

Reprint

ISSN 1997-2571 (Web Version)

Journal of Innovation & Development Strategy (JIDS)

(*J. Innov. Dev. Strategy*)

Volume: 9

Issue: 3

December 2015

J. Innov. Dev. Strategy 9(3): 25-31 (December 2015)

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HUMAN RIGHTS, INDIVIDUALISM AND CULTURAL DIVERSITY: CONTEMPORARY ISSUES IN BANGLADESH

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Accepted for publication on 12 November 2015

ABSTRACT

Sarkar SK (2015) Human rights, individualism and cultural diversity: contemporary issues in Bangladesh. *J. Innov. Dev. Strategy*. 9(3), 25-31.

Human rights are relatively modern intellectual foundations of natural law rights and liberties. The universal declaration of human rights is half a century old, but critics are still asking whether anything in our multicultural diverse world can be truly universal. Bangladesh along with a number of developing countries played an active and highly influential part in the drafting of the universal declaration of human rights. But the country faced criticism in many dimensions concerning human rights of different disadvantaged people. This present study tries to analyze the human rights and to identify the human law, practice and environment in Bangladesh and recommend some guidelines for improvement of the scenario concerning human rights in Bangladesh. Although the different governments at their respective regime were committed to uphold the fundamental human rights in Bangladesh: right to freedom, justice and adequate conditions of life, in an environment of equality that permits a life of dignity and well-being for all, but the human rights situation is still in queries.

Key words: *human rights, individualism, cultural diversity, dalit's, freedom of religion, judiciary*

INTRODUCTION

Human right is the birth right for a person and the human being has the continuous effort to achieve this. The people of Bangladesh have a deep-rooted awareness of human rights and fundamental freedom borne of the experience accompanying the nation's birth.

Bangladesh considers that hunger, poverty, illiteracy that characterizes underdevelopment to be formidable impediments, which frustrate the effective enjoyment of human rights. Removal of these impediments through mutual co-operation is, therefore, vital for the full realization of the aims and objectives of the Universal Declaration of the Human Rights.

Bangladesh is pleased to note that the Vienna Declaration adopted in June 1993 at the conclusion of the World Conference on Human Rights highlighted the universal character and the indivisibility of human rights as well as reiterated the fact that existence of extreme poverty inhibits the full and effective enjoyment of human rights and that its immediate alleviation and eventual elimination must remain a high priority for the international community. Bangladesh pledged its total commitment and unwavering support to the United Nations for its continuing efforts in promoting dignity and worth of the human person and for full realization of the principles enshrined in the Universal Declaration of Human Rights. Parliament in Bangladesh is sovereign and democratic polity is being given a permanent shape through institution building. The administration has been made transparent and accountable, the press enjoys full freedom and the judiciary has been made independent.

In Bangladesh, the Government's human rights record remained poor and it continued to commit numerous serious abuses. Security forces committed a number of extrajudicial killings. The police; the paramilitary organization, Border Guards Bangladesh (BGB); the auxiliary organization, Ansar; and the army used unwarranted lethal force. The police often employed excessive, sometimes lethal, force in dealing with opposition demonstrators, and the police routinely employed physical and psychological torture during arrests and interrogations. Prison conditions were extremely poor and were a contributing factor in some deaths in custody. Police corruption remained a problem. Nearly all abuses went unpunished, and the climate of impunity remained a serious obstacle to ending abuse and killings. In the few instances where charges were levied, punishment of those found guilty was predominantly administrative. Violence, often resulting in deaths, was a pervasive element in the country's politics. Supporters of different political parties, and often supporters of different factions within one party, frequently clashed with each other and with police during rallies and demonstrations. Press reports of vigilante killings by mobs were common. There were no reports of rape in official custody during the years, but 31 cases of rape by either police or other officials were recorded. In addition, there were credible reports that police facilitated or were involved in trafficking in women and children.

Human rights groups and press reports indicated that vigilantism against women for perceived moral transgressions occurred in rural areas, often under a fatwa (a proclamation from an Islamic leader), and included punishments such as whipping. Rejected suitors, angry husbands, or those seeking revenge sometimes threw acid on a woman's face. Violence and discrimination against women remained serious problems, as did trafficking in women and children for the purpose of prostitution and at times for forced labor. Considering the above issues the present study will try to analyze the human rights and to identify about the human law, practice and environment in Bangladesh.

METHODOLOGY

This study was undertaken within a framework of desktop review of Secondary Sources. The Secondary Data has been collected from various sources. These sources include different books, publications, annual reports, journals and periodicals. In addition relevant materials, basic magazines, law related articles, law journals, law reports, previous research reports, seminars, meetings and conference papers have been analyzed.

Normative and Institutional Framework of Human Rights in Bangladesh

The 1972 Constitution of Bangladesh had Secularism as one of the Pillars of the State, but Islam was declared the State religion in an 8th amendment to the Constitution in 1988. The Constitution nevertheless stipulates that all other communities shall practice their religion freely and likewise guarantees that all Bangladeshi citizens have the right to freedom of religion. The Constitution further prohibits discrimination by the State on the grounds of religion, race, caste, sex or place of birth in article 28 (1). Other articles concerning non-discrimination are articles 10 (participation of women); 27 (equality before law); 28(4) (mandating affirmative action or 'special measures' by the state for the 'advancement of any backward section of citizens'); and 29 (equality of opportunity of all citizens in respect of employment or office in the service of the Republic).

Basic Human Rights in Bangladesh

The concept of human rights and gender equality is enshrined in the constitution of Bangladesh, which, guarantees equality of women in all spheres of state and public life. The government recognizes the equality of women as a principle of state policy and is fully aware of the importance and dignity of women in the overall development of the society. The government of Bangladesh has not only taken up various action programs, but has also brought about legislative changes to give an institutional shape to the rights and the role of women in the national life of Bangladesh. In pursuance of this firm commitment, Bangladesh has to date, acceded to nine international instruments pertaining to human rights, including the Convention on Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Children. Bangladesh is one of the first 20 ratifying States to the Convention on the Rights of the Children and also is a Signatory to the UN Declaration of the World Summit on Children. Bangladesh-UNICEF Advisory Group has already completed a National Plan of Action for child survival, development and Protection.

Bangladesh's commitment and active involvement in ameliorating the condition of women bear recognition in its election to such International Bodies as the Commission on Elimination of Discrimination against Women, Commission on the Status of Women and the Board of Trustees of the International Research and Training Institute for the Advancement of Women. Quota system for women has been introduced with regard to employment in Government and Semi-Government Offices. A policy decision has been taken at the highest level of the government to ensure women their rightful share in the society. There are 30(thirty) reserved seats for women in National Parliament and quotas have been fixed for them in government jobs. Stringent laws have been enacted to protect women from social evils and to ensure their rights. Steps have also been taken for the economic empowerment of women.

On the question of the Rights of Minorities and communal harmony it can be said that Bangladesh is regarded as model in this regard in the region. The government and the people have ensured complete communal harmony in the country. As a serving member of the UN Commission on Human Rights and the UN Sub-Commission on Prevention of Discrimination of Minorities, Bangladesh continues to play an active and constructive role in promoting respect for human rights.

In Least Developed Countries (LDC's), the governments are unable to secure basic rights of its population, such as; food, clothing, shelter etc. Many of Bangladesh's men, women and children are profoundly affected by macro and micro nutrient deficiencies. Every year, 30,000 children become blind due to Vitamin A deficiency. Over half of the population is affected by iodine deficiency, including 80 per cent of children. The effects of malnutrition are also compounded by inadequate utilization of nutrients, given difficult conditions in terms of access to water, sanitation, health services, (UN Economic and Social Council, 2004).

Dalit's-Disadvantaged Segment of the Society

Most Dalit's in Bangladesh today are the descendants of those brought to the region from India as menial servants to the British Colonial regime. Since they are considered 'unclean' in society, they live separately from other so-called 'clean' groups in their own neighborhoods; a circumstance exacerbated by the Government of Bangladesh's rule of housing in a particular locality. Dalit's are not allowed to rent or build houses outside these designated localities. They are regularly denied entry to the temples and religious activities of Non-Dalit's, to teashops and restaurants, to houses of non-Dalit's, playgrounds, movie theatres, burial grounds, social gatherings, music concerts, and cultural events. Dalit sometimes also face severe forms of human rights violations, including abduction, rape, tortures, and destruction of houses, land grabbing, and eviction from land, threats and intimidation (BDEWF 2012; Islam 2011; Chowdhury 2009).

Political, economic and social exclusion of the Dalit community is nevertheless practiced over the entire country. Overtly visible segregation and denial of access to public spaces utilized or occupied by Non-Dalit's illustrate the depth to which caste-ism is engrained within the socio-economic and political fabric of Bangladeshi society. Social exclusion is manifested in the physical structure of both rural and urban areas throughout the country. In terms of political participation, the minority representatives in the Parliament in 1973 were 3.8%, 2.4% in 1979, 1.2% in 1988 and 3.3% in 1991. In terms of population, the minority representatives ought to have been 18% or 60 members out of 330, but it was only around 10% in the last two decades. Dalit's are often hindered from taking part in both national and local-level government policy decision-making processes.

Discrimination against the Dalit community in Bangladesh should be recognized by the Government of Bangladesh as a serious impediment to the enjoyment and fulfillment of human rights in Bangladesh. Constitutional measures and specific legislation protecting Dalit's from attacks, harassment and unlawful behavior should be enforced effectively and offenders should be prosecuted. The Government of Bangladesh should include disaggregated data on caste and the Government of Bangladesh should mainstream a Dalit perspective into all of its development and humanitarian programs.

Freedom of Religion

The Constitution of Bangladesh establishes Islam as the state religion and also stipulates the right subject to law, public order, and morality – to practice the religion of one's choice, and the Government generally respected this right in practice. Although the Government is secular, religion exerts a powerful influence on politics (Griffiths and Hasan, 2015). The Government was sensitive to the Muslim consciousness of the majority (approximately 88 percent) of its citizens. It sometimes failed to protect minority groups, contributing to an atmosphere of impunity.

Bangladesh has traditionally been a land of moderate Islam where secular Bengali culture is celebrated just as much as the Muslim faith. However, the present government after winning show a concerning trend towards more radical Islam. Therefore, the government is having good relationships with the Islamic parties and showing its interests towards Islam in the country too.

Discrimination against members of the religious minority existed at both the governmental and societal level, but there was no clear evidence of government persecution, although religious minorities were disadvantaged in practice in such areas as access to government jobs and political office (Shakil 2013). Violence, including killings and injuries, occurred both before and after the elections. There were reports of harassment of Hindus, including killings, rape, looting, and torture related to post-election violence.

In 2001, the High Court ruled illegal all fatwas, or expert opinions on Islamic law, while the Court's intention was to end the extrajudicial enforcement of penalties by religious leaders. The 2001 ruling, which generated violent protests, declared all fatwas illegal. Several weeks later, the Appellate Court stayed the High Court's ruling. No date was set for rehearing the issue. Only those muftis (religious scholars) who have expertise in Islamic law are authorized to declare a fatwa; however, in practice, village religious leaders sometimes made declarations on individual cases, calling the declaration a fatwa. Fatwas commonly dealt with marriage and divorce, or meted out punishments for perceived moral transgressions. Victims were sometimes lashed or shunned by their communities.

Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press; however, the Government did not respect these rights in practice. Individuals cannot criticize the Government publicly without fear of reprisal. The Government attempted to impede criticism by prohibiting or dispersing political gatherings. As in past years, journalists pressed for repeal of the Official Secrets Act of 1923. According to the Act, a citizen must prove why he or she needs information before the Government will provide it. The Act protected corrupt government officials from public scrutiny and hindered transparency and accountability of the Government at all levels. The hundreds of daily and weekly publications provided a forum for a wide range of views. While some publications supported the overall policies of the Government, most newspapers reported critically on government policies and activities. In addition to an official government-owned wire service, there was one private wire service affiliated with overseas ownership.

Disparity for Women and Children

The Constitution of Bangladesh states "all citizens are equal before the law and are entitled to equal protection by the law". However, in practice the Government did not strongly enforce laws aimed at eliminating discrimination. Different reports from human rights monitors indicated that women and child abandonment, kidnapping, and trafficking continued to be serious and widespread problems of the country (Khan 2014). In addition to women and children, minority groups and persons with disabilities often confronted social and economic disadvantages in the country.

Domestic violence was widespread, although violence against women was difficult to quantify because of unavailability of statistics and societal inhibitions about reporting such violence. Much of the reported violence against women was related to disputes over dowries.

The Government undertook programs in the areas of primary education, health, and nutrition. Many of these efforts were supplemented by local and foreign NGOs. These joint efforts allowed the country to make significant progress in improving health, nutrition, and education. However, slightly more than one-half of all children of the country were still chronically mal-nourished (Islam and Biswas, 2015).

Because of widespread poverty, many children were compelled to work at a very young age. This frequently resulted in abuse of children, mainly through mistreatment by employers during domestic service and occasionally included servitude and prostitution. This labor-related child abuse occurred at all levels of society and throughout the country. Sometimes children were seriously injured or killed in workplaces.

Torture and other Cruel, Inhuman or De-grading Treatment or Punishment

The Constitution of Bangladesh prohibits torture and cruel, inhuman, or degrading punishment; however, the law enforcement agency – police, routinely employed physical and psychological torture as well as cruel, inhuman, and de-grading treatment during arrests and interrogations. Torture may consist of threats and beatings, and the use of electric shock. Despite strictures against torture, police routinely employ physical and psychological intimidation on suspects and custodial deaths are not uncommon.

According to the Bangladesh Rehabilitation Centre for Trauma, there were 1,296 victims of torture and 115 deaths due to torture by security forces during 2003 (UN 2005). Victims were predominantly from the lowest end of the economic scale. The Government rarely charged, convicted or punished those are responsible, and a climate of impunity allowed such police abuses to continue.

Arbitrary Arrest, Detention and Exile

The Constitution of Bangladesh provides that each person arrested shall be informed of the grounds for detention, provided access to a lawyer of his or her choice, brought before a magistrate within 24 hours, and freed unless the magistrate authorizes continued detention. However, the Constitution specifically allows preventive detention, with specified safeguards, outside these requirements. In practice, authorities frequently violated these constitutional provisions, even in non-preventive detention cases.

Governmental Attitude regarding Violations of Human Rights

A wide variety of domestic and international human rights groups generally operated independently and without government restriction, investigating and publishing their findings on human rights cases. Prominent human rights NGOs of Bangladesh included: Odhikar (Rights), Bangladesh Society for the Enforcement of Human Rights, Ain O Shalish Kendro (Law Mediation Center), Shishu Adhikar Forum (Civil Rights Forum), Adibashi Forum (Indigenous Peoples Forum), Bangladesh Rehabilitation Center for Trauma Victims (BRCT), and Naari Pokkho (On Women's Sides), Bangladesh Women Lawyers' Association, Bangladesh Mahila Parishad (Women's Council), and Justice and Peace Commission. While human rights groups were often sharply critical of the Government, they also practiced self-censorship, particularly on some politically sensitive cases and subjects.

Government officials were defensive about international criticism regarding human rights problems. However, the Government maintained a dialog on human rights issues with international organizations such as the U.N. Human Rights Commission and the ICRC (International Civil Rights Commission). Despite their election pledge and repeated public announcements, the government did not enact legislation establishing an independent National Human Rights Commission (Odhikar 2013). It is imperative for the government to issue standing invitations to all special procedures and facilitate the visits of those with pending requests as a priority. However, followings are some issues government is focusing:

I) Extra-judicial Killing

The term extra-judicial means the process, which is done, given, or affected outside the course of regular judicial proceedings. It refers to actions outside the judicial system. Though there is no legal definition of an extra-judicial killing, but if a death is caused by a law enforcement authority without following the legal rules or due judicial process, it can be considered as extra-judicial killing (Hossain 2010).

Since Bangladesh's election to the Council in 2006, the Rapid Action Battalion, the police, the armed forces or other paramilitary security forces have extra-judicially killed an estimated 1000 persons. However, not a single case has yet been prosecuted and those are responsible enjoy total impunity. The killings have continued despite the government promising that government will show "zero tolerance" to the perpetrators of extra-judicial killings and other human rights abuses during the examination of Bangladesh's human rights record under the Universal Periodic Review process in February 2009.

II) Independence of the Judiciary

The lack of an effective, independent judiciary is ensuring that the perpetrators of a wide range of grave human rights abuses continue to enjoy impunity (Khan 2012). Although in theory the judiciary was separated from the executive branch in November 2007, it is still not able to function independently. Despite claims in the 2009 pledges that “Bangladesh recently completed the process of full separation of the judiciary from the executive,” in April 2009, the government amended the Code of Criminal Procedure-1898 to ensure that it has discretionary powers to enable officers of the executive to take control of criminal cases whenever the authorities deem fit. This evidently runs contrary to the claims made in the pledges and eliminates the independence of the judiciary in practice, notably concerning cases of human rights abuses alleged to have been committed by members of the authorities.

III) Freedom of Speech

Bangladesh, in its 2009 pledges, claims to have “one of the most independent print and electronic media in the world.” However, the authorities forced some 160 local newspapers and a television news channel to close during the state of emergency. A significant number of journalists have been arbitrarily arrested and detained, received threats or been subjected to legal or physical attacks. According to Odhikar, in 2007, 35 journalists were injured, 13 arrested, 35 assaulted, 83 threatened and 13 sued (UN 2009). For example, a media practitioner was forced to sign an undertaking not to write any report without permission from the Bangladesh Rifles.”

IV) Treaty Bodies

Despite pledges in 2006 to “strengthen its efforts to meet its obligations under the treaty bodies to which she is a party,” Bangladesh’s record in this regard remains poor (Bangladesh Pledge, 2006). For human rights to be protected and enjoyed in reality the government must go beyond seeing ratification as an end in itself and ensure the implementation of the rights and provisions contained in the human rights instruments to which it is a party. For example, more than 10 (ten) years after the ratification of the Convention against Torture (CAT), the country has still not criminalized the practice of torture. Torture remains endemic in Bangladesh, in part due to the fact that there is no legal prohibition and therefore no credible deterrent to halt the use of this grave abuse.

A Bill on the criminalization of torture has been submitted to the Parliament as a Private Member's Bill. However, its enactment remains uncertain, as the government, which has more than two-third majority in the house, has not clarified its position on this issue. As such, the authorities are urged to criminalize torture without delay and invite the Special Rapporteur on torture to visit the country during its upcoming membership in the Council.

V) National Human Rights Commission (NHRC)

Bangladesh appeared to fulfill its 2006 pledge when it established an NHRC in September 2008 (Bangladesh Pledge, 2006). However, the NHRC was established as a face-saving exercise by the military-controlled government during the state of emergency. A Chairman and two Commissioners were only appointed two months later, to begin officiating in December 2008, coinciding with the end of the emergency. At present, the NHRC remains in a state of limbo.

VI) Human Rights Defenders

Bangladesh pledged in 2006 to “continue to promote the constructive role of the NGOs in the work of the council” and to “...strive to promote effective participation of the NGOs from developing countries in the work of the council” (Bangladesh Pledge, 2006). In the 2009 pledges, the government claims to be co-operating with civil society representatives at the council (Bangladesh Pledge, 2009). However, in truth, the government has made attempts to block NGOs raising concerns about Bangladesh’s human rights record during council sessions. While the country has a large number of NGOs operating in its territory, those that seek to work on sensitive issues, such as arbitrary arrests and detention, torture or extra-judicial killings, face the prospect of becoming victims of such abuses themselves.

VII) Anti-Corruption Commission

Endemic corruption continues to stifle Bangladesh, as it has done since the nation’s inception. Corruption has impeded our economic development, impaired investors’ confidence, prejudiced the development of public education and health, weakened our democracy and called into question the rule of law. The new Anti-Corruption Commission (ACC), established on 21 November 2004, was dysfunctional until the arrival of the Caretaker Government in 2006 (BRAC University, 2007). But this body lacks impartiality and was used during the state of emergency as a weapon to harass politicians and businessmen. A large number of high profile persons were tried in special tribunals that did not follow due process, under complete supervision by the military. Despite claims in the 2009 pledges by the current government that it has reformed the commission to have “greater independence and authority,” local civil society groups have accused the current government of applying pressure to have cases dropped. Political interference is making the commission less able to effectively address the country’s serious problem of corruption.

Future Break-through for ensuring Human Rights

The government of Bangladesh has an opportunity to break from the practices of the past and make substantial progress concerning the protection of human rights and its cooperation with the UN human rights system. This is not a question of development or resources, but one of political will. Bangladesh must go beyond simple ratification of instruments and ill-founded claims of cooperation with mechanisms at the international level, and face-saving yet ineffective measures at the national level. It must instead commit to tangible cooperation with the Human Rights Council (HRC), and its mechanisms and the implementation of its obligations under international law at the national level.

As part of its membership in the Human Rights Council, the government of Bangladesh must:

- Issue a standing invitation to all of the Council's special procedures, and enable visits of all that have requests pending, without delay, giving priority to the Special Rapporteurs on extra-judicial killings, on the independence of judges and lawyers, on the freedom of expression and on torture.
- Ensure the implementation of all recommendations made by special procedures and of all obligations under the international instruments to which Bangladesh is a party.
- Ensure the full independence of the judiciary in practice, inter-alia, by revoking the April 2009 amendment to the Code of Criminal Procedure-1898 that allows the executive to take control of criminal cases.
- Enact a law criminalizing torture, in line with international laws and standards.
- Investigate all allegations of human rights abuses, notably arbitrary arrests and detention, torture, extra-judicial killings, violence against women and corruption, including those committed during the recent state of emergency; prosecute all those alleged to be responsible in fair trials; and provide adequate reparation to the victims and their families.
- Guarantee the personal integrity and freedom to work of all journalists and human rights defenders.
- Strengthen and provide sufficient resources and independence to the National Human Rights Commission and the Anti-Corruption Commission.

CONCLUSION

As a candidate to the Human Rights Council, the Government of Bangladesh made a pledge to “further integrate the promotion and protection of human rights into her national development policy with special attention to the rights of women, children, minorities and persons with disabilities”. The Government needs to engage in a constructive dialogue with human rights experts about the ways to overcome challenges and constraints experienced in the country. In particular, the Independent Expert on Minorities Issues would be able to initiate a dialogue about the prevention of discrimination against marginalized communities and minorities, including Dalit's, in Bangladesh.

A strategy should be developed by the government and NGOs in collaboration with Dalit organizations and other stakeholders to establish a human rights monitoring mechanism that gives Dalit communities access to the same rights and services enjoyed by other citizens. In addition, the government should cooperate constructively with international human rights mechanisms, including Special Rapporteurs and UN Treaty Bodies and need to focus on capacity-building and technical assistance through bilateral, regional and international cooperation.

ACKNOWLEDGEMENT

The Author is grateful to Mrs. Shikha Rani Dutta who completed BBA and MBA in HRM, and DBA in Non-Governmental Organizations (NGOs) from American World University, California, USA, Bangladesh Study Centre, Navana Rahim Urdent, 10th Floor, 39, Bijoy nagor, Dhaka-1000 for her cordial support and inspiration to carry out the research in time.

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