

Human Rights and Good Governance: A Quest for Measuring The Status of Good Governance at The Stake of Violation of Human Rights in Bangladesh

Pranab Kumar Panday

Department of Public Administration at Rajshahi University, Bangladesh

INTRODUCTION

Human development in a politically organised society i.e. state, inter alia, can be measured in terms of level of governance the society has attained in its pursuit to organize human life for better living^[1]. Good governance simply means that various levels of agencies of government exercise their power in a manner that is effective, honest, equitable, transparent and accountable (Good Governance, Retrieved from; www.acdi-cida.gc.ca/cida_ind.nsf/011120E9700965D51CE85256919006BFIES, accessed on 30 August 2004.) It indicates that political and civil rights of citizens should not be denied because of their sex, race or ethnicity and courts should not be open to the people of advantaged classes of the society. Protection and promotion of human rights is a function of good governance. Link between human right and good governance is therefore, very clear. While good governance sets the condition's for realization of human rights, protection and promotion, on its turn, plays a major role in further providing for and sustaining good governance^[1]. In this study, an attempt has been made to discuss the relationship between good governance and human rights and measures the status of good governance in Bangladesh at the stake of violation of human rights Bangladesh.

DEFINITION OF KEY CONCEPTS

Governance: The concept of governance is now not new. It means different things to different people, therefore, it is better to get our focus right. The concept has been around in both political and academic discourse for a long time. The general definition provided by Webster's Third New International Dictionary is of some assistance, indicating only that governance is a synonym for government, or "the act or process of governing specially authoritative direction and control. This interpretation specifically focuses on effectiveness of the executive branch of government.

United Nations Development Programme viewed governance as the exercise of economic, political and administrative authority to manage a country's affairs at all levels. It comprises mechanisms, processes and

institutions, through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences (in HDC 1999, retrieved from www.nssd.net/country/nepal/nep03.htm#02).

World Bank defines governance as the manner in which power is exercised in the management of a country's economic and social resources. The World Bank has identified three distinct aspects of governance.

- the form of political regime
- The process by which authority is exercised in the management of a country's economic and social resources for development; and
- The capacity of governments to design, formulate and implement policies and discharge functions (HDC, 1999, retrieved from www.nssd.net/country/nepal/nep03.htm#02).

Based on the above theoretical discussion, it can be said that governance refers to a process whereby elements in society wield power, authority and influence and enact policies and decisions concerning public life and social upliftment.

Good Governance: The World Bank defined good governance as it is epitomized by predictable, open and enlightened policy making, a bureaucracy imbued with a professional ethos acting in furtherance of the public good, the rule of law, transparent process and a strong civil society participating in public affairs (W.B. Understanding the Concept of Governance, Retrieved from: www.gdrc.org/u-gov/governance-understand.html). The result of good governance is development that 'gives priority to poor, advances the cause of women, sustains the environment and other livelihoods (Re-conceptualizing Governance, UNDP, 1997:1). Governance is good when it subscribes to the following nine characteristics:

Participation: All men and women should have a voice in decision-making, either directly or indirectly or through legitimate intermediate institutions that represent their interests.

Strategic Vision: Leaders and public have a broad and long term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical cultural and social complexities in which that perspective is grounded.

Rule of law: Legal framework should be fair and enforced impartially, especially laws on human rights.

Transparency: Transparency is built on free flow of information. Processes, institutions and information are directly accessible to those concerned.

Responsiveness: Institutions and process try to serve all stakeholders.

Consensus Orientation: Good governance mediates differing interests to reach in broad consensus on what is the best interest of the group and, where possible, on policies and procedures.

Equity Building: All men and women have opportunities to improve or maintain their well being.

Effectiveness and Efficiency: Processes and institutions produce results that meet needs while making the best use resources.

Accountability: Decision-makers in government, the private sector and civil society organizations are accountable to the public as well as to institutional stakeholders. This accountability differs depending on the organization and whether the decision is internal or external to an organization.

In the 1990s, Humane Governance came into limelight as another approach to governance. Mahbub Ul Haq was the chief advocate of humane governance. He argued that the concept of good governance has so far failed to match the radicalism of the notion of human development. Human governance focuses on effective participation of people in state, while society and private sector activities that are conducive to human development. It stresses on the state, civil society and the private sector to provide room for building capacities favourable for meeting the basic needs of all people, particularly women, children and the poor ensuring sustainability at human development. The fundamental aspects of humane governance are to establish the rule of law and ensure people's right to participate in deciding the role and conduct of public institutions in shaping their lives.

Nevertheless, some broad features of good governance may be identified based on the above discussion. Some of them include:

- promotion of democracy and open pluralistic societies with free and fair electoral process;
- Strengthening of transparent accountable, efficient and effective national and local government;
- Promotion of respect for human rights;
- Reinforcement of rule of law, including fair and accessible legal and judicial system.
- Promotion of independent media and the dissemination of information.
- Anti-corruption initiatives and efforts to reduce excessive non-development expenditure.

Human Rights: Meaning and Definition: Human rights were known as natural rights in the past. In present day context, the international roles of human rights impose modes of behavior by requiring governments to act in a certain way and at the same time legitimize the complaints of the individual if these rights and freedoms are not respected^[2], since human rights envisage to increase safeguards for the dignity of human person. The concept of dignity guarantees the integrity of human person although its modes of expression and implementation can not be culture free. While adopting the charter at the United Nations the world body incorporated no less than seven human rights references. It was the historical Declaration following the adoption of the United Nations Charter that gave flesh and blood to the ideology of human rights^[2,3].

Renecessin considered the personal rights, the right that belongs to the individual in his relationships with the social groups in which he participates civil liberties and political rights exercised in order to contribute to the formation of governmental organs or to take part in the decision making process and the right exercised in the social and economic arenas as the four fundamental pillars. Article 28 of United Nations Charter on human rights is aimed at emphasizing that these rights can be implemented only in a favourable social structure is set up that allows them to take roots and Article 29(1) provides for duties owed to the community^[2].

The International bill on Human Rights contains "unequivocal standards of human rights" which give to the bill a distinctive legal status in contemporary international law. Human rights are based on an expensive desire to unify the world by drawing up a list of guidelines for all governments. They is an attempt to highlight the values and their opposites that all states should take as parameters assessing their actions^[3].

Based on the above discussion it is imperative to say that the states are under a responsibility and duty to ensure the enjoyment of human rights by every human being that calls for adoption of different ways and means. Direct protection has to go hand in hand with indirect protection, education, teaching, training and the dissemination of information also have an important role to play^[4].

GOOD GOVERNANCE AND HUMAN RIGHTS: INTERRELATIONSHIP

The bill of human rights recognises the indivisibility and universality of fundamental human person. The dependence of economic and socio-cultural rights, inclusive of rights to development and civil and political rights with each other is absolute. The protection of "right to life" is meaningless in absence of the protection of human dignity economically, socially and culturally. One of the connotations of the good governance is thus to create a system of 'safeguard for indivisibility' of the human rights. The concept of 'good governance' in this sense functions as a mechanism to ensure respect and protection of human rights in practical reality^[5]. The concept of good governance and human rights has started using into new stage after the collapse of cold war. According to Theo Van Boven (a noted international scholar):

"The days are over that the UN General Assembly declared the realization of the new international economic order, an essential element for effective promotion of human rights and fundamental freedoms and should be accorded priority. While the right to development retained its place on the International Agenda as a preferred item of developing countries, industrialized countries wanted to carry on the development debate from the different prospective, in spite of the affirmation in the UN Declaration on the Right to Development that this right is a prerogative both of nations and of individuals who make up nations and in spite of its focus on the human persons as the central subject at the development and the beneficiary of the right to development. Thus, the tone and the context of the discourse changed and emphasis were put on the virtues of democracy, democratic government, the rule of law and pluralism^[6]."

The concept of 'good governance' is thus obviously linked to 'human rights' a system of protecting and promoting human dignity. In this sense, the good governance is an 'art of steering societies and organization' for the propose of respecting and protecting human dignity, welfare and development^[7].

Finally it may be said that good governance refers to the quality of governance which should be judged by the well-defined criteria. Good governance and human rights

are conceptually distinct but are-related while the former deals with form of governance and management of relation between governments and its populace within a constitution order, the later is related to the question of individual rights and their protection. A closer look will reveal that requirement of good governance is seen as a precondition for effective enjoyment of human rights. On the other hind, without human rights, good governance can hardly be realised.

SITUATION OF HUMAN RIGHTS IN BANGLADESH: VIOLATION OR PROTECTION?

Bangladesh are a parliamentary democracy with broad powers exercised by the Prime Minister. The Government's human rights record remained poor and it continued to commit numerous serious abuses. In few years, security forces committed a number of extrajudicial killings. The Police; the Paramilitary Organization; Bangladesh Rifles (BDR); 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 interrogation. 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^[8]. In the following section, an attempt will be made to highlight the constitutional basis of few aspects of human rights and their violation in Bangladesh with specific case examples.

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. 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. Discrimination against members of the religion minority existed at both the governmental and societal level, but there was no clear evidence of government prosecution, although religion minorities were disadvantaged in practice in such areas and access to government joss and political office. The following case clearly represents the sufferings of the religious minorities in Bangladesh.

Oppression of Hindu Minorities after the General Election of 2001: As a minority community in Bangladesh, Hindus have tended to vote for and support

parties such as the Awami League. They have therefore been the targets of a political backlash by supporters of parties opposing the Awami League. While both Hindu men and women have been subjected to attacks and intimidation, Hindu women have also been subjected to sexual violence. The current wave of attacks against the Hindu community in Bangladesh began rampant before the general elections of 1 October 2001 when Hindus were reportedly threatened by members of the BNP-led alliance not to vote, since it was perceived their vote would be cast for the Awami League. The backlash after the elections was systematic and severe. Reports indicate that the worst affected areas have been in Barisal, Bhola, parts of Pirojpur, Khulna, Satkhira, Gopalganj, Bagerhat, Jessor, Comilla and Narsingdi districts. Attackers have reportedly entered Hindu homes, beaten members of the family, looted their property and in some cases, raped Hindu women.

In the village of Daspara in Mithanala Union, Mirersarai upazilla, a gang of about 25 youths reportedly attacked homes of Hindus around mid night on 5 November 2001. One-person Sunil Das Sandhu, 28, was reportedly hacked to death and 16 others were injured, some seriously. They ransacked houses, looted them, dragged family members out of their homes and beat them. Police reportedly by arrested 12 persons in connection with their attack, but it is not known if they have been charged.

Human rights organization in Bangladesh believe over 100 women may have had been subjected to rape. Reports persistently allege that the perpetrators have been mainly members of the BNP or its coalition partner Jamat-e-Islami. Rape victims are frequently reluctant to disclose their ordeal. But 9 have some available information.

A college student was reportedly raped in front of her mother at her home in Azimnagar, Bhanga, under Faridpur district. The attacker reportedly entered her home on 6th October 2001 at about 9 p.m. ransacked the house, looted valuables and raped the student before leaving the house. A schoolgirl was reportedly gang-raped in Delua, Ullapara under Sirajgong district on 8 October 2001. Attackers entered her home, ill-treated members of her family, took her outside the house and raped her. Two Hindu women were reportedly raped in front of their husbands on 11 October 2001 in Khanzapur Upazilla in Gournadi under Barisal district. The attackers reportedly came at night, knocked at the door and told the family that they should leave the area because they had voted for the Awami League. They then tied up the husbands and raped the women. Another two Hindu women were raped in their home in Bashkandi, Chorfashon under Bhola on 6th October 2001. Male members of the family had already gone into hiding for fear of being attacked. The attackers entered their home and raped the girl and her mother.

A number of Hindu girls were abducted also. It is not known whether or not they have returned to their family. A gang of armed men abducted three Hindu girls at the village of Nohata in Shreepur under Magura district on 11 October 2001. The men entered their home at midnight and took the girls away. Another girl was abducted from her home at Razarchor, sadar under Barisal district after the attackers were not paid a large sum of money, which they had demanded for leaving the family alone. They also molested the girl's mother and her aunt. There are fears that all of these girls may have been subjected to rape (Bangladesh: Attacks on members of the Hindu minority, 2001). These are the cases that had been appeared in the media. But there are more cases of minority oppresses after the election of 2001 which have not been discovered yet.

Freedom of Speech and Press: The constitution provides for freedom 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.

Besides these, the government harasses very often journalists if they write or disclose facts, which Government deems detrimental for their image. The following example would establish such argument.

Arrest of Shahriar Kabir: The arrest of a prominent journalist and writer, Shahriar Kabir, who was investigating the situation of Hindus after the election of 2001, has sent a chilling message to human rights defenders in Bangladesh and throughout the world. He was arrested and taken into custody of the special Branch of the police on November 22, 2001 at Dhaka Zia International Airport on his return from Kolkata. He had been to India to cover the situation of Hindus who had fled persecuting in Bangladesh after the general elections. Police seized his passport, five videocassettes, 13 audiocassettes, three CDs, several unprocessed films and his camera. He was detained under section 54 of the Code of Criminal Procedure, which allows the police to detain people without a warrant of arrest for 24 hours. The police asked for his remand in police custody and the magistrate issued a two-day remand order. However, the lawyer representing Shahriar Kabir sought a stay of this remand order for two weeks, which was granted. The court did not grant bail to the prisoner and he was sent to Dhaka central jail where he was then served with a detention order under

the special power Act (SPA) (Library Asia and the Pacific South Asia, Bangladesh, ASA 131006/2001, December 2001).

The SPA provides for detention on the grounds of preventing [a person] from doing any prejudicial act for example by causing fear or alarm to the public or any section of the public or to prejudice matters relating to defence, foreign relations, security, community relations, administration of law, essential supplies and services and economic and finance interest (Library Asia and the Pacific South Asia, Bangladesh, ASA 131006/2001, December 2001). Its broadly formulated provisions allow for the detention of people in contravention of their right to freedom of expression. It has been frequently used by Bangladesh Governments to detain political opponents.

The explanation the government was given for the detention of Shahriar Kabir was that it was found that the videos contain objectionable and misleading statements that were detrimental to communal harmony and subversive of the state and that Shahriar Kabir in the interest of vested quarters was involved in tarnishing the image of Bangladesh and of the government in the outside world.

At the time of writing, the grounds given by the government for the detention of Shahriar Kabir do not relate to any specific penal charges. On 1 December 2001, the Bangladesh High Court asked the government to explain within one week why Shahriar Kabir's detention was not illegal. The ruling followed a writ petition by defence lawyers challenging his detention.

Shahriar Kabir's detention appeared to be solely writing articles, giving interviews and taking video footage of Hindus who had been the subject of attacks after general election 2001. In light of this, Amnesty International believes that Shahriar Kabir's arrest was in contravention of his rights to freedom of expression, which includes freedom to express his views peacefully on the plight of the Hindu minority in Bangladesh. There was no indication whatsoever that he had used or advocated violence. Amnesty International therefore considered Shahriar Kabir to be a prisoner of conscience and was calling for his immediate and unconditional release (Library Asia and the Pacific South Asia, Bangladesh, ASA 131006/2001, December 2001).

Freedom of prisoners: In a democratic country like Bangladesh it is imperative that a prisoner enjoys the access to be heard before the ordinary Courts of law. Several allegations have been raised against the government in Bangladesh mentioning the fact that the prisoners are tortured under the police custody and in some cases they are the victims of crossfire.

Torture as an instrument is not permitted by the judicial process. Nevertheless, it is widespread and persistent. This has recently assumed a different

dimension with the many reported deaths through 'crossfire' while in the custody of the Rapid Action Battalion (RAB) force. The situation has become complex, given the fact that while our constitution specifically forbids torture and it is considered a criminal act under the Penal Code, yet section 54 of the Criminal Procedure Code permits law enforcement agencies to arrest anyone without a warrant of arrest and keep him in detention for up to 24 hrs on vaguely formulated grounds. This aspect has assumed enough seriousness to lead the High Court to recently issue a rule upon the government, to show cause as to why direction should not be issued for RAB to function within the purview of law^[9].

CAN VIOLATION OF HUMAN RIGHTS ENSURE GOOD GOVERNANCE IN BANGLADESH?

Good governance is the only desirable form of governance that creates the space within which individuals can fully enjoy human rights. Only in a setting of good governance can human rights truly be respected? Of course, human rights are not synonymous with good governance. Good governance is however, turned with human rights. Without human rights there cannot have existence of good governance. Because good governance delivers accountability, responsive and transparent governments that are far less likely to extend their oppressive arms to destruct the rights of the individuals and for more likely to address the needs of those in society who often suffer from lack of respect of their rights, including women, the poor, vulnerable groups, disasters victims and minorities^[10].

So, if we analyse the existing human rights situation in Bangladesh, it can be undoubtedly said that there is hardly any existence of good governance in the country. Human rights are violated in every aspect. Huge number of human rights instruments proclaiming civil, political, economic, social and cultural rights of individuals and groups of individuals have been drafted, signed and ratified by states. These instruments impose obligation on the states to respect and ensure the realization of the rights guaranteed by these instruments. But still every day, the minimum core entitlements of those rights of millions of peoples are violated with impunity.

Absence of good governance encourages the governments to violate the rights of their citizens. Now existence of good governance creates the space within which the governments can show disregard to the rights of the peoples. In almost all cases the violation stems from the irresponsible use of political authority to manage a nation's affairs. States in general, however, attribute these violations to unavailability and inadequacy of resources in order to save their faces. But in most of the cases, this is not true. Availability of adequate

resources is necessary condition, but it is not a sufficient condition for realization of human rights^[10].

The governments claim regarding unavailability and inadequacy of resources responsible for violation of human rights is again disproved when the exercise of civil and political rights by their citizens are frequently interrogated by arbitrary governments decisions. Most of the civil and political rights entail negative obligation as they only require non-interference of state in their enjoyment whilst the enjoyment of the other civil and political rights require minimum resources which is way beyond the capacity of a state. Therefore, it is not the resource problem rather attitude problem of the governments generated and encouraged by the absence of good governance is mainly contributing to the non-fulfilment of human rights. We can take another burning example from Bangladesh. Demand for separation of judicial magistracy in Bangladesh from that of executive is longstanding. In spite of the fact that there is clear directive of Bangladesh Supreme Court to the Government in *Mazdar Hossain V. State*^[10] case that judicial magistracy must be separated from executive, that it must exercise only judicial power being responsible and accountable to higher judicial authority and not to any higher executive hierarchy. The Government on various pretexts is routinely paying for time, getting it and endlessly delaying to implement judicial verdict. Under these circumstances, it can be said that where the rights of the common people is violated every now and then, the concept of good governance in Bangladesh will take a long time to be ensured in its true sense.

CONCLUSIONS

Good governance and human rights are intrinsically interwoven in that the later cannot be enforced and observed without the former and the good governance cannot be achieved without respect for human rights.

The clamour today for good governance stems from two broad reasons. First the denials of fundamental human rights, the presence of arbitrariness and the absence of basic freedoms for the individual remained familiar traits of a majority of government all over the globe. Secondly, the strain of these styles of governance has prompted a demand and a clamour for new approaches to the resolution of various nation questions including the ever-burning issue like frequent violation of the rights of the peoples civil, political, social and cultural.

It is easy to break the eggs without making the omelettes. Similarly it is easy to argue that human rights are best perfected in a setting of good governance, but the challenges to established good governance are colossal. The major challenges of good governance in

Bangladesh are to develop and strengthen competent institutions of good governance, such as the free media, independent judiciary, sensitive, accountable and transparent bureaucracy, effective legislature, enlightened and engaged civil society, meaningful reciprocity between the ordinary citizens and the powerful.

The prospect of enforcement and observance of human rights in Bangladesh is dependent on consolidation and sustainability of the good governance and the sustainability of good governance in Bangladesh is dependent on the institutionalisation of it.

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