

REALISING ESC RIGHTS THROUGH BUDGETARY ALLOCATION: A VIABLE ALTERNATIVE FOR BANGLADESH

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ABSTRACT

In terms of constitutional articulation CP rights maintain multidimensional relationship with ESC rights. Mere defining a set of rights and characterising them in relation with other rights may not serve the purpose of materialisation of many ESC rights. Apart from ideological dichotomies and the issues related to big and limited government there are concrete budgetary issues involve in the actualisation of ESC rights. Conceptualisation of fundamental rights in the Constitution of the People's Republic of Bangladesh has been done in a way that governmental agencies and judicial organs take the responsibilities of looking after the CP rights but are quite hesitant to shoulder any direct responsibility for the materialisation of ESC rights. As a result, in most parts of the world ESC rights have become ornamental or rhetorical in character devoid of enforceability through the judiciary. However, budgetary arrangement of resource allocation and distribution cannot completely be indifferent to the ESC rights. Any progressive materialisation in the context of Bangladesh can not overlook any pertinent state policies that should not be concocted with ideological dilemmas of competing political forces aspiring to capture the state powers. In fact this problem limits us many ways to organize or conduct a thorough and neutral research in finding organic relationship between CP and ESC rights. Thus, our attempt is set out from ideological perception, constitutional articulation on the one hand and judicial predicaments and accessibility to minimum sustenance or irrespective of race, religion, gender and ethnic belonging on the other.

INTRODUCTION

It is perceived by almost all influential actors of international community that all human rights are universal, indivisible, interdependent and interrelated. In a broader sense, all human rights are divided into economic, social and cultural rights (hereinafter abbreviated to ESC rights) and civil and political rights (hereinafter referred as CP rights). Each group of these human rights is almost organically related to each other. However, their functional relationships are not

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identical on the one hand, and they are overlapping their functions for the better performance of those rights on the other hand. It is true that in most cases concerned parties are excited with CP rights and less enthusiastic in regard to ESC rights.

The issues of divergence and convergence between CP and ESC rights are quite complex and complicated both in terms of national interest as well as global consideration. Apparently, CP rights are always enforceable by the courts of law, while ESC rights are substantially the issues of national and international policies distantly related to the actual materialisation of those rights. This divergence between CP and ESC rights has been extended in the national arena as well where Bangladesh is not an exception.

Bridging the gap between CP and ESC rights is a pertinent issue for all governments and international organisations alike. This is not a pertinent issue that we would make one group of rights superior or inferior to another group of rights. But their corresponding relationship is very important for the progressive materialisation and realisation of those rights to improve the living standards and quality of life.

The major objective of this article is to explore the multidimensional relationship between CP and ESC rights in the context of Bangladesh, more precisely, in terms of constitutional system and arrangement in addressing the issues of fundamental principles of state policy¹ and their reflection in the system of governance. In doing so, the paper will search for the most feasible way of realising ESC rights in addressing the relevant issues keeping in touch with the socio economic and political development of Bangladesh. As a matter of fact, the paper will ventilate comparatively the most feasible way of realisation of ESC rights elaborately in the socio-economic perspective of Bangladesh. While achieving this objective, the paper will not forbear to present references and examples from other legal and political system either from neighboring countries or countries far beyond.

DISPUTES OVER THE CONTENTS OF ESC RIGHTS

Jurisprudentially speaking we may not reach to a conclusive decision whether ESC rights are collective or individual rights. By going through different legal perspectives and analyzing diverse legal theories we may endlessly try to shrink or expand the content of ESC rights. However, from universal perspective of human rights and humanitarian laws we may rather easily describe some core principles about ESC rights. As no group of jurists or lawyers can justify a set

¹ Part-II of the Constitution of the People's Republic of Bangladesh deals with the "Fundamental Principles of State Policy".

of collective punishment, so we cannot claim that a set of rights should be regarded as collective rights to be ignored altogether in the courts of law.

Accepting some core ESC rights as universal human rights we can make them inalienable rights of individual human being. Dilemma here lies with the status of an individual citizen as well as his or her natural and artificial incapacitated situation or position.

By denying any rights or services to an individual because of his or her particular situation or circumstances, we may push the concerned person to total and untimely elimination from this planet that belongs to the entire mankind. Thus we can conclude that no institution whether it be governmental or non- governmental, or a group of people or even a man with superior position cannot deny a right of a person whose physical survival is at stake. From this perspective we find the content of ESC rights is very vast and may be developing or expanding its horizon in the course of time or overall economic emancipation of a particular society. This is the reason first we need to have a well defined legally articulated content of CP rights that may be helpful in determining the boundaries of ESC rights. This correlation between CP rights and ESC right may create a good number of philosophical, legal and economic dichotomies and prejudices to be tackled through judicial avenues. In other words we can do argue that many ESC rights may be brought within the orbit of powers and functions of judicial organs of a state. This is the major challenge about which we will be discussing in later part of our paper.

HISTORICAL SKEPTICISM TOWARDS ESC RIGHTS

The human rights as we have perceived today may be traced back in the annals of history long before the inception of UDHR, 1948 in different tires or different forms. In the Greek civilisation the term ‘natural rights’ or overall concept of ‘rights of man’ was perceived almost as the same notion of modern term ‘human rights’.² Since its inception Magna Carta 1215 it has been regarded as a premier document of human rights in the context of English history. Prior to UDHR 1948 the landmark human rights documents were the English Bill of Rights 1689, French Declaration 1789, the American Declaration of independence 1776 and the American Bill of Rights 1791. Apart from that, various constitutional documents of many advanced industrialised countries also articulated different human rights. However, adoption of UDHR paved the way for unification of human rights, of course, without division of rights³. Shortly after the adoption of the UDHR, attempts were made to translate those rights into legally binding document through the ratification of those rights in the national constitution. As a result of ideological

² See, Khan, Maimul Ahsan, Human Rights in the Muslim World, Carolina Academic Press, North Carolina, U.S.A 2003, p.215.

³ UDHR, 1948, Preamble, Para-1, at www.un.org/en/documents/udhr.