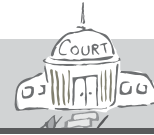


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LAW news



Administration of judicial system in Bangladesh

M. M. YUSSOUF

THE administration of judicial or justice delivery system in Bangladesh is time consuming and un-affordable to the poor people. A case usually takes about ten to twenty years on average from date of filing to date of judgment. Our district court judges are the administrator of the district court, responsible for managing, scheduling and delivering decisions. Justice delayed justice denied is one of the principles of equity. Public confidence in our legal system is lost. Our Law Minister Barrister Moudud Ahmed in a recent workshop said that our present judicial system is old, traditional and corrupt and needs reform. He informed that a total of Ten million (96, 83, 305) cases are now pending in different courts of the country and under existing procedure hundred years will be required for disposal. The breakup of this backlog is: 4,946 cases in the Appellate Division of the Supreme Court; 1, 27, 244 cases in the High Court Division, 3,44,518 civil cases and 95,689 criminal cases in the Judges courts and 2,96,862 cases with Magistrate courts and 99,004 cases with Metropolitan Magistrate courts. Independence of judiciary, amendment of existing laws, alternative dispute resolution, case management by judges, court administration by court administrators - are a few recommendations came from our donors and development partners.

Legal reform committees and commissions in Bangladesh

Several legal reform committees and commissions have been formed since the independence of Pakistan in 1947, i.e. Law Reforms Commission of 1957 under Justice S.A. Rahman, Law Reforms Committee of 1967 under Justice Hamoodur Rahman, Law Reforms Commission of 1976 under Justice Kemaluddin and Criminal Law Reforms Committee of 1982. The recommendations (both legal and administrative) of those committees and commissions include, inter alia, to create Judicial Ombudsman, Commercial Courts, setting time limit for disposal of both civil and criminal cases. The Government has tried fixing time limit with repeated amendments of Cr. P. C within which hearing and different steps in both civil and criminal cases are to be completed. Unfortunately defects in penalty provision for not following the time limits led the judges go on disposing cases in their own way and the result is the judicial logjam of today. The government enlarged number of magistrate courts, district courts and divisions of the High Court for speedy disposal of cases. Recently the government under its legal reform programme has enacted Speedy Trial Tribunal Act, 2002 and formed six speedy trial tribunals for early settlement of certain cases. This is the century of specialization, the world around us developed and developing. We must move fast in accepting latest modern technology of court administration and case management and not waste time lagging behind.

Judicial administration in Bangladesh

The Bar and the Bench constitute the highest judicial administration of the country. The judiciary has its tradition of living in "ivory tower" in glory of detachment and distance but it is subject to public scrutiny entailing both transparency and accountability to the constitution, the Supreme law of the country. The purpose is to dispense justice, to preserve people's freedom and right. The directive of the Appellate Division of the Supreme Court to the government on separation of judiciary from executive is in process. Independence of judiciary is not an end in itself; its success will depend on competence, honesty and professionalism of both the Bar and the Bench. The guarantee of the independence will depend on the performance of the Bench and the Bar. The judiciary must play proactive role in meeting new issues, challenges and developments and also must see that the disadvantaged and vulnerable groups in society i.e. the poor, women and marginalized sections are not denied access to justice either because they are not aware of laws or they are unable to bear the financial or social costs of justice.

Legal reforms in Bangladesh

The present scenario of legal reform system of Bangladesh is positive and encouraging. Major reforms in our legal system are necessary for ensuring speedy justice, reduce delay in administration of justice, attracting and encouraging foreign investments in Bangladesh. As per press report our law minister Barrister Moudud Ahmed in a recent workshop on "Court Administration and Case Management: Inquest of Capacity Building" organized by Bangladesh Legal and Judicial Capacity Building Project welcomed the donor countries and agencies including World Bank for coming up with

such a project for the first time to improve the judicial system involving an outlay of Tk 228.75 crore (equivalent to 42.36 million us dollar). Our Government has already enacted some new laws and brought some changes to some old laws to give protection to foreign investments in the country. Our litigants have to wait sometimes 10 to 20 years to obtain justice due to our multi-layered legal system. Our present prosecution system is weak and policing system is not capable enough to deal with the overall law and order of the country. The recent Speedy Trial Act yielded good result disposing good number of sensational cases. Our law minister in a recent seminar on "Rule of Law and Judiciary in Bangladesh" said that the present government is working continuously to establish an independent Human Rights Commission, Anti-Corruption Commission, an Ombudsman to ensure rule of law in the country. He also mentioned the work in progress of comprehensive reform for judicial capacity building, train up judges and lawyers, and remove flaws from the judicial system. Recently Law



Commission on reference from the government on flaws in the Code of Criminal Procedure (CrPC), 1898 submitted its report incorporating recommendations for necessary changes to sections 54 and 167 of the CrPC. The government plans to introduce Alternative Dispute Resolution (ADR) in judicial system to ensure justice by amending the Code of Civil Procedure, 1908. ADR introduced earlier in Family Courts of 15 districts as pilot project has been proved successful and envisaging introducing the same to other districts. The government had recently decided to establish separate investigation unit and law and order unit in all thanas of the country with their own manpower and to work independently under the supervision of the OC of the respective thanas. Manpower of one unit will not be transferred to the other unit before three years and DIG or Metropolitan Police Commissioner will be competent authority for such transfer after three years, unless otherwise in emergency cases by the IGP. This reform came on reports of lapses in recording and investigation of cases that result in delays and deviation in prosecuting the offenders.

Separation of judiciary from executive

Independence of judiciary and its separation from executive with its 12-point directive to the government by the Supreme Court of Bangladesh in December 1999 is still in process of implementation. The task is so difficult and challenging that both governments of Awami League and BNP had failed to make any head-start over three years span since directive issued by the supreme court. The problems to its execution and functioning entails a few decisions as to its absorption of administrative cadre officials discharging magisterial responsibilities in the lower courts. Actually the caretaker government headed by Justice Latifur Raman finalized the rules at the last meeting of the advisory council for establishment of a separate judicial service, a judicial service commission, a judicial pay commission and a draft amendment to the code of criminal procedure. It would have introduced the

rules on October 2, 2001 but Begum Khaleda Zia, elected BNP government wanted to implement the it and still working on this issue.

Case management and court administration

We are living in this century of specialization. We may think reforms of administration of case management and court administration with concept of specialization. The Judges shall deal with the case management of judicial system and the Court Administrator shall deal with court administration. This will maximize use of judges' time and energy. We must understand the difference between case management and court administration in context with the reform of our judicial system.

In Bangladesh our existing judicial administration involves both case management and court administration under the responsibility of District Judge (District Judge court) with the help of an administrative officer to manage the administration of the court with regard to record room, library, copying section, accounts section and the Nazareth of process serving etc. and other logistic support services in addition to his own line management within his hierarchy of the Courts of Assistant Judges, Senior Assistant Judges, Joint district Judges and Additional District Judges with their respective bench assistants, stenographer, sherestadar, dealing assistant and peon. The load and burden of court administration on the district judges should be shifted to the present administrative officer by upgrading his post as district court administrator with suitable experience and educational background and thereby relieve the district judge to undertake basic principles of modern case management. The modern concept of case management, absent in Bangladesh, includes some basic principles: quality in process and outcome of case, identifying and classifying various types of cases, measuring caseloads, monitoring case flow, diagnosing delay, forecasting workload and allocation of resources etc. Case management is not just moving cases quickly; it must consider quality of case outcome.

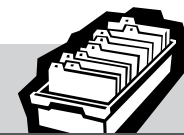
Reforms of court administration in Bangladesh

The court administration system in Bangladesh with present case management judicial reforms through development partners' expertise need special attention by our top policy makers and planners to modernize, develop, standardize and implement to reap the benefits of a modern judicial system. Multiplicity of authority leads to share responsibility with no accountability that makes existing judicial administration frustrated losing public confidence with its vicious circles of all effects - all apparent to our present court administration. Public Service Commission makes appointments of judicial officers of the subordinate courts and District Judges decides appointments and promotions of non-judicial staffs of the courts. Ministry of Law processes promotions of judicial officers and make budgeting, planning while Public Works Department manages the facilities of the courts buildings. This dispersed hierarchy of court administration leads to present weak judicial management that outcry of present reforms.

The new administrative structure under reform of judicial management in Bangladesh may be updated through Office of the Chief Justice as Central Administrative Office (CAO) for both court administration and case management headed by two Director(s) under Chief Justice, one Administrative Director and the other Judicial Director. The present post of Registrar of the Supreme Court may be upgraded to Director (Admin) with professional knowledge of administration and practical experience. All district courts will be managed by District court Administrator (admin) and District Court Judges (Judicial) under CAO of the Chief Justice. The administrative function of the Director (Admin) and its subordinate offices in lower courts shall be of support service to the judicial division of both civil and criminal, Director (Judicial) and its subordinate offices for making delivery of justice efficient, effective, timely and inexpensive.

The above administrative structure and hierarchy of judicial management and court administration with specialization concept need to be examined and improved with present working process of the Government towards Independence of Judiciary, reforms of capacity building of pilot courts of the World Bank project, present issue of ADR etc. with consultative opinions of stakeholders of judicial system i.e. Bar Association, Legal Professionals, Legislative Branch and Executive Branch of the government and the Ministry of Law.

M. M. Yussouf is a management consultant and former Administrator, Legal & Judicial Capacity Building Project of World Bank in Bangladesh.



FACTfile

Poor Bangladeshi women suffer health problems

QUAZI SHABNAM

IT was a close call for Rahela Khatun during the delivery of her second child. Doctors at a private clinic sweated a lot to save her from the jaws of death. She took several weeks to recover from the pregnancy-related complications which her doctors at a private clinic described as critical. The 36-year-old suffered fatigue even months after she left the clinic and returned to her family.

In spite of the ordeal, Rahela, wife of a mason, considered herself fortunate. Her husband agreed to take her to the clinic, where healthcare was costly. Not many from her class of the society can afford such expensive treatment.

"My husband had to borrow heavily to pay for my fat medical bills," says Rahela, with the child, now one-year-old, on her lap. However she says, "The timely treatment had saved me and my child."

Women like Rahela are usually taken to state-run hospitals. It is because poor families such as Rahela's can't afford treatment at the country's private clinics. On the other hand, healthcare facilities are scanty and low in the state-run hospitals.

It is true that poor women can avail of almost free treatment in government hospitals but they have to face difficulties in getting admission. There are fewer seats than the demand.

Moreover, they have to buy most of the medicines from outside. It is a common allegation that doctors and nurses in government hospitals do not take enough care of their patients.

In Bangladesh, most of the women don't get healthcare during their pregnancies or during deliveries. Help reaches only a few of the women who become pregnant or go to hospitals for deliveries, according to Health and Demographic Survey of Bangladesh and Save the Children USA. That's one big reason why the rate of maternal mortality is very high in Bangladesh. Up to 600 out of one lakh women die during childbirth every year. The deaths are blamed on lack of medical help for the women. Most pregnant women suffer from anaemia, abdominal pain, swelling of legs or body, urinary problems, constipation, eclampsia, premature delivery and hemorrhage. Besides, abortion is a most common phenomenon for them. On the other hand, during and after delivery they suffer from postpartum hemorrhage, vaginal discharge, prolonged labour, vaginal tear, puerperal sepsis, breathing and many other problems that cause deaths to many women.

Doctors advise a pregnant woman to check her health condition every month until the seventh month of her pregnancy, while in every 15 days during eighth and ninth month. But 85 percent expectant mothers of the country are not aware of this.

A survey conducted on 1320 mothers who visited doctors during pregnancy revealed that 812 of them made one visit, 178 made two visits, 127 made three visits and 203 made four visits to doctors, nurses and other reproductive health service providers.

Among the mothers who consulted for their antenatal care, 35.5 percent visited FWVs or FWAs or HAs, 14.4 percent visited untrained TBAs, 14.2 percent consulted doctors with degree, 11.2 percent consulted village doctors, 9.2 percent visited trained TBAs, 7.1 percent talked to nurses and 6.9 percent visited upazila health complex.

Nasima, 20, a garment worker in Dhaka, was at an advanced stage of her pregnancy. But she is concerned about a safe delivery, as she could not visit doctors regularly to check her condition. She has already developed some



complications, including jaundice.

"I go to work even though my condition is not good. I don't know how long I will be able to do so," the poor garment worker says fearing that she won't receive any medical treatment.

Nasima says she made several visits to a government hospital. Her experiences at the hospital had been bitter, enough to discourage her from going there again. "I returned from the hospital disappointed as the doctors were not on duty. On the other hand, the factory management deducted my salary for the absence."

About such common complaints, Dr SA Haider Ali, resident physician of Dhaka Medical College Hospital, says the government hospitals are always overcrowded and it is impossible for doctors to attend each and every patient.

He says the number of government hospitals as well as doctors and nurses is inadequate to meet the demand. In Dhaka city, the lower middle class and poor population is growing fast but the medicare facilities are not increasing to match the demand.

For example, he mentions, there are only 250 seats in the gynae wards of the city's two leading hospitals - Dhaka Medical College Hospital and Mirflood Hospital - against thousands of patients rushing everyday for deliveries and other problems.

Only four doctors have to check up around 800 outdoor patients everyday at the DMCH from 9am to 2:30pm. "How it is possible for four doctors to attend so many hundred patients within their six-hour duty," wonders Dr Haider Ali.

Apart from shortage of doctors, nurses and other staff, the hospitals are plagued with various problems, including shortage of medicine, lack of modern equipment. With the available facilities, it is really impossible to ensure proper treatment to all. A number of NGOs have launched foreign-funded projects to establish satellite clinics, especially for providing reproductive healthcare to women. Their efforts could not bridge the huge gap between need and available services.

Doctors say that services through such satellite clinics should be expanded all over the country, particularly to the remote areas, where there is no government hospital or health centre. According to official statistics, over 95 percent deliveries in Bangladesh are performed at home by unskilled midwives who do not have any training on childbirth. As a result, the risk factor remains high for the expectant mothers.

However, Dr Morshed Chowdhury of Gonoshasthya Nagar Hospital thinks that it is not realistic in a highly populated country like Bangladesh that all women go to hospital and take doctor's help. Rather, the traditional midwives should be trained to assist and perform safe deliveries. Midwives should be able to judge when a patient needs to be hospitalised and in what condition the patient needs an operation, he says.

Dr Morshed says combined and coordinated efforts by the government, private hospitals and NGOs could improve the existing situation and reduce the rate of maternal and child mortality. "There has to be a well-designed policy and appropriate medical structure." He admits there are resource constraints. Doctors' accountability must be ensured so that the patients in all government and private hospitals and health centres can avail of proper health care and treatment without any negligence.

Poverty, malnutrition, teenage and unplanned pregnancy force many women in Bangladesh into high-risk situation that sometimes costs their lives. And the available facilities for reproductive healthcare are unable to contain the deaths.

Concerned people think that the number of government hospitals, doctors and nurses will have to be increased as per need while sufficient stock of medicines and necessary equipment should be ensured in hospitals to provide proper reproductive healthcare to women in Bangladesh. Otherwise, the high rate of maternal and infant mortality will not come down.

NewsNetwork

Thailand: Taking issue with sexual harassment

WALLAPA T

Recent revelations in the press have brought to the fore an issue that is very common in Thailand but often does not receive the attention it should: harassment of women at their workplace.

Now that the issue has caught the attention of the public, women have been reporting their experiences almost on a daily basis. The list of affected women seems to be never-ending. Says Supensri Puengkokesong, of a local non-governmental organisation (NGO), the Foundation for Women, "Increasing press coverage is encouraging more female victims, who had all along kept their stories secret, to lodge complaints."

The methods of harassment range from lewd looks and suggestive conversation to touching. Leaving pornographic pictures on women's tables in the office or computer monitors are also highly prevalent 'low intensity' modes of harassment. Some go further and invite women for dates, outings and more, a few explicitly stating what they want from the women.

Despite the wide prevalence of sexual harassment, it is only a courageous few who report it. A teacher from the Rajabhat Institute filed a report with the police because her boss repeatedly asked to perform sexual favours for him. When she refused, she was harassed and 'stories' about her character began to float around the Institute. The students received degrading information about her. An investigation by the police revealed that the origin of the information was none other than the vice-principal of the school, who was taking revenge on the teacher for not responding favourably to his overtures.

Similarly, when a lecturer at a private university in Bangkok assaulted a student, she complained. However, she was told to keep the matter quiet and assured that the university would investigate her case and take appropriate action. Seeing that nothing done was done for more than a month, the student went to the police with 10 witnesses who backed her statement. The lecturer was arrested and the university found its name splashed on the front pages of the newspapers, something that it had wanted to avoid by encouraging the student to 'forget' about the incident.

Unfortunately there are many others who lack the wherewithal to take such decisive action. Such women are generally from weaker segments of society or are the only breadwinners in their families. Since the family depends on their income, these women are not in a position to take steps that might jeopardise their employment. Often, the offenders are aware of the vulnerability of such women and single them out for their attention. Recognising the seriousness of the problem and in order to provide advice to victims, the Civil Service Commission (CSC) proposes to publish a handbook. This book will have a series of suggestions to those who suffer from abuse and also those who are witness to it. It is expected that the book will also list the various agencies, both governmental and non-governmental, to which the victims can turn for help.

The CSC has also set into motion a plan under which more and more women will be inducted into higher positions. At present, most women are employed at lower or middle level positions while men occupy most of the senior level positions. However, the degree of success that this plan will achieve is uncertain because its implementation will be in the hands of some of the perpetrators.

According to Khunying Dhipavadee Meksawan, CSC secretary-general, male superiors tend to discriminate against female subordinates and deny them their respect. In addition to the resource book for victims, she plans to publish a manual on how to react to the problem. It would also advise men to mind their language in front of women. Harassment in Thailand is not considered a serious crime and the advice most women receive is to ignore such behaviour from their superiors rather than confront and report them.

Bringing the issue into the open is not considered 'acceptable' in Thai society. The Thai attitude of not bringing unpleasant incidents into the open but tolerating them, makes it easy for the abusers to get away, often without any penalty. The need for change is being felt by some people, with Pongthep Thepkanchana, Minister in the Prime Minister's Office who oversees the Civil Service Commission, pointing out that in western countries sexual harassment is a legal offence and that Thailand should follow suit.

Somalia: Women Vs warlords

CHARLES WACHIRA

After successfully lobbying for the involvement of women in peace initiatives in anarchic Somalia, the top diplomat at the United Nations, Kofi Annan, now knows that this move will remain ineffective until the clout of local warlords are neutralised. The intermittent turf wars amongst rival clans have ensured that all peace initiatives have so far come to naught. Through networking and courageous initiatives, women in Somalia now consider themselves prime movers in the on-going reconstruction efforts in their strife-torn country. This is despite the strong patriarchal culture in Somalia, a country where civil life revolves around five exclusive male-led clans that wield considerable power. As a consequence, Somali women have hitherto been condemned to the periphery of the country's polity.

However, a veritable revolution initiated by Somali women themselves now seeks to debunk the notion that women in this tumultuous country are servile beings with no minds of their own. Asha Haji Elmi is one of the few women inducted into Parliament by the fledgling and shaky Somalia Transitional National Government (TNG) set up in 2000 in the neighbouring state of Djibouti. She explains, "We realised that the only way to be heard is to harmonise our views as women so that we could talk with one voice in the peace process."

Inevitably, the stubborn clan-based politics of Somalia has so far blocked women from the peace table. "The traditional structure of the clan has no room for women and the clans are not keen on including women in their delegations," comments Zakia Abdusalim Alim, another woman legislator of the TNG. As a last resort, the women sought the intervention of the United Nations. "We decided to petition UN Secretary General Kofi Annan to lobby for the inclusion of women in the peace process. As a result, 60 of us were included in a symposium of Somali intellectuals convened to map out the criteria for the conference. Later, 25 women were elected in the 245 member TNG," says Elmi.

In this stage, the women opted to play for high stakes by making their place in future conferences certain: They set up an exclusive women's forum. The conference held in the Djibouti resort of Arta this June did not silence the guns in Somalia but it did herald the arrival of women as key players in Somalia's future. The inclusion of women in the peace process is a much-needed development in a country that has witnessed 14 peace initiatives since 1991. All of these have taken place outside Somalia, which descended into chaos in 1991 after the overthrow of Mohammed Siad Barre, a despot who was at the helm of power since 1968, ruthlessly playing one clan against the other. He died in January 1995 in the West African state of Nigeria where he was a refugee.

Somalia has witnessed periodic international interventions with varying results. In May 1993, for the first time, a 38,000-strong American-led force landed in Somalia with the mission of tackling armed goons who had virtually taken control of the country. But in June, almost a month to the day of the arrival of the Americans, 23 Pakistani UN peacekeepers were killed by supporters of General Farah Aideed, then one of the most notorious local warlords.

In October of the same year, 18 US soldiers who formed part of the same UN peacekeeping force were killed by armed members of a local clan. In a gruesome finale, some of the dead bodies were dragged through the dusty streets of Mogadishu, the capital.

The UN forces, peacekeeping and election-monitoring in some of the world's worst trouble spots - Somalia, Afghanistan, Angola, Burundi, Central America, West Timor, Haiti, Lebanon, Namibia, Iran-Iraq, Western Sahara, Sierra Leone, Rwanda and the Western Sahara - have become increasingly vulnerable to attacks. According to the UN Security Office, 198 of its aid workers have been murdered since the first figures were compiled in 1992. More than half were shot dead. Yet, the need for UN intervention in Somalia has never been stronger; the country's nine million inhabitants are weary of the senseless butchery and continuous unrest amongst the various tribes.

And while the warlords of Somalia fight for a share of the spoils, women are looking to the UN to provide the push for peace. Says Elmi, "The UN should help Somalia, a country crying out for help. If any organisation is to answer that call, it is the UN; particularly because it has an African person as its head." It remains to be seen whether the UN can respond effectively to this appeal.

WFS