

The Daily Star Roundtable

How to Create a People-friendly Legal System

Star Report

EMINENT jurists and lawyers from the South Asian nations at a roundtable organised by The Daily Star on Sunday, December 29, stressed the need for reforming the legal system to make it people-friendly, protecting their rights, while cutting the delays in dispensation of justice at a cheaper cost.

Editor of The Daily Star, Mahfuz Anam moderated the session, held at a local hotel, introducing the participants and explaining the background of holding the roundtable. Mahfuz Anam observed that we are yet to evolve a people-friendly legal system. Its language is archaic, even in Bangla, that ordinary people cannot understand. The expenses are high and the process to get justice is lengthy. In this backdrop he urged the participants to narrate their own experiences and efforts to suggest ways to make it people-friendly.

The participants were former Chief Justice of India Justice Krishna Iyer; K K Venugopal, President of SAARC Law; Barrister Amirul Islam, President of Bangladesh Chapter, SAARC Law; Ranjit Abesuriya, former president of Bar Association of Sri Lanka; Justice Nayeemuddin, Member, Law Commission of Bangladesh; Justice C U Wigneswara of Sri Lanka and Abdul Matin Khasru, State Minister for Law and Parliamentary Affairs, Bangladesh; Madhav Menon, an Indian lawyer; Raju Ramchandran, another lawyer from India and Ms Salma Sobhan from Bangladesh.

Noted Indian jurist Justice Krishna Iyer, narrating his years in the bar and the bench, observed that a change of mind among the bar, court and the people necessary for a radical transformation of judicial system to bring it closer to the people.

He said both the judge and the lawyer must have an empathy and professional discipline to reduce the duration of trial and avoid a lengthy process that denies justice. He also suggested that there should be a peer group among the judges to discipline them for not delaying cases on various pretexts like failure to attend the office on time, staying there and developing quick process for hearing and delivering the judgment to expedite justice.



Justice Krishna Iyer

Citing a number of cases, some involving illustrious personalities like late Indian prime minister Indira Gandhi, on her bail petition in a case, he said that he limited the timing of counsels on both the sides. "Nani Balkiwala and Shanti Ghose were both well known for their arguments with lot of theatrics, which consumed time for hearing. When I asked them if they could shed their rhetorics and come to the point so that we could finish the judgment on the day, each having two and-half-an hours, foregoing the lunch as I had decided to do so myself, they agreed and we finished the case. We then let the clerks to arrange printing of 5000 copies of the judgment, cyclostyling it overnight, keeping the veil of secrecy. The copies were available for all, doing away with the practice of long time even in those days when technology was limited," Justice Iyer said adding, "Today a simple Xerox could do wonders."

The jurist from Kerala state of India who served as Chief Justice of India later on said, with the time changing today's Indian Chief Justice had promised computerisation of the Supreme Court. But unless the system is overhauled with a change in mentality of people, lawyers and judges there cannot be a people-friendly legal system, he observed.

Citing an example of delay in justice he said, the Lucknow High Court had been sitting on the case of Babri Mosque for a long time. The mosque had been demolished but the court was yet to come up with its verdict.

For such delay the judges should be made accountable and impeached, he added.

To speed up the backlog he cited the example of Justice Raman of Kerala High Court who made a select list of cases for their quick disposal. But clerks and lawyers who felt their earnings would be reduced with speedy trial process burnt his effigy.

Justice Iyer suggested reforms in the semantics of law and penal code, stressing specially on a simplified drafting, replacing the Westminster style, which is archaic and colonial. Drafting is an art, a simple draft makes interpretation easy, he noted.

He also suggested that there should be a criterion for selecting judges not just increasing the number to deliver better justice and cut short the delay. Citing another example for making judges responsible he said, without naming, a judge of the Kerala High Court used to arrive at his court at 10-30 am and leave in another 15 minutes, that left a pile up of cases. Sometimes judges transfer the cases to a full bench or another bench thus contributing to delays in disposal of cases.

On human rights Justice Iyer cited an example of Kerala High Court making the police respect human rights by carrying a drill on the issues among policemen. "We have to be innovative making the law people friendly," the veteran judge noted.

Ms Salma Sobhan, giving examples of Bangladesh where progress has been made in gender issues since the Nairobi conference, said "We have made available a lot of translations of legal issues and women's rights." Referring to the legal tangles resulting in delays, she said access to legal system and procedures are yet to be simplified and corruption making it expensive for redress seekers through litigation is still impeding quick disposal of cases.



Ms Salma Sobhan

"The best option we advice to clients is not to go to court," she noted about the frustrating experience a litigant incurs through long delays and expenses involved. People still use legal system as a weapon against another, making the need for the reforms and the meaning of law understood by the people.

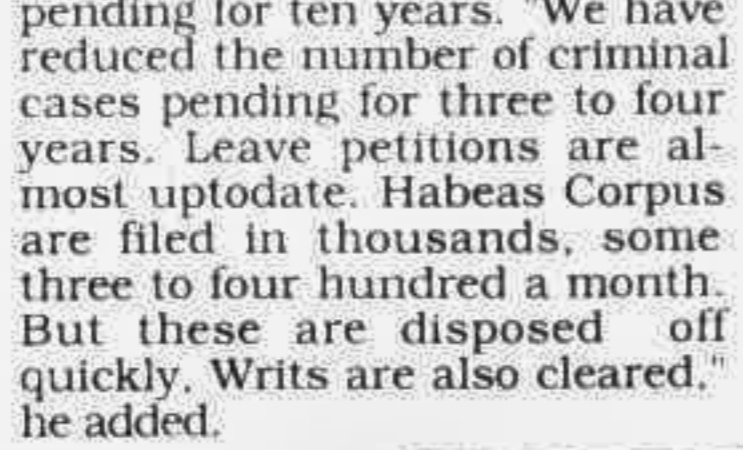
Justice Nayeemuddin Ahmed, member of the Bangladesh Law



The Daily Star Roundtable on How to create a People-friendly legal system 29 December, 1996

Commission, observed that legal profession is highly technical but it is not the only problem standing in the way of making law people-friendly. The problem lies in delay and expenses, he noted.

Giving examples he said that in the apex court of Bangladesh there are hardly any case pending for ten years. "We have reduced the number of criminal cases pending for three to four years. Leave petitions are almost up to date. Habeas Corpus are filed in thousands, some three to four hundred a month. But these are disposed off quickly. Writs are also cleared," he added.



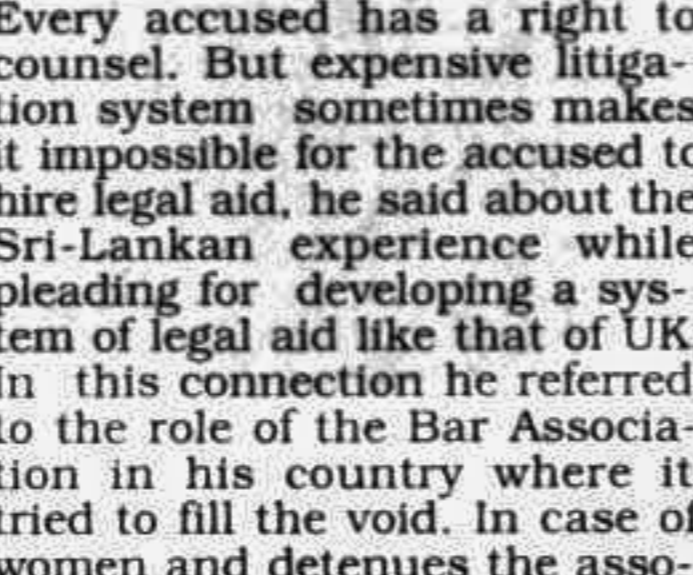
to get rid of the backlog in cases to bring the desired changes to make justice available to the people for their benefit.



Justice CU Wigneswara

In this connection he cited the experience in his country where reconciliation and family courts did not work, eventually passing their loads on to the judges' courts because of lack of reforms.

Ranjit Abesuriya, former President of Bar Association of Sri Lanka dealt with the human right issues like the right to counsel and right to silence as basic fundamental rights. The right to counsel has been incorporated in the constitution of Sri Lanka since 1978. Every accused has a right to counsel. But expensive litigation system sometimes makes it impossible for the accused to hire legal aid, he said about the Sri-Lankan experience while pleading for developing a system of legal aid like that of UK. In this connection he referred to the role of the Bar Association in his country where it tried to fill the void. In case of women and detainees the association provided assistance. Those who were in detention in thousands because of political situation sent petitions to the Chief Justice, who referred them to the association to prepare their petitions as a constitutional right.



Justice Nayeemuddin Ahmed

But the problem is posed by the civil suits, which in some cases remained pending for ten years. Civil appeals are pending for, in some cases, 10 to 15 years. "Even at one instance in Chittagong I found appeal in civil suits pending for even 20 years for reasons best known to the judges. I know one case in particular where it could be disposed of in day," Justice Nayeemuddin said.

On other problems he said a civil suit in a trial court which could be disposed of in eight to 10 months but remains pending for four to five years. "Previously supervision has been very effective but I have found district judges did not inspect their courts where civil litigations remain backlogged," he added.

Stressing on improving the quality of manpower Justice Jaemuddin further observed that the courts are poorly manned. He also called for transparency of judiciary to reach justice easily to people he cited the failed experience of Upzila Courts and bifurcation of the High Court.

Sri Lankan Justice C U Wigneswara observed that political interference sometimes leaves the judges frustrated and works as an impediment to dispensation of justice.

He recommended working out reforms to evolve a system

He stressed on the constitutional recognition of right to counsel and right to silence by the accused during arrest to help justice.

On the experience of mediation board in Sri Lanka he said they are not manned by serving judges but retired judges, dealing with certain types of minor cases, which helped disposal of a large number of cases, cutting delays in dispensation of justice.

Ranjit Abesuriya observed that to make law friendly to people the lawyers have a great role to play by making themselves available to the people.

K K Venugopal, an Indian legal expert who is also the president of the SAARC Law, identified two "great impediments" to the justice delivery system. One is delay in the disposal of cases, and the other is expenses involved in litigations. The expenses include court fees and lawyers' fees.

For a people-friendly justice delivery system, the litigation process has to be altered, Venugopal said. Referring to the ADR (Alternative Dispute Resolution) set up in India, Venugopal suggested that certain types of disputes such as commercial dispute could be settled outside the formal courts which could be called mediation or conciliation courts.



KK Venugopal

Claiming that the ADR courts are doing well in India, Venugopal said that the Indian government has already allotted a piece of prime land in the heart Delhi for setting up an institution which would provide training to the mediators or the conciliators. The conciliation courts would work as supplementary courts, he suggested.

"With a view to making the litigation cheaper," Venugopal suggested fixation of lawyers' fees in some kind of cases such as accident and divorce cases. He, however, argued for the provision of contingency fees for lawyers in case disposal of a litigation is delayed.

Raju Ramchandran, another

legal expert from India, narrating his country's experience observed that reason behind the unfriendly legal system lies with the faulty electoral laws. "Under the present electoral laws and rules, money can play a big role in getting elected to parliament. So the chances for the pro-people candidates to win the polls are slim, and that is why the parliaments are not always the true representatives of the people," Ramchandran said. The legislations enacted by such members of Parliaments are bound to carry some people unfriendly ingredients, he added.

Pointing out another impediment to a sound judicial system, he said the politicians would play a role in appointing the judges that eventually contribute to develop some sort of oligarchy in the benches.

Ramchandran also suggested evolving a system where democratic accountability of the legal personnel, including judges, should be incorporated. He also opposed Venugopal's view that lawyers should be paid for contingency fees for delayed trial on the ground that it would be an additional burden on the people.

Abdul Matin Khasru, the state minister for Law, Justice and Parliamentary Affairs of Bangladesh, observed that the justice delivery system of the country "is costly, time consuming and cumbersome."

"On top of all, our rural people who constitute the majority of the country's population — most of whom live below the subsistence level — do not have accessibility to the justice especially because of the expenses involved in litigations", the state minister said. "For us, a people-friendly judicial system therefore means a system which would make sure that the said people have accessibility to the courts, get justice quickly and at a cheaper rate."



Abdul Matin Khasru

Khasru added

In this regard, the state minister told the conference that he was thinking of introducing Grameen Courts in the rural areas which would be working as supplementary courts to the formal ones. The GC would deal with cases of trifling matters such as family disputes and disputes arising out of divorce and so on," he said.

For a people-friendly legal system, the minister also stressed on the "accountability of the supreme judiciary, an effective mechanism to monitor the activities of the lower courts by the higher ones and adequate logistic supports to the judiciary."

Barrister Amirul Islam, president of the Bangladesh chapter of SAARC Law, said, "Our judicial system is not people-friendly when these days even machines are getting user-friendly." He, however, observed that when it was a matter of changing a system run by human beings there was a need to apply some creativity.

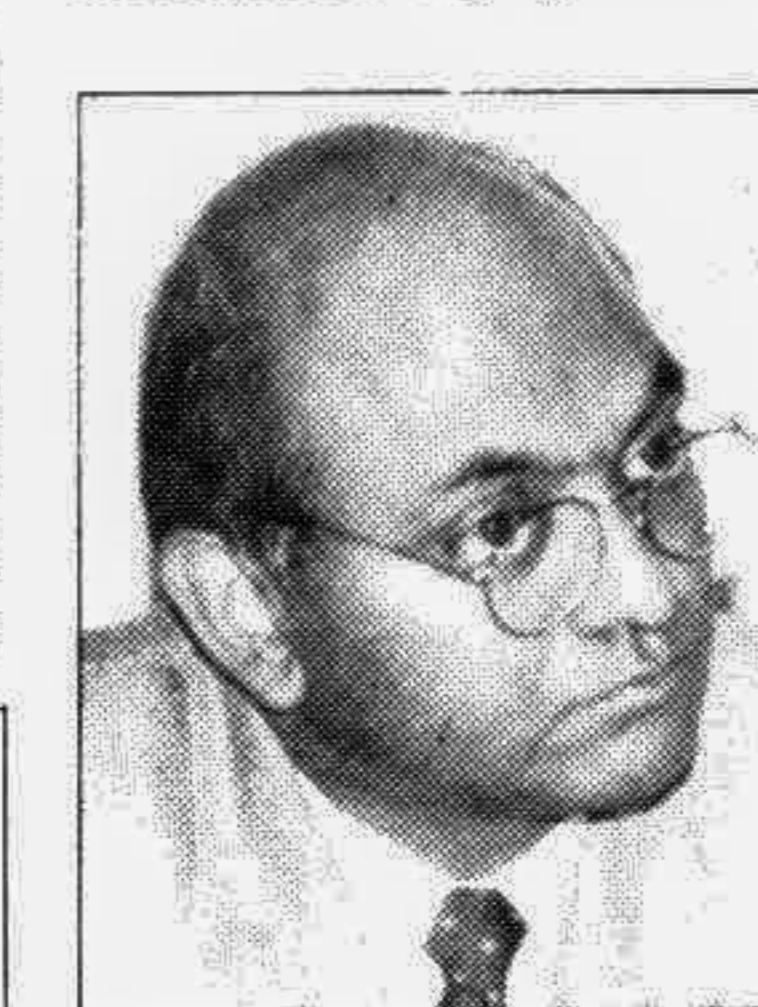
In a bid to identify the impediments to a people-friendly judicial system, Barrister Islam said, "The judges are not always oath conscious." Analysing the concept of equal justice he asserted that it was a comprehensive package that includes both social, economic and political rights of the people.



Barrister Amirul Islam

Criticising the existing mechanism of appointing judges, he said, "While appointing them, we are most callous." "Before appointing a judge, his or her track record including one's commitment to the constitution of the state and even writings should be scrutinised properly," Islam maintained.

Stressing on the need of judicial accountability, he said the media and the academics could play a vital role by discussing the judgements and help correcting the judicial system. "There should not be any indiscriminatory use of contempt power by the court to shut criticism of judgements."



Madhav Menon

Madhav Menon, a legal expert from India, opined that the people in legal profession are yet to be socially sensitised and made accountable. They should also be sensitised to the needs of a people-friendly legal system, be sensitive to gender, children and the handicapped. Unless the human element is taken care of, the needs of the society cannot be met, there cannot be a pro-people system of justice.

Dr Mohiuddin Farooque, Secretary General of Bangladesh Environment Lawyers Association, said: "In our country people are not scared of law but of lawyers and the legal process. I can also ask whether our legal system is lawyer-friendly or even friendly to judges because such aspect may be a precondition to have a people-friendly legal system. The broader answer is 'No'. This is because when a young person enters the noble profession with high spirit and morale as 'junior' to some senior lawyer, he or she, in most cases, becomes a domestic law servant. The initial phases and years are full of exploitation by the senior lawyers who either don't pay or underpay the young lawyers or juniors. Sometimes seniors put the money taken from client as 'junior's fees' into their own pockets. Due to this unprofessional atmosphere, I have seen many bright lawyers simply perish from the profession, being demoralised and frustrated. Those who survive, it would be an exception, if the society still expects them to retain the values of serving for justice."



Dr. Mohiuddin Farooque

The clerks or *Muhurits* of the lawyers exploit the clients, and in many cases may also write the legal documents themselves although the lawyer takes high fees.

"Lawyers also over-exploit their seniority and face-value in procedural matters and in court rooms. They get undefined priority from many courts which also attracts more clients who want relatively quick disposal. This advantage leads to higher fees and so higher cost."

"After inheriting the colonial legal system we, perhaps, became more 'British' than the Britishers. Often, it is not appreciated that every minute of the court hour is 'tax payers' and also the litigants' money'."

Petty matters and unnecessary talks eat up the expensive and valuable time of the legal system. It is also a "revenue earning" sector where people pay lots of money as various court fees and charges. It's not free, yet they don't get justice. It is, perhaps, a self-sustaining institution. Yet the logistics and manpower of the courts are inadequate. No subsidy is provided to the poor although non-earning service-sectors are being financially supported and run.

"To make the system pro-people, which may be a subjective matter, among others, access to resources and access to justice need to be ensured to them. To avoid costs when larger section is affected, class action suit or public interest litigation in the form of *pro bono publico* can be undertaken for them. The question of 'person aggrieved' as hindrance to such litigation for want of personal damage or injury has been recently resolved by the Appellate Division of the Supreme Court in the case of Dr Mohiuddin Farooque vs. Bangladesh & Others, in which the scope of such litigation through a pragmatic interpretation of the above phrase has been expanded. However, sometimes, some courts are reluctant to hear these litigations because of its unique complexity."

FOCUS

Career, Condo, Credit Card, Club and Car — Convergence

NORTH and South Korea are not Asia's only candidates for possible reunification. Malaysia and Singapore have not ruled out the possibility, either.

Such a move is not imminent, but leaders of both nations, which were united under the Malaysian Federation from 1963 to 1965, have acknowledged that it could happen — eventually.

The divorce 31 years ago, over ethnic and political disagreements, was acrimonious. Since then, both have benefited from high economic growth and have kept the lid on potentially combustible race relations.

They are regarded as almost model societies by many envious governments, and until now, reunification has not been an issue.

Then, earlier this year, Singapore's Senior Minister Lee Kuan Yew, the patriarch who led the little island to economic success, surprised everyone by saying that one day the two states could rejoin.

Singapore had to remain competitive, organised and tightly knit, or it would eventually be "absorbed", he told an open-mouthed audience. "Rejoining would be difficult to achieve for a very long time, but I hope that one day it will happen."

Almost as surprising was Malaysian Prime Minister Mahathir's refusal to dismiss the notion. "I do not think the time is yet," he commented. "Maybe one day."

It set the chattering classes of both countries into overdrive. Editorials expounded. Readers wrote in. Radio stations polled listeners, and almost everyone was against the idea.

Singapore's Prime Minister Goh Chok Tong raised the issue again during his annual national day speech in August. This time, however, it was clear the island's leadership was using the issue as a warning to its citizens. "Don't slacken or else," was the gist of the message.

While saying "reunification is not on my political agenda",

Yugoslavia splinters, Eritrea regains independence from Ethiopia, the Soviet Union disintegrates, secessionist sentiment bubbles in Canada — sometimes it looks as though there is a worldwide trend towards national break-ups. But not everywhere. A Gemini News Service correspondent Bob Holmes from Kuala Lumpur, reports murmurs of merger in south-east Asia.

Goh added: "If Singapore's economic competitiveness were to falter, it could be forced to ask Malaysia to take it back — and on Malaysian terms."

That was the reason, he explained, behind Lee's remarks. He said Lee felt Malaysia was doing very well and could become even more competitive.

Goh was urging Singaporeans to keep their hands to the pump. But he did not go as far as his mentor, who also said: "If they (the Malaysians) go the whole road with us [advancing and reducing racial tensions], then I say we rejoin them because this is what we fought for. It will take some time," Lee continued, "but the road we are going — pursuing maximum economic benefit — if we carry



Talking about unity: Singapore Senior Minister Lee Kuan Yew and Malaysian Prime Minister Mahathir Mohamad

it to its logical conclusion... the difference between Singapore and Malaysia will narrow."

But he added an important rider: "We will not join unless Malaysia practises meritocracy."

This scratches old racial differences. The statement requires Malaysia to abandon its preferential treatment of Malays, who form 50 per cent of its population. Both nations have a racial mix consisting largely of Malays, Chinese and Indians, but in Singapore, Chinese form a 77 per cent majority.

Mahathir was not slow to make capital out of the perceived insult: "Singapore is using us as a bogeyman... and is practising racial discrimina-

tion itself. This can be seen by the fact that Malays are not allowed to hold high posts in the armed forces, become pilots or bear arms in that country."

Despite this tirade, the fact remains that there are many similarities between the states. The people share a common colonial history and the economic and physical links are strengthening.

As both societies become more sophisticated, they become more similar.

Claustrophobic Singaporeans flood over the Causeway into Malaysia to get off their overcrowded island. Many buy properties on the mainland. A second Causeway between the neighbours will open next year and a bridge is planned.

Malaysia's *New Straits Times* commented: "Singapore investment in Malaysia — both in terms of property and business, is growing at such an extent that national boundaries will eventually be but a formality."

A crucial factor in any possible re-marriage is that

Malaysia, once sneered at by rich Singaporeans, is gaining respect. The growth rates are similar and the incomes gap is narrowing.

What is more, most Malaysians own cars — something few Singaporeans achieve because of prohibitive taxes.

Singaporeans have long worked for the five Cs — career, condo, credit card, club and car, with the last the most elusive. Malaysians are beginning to feel sorry for the poor little rich guys south of the peninsula — all dressed up and nowhere to go except to Malaysia.

What Singaporeans need most is land, and Malaysians have it. An international port city and another financial centre could be coveted by the next generation of Malaysian politicians. The more one looks at a merger, the more advantages one can see for both sides.

But perhaps the biggest factor in its favour is that today's politicians have the luxury of not being around if and when it happens.