Law and Our Rights

## Grameen Courts

# An Outline of the Final Draft

FFECTIVE legal recourse and settlement of disputes remain a core component for maintaining a truly democratic order and achieving the goal of sustainable human development. In Bangladesh, appropriate mechanism and processes for effectively safeguarding human rights and providing speedy and judicious remedies to cases at all levels of society have to be improved and modernised. To develop a not proper people oriented legal system, access to Justice for the vast majority of the people of Bangladesh remains a key issue. In fact, it is arguably the lack of access to the Judicial system that best characterizes the experience of the poor. Justice consequently, becomes a concept devoid of any meaningful substance.

Empowerment of people, today recognised a indispensable for establishment of a just and democratic society and the rule of law demands an environment of participatory democracy. In the same order, one of the prerequisites of participatory democracy as participatory administration of Justice (hereinafter referred to as participatory justice) establishment of the Grameen Courts as but the first real step towards implementation of participatory justice in Bangladesh.

It is believed that the mechanism evolved through the Grameen Courts will ensure speedy, easy, inexpensive, substantial and effective justice to the common people of Bangladesh without disturbing the social harmony and fabric of rural society.

#### Composition of the **Grameen Court**

a) The court will be composed three Judges/adjudicators to be nominated from among a panel of 15-20 Justices of the peace [honorary magistrates]. The senior-most adjudicator will be designated as Chairman of the Court.

Alternatively, the Court may be headed by a retired judge or a specially trained Grameen

HE actual forest cover in

percent of the total land area.

million ha. The Bangladesh

Country Report to UNCED, 1991

Forests (USF) under the control

and 0.271 million ha are pri-

vately owned village woodlots.

These forests, are unevenly dis-

tributed and mainly concen-

trated in the South and South-

Eastern parts of Bangladesh.

Per person availability of forest

land is about 0.02 ha one of the

lowest such rations in the

first green lawyer and pioneer

in legal battle for the cause of

environment in Bangladesh

has recently authored a book

named 'Law and Custom on

Forests in Bangladesh: Issues &

Remedies'. This book is based

on the study which was under-

taken by the International

Institute of Environmental

studies and Disaster

Management (IIESDM), Dhaka

with support from Ford

Foundation. The author, as the

Principal Investigator, ended

up doing the investigation and

writing the final report of the

study almost single handed due

1991-92, a time when conflicts

over forest and forest land be-

tween private and public rights

and interests have not only in-

flicted destruction of Sal

(Shovea rebusta) forest re-

sources but also hindering all

development and management

programmes Forest lands are

subject of tenure and title dis-

putes often resulting in physi-

cal violence. The conflict be-

tween the traditions of public

agencies like the Forest

Department and the customs of

the forest dwellers as well as of

the local people is severing in

classic case of the fate of forests

legacy continues through the le-

gal regime. Hence, forest man-

agement and the implementa-

tion of social or - participatory

forestry programmes are being

The Sal forest represents the

degree and nature.

The study was undertaken in

to some unforeseen situation.

Dr Mohiuddin Farooque, the

world.

Court Judge who will be responsible for a circuit of Grameen Court. For this purpose, all the Grameen Courts must be divided into some circuits and a professional Judge be placed to preside over the

However, the remaining two members of the courts must be from among the panel of adjudicators but residents of the Union where the dispute arose.

Out-line prepared by Dr Mizanur Rahman, National Consultant Coordinator, GCP in consultation with Mr Justice KM Subhan and Mr Ahmed Ali. Readers of the 'Law & Our Rights' Page are welcome to send their valued comments, evaluation, recommendations and criticisms on this outline of the draft on the proposed Grameen Courts. We will publish readers' responses on the forthcoming issues as The Daily Star is pledge bound to ensure a people-friendly legal system - Page Incharge.

or where the victim resides. b) Any individual, professional organisation, community, non-governmental organisation etc. may propose names of individuals to be considered as adjudicators of the Court. Any such proposal should accompany a detail CV of the person

WATCH

concerned and especially outlining his/her contribution as a social worker, integrity, impartiality, and readiness to contribute time as an adjudicator on a voluntary basis. None of them, shall, however, be holder of an elected office or associated with any tier of local government.

c) All the proposed names will be screened and their eligibility assessed by an appointing authority i.e. the government composed of the District Judge. the District Magistrate and an elected representative of the people (member of the parliament). This authority shall select/nominate 15-20 adjudicators for a period of 3 years provided that one third of the adjudicators shall retire annually to make room for new adjudica-

In appointing the adjudicators the authority shall bear in mind that one third of the adjudicators must be women.

d) In a dispute where one of the parties is a woman, one of the three members adjudicating body of the court must be a fe-

### Procedure

a) The Evidence Act, the Code of Civil Procedure and the Criminal Procedure Code shall not be applied in the Grameen Courts. However, the spirit of these acts should, as far as possible, be maintained. A simple procedure may be devised for filing, hearing and disposal of cases.

b) The court upon receipt of a complaint (orally or in writing) shall initially try to amicably resolve the dispute through conciliation, mediation or arbitration failing which only, the matter shall be referred for trial. However, whichever form the

settlement might follow, it must be disposed of save certain exceptional circumstances, in two sittings.

If conciliation, mediation or arbitration has failed, the dispute will be tried by a 3 member-adjudicators who have not acted as conciliator, mediator or arbitrator in the same dispute. However, a certificate from the adjudicator stating the failure of

ADR must precede the trial. c) The majority decision of the court shall be treated as the decision of the court, and the decision once sealed by the Court shall have the force of the decree. The award in the ADR procedure shall be entered as a

decree of the court under its

seal. The decision shall be final. [The decision may be appealed to the Grameen Appeal Court, composed of 5 Judges nominated/selected in the same manner, who had not participated in any of the earlier stages of dispute resolution. There shall be one Grameen Appeal Court in each administrative District.

In exceptional cases The District Judge may call for the file to examine whether there is a failure of justicel.

d) The awards in the ADR and the Judgment of the Court shall be in writing signed by the adjudicators.

e) The parties shall be present physically and represent themselves during the trial, except if the party happens to be a woman unwilling to appear before the court in which case she may be represented by her husband/son/parents/brother or any other female close rela-

f) The court shall, through the Union Parishad Office, notify in a notice board in the Union Parishad Office at least seven days in advance, of the date, time and place where the court shall sit next and also publish a list of disputes on its agenda.

Non-publication of the cause-list however, will not affect the validity of the proceedings or of the decisions of the courts relating there to.

### Jurisdiction

The Grameen Courts shall exercise the same jurisdiction as that of the village courts under the village courts ordinance, 1976 (Ordinance No. LXI of 1976), which is appended here

Seat of the Court

The Court shall sit at a predetermined public place such as a school, college etc.

Conflicts) (XII) Customary Right

in the SA (XIV) Conflicts and

### VIEWPOINT

# Legal Awareness by Dr Kamal Hossain by Dr Kamal Hossain

ANGLADESH is among those countries which are involved in both a political and an economic transition. The political transition is from an authoritarian to a democratic political order and the economic transition is from a state-controlled economy to a market economy. These transitions are taking place in a rapidly changing global environment. Globalisation of the world economy and the impact of the revolution in information and communication technology are integrating the entire world. These changes both at the national and the global level call for heightened legal

The role of law and lawyers is crucial to ensure that changes take place in an orderly manner and that these changes do not undermine, indeed are compatible with, certain basic values, such as respect for law and human rights and the fundamental principles of a democratic order, and the principles of fairness and equal opportunity in the economic system. Democratic development necessarily requires nurturing respect for the rule . of law and for human rights. Societies which have suffered from authoritarian rule have been marked by an erosion of respect for law. These societies have experienced lack of transparency and accountability in matters of governance. arbitrariness in the exercise of public power, corruption (the abuse of public power for private profit) and forms of lawenforcement which may be described as "lawless".

Citizens in these societies have lacked awareness of the extent of their rights and become prone to tolerate and acquiesce in violations of human rights and transgressions of the law. Such acquiescence emboldens the violators of human rights and those who transgress the law with impunity. Citizens tend to submit to corrupt practices since challenging them involves risks as well as costs which they are afraid to bear.

The fact that democratic development requires an active role by conscious citizens, who must develop the role of civil society, requires every citizen to become aware of human rights and of the legal and constitutional remedies available in the event that rights are violated. Every conscious citizen must not only exercise vigilance which is the price of liberty for himself but also to protect disadvantaged sections of society. Civic activism should initiate public interest litigation to enforce their rights in the public interest. The emergence of Mafia-type groups, who acquire power both through political patronage and involvement in arms smuggling and drug trafficking, pose a threat to democracy and the rule of law. Again it is only through spreading legal awareness that coalitions of citizens can be developed to combat these powerful groups.

The economic transition also requires raising the level of legal awareness and even "re-tooling" on the part of sophisticated lawyers. The globalisation of the capital market made possible through the revolution in information and communication technology effectively eliminates geographical distances and physical barriers between the countries, enabling large flows of funds and trading in securities to take place at the push of a button or by telephone calls. While encouraging the inflow of foreign investments and the flow of fund, regulatory frameworks need be developed to ensure that volatility resulting from sudden outflows of funds can be reduced.

Law and lawyers have to be innovative and creative in order to anticipate developments and to promote respect for basic regulatory principles. There is need for law reform to develop public investors' confidence that fairness and integrity of the market will be assured. The law must introduce a system which will create stability and provide for anti-monopoly provisions and effective rules to ensure that the financial fraud is prevented from spreading. This is particularly relevant since computerisation has created a wider scope for undetectable fraud. Equally there is need to acquire knowledge about the growing body of laws for the protection of the environment and for promoting "Sustainable development."

Market transparency is one of the fundamental requirements for an efficient and fair capital market. Equal and timely access to information must be one of the pre-requisites of a level playing field for all market participants. Securities law must require that companies and their officers act with integrity and that due regard for accountability, protection of shareholders' rights and for full and adequate disclosure of material information. Provisions should be made to prevent insider trading and abuse of information.

A good regulatory framework must also provide adequate investment protection. The rules must provide safeguards to protect investors from default by market intermediaries and from their insolvency. Market intermediaries through appropriate training, must acquire legal awareness of their obligations to protect the investors.

Thus, both political and economic development require a much more active and enlightened role to be played by law and lawyers. Legal awareness is essential to meet the new needs and to discharge new functions. In order to do so lawyers themseives must update their own knowledge to cope with the developments which are rapidly occurring and to devise new legal instruments and mechanisms for monitoring and enforcing of laws effectively.

The writer, a Senior Advocate of the Supreme Court is the former Vice Chairman of Bangladesh Bar Council. He is also a member of Legal Education Committee, Bangladesh Bar

## WFSF XV World Conference

# What you and I can do for future generations

Conference Vision

HIS series of meetings intends to begin a global dialogue between cultures, genders, ideologies, technologies, and L civilisations on what each one of us can do for sustaining and transforming the world for future generations. As we dialogue about the future generations, we will seek to

understand the futures of conversation itself particularly what this form of interaction, method, will mean for each of us in the

We are committed to global conversations because we believe that knowledge is not only expert technical knowledge but also day-to-day knowledge, the wisdom that each one of us have. Conversations assumes creating spaces of equal power, where people from different ages and histories, oppressor and victims, can find epistemological space to stand together. Conversations means that we are committed to theory that

exists with process, structure that is chaotically interactive. However conversations and process can be empty just as research papers and expert speeches can be tiresome. Rich content - varied histories, personal visions, examples of successful social transformation - is a necessary context for conversation.

Conversations for the sake of mere talk do not suffice either. We ask is dialogue a useful research method? What are its limits? How will dialogue be changed by the new information technologies? Who is and who will be eligible for dialogue and conversation in the future? How can we enlarge our communicative community to include future generations? Finally, how does conversation differ from other research frames such

as empiricism, interpretation and critical theory. But more then research, we seek to create strategies for transformation. These can come about from talking and actively listening to each other; from understanding our different stories: origins and fears; commitment and goals; and our

hopes of what the futures can be. While this conversation will be held in Brisbane region, we believe that it must be global. We need to learn from those far away and those near by. Even though our concerns, what you and I can do, are often local, the global ecumene frames and codes what and how we think and act.

We also believe that cultures (animals, plants, technologies, genders, metaphors, ways of thinking, ways of loving and killing) create the world differently. We exist in different temporal and spatial configurations. How you and I see events and trends, death and life, love and hate, action and reflection are likely very different. But this does not mean we remain in existential or postmodern angst, fearing action or intimacy, rather, it means we need to discover our differences in the search of some common spaces for reconciliation and active transforma-

We are committed to finding shared concerns, shared affirmations, shared goals, and shared visions. Through conversa-

Freedom of Press and Some Related Issues

tion, we hope to discover what, within the sea of cultural, political, and institutional differences, are our human similarities. We understand that the present is often difficult to transform, that history - failures and traumas, victories and transcendence - structures our dreams, and yet, the future beckons. To us, it calls in the form of the rights and needs of future generations. We are responsible for them as we much as we are for each other. Most of our activities are based on the moment - whether

the needs of the business cycle, our family, our political party, or the institution we work in - in these series of meetings, we seek to understand and actualise how we can base our actions on the needs of future generations; environment, our children, our children's children, to begin with. While we celebrate the present, there is much that needs to be

transformed, many problems that need to be solved, much that needs to be changed to make the world a more nourishing place for me and you. Since future generations have no voice — there is no institu-

tion, no government, no person who represents them - we need to hear their silent pleas, we need to communicate with them and let them communicate to us from the distant future.

We are thus committed to create a series of meetings where we discover the differences between cultures and positions and where these differences leads to concrete action steps on what you and I can do for future generations.

To Summarise: Why Global?

While action is often local, the context for our decisions must be

Why Conversations? Conversations include theory, values and data bringing in

content and process.

Why and Who are the Future Generations? Future generations link linear time with ancestral, cyclical and spiral time — it is culturally varied. Future generations includes plants, animals, humans, technologies and metaphors that is an enlarged communicative community.

Commencement: The conference will commence on Sunday 28 September, 1997. It will concludes on the 2nd October '97.

Venue: The University of Queensland, St Lucia Campus, Brisbane, Australia

Conference Host: World Future Studies Federation,

Futureactive Incorporated And UNESCO (co-sponsor).

"The liberty of the press is inviolably connected with the liberty of the subject.....The use of speech is a natural right, which must have been reserved when men gave up their natural rights for the benefit of society. Printing is more extensive and improved kind of speech." Virginia Gazette, May 18, 1779

HE affirmative role of the press is an indispensable factor in the operation of the L democratic process in a free society. The very strongly affirmation of this principle in American law, notably that laid down in the landmark decision in New York Times v. Sullivan, is well known and widely recognized. The American ground rules are propounded in the first amendment of the Constitution: "Congress shall make no law abridging respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to protection the Government for a redress of grievances." This constitutional position of the press is, perhaps not so well appreciated in the other jurisdiction in the world. But, recently, the international legal and judicial institution has expressed there positive approaches towards press freedom, and repeatedly stressed the preeminent role of the press in a state governed by the rule of law. In the case of Castles v. Spain the European Court of Human Rights observed in its judgment that: "Freedom of the press affords the public one of the best means of discovery and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the pre-occupation of the public opinion; it thus enables everyone to participate in the free political debates which is at the very core or the concept of democratic society." In the case of Thorgeirgon v. lceland the court observed: "..... it is.... incumbent upon [the press] to import in-

formation and ideas on matters of public interest. Not only does it have the task of imparting such information and ideas; the public also has a right to receive them. Though it is the common approach to the gued that "this discrimination may be consid-

ered elitist and reinforces the objections to the

by Zaved Hasan Mahmood modern democratic society to recognize press freedom in a constitutional manner as a right of the people, but constitutions generally refer to the "freedom of press" in association with the right to freedom of speech, or with freedom of expression. In some constitutions the two freedoms are expressed in the same sentence (USA Constitution, First Amendment; Canadian Charter of Rights and Freedoms 1981, Section 2; Constitution of Japan, Art 21), sometimes in different sentence or even in different clauses [German Basic Law, Art. 5.1, Constitution of Ireland Art 40.6.1 (i)]. The question may raise that, whether 'press freedom' or the 'freedom of press' means merely that the institutional press enjoys the same liberties and the immunities as every individual does under the free speech clause; or whether the press has wider, or perhaps narrower rights. In fact no legal system of judiciary has really come to terms with the issue. There is still controversial debate going on. Sometimes, it is argued that the phrase 'freedom of press' suggest three alternatives; freedom of the press is independent principle; or is co-extensive with freedom of speech; or is distinguishable subsets of freedom of speech. But it is very critical to support any one notion, whereas the nature of role of the press and issues of freedom are changing, day by day, in the modern world. Recognizing the important role of the press in

a democratic society, in this article we would like to identify some standards regarding the nature of the freedom of press. To examine these issues, in main focus will be on the US legal system. The press does indeed perform a crucial and important role in a modern democratic society. but it is questionable whether it should be given a wide set of legal privileges which would place it apart from ordinary individuals. For this purpose a legal problem which would arise from the admission of special status of the press, that how we define the 'press.' The argument from democracy may suggest that the press should not be given special status and rights, in view of its particular responsibilities in keeping the public informed. This argument suggests that the status should be reserved for the Patter group, i.e., daily national and local newspapers. But it is also ar-

grant of legal privileges". (See, Barendnt Eric, Freedom of Speech, Clarden Press, Oxford 1987). In USA virtually the first amendment had no definational difficulty at all. But the question raised with the justice Stewart's extra-judicial observation expressed in the Yale Law School. In the address at Yale Law School, Justice Potter Stewart, former Chief Justice of US Supreme Court, said that most parts of the Bill of Rights protect liberties whoever exercises them; but the press clause of the first amendment is a structural provision protecting a particular institution: "the organized press." He said, the press clause did not merely join with the speech clause to guarantee freedom of expression to all: that would make it "a constitutional redundancy". He also said the primary purpose of those who framed it was to create a fourth insti-

tution outside the government as an additional

check on the three official branches.

Floyd Abrams considered three approaches in defining "press". (See, Floyd Abrams, The Press is different: Reflections on Justice Stewart and Autonomous Press, in Hofstra Law Review, Vol. 7, 1979) One would be to afford equivalent press' protection to all who write, thus treating the occasional pamphleteer precisely the same as the regularly employed journalist. A second, narrower, approach is functional one similar to that taken by the President Carter administration in proposed legislation to reserve the Supreme Court's ruling in Zurcher V. Stanford Daily, protection would be afforded not only to journalist on established newspapers but "to free-lance writers, radio and television station. magazines, academicians and any other person possessing materials in connection with the dissemination to the public of a newspaper, book, broadcast or other form of communication."

The third, narrowest, definition might limit the entities protected by the press clause which expressed in Justice Stewart's thesis, refereed to the "institutional Press." This narrowest definition may be found in laws of most states and protect, by statue, journalists from being required to disclose their confidential sources and information. Some supporters of the Stewart thesis, perhaps recognizing the risks in its exclusivist character, have tried to make it more appealing by broadening its definition of "the press." In Herbert v. Lando, Judge Oakes while relying explicitly on Justice Stewarts speech, said that he would not draw any "distinction between the institutional press and the individual pamphleteer.

Floyd Abrams said that, all three of these approaches are acceptable ones, although none is without difficulty. "The broader the class included within the narrower the class, the greater the risk of appearing to license some newspapers, but not all. For that reasons, the second approach seems a workable, if not flawless, compromise," He, in his Supreme Court brief for the media respondents in the Herbert, embraced the position that the Press clause of the first amendment fully covered 'the lonely pamphle-

Anthony Lewis, Lecturer of Harvard Law Review, argued against this position: ".... if the definition is thus broadened, then any publication becomes 'the press' and Justice Stewart's thesis loses its point." In 1990 Report, USA Reporters' Committee for Freedom of Press has chosen the narrowest view to define the word journalist.' They recognized, in their report, journalist as the person who primarily employed by a news organization.

The idea that news media, i.e. the press, are constitutionally unique may also encourage hubris, the excessive pride that goes before a fall. Ordinary citizens may find it hard to understand why the press should have rights denied to them. And in the long run, rights depend on public understanding and support. Vermont Royster of the Wall Street Journal has said: "That first amendment we cherish is not some immutable right handed down to Moses on Mt. Sinai. It's a political right granted by the people in a political document, and what the people grant they can, if they choose, take away. There is no liberty that cannot be abused and none that cannot be lost."

What is important, however, is not the definition that is chosen; it is the recognized that conceded definitional difficulty is hardly a basis for affording no press clause protection at all. Simply, because a word in the constitution is difficult to define does not render it devoid of any explicable meaning.

The writer a Post Graduate Research Student, University of Nottingham UK; is a Member, Ain O Salish Kendra, Dhaka.

#### Bangladesh is based on approximate estimation and the figures are different. A report of USAID holds the figure at 1 million ha or only 6 Law and Custom According to an estimate of the Forest Depart-ment in 1989, the FORESTS in BANGLADESH area under forests is 2.46 stated that the percentage of forest land is about 14 and the actual tree cover is approximately 9 per cent. Out of the total forest area 1.461 million ha are managed by the Forest Department, 0.728 million ha are Unclassed state of the district administration hampered by the existing forest

The tenancy law and Record of Rights have intensified the problem over defining boundaries of forest lands under private and public ownerships. The process of notification and misapplication of forest law over public - forests have created uncertain legal status and a large number of litigation's and prosecutions. As become evident from the Sal forest, there is a gross misinterpretation of forest laws and improper use of institutional authority.

In his book, Dr Farooque attempts to examine the existing forest laws, by-laws, policies and the institutional practice to identify the problems and limitations in the legal regime to explore the prospects for sustainable forestry management - through participatory forestry. In this connection, all laws and by laws including executive orders or guidelines relevant to forest and customary rights have been examined. Such examination was further supported by policy analysis. All these aspects have also been examined from their historical perspectives including the objectives that led to formulation of laws and policies including the underlying purposes.

In his precise work, the author has surveyed existing literatures on the subject including relevant materials from the neighbouring regions. Many case records have been obtained, examined and used. He has made many concerned field visits too. All these, assure any reader having particular interest in the subject, regarding the substantiality and authenticity of the study.

back up the same. The part A

### by Abul Hasnat Monjurul Kabir

laws and their institutional application. The tradition of colonial. bureaucracy exploit the law and the gap between public agencies and public properties has institutional-

in Bangladesh where tenure and title over resources are almost a regular struggle for the dense population under crippling poverty. And the law and institutions aggravated the situation instead of resorting the issues or tackling the historical inequity. Most of the laws were introduced during the colonial rule and so were the basic social and public institutions. Although Bangladesh has been independent twice, the feudal

The study has been divided into two parts. This division has been made covering the aspects to give a complete picture from legal perspectives or to

# A Unique Study towards a Greener Bangladesh

under the title of 'Law And Customs On Forest' consist six chapters. These are (I) Forests and Forests Management in Bangladesh (II) Development of Law On Forests (III) Tenure Over Forests (IV) Forests in Law (V) Rights Duties and Interests in Forests and (VI) Forests Offences. In this part attempt has been made to examine law and customs on forests in general. These aspects have been examined thoroughly covering wide range of relevant laws and matters that affected the law and custom. In the light of the legal examined in Part A, the Study Area, that is, the case of the Sal forest has been examined in the 'Part B'. This part under the title of 'The Sal

Forest' consists nine chapters. These are (VII) The Study Area (VIII) Some Specific Laws relevant to SA (IX) History of the SA (X) Survey, Settlement and Record of Rights (XI) Existing Legal status of the Sal Forest (Background to the Land Right

Offences (XV) Alternatives for The book is, no doubt, a valuable addition to a sector of knowledge which has virtually not been cultivated yet. Infact before this, there is no concise publication on the laws and customs of forests and relevant issues.

The Green Lawyer takes the labour and pain to cultivate this barren land of knowledge and thus extends the public access to information which is a sin-qua-non for conservation of forests not only for us but also for generations to come.

Congratulations Dr Mohiuddin Farooque! Please keep it

Law and Custom on Forests in Bangladesh: Issues & Remedies Authored by: Dr Mohiuddin Farooque Publisher: Bangladesh **Environmental Lawyers** Association (BELA) Page: 308 Price: Tk. 300