Law and Our Rights

Bangladesh Supreme Court: A Historical Perspective

by Dr M Zahir

In the wake of the completion of the twenty fifth year of the Supreme Court of Bangladesh there is one question that would haunt any veteran like this writer. Have we seen the worst of times in the constitutional upheaval which we have witnessed or are there worse times to come? Depends on our own determination to uphold the dignity of this sacred institution for which we are indebted to all those who preceded us. We express our gratitude to them and also hold those who will succeed us to do likewise so that the country will know that their last hope for justice is still there.

ONE of the fallouts of the Battle of Plassey, shameful and agonising as its memory may be to us, is the introduction of a judicial system based on the English common law. The English judges did not distinguish between one 'native' and another although they often applied a different criterion when an European and an Indian were adversaries. The glaring example of Sir Elljah Impey sending Maharaj Nandkumar to the gallows is still fresh in our mind especially so because of the standing portrait of Sir Impey the first Chief Justice of the Supreme Court at Fort William adorning the Court Room No. 1 in the Old High Court Buildings until the autumn of 1968 when the Supreme Court premises were shifted to the present building. The officers of the Calcutta High Court were only to glad to get rid of the picture in 1947 and its only resting place was in the Dhaka High Court which was created to be the highest seat of justice in the then East Pakistan.

The first Supreme Court having jurisdiction over the territories now constituting Bangladesh was established by a Royal Charter on 26 March 1774. It administered 'the common law as it prevailed in English, the statute law which had prevailed in England, the statute law expressly extending to India, the civil law as it obtained in the Ecclesiastical and Admiralty Courts in England, Regulations made in the Governor General in Council, the Hindoo law in all civil actions in which a Hindoo was a defendant and Mahomedan law in all civil actions in which a Mahomedan was a defendant *'Longueville Clarke in the preface to his edition of the Rules and Orders of the Supreme Court (1829 edition).* The courts established by the East India Company continued to exist and administered the traditional indigeneous system of laws, their procedure being regulated by the Council of the Company.

The Supreme Court at Fort William in Bengal exercised jurisdiction only inside the precincts of Calcutta but soon there were clashes between the two systems. A classic example was that of an action commenced in the Supreme Court by a 'Cossinaut Baboo' against the Zemindar of Cossijurah in 1779. The then Attorney General gave an opinion that the Zemindar was outside the jurisdiction of the Supreme Court but Chief Justice Impey issued an order to all landholders that they were subject to the jurisdiction of the Court. The Zemindar and his people beat off the sheriff and his officers when they attempted to take him in custody. Thereupon the sheriff collected a force of fifty or sixty sailors who marched from Calcutta. The Governor General in Council ordered troops to be sent against the march of the sailors and finally action was brought against the Governor General in Council and other members of the Council by the plaintiff. *Sir Fitzjames Stephen: The Story of Nuncomar and the Impeachment of Sir Elijah Impey, 1885.* The Council declared all who were in Bengal and out of Calcutta to be outside the jurisdiction of the Supreme Court. The reason was that the Council hated the Supreme Court which applied the English principles and prevented the Zemindars from squeezing the ryots to collect revenues punctually. The practical effect of all this was that the jurisdiction of the Supreme Court at Calcutta was initially confined to that city alone and this was so confirmed by the Settlement Act of 1781. Warren Hastings solved the problem of conflicting jurisdictions by appointing Impey also the presiding judge of the Company's courts. *The Rules of The High Court of Judicature at Fort William in Bengal by E.C. Ormond 1914.*

The so called 'Sepoy Mutiny' (First War of Independence) had awakened in the public mind of the English people a lively though somewhat tardy interest in the affairs of India and roused the Government and the people of England to a sense of their responsibility for the administration in India. A Bill was passed in the English Parliament to take over the possessions of the East India Company on 2 August 1858. A further Bill was introduced in the Parliament in 1861 for the establishment of a High Court in Calcutta. Its jurisdiction was to be defined by Letters Patent. In pursuance of this Letters Patent dated 14 May 1862 was issued. In 1865 new Letters Patent replacing those of 1862 where issued. It is under these Letters Patent that the High Court of Calcutta derived its jurisdiction and continued to exercise it until India was partitioned in 1947. The jurisdiction that the Calcutta High Court exercised included the original side jurisdiction, admiralty jurisdiction, appellate and other jurisdictions given by law.

In 1947 in exercise of the powers conferred by section 9 of the Indian Independence Act 1947, the High Courts (Bengal) Order 1947 was passed. Paragraph 5 of the Order provided:

"The High Court of East Bengal shall be a Court of record, and shall have in respect of the territories for the time being included in the Province of East Bengal, all such original, appellate and other jurisdiction, as under the law in force immediately before the appointed day, is exercisable in respect of the said territories by the High Court in Calcutta."

The High Court of Judicature at Dacca in East Pakistan was therefore vested with all the jurisdiction that the Calcutta High Court exercised. Some anomalies remained however. Although it had the original side jurisdiction it never exercised it as no proclamation was made defining the extent of its original side jurisdiction. The earlier jurisdiction given to the Calcutta High Court related to the precincts of Calcutta and this was never changed. The High Court in East Pakistan however continued to exercise all other jurisdictions including appellate (civil and criminal), prerogative writes, company, probate, divorce admiralty.

The Constitution of Pakistan in 1956 continued with the existing jurisdictions. Writ jurisdiction was especially mentioned in the constitution (Article 170) by name, i.e., mandamus, certiorari etc. The constitution was however suspended by the promulgation of martial law of Iskander Mirza and Ayub Khan and for a few days there was no High Court in the country at all. However, the High Court was restored within a few days but with truncated powers. The power to issue writs to enforce fundamental rights was not there.

The constitution of 1962 revived the writ jurisdiction of the High Court (Article 98) but this time the jurisdiction was defined and not named as done previously. The High Court along with its counterpart in West Pakistan and the then Supreme Court of Pakistan sought to restore some dignity to the people while interpreting the article giving the right to the treated in accordance with law. Important decisions were given protecting liberty of the people interpreting this article as obliging the detaining authority to have an objective satisfaction rather than a subjective one thus allowing the courts to scrutinise materials on the basis of which a person was detained to judge whether the detention was justified or not. (To be continued)

This article was written to commemorate the silver jubilee celebrations of the establishment of Bangladesh Supreme Court. The writer is a Senior Advocate of Bangladesh Supreme Court.

In the next issue, the writer will review the history of Supreme Court in the Bangladesh context.

In Quest for Another Black Law?

by Farzana Chowdhury and Jagannath Paray

WE all know that women and children are disadvantaged group in the Society. The United Nations even has from its very inception, worked with the women movements to achieve its asserted objectives in its Charter calling for full equality of men and women. It is over two decades four World Conferences have been held under the auspices of the UNO in order to strengthen the legal, economic, social and political dimensions of the role of women and children. Bangladesh after its birth has also enacted many laws to protect women and children. In this regard another Bill has been drawn by the present Government titled "Nari, Shishu O Shantrash Shonkranta Aparadh (Bishesh Bidhan) Ain, 1998 in order to protect the rights of women and children. But unfortunately, like the previous laws this law is not also above criticism. And the insertion of provisions regarding "Shantrash" (Terrorism), which is inconsistent with the proposed law has vitiated the very object as well as the importance of the said law. We strongly put our recommendations in this regard.

1. In the proposed Law there are 11 provisions of death penalty as highest punishment. There is no denying the fact that the rate of crime in the society cannot be reduced by increasing severe punishment, rather it depends upon the honesty and sincerity of the Law Enforcing Agencies. We find the proof of this contention if we take a glance at the implementation of the past law titled Nari O Shishu Nirjatan Bishes Bidhan Ain, 1995 [which was passed by the BNP govt. and is still in force] and working of the law enforcing agencies upon such law. This does not mean that we are against the protection of the rights of women and children, we strongly believe and recommend that for the better protection of the women's and children's rights, the Law Enforcing Agencies in our country should be reformed first. The 20th Century has been declared to be the year of Human Rights. To abolish the conception of death penalty is the consensus of the whole world today. Various International instruments regarding abolition of death penalty have been signed and many democratic countries have already abolished death penalty from their legal systems. Keeping provisions for death penalty in the said Bill, Bangladesh, being a democratic country and a signatory state to various human rights instruments clearly goes against the norms and principles of not only the international instruments but also against the norms and principles of a civilized society. Hence we are against the insertion of death penalty.
2. The proposed law will be a Special Law. In 1995 the then Government enacted a Special Law under the title of Nari O Shishu Nirjatan (Bishesh Bidhan) Ain, 1995 [Women and Children Repression (Special Provisions) Law, 1995] which is now in force. Proposal of another one within the span of only 2 years proves the non effectiveness, non acceptance of a Special Law. Hence, enactment of special laws frequently cannot serve the purpose of a well designed law. We strongly think that protection of the rights of women and children can be done through the amendment of the Penal Code and insertion of new provisions therein.
3. The proposed law has failed to protect the rights of the accused on the similar footing as of the complainant. Discriminatory measures against the accused has violated the principles of natural justice.
4. From practical experience it is found that through the abuse of the law relating to the protection of the rights of women and children passed by the past government, innocent people were harassed maliciously. Furthermore enactment of such a rigorous act would widen the scope of corruption of the law enforcing agencies.
5. The crimes of the proposed law being declared non bailable, many innocent people will be the victims of harassment. Taking this advantage the Investigating Officer (police) will get ample opportunity of bribery. It is revealed from the experience that in many cases the police submitted Final Report after taking bribe. So "grant of bail" of the arrested accused should be left to the "exclusive jurisdiction" of the court.
6. Many times it has been observed that the Public Prosecutor being gained by the opposite party prosecutes the case in such a way which goes against the victim. Hence after section 23(3) provision like- *If the complainant thinks necessary he/she with the permission of the court may appoint a pleader to assist the Public Prosecutor.*
7. In Chapter V of the proposed Law provision of fine, which is to be submitted by the accused and be paid to the victim, has been inserted. But what would be when the accused does not posses any property for the satisfaction of the fine? In that case there should be specific provisions which will bind the Government to pay the same amount to the victim.
8. At the time of examining a victim of rape, the presence of at least one lady doctor should be ensured. Along with it there should be specific provisions of punishment for submitting false medical report.

Opinion as to the Insertion of the Acts of Terrorism with the Proposed Law:

Acts of terrorism has been inserted with the proposed Law. This indicates the very political intention which has given rise of doubt regarding the effectiveness of the proposed law in the minds of the conscious people. Activities of the Political Parties like hartal, oboradh (obstruction), bikhob, (agitation) etc. have been termed as acts of terrorism. There is no doubt and confusion that these activities have become a tool in the political culture to struggle against the authoritative government from power. But the said acts have been categorized as the acts of terrorism for which death penalty, life imprisonment, rigorous imprisonment etc. along with fine will be awarded. So it is crystal clear that the proposed law if passed shall be an weapon of the government to serve its narrow political self interest. During the reign of BNP (Bangladesh Nationalist Party) such a Law was enacted and was short lived. Because through the application of that law general people were unnecessarily harassed on one side and on the other side opposite political leaders were oppressed. This made that law to be uttered commonly as a "**Black Law**. From the point of qualitative and quantitative view the proposed law shall be much more horrifying if passed.

The writers are the Research Lawyers of the Project "Legislative Advocacy and Participation of the Civil Society", a Project of Bangladesh Legal Aid and Services Trust, Ain O Shalish Kendra & Madaripur Legal Aid Association.

Lawscape

At Last Ron had to surrender to Runa Laila

RUNA Laila, an internationally reputed singer, filed her divorce suit being suit no. 90/97 before the Hon'ble 2nd Sub-Judge, Dhaka on 10-3-97 for declaration that she is no longer the wife of Ron Daniel Pilnik. Initially she had waited to bring the action in England but could not do so as she is not an English domiciliary. The divorce suit is the consequence of irreconcilable marital differences, including mental incompatibility and psychological harassment. Also at the time of marriage, Ron Daniel had promised to convert to Islam but had not subsequently kept his commitment.

Further, Ron Daniel has been defending the suit, not personally, but through a power of attorney given allegedly to a local person. He is also trying to cause undue delay in the proceedings on various pretexts. Till now, the defendant (Ron) has not submitted the written statement.

Though 22nd March '98, was fixed for submission of written statement but the defendant did not submit any written statement.

In the mean time, the Defendant, Ron has sent a letter to Runa through his Lawyer Barrister Tania Amir which was forwarded to Runa Laila in the presence of her own Lawyer Barrister Rabia Bhuiyan. In the letter Ron admits that they should end a marriage that had not worked out and caused a lot of bitterness. On 22/3/98 Barrister Rabia Bhuiyan filed an Affidavit along with the letter. The Learned Subordinate Judge, having heard the parties, fixed 2/4/98 as the date for next hearing. It appears that there is nothing much to argue in this case any more as Ron has already admitted that Runa had been right in seeking to end a marriage that has, in all practicality, not existed for the past two and a half years. Barrister Amirul Islam assisted by Barrister Tania Amir is appearing for Ron Daniel Pilnik and Barrister Rabia Bhuiyan is appearing for Runa Laila and she is assisted by former District Judge and Learned Advocate Mr M A Jafar and Advocate Mr Saifuddin Md Aminur Rahman.

LAW WATCH

Legal Notice Served Upon GrameenPhone Limited

A legal notice was served upon the GrameenPhone Limited from the chambers of Dr M Zahir & Associates under instructions of certain subscribers. In an earlier notice dated 18 September 1997, it was alleged that due to GrameenPhone's inefficiency and negligence in providing adequate base stations, the subscribers were unable to get proper signals; that it had become nearly impossible to make calls from GrameenPhone mobile to land-line due to insufficient net-working making GrameenPhone totally useless. The notice alleged that the GrameenPhone Limited had defrauded thousands of people by luscious advertisements and are indifferent towards any service and should not be allowed to continue to take any more subscriptions or charge them monthly rentals. That earlier notice called upon GrameenPhone Ltd to take immediate steps so that the subscribers could make outgoing local phone calls with reasonable ease. The recent notice observes that subsequently, the legal counsel for the GrameenPhone Limited urged the subscribers to show restraint with the pledge that the situation was going to ameliorate soon thereafter. However, to the utter dismay of the notice servers, almost no improvement have been perceived in the mobile phone services provided by the GrameenPhone Ltd. Moreover, the notice alleges that it is now abundantly clear to the clients from the news published in all the major national newspapers and from other reliable sources that the problem has been caused mainly due to overburdening of the lines by sale of mobile sets by the GrameenPhone Ltd and thereby giving connections to subscribers four times above the limit prescribed by the T&T. This, as the reports suggest, has been committed by the GrameenPhone Ltd in breach of its contract with the T&T. The notice asserts that by letters to the subscribers in the recent months and by making a deduction from the monthly service charge, GrameenPhone Ltd has admitted that it has been in breach of its contracts with thousands of subscribers and it is felt that such deduction does in no way commensurate the extreme inconvenience, financial detriment, mental agony and distress suffered by the notice servers and other subscribers every time they attempt to use GrameenPhone. That on top of all this, GrameenPhone has now prescribed a charge of Tk 2.00 per minute on the subscribers for incoming phone calls made from T&T lines to GrameenPhone. This is brought about unreasonably, unjustifiably and in furtherance of breach of contract with the notice servers by the GrameenPhone Ltd. GrameenPhone, till now, has at all times maintained its position of not charging its subscribers for incoming calls and thousands of subscribers have availed themselves of its services for valuable consideration in reliance of such representation which also forms part of contract between GrameenPhone and the subscribers. The notice avers that GrameenPhone Ltd instead of fulfilling its contractual obligation of providing a suitable mobile telephone system has now shifted the blame primarily on the poor subscribers by alleging that the problem is mainly due to the abuse of channels by the subscribers some of whom spend hours making calls from T&T to GrameenPhone. Such allegation, the notice contends, is baseless, slanderous and defies logic given the fact that the "talk time" allowed by a fully charged battery will not accommodate conversation of such time length. In any event no incoming call lasts more than a few minutes as automatically the line is disconnected. The subscribers, as a result of fraudulent inducement and misrepresentation, have paid valuable consideration for purchase of services of the GrameenPhone and entered into agreement and now in total failure to carry out its contractual obligations, GrameenPhone has decided to somewhat castigate them which is legally and equitably unacceptable. The notice demands that, in the circumstances, GrameenPhone should immediately cancel the decision to charge notice servers and the other subscribers for incoming calls and take immediate steps so that the subscribers can make outgoing phone calls, especially local calls with reasonable ease and offer the subscribers greater reduction on their monthly service charge until the situation reaches a desired level. Failing which, the notice servers shall take legal steps to protect their interest as well as to protect the interest of other subscribers by moving the appropriate forum(s).

The State of Women Workers in the Garment Sector of Bangladesh

by Naimul Haq

STUDIES show that there has been no improvement in working condition of the garment factory workers in last ten years over 90 per cent of whom are female.

This was disclosed at an open dialogue on "The State of Women Workers in the Garment Sector of Bangladesh, jointly organised by Law Watch and The British Council on 22nd March, '98.

Held at The British Council auditorium, speakers depicted various aspects of working condition of garment factory workers.

Shima Das Shimu, an activists working for the movement of the women while discussing on the subject said, "The workers in most garment factories do not have proper access to 'basic' facilities like, drinking water and toilet. They work in inhuman condition but owners do not pay any attention to their call for providing minimum facilities."

She also said, "It is their contributions out of which the owners build their wealth and surprisingly the owners pay little attention to demands of the workers. It is injustice."

Roushan Jahan while describing her experience of conducting surveys on the working condition of the female workers in the garment factories said, "BGMEA's claim of children not working in the garment factories any longer is not true. There are many factories associated with the BGMEA where children are employed."

She said, "The garment factories are growing in an unplanned manner and there seems to be no regulation to stop them. We must protest unplanned establishment of factories."

She added, "Most of the factory owners ignore the demands of the workforce by way of which they are able to earn such a huge amount of foreign exchange. It is sad to know that they have turned their blind eye on the calls of the workers."

She further said, "The owners have restricted alliance of the workers imposing ban on union activity. There are reports of workers being terminated without specifying causes. There are many employees who are deprived of their salaries for months. We must address these problems unitedly."

Advocate Fouzia Karim while describing her experience of dealing with criminal cases of the garment workers said, "By way of regular inspection we could ensure proper working condition for the garment workers. But when we approach the officials they give lame excuses of not having sufficient manpower to check irregularities in the sector. Does that mean that there will be no remedy to the problems?"

She said, "I receive frequent complaints from the workers that they are not allowed their sick leave or maternity leave. There are a number of instances where the workers are deprived of the wages for months. There are common allegations of sexual harassment but nothing is being done to overcome the problems. Rapes in garment factories are nothing new. But there has to be an end to it."

Farida Akhtar in her deliberation said, "Surveys shows that businessmen who had good background of dealing with industries have more or less provided the workers in their factories with proper basic facilities. But those who see the business as trade have dealt with the sector quite badly."

A representative of the garment workers — Lovely Yasmin, while narrating her experiences in the sector said, "I have received threats from various sources not to give advises to the female workers. I have also received notification from specific garment owners asking me not to give advises on lawful aspects of the sector but I ignored their threats."

Rubana Huq, a Director of Muhammadi Group and Farah Kabir, Advisor, Governance and Gender Section of British Council also spoke on the occasion.

Question and answer from the audience followed the discussion session.

A H Monjurul Kabir, Secretary General of Law Watch moderated the discussion programme. He also briefly discussed about the deteriorating condition of women workers.

Metropolitan

Bangladesh Mahila Parishad organised a rally marking its 29th founding anniversary at the Central Shaheed Minar in the city yesterday. — Star photo

Mahila Parishad holds protest rally

By Staff Correspondent

Bangladesh Mahila Parishad held a protest rally at the Central Shaheed Minar and brought out a procession in the city yesterday demanding " security of girl children and exemplary punishment of rapists."

The programmes were organised in observance of the 29th founding anniversary of the organisation.

Parishad chairperson Sufia Kamal and general secretary Aisha Khanam addressed the rally, while assistant general secretary Dr Maleka Banu read out the 29th anniversary declaration of the organisation.

The Parishad also set forth a 10-point charter of demands for ensuring security and protection of women and girl children.

The demands include rapid trial and stern punishment of rapists, life imprisonment or death penalty for rape of girl children, and immediate reform of the "Repression on Women" act.

BCSIR develops low cost technology for spirulina production at home

Scientists at Bangladesh Council of Scientific and Industrial Research (BCSIR) have succeeded in developing a low cost technology for the production of nutrition rich spirulina, a blue-green micro algae, at home.

This innovation has paved the way for making spirulina available to the nutrition-deficient poor people of Bangladesh, concerned scientists said.

Sajeda Begum, a member of the spirulina research team and a principal scientific officer of BCSIR, told BSS that she has been successfully carrying out trial production of spirulina at domestic level for the last one year.

She said any family living in rural as well as urban area and having a few square feet of sunny space could produce spirulina at home for their own consumption.

The initial requirement is three red coloured plastic bowls with a capacity of 30 litres of water each. Sodium bicarbonate, common salt, urea and ashes of coconut or banana leaves mixed in specific proportions are used as nutrients for spirulina, she said.

By using this technology one could produce spirulina round the year at a cost of Taka 300 for each kilogram of dry spirulina.

In the early 1990s, the BCSIR scientists had perfected the technique of artificial cultivation of spirulina on commercial basis with the help of required nutrients and control of different environmental parameters in Bangladesh. They worked with French technical assistance and advice.

This pioneering work was conducted by a team of eight scientists at the Applied Botany Section of the Biology Division of BCSIR led by Dr FZ Majid. The other team members were Lutfunnahar, Sajeda Begum, Parveen Noor, Rahima Khatun, Nasima Akhter, Motahar Hossain and Miskat Ara.

Since 1993, some private firms have gone into commercial production of spirulina by using the technology developed by BCSIR. They are marketing the product in the form of powder, tablets and capsules.

Research conducted by World Health Organisation (WHO) and scientists in some countries including the United States, Germany, Japan, France, Mexico and Vietnam, has shown that spirulina is high in protein, different B-complex vitamins, vitamin A and several important minerals, including iron.

Dr FZ Majid said spirulina could be produced and consumed by the poor people as protein and vitamin A supplement, and for treating anaemia. The production technique could be spread to the people by combined efforts of the government, NGOs and educational institutions, with the BCSIR scientists training the field workers.

The World Food Conference in 1974 declared spirulina as the 'best food for tomorrow," specially considering that one kilogram of spirulina contains as much nutrition as 1000 kg of assorted vegetables.

Since the declaration, scientists have found extensive uses of spirulina in medicine, as health food, as specialised animal feed and even in cosmetics.

It has been successfully used for treatment of night blindness, control of diabetes, protein deficiency, anaemia, ulcer, hepatitis and cirrhosis, obesity, circulation disorders and for nursing mothers to increase lactation, the scientists said.

Spirulina existed on earth some three billion years ago and grows in abundance naturally in some countries of Africa and South America.

It is produced artificially in commercially in Mexico, Spain, US, Thailand, Brazil, Israel, Japan, India, Myanmar, Taiwan, Martinique and Bangladesh.