

# Law and Our Rights

"All citizens are equal before law and are entitled to equal protection of law"-Article 27 of the Constitution of the People's Republic of Bangladesh

## Towards Establishing Green Courts

By Shamim Ara Begum

THE true success of democratic system mostly depends on the en-mass participation of people in the governance of the state mechanism. It is often opined that the legal system of a nation reflects its capability of administering natural justice. In the democratic governance the responsibility of formulating legislation is largely vested with the legislature. Though abundance of law is compulsory for all and no one may take plea that ignorance of law as an excuse the people play a very significant role in adopting a new law. It is a well known fact that the law makers are elected representatives of the people and the trust of the people has been transmitted with the authority to exercise their law making power. In practice, laws are made in a way devoid of public participation.

For better protection and conservation of the environment and eco-system in Bangladesh, Environment Conservation Act, 1995 was enacted. But it has failed to work for its in-built inadequacy. After approval of the draft bill of Environment Conservation Act, 1995 by the Cabinet, BELA organized a debate on the said Bill. Some suggestions such as definition of environment was narrower than that of the Environment Pollution Control Ordinance, 1977; although the Bill aims to provide for the conservation, development and pollution control of environment, the text of the whole law speaks contrary and virtually Bill turns out to be more pollution oriented; the Bill lacks in necessary direction for the conservation and development of resources and biodiversity; it does not provide for the prosecution procedure that would be determined by bye-laws; no court has been specifically debarred from taking cognizance. The effectiveness of the Bill largely depends on the rules and by-laws that are to be made in future which might eventually give rise to great uncertainty among the foreign investors, unskilled and unplanned drafting has affected the merits of the Bill, the experts opined. The law, on the contrary, is virtually based in two sections, i.e., one on providing power and the other providing functions to the Director General the uncertainty of Environment Quality standards gives the DG the arbitrary power. These suggestions derived from the debate held in 1994 were sent to the Ministry of Environment and Forest, but not considered at the time of enactment. But after 4 years all those suggestions have come as proposal for amendment of Environment Conservation Act, 1995. The recent view of

Department of Environment (DoE) to consider those suggestions inspired BELA once again to organize another public debate on a recent draft of DoE on Environment Court Act, 1999 for conservation of our environment.

**Number and Nature**  
According to the draft bill primarily eight environment courts shall be established, six in divisional head quarters and two in Dhaka. It was noted in the discussion that prior to the establishment of such a court, a survey needs to be undertaken as to the total number of environmental litigation pending before the existing courts to legitimize the sustainability of such a new judicial institution. If the survey suggests that a large number of environmental litigation are pending then only it would be justified to have a number of environment courts. The discussants in the debate opined that the existing judges could be entrusted with additional responsibility to adjudge environmental cases.

The participants said that in addition to courts of divisional head quarters, courts may be established in every district so that people can file a suit where cause of action arises. At the same time some mobile courts may be operated for redressing public injury immediately. The traditional way of mitigating environmental problems through public interest litigation under writ jurisdiction may also be applied where necessary.

**Establishment of Environmental Court**  
Under the bill, Government will appoint a judge in Environmental Court from the additional district judges with the permission of the Supreme Court. In the previous draft bill, there was a provision to appoint a technical person with the additional district judge from the Department of Environment. All the discussants were against the inclusion of a technical person in the environment court.

**Power and Jurisdiction of Environment Court**  
All cases about conservation of environment, its further development, control and combat of environmental pollution shall be filed and dissolved in these courts. The discussants observed that if there is any provision in any other laws to take any action about environmental matters or indicate any specific courts for filing such matter may be filed in Environment Court as well.

**Who can file suit**  
Any aggrieved person whose environmental right has been infringed can directly file a suit



The Nature at stake

Photo: Z I Khan

in the Environment Court. In the previous draft Bill, it has been stated that no person can file a suit without the permission of the Director General of DoE.

**Activities to expedite the trial**

No case filed in the Environment Court shall be adjourned for hearing more than 3 times. Every suit shall be dissolved within a period of 6 months from the date of filing a suit. Some suggest that it is necessary to insert some provisions to take immediate action according to the damage and to ensure equitable justice. The time frame may also be extended.

**Interim order**  
Any person may prefer an appeal to the High Court within 30 days from the date of pronouncement of the judgement. Provided that no such appeal shall be filed against any interim order. Discussants also welcomed these provisions because most of the time appeal against such order causes delay to realise the judgement.

**Provisions for Damages**  
There was no provisions for providing damages in the former draft bill. Now there is a provision for damages to be determined depending on the facts and circumstances of each case and fine and imprisonment to be increased from 1 lacks to 10

lacks and 5 years to 10 years respectively. Discussants emphasized on implementation of the law rather enhancement of the punishment.

**Existing laws**  
There is a number of laws which have bearing on environment directly and indirectly. If there is any contradiction among the provisions of these laws about the same matter, it should be cleared and immediate amendment would be necessary for appropriate remedy.

Some important actions like public hearing of every project under Environment Impact Assessment and for renewal of EIA projects under Environ-

ment Management Plan in every year should be compulsory. Like other countries, our DoE should act as watch-dog for conservation of environment. Above all mass awareness is necessary for promotion of efforts aiming to conservation of environment.

### Some Observations

With all the theoretical and practical restraints on the common people's part, justice nowadays has become a myth for the mass people. The complexity of the structure of the court, the procedural loopholes creating scope of exploitation of a party, the virtual obscurity of court procedure and the total denial by the state to provide legal aids to the poor are some of the factors which have put justice in a position to be treated as a commodity. This is against the fundamental right of the people guaranteed by the Constitution. These letters of the Constitution loses its justification when the people are debarred from access to the door of justice even if due to practical restraints, this is only one of the aspects of the topic of this thesis which strongly reveals the picture as to why we should go for an immediate court reform. Another aspect may be drawn from the changing situations of socio-economic state of the country. The same court procedures designed to meet the needs of 19th century can not be expected to play effective role in meeting the demands of 20th century.

Surprisingly we find in section 3 and 4 of the draft bill on Environment Court Act, 1999 respectively that this environment court will be recognized as criminal court and this court will enjoy all powers and jurisdiction like criminal court according to the Code of Criminal Procedure, 1898. Notwithstanding anything contained in this act, Environment Court will follow the Code of Criminal Procedure, 1898 (Act V of 1898) for its proceedings. It would be wise to open both the existing courts and Environment Court for general public to get justice about environmental matters, so that they can choose their own way for enforcing their constitutional right — right to life — which is the central of all rights, and play an important role to protect our environment for its conservation, further development and combat environmental pollution which is necessary for sustainable development and for the existence of our future generation.

The writer is a staff lawyer of Bangladesh Environmental Lawyers Association (BELA).

## The Role of Police, Prosecution and Judiciary in the Changing Society

By Dr. M. Enamul Huq

IN our criminal jurisprudence a person accused for an offence shall be presumed to be innocent so long as he or she is not proved guilty by legal evidence beyond all reasonable doubt. The doctrine of reasonable doubt plays vital role in our legal system as a safeguard against conviction of the innocent person meaning thereby that even though a person may be acquitted but not a single innocent person should be convicted. Here though it is expected that no crime should go unpunished — the extents law zealously guards the values of civil liberties of citizenry. It insists that the prosecution — in order to secure conviction of an accused, must present acceptable evidence. A judge will exclude from his consideration a piece of evidence that has been improperly obtained or received. In this context it is worthwhile to mention that statements made before police under section 161 Cr PC is not acceptable while that made before magistrate under section 164 Cr PC is admissible in trial. This has of course given scope to question the efficacy of investigative agencies, performance, which presents a diabolical picture and deserves thorough reconsideration indeed.

A special mention need be made here that for the purpose of protecting social order and peace by preventing prejudicial activities against the state, the Special Powers Act, 1974 was enacted. There are lot of arguments and criticism for and against this, which curtails the fundamental rights of the citizen. Instances are not rare when the Government sometime use the provision of the law arbitrarily though subsequently certain modifications were made. Meanwhile the Supreme Court took commendable stand in checking arbitrary arrest and detention by granting anticipatory bail and directing the release of some detainees forthwith. However black laws remains as before.

Justice Delayed Justice Denied is oft repeated proverb again during martial Law. Another phraseology was commonly used "Justice Hurried Justice Buried." The whole drama of criminal proceedings ends with the verdict of the court in which the police/investigator, the witness, the prosecutor and the judge/magistrate play their respective role. Judge is the keeper of the conscience of society and prosecutors and defence lawyers are there to help them to come to correct decision

through intricate battle of wit to thrash out the evidence and establish the truth — which may not necessarily be whole truth. However, in passing the sentences the court must have regard to the nature of offences, status of accused and overall ends of justice in all fairness of things. The crux of fair justice lies in fair investigation, fair conduct of trial by prosecution and defence, proper application of law and impartial decision in the delivery of judgement.

But certain basic difficulties are the real hindrances like inadequate manpower for investigation — who are mostly busy for protocol duties, lack of modern equipment to help solve the detection, public apathy to law enforcement, parochial appointment of public prosecutor, back-log of cases, (both in lower and High Court) non supervision of court proceedings, unnecessary adjournment, witness absence of the witness, unusual delay to get report from the lone chemical laboratory for the whole country, Magistrate's otherwise involvements, dearth of courts and logistics, certain inherent deficiencies in laws and rules made during colonial regime-fraudulent practice of evil mongers in arena of Judicial provision, insufficient budget provision and above all the vested interests of the party in power and the opposition too.

### Counter Measures to Improve and Enhance Remedial Aspects

These day's economic crimes like bribery, corruption is increasing at a faster rate and getting organized deep-rooted and systematized. In some cases, the practices go far beyond the national geographic limit. And with the expansion of foreign aid and investment the vested groups are bent upon to reap the harvest themselves. And it is needless to say that instead of sustainable growth and development for the vulnerable segments the rich is becoming richer and vast majority are often deprived of the benefits of the so-called Pro-poor Agenda. A disproportionate burden of the misery of poverty falls upon women and children. As a corollary there have been innumerable instances of illegal trafficking of women and children across the border.

Constitution has an explicit "Social Equity" Clause under article 19 (2) — but practically one of the difficult problem is the very real gap between formal legal equality between citizens and the real inequality in their actual conditions. Thus UNDP in their report states that "absence of an accountable sys-

tem of democracy and good governance" as a major cause of poverty. They also identified law and order as one of the priorities under good governance. Equal protection of law needs equal reasonable opportunities to access to the course of law. Otherwise justice remains a myth. "Justice is always advantageous to the rich" is equally applicable here. Major imbalance in progress often causes conflict among people and thereby increases unhappiness and restive environment.

The study also noted that one of the fundamental problems was the dissonance between laws and their implementation. Good laws remain in the books only and rarely

better detection of cases—especially in handling the women accused.

Police personnel mostly busy for multifarious non — police job—hence the question of investigating police is being considered who should concentrate in criminal cases only.

Family Court has also been set up to settle the disparities between husband and wife, which also reduce the load in police stations and Courts. Local Government Institutes capacity building has been geared up to strengthen the Law and Judicial aspects too.

Parliament and Law Ministry has set up Law Commission and Judicial Training Institute respectively to update

### Towards Effective General Preventive Measures

There are many value systems in a changing world. Sometime we think of our obligation to care for the old and provide them social security with useful work and recreational facilities. As senior citizens they do deserve special consideration and hence care for the aging, elderly, infirm and handicapped need to be ensured. All possible modes of co-operation between Govt and Non-Govt organisation be explored to provide timely services in these fields. Law is there but perhaps special task force is needed to ensure that these are implemented desir-

amongst various countries have posed in serious problems. If not possible to go for formal treaties at least some sort of mutual understanding among the regional, bilateral, multilateral schemes could lead the path of ultimate goal. To cite example Bangladesh and Thailand has already implemented extradition treaty and there are already some sorts of agreement with Myanmar and Iran particularly for drug related offenders.

In the context of present day law enforcement and Judicial process perhaps majority of the taxpayers do want a change and here comes the concept of private security services. Familiar practices are disappearing and in their place unprecedented for productive and efficient client oriented services have become the need of the hour. And today security industry is growing a tremendously fast and they all have the objective to be suitable complementary services with transparency to the users for their expectations. Many of them are actively engaged in law enforcement responsibilities as an alternate force specially in the private sector e.g. industrial, project, multinational organisation even in the protection of the VIP/CIP of these domains.

Perhaps the important aspect of retribution and punishment deserves to be reconsidered. The offenders are punished because it is unavoidable and to eradicate the evils from the society. Instead of jail many countries (as in Japan) call it correction institute for making the inmates repentant so that they can join their family and contribute their mite as normal citizen. Perhaps the phrase "hate the sin" — not the sinner" needs to be reminded so that the social stigma is not made permanent to the inmates of prison lest they become recidivist and that make the situation worse. With that end in view the significance of prison administration could be a necessary and healthy adjunct of crime prevention and treatment of offenders. The concept of prison administration as institutional device for correction and rehabilitation is gaining ground and deserves more serious but immediate attention from the legislative, executive or judicial policy makers and social thinkers and experts thereof.

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The people-police relationship has faced severe setback in recent past.

Star file photo

implemented. Fundamental rights guaranteed by the Constitution and internationally adopted human rights are also hardly translated into reality. All such sacred covenants to which the country is signatory must be implemented so that society does not fall into the grip of few terrorist and political goons who are often immune to commit violence anywhere they like.

There have been some awareness amongst the public for improvement of the cycle of crime and the judicial process and good many steps are in hand of the Govt authorities for the purpose. To highlight some of these the followings are worth mentioning.

Besides Govt has appreciated the endeavors of NGOs working in the relevant fields to make the concerned agencies more sensitized for these vulnerable issues and consequently awareness creation and capacity building is progressing more than before to work hand in hand for common purpose to have a crime free society.

able well and the civil society i.e. community as a whole and the media in particular can do a lot to attain the cherished goal of humanity's two precious flowers "Security and Freedom" and that will help ensure the function of legal frame work on a sound institutional arrangement and capacity building for implementation of the desirable aspirations of the vulnerable groups and the most disadvantaged ones.

The increasing mobility of the population and the growing communication and financial links among different countries of the developing and developed world and internationalization have caused significant change in criminality. For such transnational criminal activities all concerned agencies could put their heads together but lack of extradition treaty

## Law Watch

### The Street Lawyer

By Shahdeen Malik

I almost felt sorry for the politicians and bureaucrats and officer workers at the thought of four hundred Drake and Sweeney lawyers suddenly seized with a fervour to protect the rights of street people.

In trying to transplant this to our situation, I was reminded of the couple of dozen or so letters we have already written to different ministries over the last six months, requesting for copies of reports of those numerous inquiry commissions that governments are wont to form to put any unpleasant incident, accident or their sheer incompetence and culpability under the rug. Obviously, we haven't received a single response, though we continue to hope and now I am trying to imagine whether it would make any difference if a number of other organisations were writing similar letters — the four hundred lawyers of The Street Lawyer.

The Street Lawyer is the most recent best seller by John Grisham (Doubleday; New York, London, Toronto, Sydney, Auckland; 1998; US\$27.95 — I am sure there would a much cheaper soft cover version soon), a lawyer turned best seller writer who seems to be selling his books by the million — A Time to Kill, The Firm, The Pelican Brief, The Client, The Chamber, The Rainmaker, The Runaway Jury and The Partner are his other novels, almost all of which has been enthusiastically read by hundreds of thousands all over the world. As the inside jacket of another of his books states, "Following the success of The Firm, John Grisham retired from his law practice and now writes full time." And now not only readers but movie goers may also have the pleasure of seeing at least two of his novels turned into mega movies — The Firm and the Pelican Brief. There must be other movies in the production pipe line.

Its a delight to read John Grisham's book — law thrillers. His heroes and villains are lawyers, their firms, juries and judges, often law students as well and only fleetingly their spouses and lovers. There are hardly any romance — usually not more than five pages in the standard three hundred or so pages of each book. No killings or robberies, but plenty of conspiracies with abundant legal niceties. Obviously, Grisham's books are woven in a world of fantasy — but made rather plausible by the minute attention to details of the plots and plots with each character laid out with distinct and clever roles to play — the usual requirements of best sellers. Intricacies are endless and I suppose that is the quality which keeps readers glued to the end waiting for new twists and turns and often wondering how each particular sub plot will end or connect to the main plot.

Compared to his other books, The Street Lawyer is rather simple — only one plot. Characters and twists were rather limited and hence I was a bit disappointed. Michael, the thirty two year old lawyer with one of the largest law firms in Washington, Drake and Sweeney, was already making more than one hundred thousand dollars with the prospect of netting more than million dollar per year in a few years. He leaves all these behind and becomes a 'street lawyer' with a legal aid clinic providing legal services to the homeless. Its the story of a month of his life — I could look back for the first time and try to make sense of it. Thirty two days earlier I had been married to someone else, living in a different apartment, working in a different firm, a complete stranger to the woman I was now holding. How did life change so drastically in a month? This is the story of this very readable change.

Needless to say, it is a mushy story and hence with a good end — the good guy wins at the end.

Too often, particularly in these times of marketisation, privatisation, globalisation and those plenty other 'isations' one has too often seen how a first year law student's idealism about law, about changing the world through law, about justice and serving the poor, about making a difference turns into uncertainty about the future and the consequent search for a stable job. This inevitably leads to applications to 'international organisations' or a 'student visa' for the West. Failing these, the search is for a government job or with a multinational company here, preferably a bank but tobacco or more recently oil companies as well. Failing all these, there is the obvious route of 'juniorship' with big time money making seniors or processing bail matters and then the mad rush to become a 'retainer' with a banking or commercial house.

The Street Lawyer is a novel, with fictitious characters and events. But one, nevertheless, strains to believe that even in these times young law students still dream of making a difference through law and I wish those law students would read this book and at least one of them would want to be a Michael. There is the Mordcael Green who runs the legal aid clinic and fights every inch of the way for the right of the homeless. There are plenty of older Mordcael Greens in our legal world but increasingly fewer younger Michaels and its a pity that world of legal education increasingly looks upon law as a white collar profession and not a calling. In a milieu such as this, it is rather heartening to read a book, however improbable the events and the characters are — after all it is in the genre of 'best sellers' and hence soft, tears, and lumps — and feel good about law, lawyers and humanity. Let the real world be populated by the non responsive bureaucracy, corruption, the almost limitless impunity all around, yet it is nice to get away from all these even though the only option is a best seller set in an American context.

A street lawyer's world is the world of the poor — torn, dirty saarees, naked children with running noses and old men clutching a few worn out documents. The poor do not make headlines unless they are killed by accidents in good numbers or raped in public places or trafficked or beaten up by police in front of every one else to see. The legal victories are small — a few thousand taka of maintenance from wayward husbands if they have permanent addresses which they often don't; defending the accused in petty thefts or assaults; getting them out on bail; suits for unpaid wage or illegal termination; some relief for false promise of marriage and resultant pregnancy; or endless hours of trying to mediate disputes between husbands and wives; and so forth. There are no nice dinners after you get the verdict you wanted, no sweets from the mother after you have succeeded in winning a custody battle. If they could dine the lawyers, they would not come to a 'street lawyer'. Your job is your satisfaction, no fringe benefits offered and don't expect any!

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## Open River Declared Closed

A Division Bench of the High Court Division comprising of Mr Justice Fazlul Karim and Mr Justice Md Ali Asgar Khan, on 30 May '99 issued a Rule Nisi upon the Deputy Commissioner, Narail District for unlawfully leasing out part of the River Naboganga having its flow through Rajpur to Jaipur Ghat.

The Petition, filed by BELA and one member of the local fisherman community, alleged that such leasing violated the notification of the Ministry of Land, dated 5 September '95 prohibiting leasing of open fisheries for protecting the rights of the poor fisherman community and ensuring their livelihood.

The rule required to show cause as to why the leasing out of the part of the river Naboganga shall not be declared to have been made in defiance of legal and constitutional obligations and against public interest, is of no legal effect and without any lawful authority.

The rule has been made returnable within 8 (eight) weeks. The Petition was moved by the BELA lawyers, Advocates S Rizwana Hasan, M Iqbal Kabir and Ehsanul Habib.



NEWS: Tempoes Journey to the Village

Enough with the Cities! Our New Job is to pollute the villages

Cartoon: Nazrul