

"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

BCS (Judicial) is Ultra Vires the Constitution

Of late, there has been a series of verbal onslaught on the judiciary. It all began late last year with the prime minister saying "the executive and the legislative branches are to be accountable and to function transparently, it is to be expected that the judiciary, as one of the three organs of the state, should also be doing so." Since then, members of her cabinet and stalwarts of the ruling party have, on several occasions, directly or indirectly, attacked the judiciary veiled in a shoddy argument for judicial accountability. That was not the end of the story, however. Just after the judges on a High Court Division bench 'felt embarrassed' for the second time to hear the Death Reference to Bangabandhu Murder Case, some senior ruling party members led a procession of lathi-wielding activists. Their actions, tirade against the sitting judges and the judiciary itself, was no less than intimidation. Also, they 'demanded' completion of the trial by December 30 this year, which, in a way, was an attempted interference in judicial procedures.

There are two questions here: first, to whom will the judiciary be accountable? and, second, how independent our judiciary is?

Speakers at a recent seminar on *Independence of Judiciary at Stake and the Rule of Law* were unanimous on the view that the independence of judiciary should be protected like the fundamental rights. Referring to one of the Transparency International Reports, they said, "Higher courts that include Supreme Court and High Court Division are delivering judgements without interference, whereas in the lower court the situation is not the same."

In a bid to make judiciary independent, its separation from executive is necessary. Security of the judges in terms of tenure, salary or other remuneration and pension plus institutional independence should be ensured. In our context, judicial and administrative appointments, and financial independence are also preconditions to an independent judiciary. To establish its separate entity, it cannot be part of the civil, administrative or executive services of the country. For the very distinct nature of its structure and function, judiciary stands on a different platform from civil, administrative and executive services of the country.

Hence, 218 judges of the sub-ordinate judiciary, who are either District Judges or Subordinate Judges or any other Judges in the sub-ordinate judiciary, filed a writ petition in 1995, on separation of judiciary. Their grievance was directed at the Bangladesh Civil Service (Re-organisation) Order, 1980 which outlined 14 Bangladesh Civil Services cadres, Bangladesh Civil Service (Judicial) being one of them. The Division Bench of High Court Division declared the Order ultra vires the Constitution. They also pleaded for a separate pay & allowances and claimed that separation of judiciary needed no constitutional amendment.

Six broad points urged by the writ petitioners and accepted by the High Court Division are:

(1) The term B.C.S. (Judicial) is a fundamental misconception as judicial service is recognized and treated separately in Article 115, 116 and 116A of the Constitution and defined separately in Article 152(1) of the Constitution. The subordinate courts are part and parcel of Part VI of the Constitution as a separate and independent entity and cannot be a part of the civil, administrative or executive service of the country. The definition of the "service of the Republic" in Article 152(1) of the Constitution is broad and includes defence and judicial services, but that does not mean that the judicial service or defence service is a part of the civil or administrative service. The definition clause cannot bring judicial service within the ambit of executive or administrative service which is called Bangladesh Civil Service. Article 133 cannot be invoked for the judicial officers as there are separate provisions for them in Articles 115 and 116 of the Constitution. Judicial officers are not persons in the service of the Republic for the purpose of Article 133 and hence the Rules regarding their appointment in the conditions of service cannot be framed under Article 133. It will be totally unconstitutional if the subordinate courts are tagged with or brought under the control of the executive under Part IX or any other part of the Constitution, excepting Part VI. The judicial service cannot be legally brought within the ambit of Act No. XXVII of 1975 because if it is so done it will alter the very fundamental and basic structure of the Constitution relating to separate and independent judicial service as contained under Part VI of the Constitution. The inclusion of the judicial service under Bangladesh Civil Service (Re-organisation) Order, 1980 dated 1.9.1980 as Bangladesh Civil Service (Judicial) is ultra vires the Constitution. As the defence service is under Part IV, so is judicial service under Part VI. In such a situation, the de-

ference service has been correctly organised by separate Acts and Rules and in a similar way the judicial service shall have to be organised in accordance with the provisions of Part VI and the enactment and rules made thereunder.

(2) The writ petitioners have come up for a declaration that the judiciary has already been separated under Part VI and that the respondents should be directed to implement and carry out the mandate of the Constitution in pursuance of Articles 109, 115, 116, 116A. In the instant case the High Court Division can direct the legislature and the executive to perform their functions which they are required to do under the Constitution. The State should provide immediately for bringing judicial service under the direct control of the High Court Division functionally and structurally and this direction was given by the High Court Division in exercise of power under Article 102(2)(a)(i) of the Constitution. The High Court Division, in its opinion, is competent to direct the respondents to make necessary Rules and/or enactments in order to enable the subordinate judiciary to function as an independent institution. Rules made under Article 115 may provide for independent Service Commission as well as independent Pay Commission for the purpose of appointment of judicial officers and magistrates performing judicial functions and for the purpose of fixing their scales and grades of pay commensurate with their recognised status in the constitution.

(3) For effective implementation of the provisions of Articles 115 and 116 necessary Rules are to be framed by the President. Although Article 115 speaks of appointment, it also means terms and conditions of service. Articles 115 and 116 required that not only recruitment Rules but also Rules governing conditions of service of the judicial officers and magistrates performing judicial functions are to be made by the President. Since the rule-making power of the President is wide, unlimited and absolute, the President can make any provision under these Rules that are necessary for carrying out the purposes of separation of judiciary from the executive.

(4) For separation of the subordinate judiciary from the executive no further constitutional amendments is necessary. Article 109 of the constitution brings subordinate courts and tribunals under the control and superintendence of the High Court Division. Necessary rule-making power has been given making the Supreme Court as the real wielder of authority in framing rules under Article 115 of the Constitution. Read with Articles 116 and 116 A of the Constitution the subordinate judiciary has already been separated from the executive in the constitutional scheme. In the Fundamental Principles of State Policy Article 22 of the Constitution provides that the State shall ensure the separation of the judiciary from the executive organs of the State. This principle shall be applied by the State in the making of the laws and Article 22 was not meant for beautifying the constitution as an ornament. The will of the people was entitled to be implemented within a reasonable time and the period of 25 years from independence is definitely a reasonable period to implement the cherished will and desires of the people. The Supreme Court alone shall overall control, supervision and management over the subordinate courts and over magistrates exercising judicial functions and the executive will have no control, supervision and management over them in any manner whatsoever.

(5) Judicial officers do not come within the jurisdiction of the Administrative Tribunal as their service conditions are governed and determined by or under Chapter II of Part VI of the Constitution. Courts or Judges are not subordinate to the said Tribunal. Administrative Tribunal is not to seek relief from the Administrative Tribunal.

(6) Some unreasonable conditions were attached with the pay scales of the Subordinate Judges, Additional District and Sessions Judges and District and Sessions Judges which were not attached in respect of pay scales and allowances of other Bangladesh Civil Service Cadre holders. The impugned orders Annexures-F & F(1) so far as the same relate to the writ petitioners and other judicial officers, are ultra vires the constitution being violative of Articles 27 and 29 of the Constitution. The benefits given by order dated 8.1.1994 had been abruptly and arbitrarily taken away by Annexures - F & F(1) without assigning any reason and the earlier order dated 8.1.1994 was acted upon and the same created a vested right in favor of the judicial officers. Annexure-E dated 8.1.1994 shall stand valid and shall continue till new pay scales are fixed in future by framing necessary enactment and/or rules pursuant to the impugned judgement.

The final orders that the Division Bench in the writ petition passed were as follows:

(i) The impugned orders dated 28.2.1994 and 2.11.1995. An-

nexures-F and F(1) respectively are declared to have been made and issued without lawful authority and are of no legal effect, being ultra vires the Constitution.

(ii) It is declared that the Service Cadre made under paragraph 2(x), namely, Bangladesh Civil Service (Judicial) as contained in the Bangladesh Civil Service (Re-organisation) Order, 1980 vide Annexure-A with amendment (dated 31.8.86), is ultra vires the Constitution.

(iii) It is further declared that all judicial officers of Bangladesh, i.e., all Judges of different courts from Assistant Judges to the District and Sessions Judges are not required to go to and submit before the Administrative Tribunal for any grievance with respect to their service conditions and the said Judges and magistrates performing judicial functions shall be guided under Articles 115, 116 and 116A and according to the findings in the impugned judgement made above.

(iv) It is declared that in order to give effect, carry out and implement fully the separation of judiciary from executive organ of the State no constitutional amendment will be necessary as the provisions for such separation are there in the Constitution itself. It is directed that the services of the judicial officers and magistrates performing judicial functions shall be known as "Judicial Service of Bangladesh" under the direct control and supervision of the Supreme Court.

(v) It is also declared that re-fixation of National Pay Scale, 1991 as enumerated in paragraph no. 3 of Services (Pay and Allowances) Order, 1991 dated 8.1.94 vide Annexure E so far as the writ petitioners are concerned shall stand valid and the same will continue until necessary rules/ enactment made.

(vi) Assistant Judges and Senior Assistant Judges will continue to get their salaries and allowances as they are now getting which will not be less than those that are admissible under paragraph no. 3 of Annexure F(1).

(vii) Respondent nos. 1, 2, and 4 shall take immediate step to make necessary rules under Article 115 or make enactment to give effect to and carry out the purposes of the Constitution, particularly of Articles 109, 115, 116 and 116 A read with Articles 8 and 22 of the Constitution.

(viii) If the present pay scales of the petitioners and other judicial officers are amended or enhanced or new pay scales are given before making rules under article 115, the same of the said judicial officers and the magistrates shall be made and/or done keeping conformity with the pay scales as are now declared for them in the impugned judgement.

The Government preferred an appeal before the Appellate Division of the Supreme Court of Bangladesh Civil Appeal no. 79 of 1999. The Appellate Division of the Supreme Court of Bangladesh, after hearing submissions from both the sides, partly accepted the position taken by the High Court Division of the Supreme Court in Masdar Hossain's Case. Honourable Judges Mr. Justice Mustafa Kamal, Chief Justice of Bangladesh, Mr. Justice Latifur Rahman, Mr. Justice Bimalendu Bikash Roy Choudhury, Mr. Justice Mahmudul Amin Choudhury, by a landmark judgement, have given some directions, observations, explanations and guidelines on different constitutional issues and cited several foreign cases on Separation of Judiciary to evaluate and differentiate our position with other countries. They have also held that BCS (Judicial) is ultra vires the Constitution and a separate Judicial Service Commission should be created.

The operative part of the judgement has been given here. It is declared that the judicial service is a service of the Republic within the meaning of Article 152 (1) of the Constitution, but it is a functionally and structurally distinct and separate service from the civil executive and administrative services of the Republic with which the judicial service cannot be placed on par on any account and that it cannot be amalgamated, abolished, replaced, mixed up and tied together with the civil executive and administrative services.

2. It is declared that the word "appointments" in Article 115 means that it is the President who under Article 115 can create and establish a Judicial Service and also a Magistracy exercising judicial functions, make recruitment rules and all pre-appointment rules in that behalf, make rules regulating their suspension and dismissal but Article 115 does not contain any rule-making authority with regard to other terms and conditions of service and that Article 133 and Article 136 of the Constitution and the Services (Reorganisation and Conditions) Act 1975 have no application to the above matters in respect of the judicial service and magistrates exercising judicial functions.

3. It is declared that the creation of B.C.S. (Judicial) cadre along with other B.C.S. executive and administrative cadres by Bangladesh Civil Service (Reorganisation) Order, 1980 with amendment of 1986 is ultra vires the Constitution. It is also de-

clared that Bangladesh Civil Service Recruitment Rules, 1981 are inapplicable to the judicial service.

4. The appellant and the other respondents to the writ petition are directed that necessary steps be taken forthwith for the President to make Rules under Article 115 to implement its provisions which is a constitutional mandate and not a mere enabling power. It is directed that the nomenclature of the judicial service shall follow the language of the Constitution and shall be designated as the Judicial Service of Bangladesh or Bangladesh Judicial Service. They are further directed that either by legislation or by framing Rules under Article 115 or by executive Order having the force of Rules a Judicial Service Commission be established forthwith with majority of members from the Senior Judiciary of the Supreme Court and the subordinate courts for recruitment to the Judicial Service on merit with the objective of achieving equality between men and women in the recruitment.

5. It is directed that under Article 133 law or rules or executive orders having the force of Rules relating to posting, promotion, grant of leave, discipline (except suspension and removal), pay, allowances, pension (as a matter of rights, not favour) and other terms and conditions of service, consistent with Article 116 and 116A, as interpreted by us, be enacted or framed or made separately for the judicial service and magistrates exercising judicial functions keeping in view the constitutional status of the said service.

6. The impugned orders in the writ petition dated 28.2.94 and 2.11.95 are declared to be ultra vires the Constitution for the reasons stated in the judgement. The appellant and the other respondents to the writ petitions are directed to establish a separate Judicial Pay Commission forthwith as a part of the Rules to be framed under Article 115 to review the pay, allowances and other privileges of the judicial service which shall convene at stated intervals to keep the process of review a continued one. The pay etc., of the judicial service shall follow the recommendations of the commission.

7. It is declared that in exercising control and discipline of persons employed in the judicial service and magistrates exercising judicial functions under Article 116 the views and opinion of the Supreme Court shall have primacy over those of the Executive.

8. The essential conditions of judicial independence in Article 116A, elaborated in the judgement, namely, (1) security of tenure, (2) security of salary and other benefits and pension and (3) institutional independence from the Parliament and the Executive shall be secured in the law or rules made under Article 133 or in the executive orders having the force of Rules.

9. It is declared that the executive Government shall not require the Supreme Court of Bangladesh to seek their approval to incur any expenditure on any item from the funds allocated to the Supreme Court in the annual budgets, provided the expenditure incurred falls within the limit of the sanctioned budgets, as more fully explained in the body of the judgement. Necessary administrative instructions and financial delegations to ensure compliance with this direction shall be issued by the Government to all concerned including the appellant and other respondents to the writ petitions by 31.5.2000.

10. It is declared that the members of the Judicial Service are within the jurisdiction of the administrative tribunal. The declaration of the High Court Division to the opposite effect is set aside.

11. The declaration by the High Court Division that for separation of the subordinate judiciary from the executive no further constitutional amendment is necessary is set aside. If the Parliament so wishes it can amend the Constitution to make the separation more meaningful, pronounced, effective and complete.

12. It is declared that until the Judicial Pay Commission gives its first recommendation the salary of Judges in the judicial service will continue to be governed by *status quo ante* as on 8.1.94 vide paragraph 3 of the Order the same date and also by the further directions of the High Court Division in respect of Assistant Judges and Senior Assistant Judges. If pay increases are affected in respect of other services of the Republic before the Judicial Pay Commission gives its first recommendation the members of the judicial service will get increases in pay etc, commensurate with their special status in the Constitution and in conformity with the pay etc. that they are presently receiving.

Summarised from the Judgement delivered by Mr. Justice Mustafa Kamal. (C.J.) in Civil Appeal No: 79 of 1999

Ratification of International Criminal Court Statute: National Interest Analysis

By Ahmed Ziauddin

Concluding Part

The obligations emanating from the ratification of the ICC Statute would be of general nature, applicable to all the State Parties. The obligations are as follows:

1. Obligations under Articles 5 and 12:

Bangladesh must accept the jurisdiction of the International Criminal Court in respect of the crimes enumerated in Article 5 of the Statute, namely, genocide, and crimes against humanity, war crimes and the crime of aggression. As a result, under Article 12, the Court would be able to exercise jurisdiction if any crimes occur in Bangladesh or on board of a vessel or aircraft registered in Bangladesh; or if the person accused is a Bangladeshi national. Bangladesh already has its national legislation for crimes similar to those under Article 5, and also a party to the Genocide Convention. Therefore, Bangladesh should not have any concern to allow an international tribunal jurisdiction over crimes or over the alleged criminals, while the Statute recognizes Bangladesh's right to try, if deemed necessary.

2. Obligations under Part 9:

The Statute under its Part-9 enjoins the State Parties to cooperate with the International Criminal Court in its investigations and proceedings. The Court may seek assistance of the State to surrender the accused or convicted persons and other forms of cooperation that may include questioning of suspect, taking evidence, and freezing assets. The States are thus required to put in place necessary legal basis to offer such assistance. Bangladesh should have no conceivable reason not to cooperate with the Court and to offer required assistance, as Bangladesh believes in an effective Court.

3. Obligations under Articles 72 and 73:

Under these articles, Bangladesh would have to follow specified procedures regarding disclosure of information having national security interests. In the event that supply of information may prejudice national security, then Bangladesh has to follow Article 72 to resolve the matter in a cooperative manner. If it still considers that disclosure would prejudice Bangladesh national interest, then it must advise the

Court with reasons. If, however, the information is acquired from a third party, then Bangladesh has to follow procedure laid down in Article 73.

4. Obligations under Article 3:

The seat of the Court shall be at The Hague in the Netherlands, but according to Article 3, the Court may sit elsewhere, whenever it considers it desirable. This obligation, however, is subject to the agreement of the State Party where the Court can sit or hold sittings. In the event of such an eventuality, then Bangladesh should agree to allow the International Criminal Court to sit in Bangladesh. Moreover, Bangladesh should have no problem for the Court's independent Prosecutor to carry out investigations in the territory of Bangladesh.

5. Obligations under Article 70:

Under Article 70, the Statute has created a host of offences and Bangladesh would be obliged to create new offences in Bangladesh relating to the administration of justice to apply to offending that occurs in the course of the proceedings of the International Criminal Court. These would include offenses like perjury, obstruction of justice etc. Already under Bangladesh laws, such offenses are punishable, but its jurisdiction may have to be extended over Bangladesh nationals for offending elsewhere. As a matter of fact, Bangladesh Penal Code (Act No. XLV of 1860) already has extra-territoriality principle built-in under Section-3. - "Any person liable, by any Bangladesh law, to be tried for an offence committed beyond Bangladesh shall be dealt with according to the provision of this Code for an act committed beyond Bangladesh in the same manner as if such act had been committed within Bangladesh."

6. Obligations under Article 109:

Bangladesh would be obliged to enact necessary procedures in its laws to enforce fines or forfeitures ordered by the Court and to recover the value of the proceeds, property or assets so ordered.

7. Obligations under Article 103:

Under this provision, Bangladesh could express its willingness to accept sentenced persons and at the time of its declaration, may attach conditions to its acceptance.

Bangladesh should agree to hold convicted prisoners especially, in the event, if the sentenced person was a Bangladeshi national or the victims were.

8. Obligations under Part 11:

Under this part, the Statute established an Assembly of State Parties where each party shall have one representative to oversee the various organs of the Court, its budget, and reports and activities of the Bureau of the Assembly. Bangladesh, on ratification, as a State Party would have to ensure continuous participation in the Assembly.

9. Obligations under Part 12:

Part 12 deals with the financing of the Court and that as a Party to the Statute, Bangladesh has to contribute to finance the Court. Under the provisions, funding of the Court would come from three sources; assessed contributions from the States Parties, funds provided by the United Nations, and voluntary contributions from governments, individuals, and corporations and other entities. Although exact cost of setting-up and other expenses have not yet been finalized, but as the number of the State Parties increase, so would the proportion of finance be reduced. Moreover, Bangladesh could get help from other affluent countries to share Bangladesh's burden for its commitment to international law.

10. Obligations under Article 79:

Under this provision, a Trust Fund shall be established for the benefit of the victims of the crimes within the jurisdiction of the Court, and of the families of such victims. Although to be determined by the Assembly of the State Parties, Bangladesh may have to contribute to this Fund.

11. Obligations under Article 100 and Part 9:

Though the Court under Article 100 would bear the costs associated with the transport of person being surrendered to the seat of the Court, however, Bangladesh would have to pay the costs related to the request from the International Court of assistance under Part 9. Again, the costs though cannot be quantified now, would not be excessive and that generous help would be received from other sources. Equally, if Bangladesh proposes

the seat of the Court in Bangladesh would be expected to foot the bills.

In brief, these would be the general obligations Bangladesh would undertake once it ratifies the Statute of ICC.

Additional questions posed for Bangladesh

In addition, Bangladesh might have few other issues to consider:

a. Position of the President:

Under Article 51 of Bangladesh Constitution, "the President shall not be answerable in any court for anything done or omitted by him in exercise or purported exercise of functions of this office." This contradicts one of the Statute of ICC's basic provision Article 27(2) that states the "immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person." In other words, Article 51 of the Constitution would not protect a President of Bangladesh, if he is found to be an accused of committing international crimes like genocide, war crimes etc. The matter to ponder over here is, would we really like any future Yahya or Tikka not to be put on trial just for the position they hold? The answer should be a resounding no. The aim to prevent future Bangladesh Presidents to resort to international crimes, and in an unlikely event, if the Constitutional remedy of impeachment (Article 52) doesn't succeed, the people of Bangladesh would be glad to hand over such a person to the International Criminal Court.

b. Position of Bangladesh's neighbors:

Bangladesh is way ahead in fulfilling its international responsibility compared to other countries in the region. As already noted, Sri Lanka voted against the Statute of the ICC and India, Pakistan and Nepal abstained. This is not likely to put Bangladesh in any particular disadvantage vis-à-vis these countries. Instead, Bangladesh would gain substantial benefit from the good wishes of the world community to stand-alone among its neighbors in favor of interna-

tional law. Moreover, if objections of these countries are analyzed, other than the fear of loss of sovereignty, or international accountability of their political leaders, and regional dynamics, no substantive reasons have been preferred against the Statute.

c. Wait for the others:

Bangladesh could easily succumb to the argument to wait and see the evolution of the Court and decide later, especially, to see which of the important countries join or stay away. Bangladesh should not be swayed by such thoughts. Already, a number of important European Countries, France, Germany, United Kingdom, like Bangladesh, already have signed the statute. France has already amended its Constitution in preparation for ratification, while Germany has approved a draft ratification law. Italy already has ratified it. So it's seen that European Union countries are marching ahead. However, United States is not likely to sign or ratify anytime soon and very well find it isolated. European countries are also expected to provide bulk of the Court's expenses and to support Bangladesh to defray its costs.

d. Consequences for the existing Treaties:

Once ICC is ratified, Bangladesh has to be mindful about the new bilateral Treaties to be signed with another country and that whether the country is a State Party or not. In case of the existing bilateral Treaties with countries that would not ratify the statute, Bangladesh could rely on the bilateral Treaties. The Statute of ICC does not override bilateral Treaties.

What is in it for Bangladesh?

In addition to what has been noted here about the history of Bangladesh liberation, genocide of 1971, our commitment to justice after genocide, establishment of rule of international law, there are distinct advantages for Bangladesh that the Statute of ICC enters into force and the Court be established.

This will end the eternal immunity that had so far been enjoyed by the likes of Yahya and Tikka, perpetrators of a total genocide. The prevention of such international crimes

and crimes against humanity would have positive impact on international peace and security.

2. A permanent Court would be able to respond quickly in the event of necessity, unlike the *ad hoc* approach that had been available and followed so far.

3. The ratification of the statute and that to as the first in Asia would be a resounding endorsement for the International Criminal Court and also Bangladesh's commitment for the principles of international justice. Ratification would be a reaffirmation of the commitment to existing obligations such as those under the United Nations Charter, and the Genocide Convention.

4. Because of the principle of complementary, Bangladesh would have full jurisdiction to deal with such crimes under national laws, and in this regard, Bangladesh do not have to part its rights.

5. The ratification would reinforce Bangladesh democracy and would deter adventurers from otherwise disturbing the stability of the country as has happened repeatedly since 1975.

6. The Statute though did not include use of nuclear weapons as war crimes as many countries demanded, but for Bangladesh, this has special significance that in recent years, the region has gone nuclear. This was one of the promises made to strike the Statute. However, the Statute has enough provisions to make, in effect, illegal use of nuclear weapons. It has prohibited use of weapons that are of a nature to cause superfluous injury or unnecessary suffering, or that are inherently indiscriminate (Article 8). This would have sobering effects of the nuclear countries in the region.

7. Once ratified, Bangladesh would be placed at advantageous situation to contribute effectively at early days of the Court's formation and influence it's working.

Ratification process in Bangladesh

Unlike many countries, ratification of an international treaty, whether bilateral or multilateral, has simpler procedure in Bangladesh. Under Bangladesh Constitution, Arti-

cle 145 A states that "All treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before Parliament: Provided that any such treaty connected with national security shall be laid in a secret session of Parliament."

Thus, in Bangladesh, Parliament's prior acceptance or endorsement is not essential to ratify a treaty. However, after ratification, members of the Parliament should have the opportunity to deliberate on that.

Different options related to ratification

The Asian picture, however, is rather different. The process has not gained any momentum in this region and that is where Bangladesh has an advantage as well as responsibilities that should be taken.

Bangladesh has reached this far mainly because of the better judgment of the government to take the country forward. Now, Bangladesh has to take the leadership in Asia to ratify the statute as the first country in Asia.

To ratify, Bangladesh has one obligatory process to follow with the International Criminal Court and a number of options to pick from to give effect the Statute:

A. Obligatory step

Minimum requirements The Statute of the ICC foresees a general cooperation agreement with the Court based on Part 9 of the Statute as the minimum necessary requirements following the ratification. This, however, would only take place when the Court has come into existence after the Statute comes into force. The broad outline of the agreement has already been provided in Part -9 and as discussed, Bangladesh would have no difficulty in entering into such an agreement with the Court.

B. Other Options

1. **Nationalization of the statute:** Bangladesh could adopt the Statute of the ICC in its entirety as a stand-alone piece of national legislation to be followed when the Court requires assistance, invoke jurisdiction or Bangladesh does its part at ICC. However, in such an eventuality, relationship with the Supreme Court of Bangladesh

would cause problems.

2. **Amendments to the International Crimes (Tribunals) Act:** Much easier option would be to amend the law that already exists, the International Crimes (Tribunals) Act. Although enacted to try international crimes under domestic jurisdiction, the Act could well be amended suitably to serve both the purposes: domestic trials for international crimes and support the International Criminal Court by including all the obligations as stipulated by the Statute.

3. **Specific law for ICC Statute with comprehensive amendments to various civil, criminal and procedural laws:** Bangladesh could opt for a special law for ICC after reviewing its effect on all other laws: civil, criminal, procedural etc. This could be one of the best options for Bangladesh, and also in the process, would modernize our laws.

Bangladesh has all to gain from, both from the international community and from within the country. The country would be placed at the higher pedestal for its commitment to the rule of international law.

This government should ratify the Statute and not leave it for any future government. Why? Regrettably, the position of the principal opposition party on International Criminal court is unclear and that it appears to be opposed or uncommitted to the concept of ICC. The government headed by Sheikh Hasina has made unique commitment to ICC process, has signed the Statute, and should not risk its achievement.

Beyond ratification

Following the ratification, Bangladesh still has to continue to work for the signature and ratification of other Asian countries. Bangladesh by then would be suitably placed on moral high ground to play leading role in Asia. Bangladesh should hold regional and sub-regional conferences to reach out to the other countries, to their members of the civil society and the people in general. Bangladesh can easily make this difference, and so should she.

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