

"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

The High Court Judges and Their Paradigm of Responsibility

By Mainuddin Afza

I was delighted to read a recent news in the Daily Star that says, "Judges have to give reasons for the embarrassment. ... The 28 year old code of conduct was revised recently by the three-member Supreme Judicial Council of the Supreme Court."

It is a right step to the right direction to correct at least one flaw in the judicial code of conduct. The Supreme Judicial Council's move can possibly be viewed as a needed response to the controversy that erupted when some High Court judges 'felt embarrassed' and refused to hear the Appeal case of Bangabandhu murder trial's lower court verdict. Some time in late April, I wrote a brief letter in the Daily Star and I then specifically wanted to know, "What exactly is embarrassing the judges? I still have the same question that I don't have been answered yet. A well-known lawyer, Mr. Moynul Islam recently said that the judges have the right (or privilege?), to feel embarrassed. However, Mr. Islam failed to mention that the judges also have an obligation to act prudently not to confuse people, or sow any seed of mistrust in the society. The judges when decide to withdraw from an assigned case, usually are not required to publicly say why. In my view this is a privilege, and the judges should exercise this privilege very carefully. In Great Britain and the United States, the judges are occasionally found exercising this privilege. In these countries, judges are not allowed to be seen in public. Sometimes a judge finds himself in the middle of a potential conflict of interest either in fact or in appearance in the assigned case. Obviously a responsible and professional judge would not want to be in any controversy where judge's ability to perform neutrally might become a major issue in the case. The second situa-

tion comes into play when a judge has doubt that he or she possibly is not qualified or experienced enough to competently hear the intricate issues of a given case.

In the western judiciary system, as well, the judges are not forced to publicly give any reason while withdrawing from hearing a case. Yet, in those countries it is also a widely practiced tradition that judges almost always sit in interested parties (those who are directly and indirectly related to the case) somehow know the reason for such withdrawal. They would rather do it eagerly, lest they are misunderstood and their integrity is suspected in the society. Ironically, however, what a western judge would not usually do, some high judges in Bangladesh are doing very easily. The refusal by some judges to hear the appeal case of Bangabandhu murder trial has become an embarrassment itself. Such act on the part of our judges has led to a serious controversy all over the country, because they would not let us know why they are reluctant to hear such an important case involving the brutal killing of the most important personality in Bangladesh's history, late Sheikh Mujibur Rahman.

In our environment of Bangladesh, we may apprehend certain possible reasons behind the High Court judges' hesitation to hear the Bangabandhu murder case. There is a possibility that there are direct and indirect intimidations towards the judges and their families threatening their lives and security. It may also be possible that the judges' reluctance is rather driven by their political

motives. After all, the majority Bangladeshis now are largely divided into the two major political camps: the Awami League and the Anti-Awami League led by the Bangladesh Nationalist Party. While the first reason might, indeed, be a very good possibility, but I still believe that our superior court judges still remain beyond politics.

While discussing the issue further, let me share with the readers certain facts and expected behavioral norms in a very clear language. The judges are paid from the state treasury out of taxpayers' money. They have a specific job description to follow. One fundamental principle of management suggests that authority and responsibility must coexist whenever there is a job and a person is assigned to perform it.

Thereafter, authority and responsibility calls for accountability. This applies to any position tied to the organizational hierarchy and in any organizational set up where the total job is done collectively. Compliance to this norm is especially more important in an institution that is entrusted with the mission of establishing and guaranteeing fairness and justice.

When a judge is assigned to hear a case, he or she is expected to be impartial. The judges should not have any exception. The judges should work with judicial independence and freedom, should not

be an excuse for them to be treated any differently. Accountability does not conflict with judicial independence.

Max Weber's theory of bureaucracy is an important foundation of today's dynamics of managing a social organization. However, it is only a part of the whole premise. The systems theory and the concept of informal organization are some of the very powerful tools that should be taken into consideration while managing things in an organization surrounded by many forces of the evolving society. Finally, the judges are human beings. They also can make mistakes and be misguided. Assuming that nobody in a civilized society is above law, it would be safe for me to conclude that the judges in our society are also available for scrutiny and criticism when warranted. That's why, when our judges at our higher courts are so easily and so often feeling embarrassed and withdrawing themselves from hearing certain cases and nobody has any clue why, I strongly feel that they should be made accountable. This kind of precedence at the highest level of our court of justice does not help our judicial institutions to remain trustworthy in the eye of our society, the trust that the judiciary of Bangladesh so badly need to save its waning credibility and legitimacy.

In this opportunity, it might be appropriate to outline a brief context of the current episode. The Bangabandhu murder case is not an ordinary trial. Late Sheikh Mujibur Rahman was the most important political personality at least in 1970 and 1971. At that time, his leadership and selfless commitment

gave the people of then East Pakistan a determined hope for a better future and meaningful life. The corrupt Pakistani generals and politicians, using the name of Islam, were exploiting us since 1947. However, it was only in 1970, that late Sheikh Mujibur Rahman's determined leadership gave us the reason, for the first time, to believe that we could fight and win. It was Bangabandhu Sheikh Mujib who gradually united and readied the whole nation by early 1971, and prepare a powerful platform for starting the liberation war that we fought and won. It was that very same person who sat in the Pakistani jail during the liberation war, but did not even discuss the Yahya-Kissinger offer of becoming the Prime Minister for the sake of 'saving' Pakistan. I wonder if anybody in Bangladesh, would dispute my view that without Sheikh Mujib, the emergence of Bangladesh would have been long delayed; how long, nobody can tell it for sure. In 1975, Sheikh Mujib was brutally killed with most of his family members. A quarter of a century has gone by, yet the criminals have not been brought to justice. In a normal society, even an accused criminal is granted a fair trial. During the post-liberation period of first three years, Bangabandhu might have made many mistakes, some of them, very serious, while running the country. But that cannot be an excuse for not trying the murderers of him and his family. On what good ground is the high court not deciding this important case on a priority basis? We should not forget the fact that it is for Bangabandhu that we have earned Bangladesh so early. We

should be grateful to Bangladesh that today many of us have become prosperous at home, and many others are working in foreign lands and sending hard currency back home. It is also possibly for Bangladesh that many of my friends and relatives are high court judges today.

Because of its notoriety, the Bangabandhu murder case deserves to be called the trial of the twentieth century in Bangladesh. The appeal hearing should start immediately on a priority basis. With all his strengths and weaknesses, Sheikh Mujib was an extraordinary personality thanks to whose leadership and dedication, for which we could earn Bangladesh so early. I am very disappointed that some judges are feeling embarrassed to hear the Bangabandhu murder case, but are not prepared to tell us why. Because of this, the judicial purity appears to have been tainted. They should have voluntarily and informally let people know the reason/s why they would not hear such an important murder case, the murder that was committed 22 years ago. Do they feel intimidated and threatened by someone? I suspect, this might be the prime reason behind the whole episode.

I would urge our government and the judicial authority to investigate the matter seriously. But whatever may be the findings, the judges have already inflicted a serious damage to our trust and confidence in the judiciary by fueling confusion, controversy and divisiveness in the society. I expected our judges to be proactive and courageous. What they did is an example of professional immaturity and poor judgement.

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Legal Aid Act — to Act for Whose Benefit?

Adilur Rahman Khan

In a country like Bangladesh, where almost 40 percent of the population live under the poverty line, legal aid is a vital necessity. Ordinary people, who suffer every day due to various state and non-state entities, would greatly benefit from the provisions of legal aid, as they have hardly any ways or means to pay for legal recourse. Different Bar Associations in the country and some legal aid non-government organisations are presently operating to help the poor for protecting their human rights.

It is sad to note the ill planning behind the idea of a government-sponsored legal aid programme. Instead of setting up a co-ordination between the existing resources and organisations — which have been providing legal aid for years — the present government has opted for creating a new set up, headed by the Minister for Law, Justice and Parliamentary Affairs. This will in fact create another set of bureaucrats. This set up will have its branches all over the country, although at the district levels, it will be under the supervision of the District Judges.

We have already seen and experienced how various institutions have been politicised. We know how harmful this process can become, especially when it comes to selecting the Public Prosecutor, the Assistant Public Prosecutors and other court officers on the basis of party line. With the implementation of the Legal Aid Act, the fear is that this will have a similar effect in respect of providing legal aid. This is because instead of having a neutral person at the top, or an independent mechanism to control the programme, it will be controlled by the Minister for Law, Justice and Parliamentary Affairs, who is a strong political figure and a leader of the party in power.

Though this Act purports to provide legal aid, the major sufferers of its effect will be the political opponents who will seek legal recourse against government atrocities and the brutality of the law enforcing agencies. The other victims will be the ordinary, poor people. To receive legal aid via the Act, they will need the endorsement of the local party bosses. This is rather like getting relief from the political entities after a natural calamity — always a highly controversial issue regarding the actual neutrality of distribution.

At the district level, the poor District Judge will have nothing to say, other than endorsing the mechanism approved by the political elements. Unfortunately, the judiciary is not yet separate and independent. Moreover, transfer of judges of the lower judiciary and decisions regarding their salary is still largely under the control of the Ministry for Law, Justice and Parliamentary Affairs — the Minister of which will be the head of the national legal aid body. More unfortunate is the fact that the tax-payers' money will provide for the implementation of the Act, along with money from foreign donors. It will be just another chapter in the book of 'Misuse of Funds'.

To make legal aid independent and effective, and accessible to all who are in real need of such services, an independent body, headed by the Chief Justice is essential for actual and effective implementation. Legal aid organisations and the Bar Associations, who operate legal aid fund could co-ordinate, under the guidance of the Chief Justice to meet the ends of justice for the poor.

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Trafficking: An Endless Trauma

by Yasmin Akhter

TRAFFICKING of women and children has become a common phenomena. It was practiced in the early days of civilization when through slave auction women were bought either for domestic labor or brothel bondage unfortunately, this inhuman trade continues till to day. Disintegration of the rural communities and the grim reality of the marginal people, mainly women and children is the primary cause of trafficking. One of many examples is even at the end of the 19th century women in need of economic subsistence are migrated in great numbers. According to historical accounts, they face frequent deception and coercion by traffickers taking undue advantage of their lack of legal and social legitimacy. The same dynamics operate today within the constraints of recent historical contingencies. The profile of the Asian born trafficked women or girls is nearly the same in all countries. They are poor, rural and with or without any education. There are exceptions also. Many mail order brides come from lower middle class backgrounds and often entertainment jobs abroad demand that the women be able to converse in English.

Multiple Faces and Complexity of Trafficking

Globalization has severed the traditional socio-economic relation and has made women and children vulnerable. They are increasingly becoming a commodity to be sold in the "world market". Trafficking occurs throughout the world in different forms, including illegal adop-

tion that of body parts, debt bondage of workers and sexual exploitation. Thus the purposes for which women and children are mostly trafficked are, forced prostitution, work illegally, legal marriage (include mail order brides) and illegal marriage, organ trade, camel jockeys and bonded labor. In Bangladesh during last ten years an estimated 200,000 women have been trafficked. The number of women and children sold into sexual slavery and prostitution has reached to an unbelievable limit. An average of 4500 women and children from Bangladesh are being smuggled to Pakistan per year. Every month 120 to 150 Bangladeshi women are trafficked to Pakistan and sold to brothels. Over half a million foreign women including Bangladeshis are working as prostitutes in India. The percentage of Bangladeshi women acting as sex workers in Calcutta is 13.50. An estimated 5000 women are trafficked with false promises of jobs and marriages. Of course the number of children victims of trafficking is also very high. Those trafficked, are taken out of the country for deployment in hazardous or ignominious profession. About 19,000 children have been sold into horrific form of child labor. To work as jockeys in the royal sport of camel racing in the United Arab Emirates (UAE). In this business according to News line article, the preferred weight of jockeys is 19 to 20 kilograms. The younger and lighter child, and the louder scream of fear increase the speed of camels. Many children die before the race is over either from fear or from being tossed by the animal or being dragged. On average a



Our children are still vulnerable to trafficking

dozen innocent children lost their lives every week due to this inhuman business. In our socio-economic structure women and the parents of children are eager to get a better job at least to survive and such ignorance led them to get. Key Contributors: Some factors play as key contributors to contemporary trafficking. They are like: i) Poverty/unemployment, ii) Development Strategies, iii) Migration Laws and Policies, iv) Corruption of authorities, v) Traditional Practices, vi) Civil and Military Conflicts.

Poverty/ Unemployment Research conducted by the

NGOs specially women concerned confirm that one of the main reason for migrating and for being receptive to recruitment is women's urge to improve their economic situation. It is also accelerated by the absence of sufficient employment opportunities make migration as an alternative mode of earning.

Development Strategies Tourism, industrialization and globalization are often source of aggravation than an opportunity for women, for example: European men offer exotic 'sex' in ex-colonial territories as part of a tourism pack-

age. Government changed a vast area of agricultural land into industrial areas thereby agents come to rural areas and promise those women worker as domestic workers, secretaries, etc. which often results to financial profit for the agent and abusive labor condition for the women. Economic policies designed by some governments to fulfill the conditions of international loans such as in Sri Lanka, include opening up of Free Trade Zones and promoting migration for employment. Women constitute the majority of workers in both sectors which are characterized by slave-like conditions including

physical and sexual abuse.

Migration Laws and Policies

Whilst the number of women willingness to migrate has increased, opportunities of international migration have decreased. Measures have been taken to tighten asylum procedures reinforce border controls and reduce permits for foreign workers. Despite such official acts, the demand for migrant workers is increasing. For example there has been a massive increase in demand in Europe for private domestic service, including care of children and the elderly, that demand is largely filled by migrant women without legal status. The other occupation open to the migrant women is prostitution. According to the IOM, a majority of sex workers in many sectors in the sex industry in the European union are migrant women. However the work of foreign prostitutes is not recognized as a profession and the women involved are without legal protection, either under labor laws or immigration laws. Migrant women are thus not only vulnerable to traffickers but also to police control and state punishment

Corruption of Authorities

It is alleged that officials are involved in trafficking and forced labor like slavery on both local and international levels. This involvement ranges from coercive or deceptive recruitment of women for work or services by police officers with protection of officials to traffickers and abusive employer in exchange of financial gain or

free sexual service.

Traditional Practices

Trafficking may be a part of traditional or religious custom. Although women have the legal right to free marriage, the institution of arranged forced marriage as an economic transaction is widespread and legitimized practice rooted in traditional feudal culture. That practice then provides the public support for the illegal activities of the traffickers: such violence, both legal and illegal, is considered as a normal family matter.

Civil and Military Conflicts

Abuses evasively occurred against women in times of war are rape and forced labor. Many women in Myanmar, for example prefer to leave the country to work in the sex industry in Thailand rather than serve soldiers without payment at home. Even though they face risk of detention, expulsion as prostitutes and as illegal immigrants. From the very beginning of the human civilization women have played an important role in family, social and national life and with the formation of family women have concentrated in domestic chores of life and has made a family well-organized. Lack of economic opportunities is one of the greatest threats of survival and well-being. Thereby women have in last two decades come out in record numbers to work for wages in all sorts of occupations. In the present market economy women of Bangladesh are gradually involving themselves and taking challenges. It was happened due to our socio-economic structure, family dislocation and family break-

down etc. Recently increasing poverty has pushed more and more women into workforce. The greatest job opportunities for women in the garments factories and in the export processing zone. Still, women are in more vulnerable position in the present economic situation. They face gender discrepancies in wage level, social benefits, promotion and working condition persists which devalue women's status. Such deprivation or attitude or various threats of losing morality, dignity drive them to be allured for better job. Using this demand or opportunities the group of perpetrators are gaining much. Thus global trafficking of women and children today is more profitable than arms or drugs smuggling.

Measures to be taken: A lot of work has to be done at both in national and international level to ensure the basic rights of trafficked person, for example in the area of summary deportations of trafficked person and the lack of supports for them. This is critical to shift the focus from prosecution of traffickers to the needs of victims and to make it easier for victims to seek help and to speak about their situations. To check trafficking, strict appointment of police officials should be made by all countries to strictly enforce laws on human trafficking. Instruction must be issued to border police authorities and local police in the transit areas of all countries of the region for the purpose of keeping a vigil on the entry of young girls under suspicious or unexplained circumstances into the country from the neighboring countries.

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