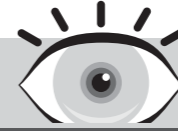


LAWvision



LAW announcement



Trial of Bangabandhu murder case

BRIG GEN SHAMSUDDIN AHMED (RETD)

THE fate of Bangabandhu murder case trial now seems to be hanging in the balance once again as two of the four member bench of the Appellate Division of the Supreme Court felt embarrassed to hear the case. The bench headed by the Chief Justice himself was to fix a date for hearing the leave to appeal petition against the High Court verdict which had confirmed earlier the death sentences of 12 accused persons. The two judges who evidently declined to sit on the bench to hear the leave to appeal petition in this murder case are Justice Modassir Hossain and Justice Sayeed Ahmad. While the honourable judges have every right to feel embarrassed to sit on judgement in a particular case as they have in this Mujib murder case, it is now the bounden duty of both the members of the bench and the bar and the government to help find a solution to the problem that the nation is faced with today. How long will the trial of this murder case drag on? Here is a case in which a man, who was a loving father to his children, an adoring husband to his wife, a political leader to teeming millions of his people, a leader who had in 1971 guided and led his 75 million people to freedom and honour as citizens of a sovereign and independent new country, was brutally murdered together with his family. Is it not only right and in the fitness of things that as a grateful nation we try our utmost to make sure that those who killed this man are brought to justice as quickly as possible?

Some of us may not have liked this man by the name of Sheikh Mujibur Rahman, son of Sheikh Lutful Rahman of Tungipara village of Gopalganj. He may have made some serious mistakes. And indeed he did make a mistake, nay a blunder by introducing BAKSAL, a one party system of politics in the country. But does any one have a right to kill this man and together with him his entire family including a minor boy for this mistaken policy of his? Forget that the man was given the appellation "Bangabandhu" by his admirers. Forget that the man had led us to political freedom and was unquestionably the architect of Bangladesh. Also forget that the man was the sitting president of this country constitutionally elected when he was gunned down. The very simple fact that the man was Sheikh Mujibur Rahman, a citizen of this country and a human being, who was murdered together with his entire family on August 15 in 1975, a tragic incident which has engaged the attention of the people at home and abroad over the last three decades or so and that most of the assassins, armed with an infamous indemnity law, had boastfully confessed having killed this man and were glorified so to say for this act of crime is good enough a case to merit a fair trial as per law of the land by any court of justice so that those who committed this heinous crime are punished and those who did not are honorably acquitted. This is the least that we as a nation owe and must do to this man but for whose inspiring leadership and pioneering role, Bangladesh would not have come into being and many of us would not have become what we are today in various stations of our life.

We must not waste any more time in disposing of this murder case if we sincerely believe that justice delayed is justice denied. It is indeed shameful on our part as a nation that for long 21 years, the conscience of this nation remained dormant as the self-confessed killers of Sheikh Mujibur Rahman, the founder president of Bangladesh were indemnified from prosecution and trial in any court of justice for this crime. Not a single voice was heard criticising the indemnity law which was not repealed until the Awami League government came to power in 1996. The Indemnity law having been removed from the statute book, the formal trial of this murder case began in the court of sessions judge in Dhaka some time in the month of March in 1997 some 22 years after the crime was committed. After more than a year and a

half of trial, on August 16, 1998, the Dhaka sessions judge Mr Golam Rasul announced his verdict sentencing 15 accused people in the Bangabandhu Murder Case to death. Later the High Court Division bench of the Supreme Court confirmed the death sentences of 12 accused persons on April 30, 2001. Since then almost a year has passed but no hearing on the leave to appeal petition against the High Court verdict in the Bangabandhu murder case could take place in the Appellate Division of the Supreme Court because of technicalities of our judicial system.

Following the latest development of the two judges feeling embarrassed to hear this murder case, the legal experts say that until and unless a new judge is appointed in the Appellate Division on an ad hoc basis to help consti-



tute a three member bench, the leave to appeal petition cannot be heard and consequently the final judgement in the case will be delayed for an indefinite period. This is something which must worry all of us particularly the judiciary and the government.

The trial of Bangabandhu murder case as this case has come to be known needs to be pursued by all concerned in real earnest. We have already demeaned ourselves as a nation by blocking trial of this murder case through an indemnity act for long 21 years. There is no use blaming Khandaker Moshtaq Ahmad alone for enacting this law. No government autocratic and democratic alike which came to power following the ouster of the short lived

Moshtaq government and ruled this country until Awami League came to power in 1996 thought of scrapping this undemocratic law. We all are a party to it because nobody from the lawyers, the judges, the politicians, the academics, the civil society raised a voice against this indemnity law which militates against fundamental human rights and basic principles of justice as enshrined in our constitution. Let us not demean ourselves further by deliberately delaying this trial and thereby denying justice. We have now a democratically elected government with a massive mandate from the people. Let us all rise above party politics and join hands together to uphold and establish the rule of law and the cause of justice and truth in this country. Our failure to do justice in one murder case will lead to more and more murders being committed. One injustice will only lead to more injustices. It is time our law-makers, the government, the judiciary, the intelligentsia, the civil society, all sat together and agreed to initiate reforms needed to ensure fair and speedy trial of all cases of major crimes like murder, rape, robbery, abduction, mugging, extortion etc. Should we fail to do this, our posterity will surely reap a very rich harvest of social unrest and moral decay for which the blame will lie squarely on our shoulders.

Something needs to be done to prevent inordinate delay in the trial of cases of murder, rape and such serious crimes. What happens if the new judge to be appointed in the Appellate Division on ad hoc basis to help constitute a three member bench to hear the leave to appeal petition against the verdict of the High Court Division confirming death sentences of twelve accused persons should also feel embarrassed to hear the case? Should the government keep on appointing a new judge in the Appellate Division on ad hoc basis each time an honourable judge feels embarrassed to hear the leave to appeal petition? A good government must try and evolve a system of justice which can effectively and promptly take care of such an eventuality and administer justice to people as fairly and speedily as possible without having recourse to any ad hocism. Whether a judge should feel embarrassed or not to sit on judgement in a particular case, the trial must go on uninterrupted until a verdict can be pronounced by the trial judge based on justice and truth. Which is what a good government in a democratic dispensation must strive to ensure. It is felt that there is a need to have more judges than we have presently in both the High Court Division and the Appellate Division of the Supreme Court? Besides given that violence and murder are steadily on the increase, there is a greater need now than ever before on the part of the judiciary, the government and the lawyers to work closely together in order to speed up trials of all cases of murder because it is the murder case which demands quicker and fairer trial than any other case for the obvious reason that a murder will only lead to more murders if the guilty is not punished and punished speedily enough. Islam attaches great importance to the system of justice. There is a hadith which says that on the final day of judgement seven categories of people will be seated in an exclusive enclosure under a canopy for Allah's blessings. Among them will rank high those who in the discharge of their duties have given fair judgement based on justice and truth.

Judges, elevated and held in high esteem as they are in the society, ought to be a special breed of people. They must necessarily be as indeed they are men and women, imbued with the high ideals and principles of justice and truth, democracy and humanity, impeccable integrity and honesty, dignity, courage and a deep sense of patriotism. Such men and women in our judiciary can never flinch and funk but will always stand their ground and boldly pronounce what is right constitutionally, legally and morally.

RIGHTS corner



Consumer representation in Asia

DR SOTHI RACHAGAN

CONSUMERS International (CI) has since 1983 celebrated World Consumers Rights Day (WCRD) on March 15. The date was chosen to commemorate US President John F. Kennedy's historic message to Congress in 1962 in which he enumerated four consumer rights: the right to safety, the right to be informed, the right to choose and the right to be heard. CI has since added four more rights: the right to basic needs, the right to redress, the right to consumer education and the right to a healthy environment. Each year, CI rallies its 263 member organizations throughout the world to use WCRD to campaign on a particular theme. Past themes include corporate accountability, genetically modified foods, consumer protection and the environment. This year's theme is 'The Consumer Right to Representation' a corollary of the right to be heard. Consumer associations view representation of the consumer interest as one of their principal functions.

Why representation?

Consumer participation in decision-making is representative of an active citizenry and beneficial to society. Representation promotes vigorous competition in ideas, and enhances public participation, a desired ideal of democratic governance. Consumer participation is also critical for an effective operation of the market economy. It reduces the risk of market failure through incomplete and misleading information. The demand side of the economy needs to be heard and the position of consumers vis-à-vis producers in the marketplace strengthened.

Forms of representation

Consumer organizations in Asia are being increasingly recognised as representatives of the consumer interest. They have been legitimised by statute (e.g. Korea, China), given standing before the courts and other redress agencies to represent the consumer interest (e.g. Thailand, India) and have been provided membership in consumer policy-making agencies (e.g. Malaysia, Philippines). They participate in industry maintained alternative dispute resolution mechanisms (e.g. the Insurance Mediation Bureau and the Banking Mediation Bureau in Malaysia), and even negotiate codes and charters on their own initiative (e.g. the Citizens Charter in India and the Patients Charter in Malaysia).

CI as the global consumer body has official recognition to represent consumers at various UN and other international bodies such as the Economic and Social Commission (ECOSOC), World Health Organisation (WHO), Food and Agriculture Organisation (FAO), United Nations Environment Programme (UNEP), International Organisation for Standardisation (ISO) and the Codex Alimentarius Commission. CI's work at the UN resulted in the adoption of the UN Guidelines for Consumer Protection in 1985 and its revision in 1999.

Where are consumers represented?

CI's survey of representation by its members reveals that it is extensive in some areas but not in others. It is strongest in the traditional areas of consumer advocacy: consumer policy and protection, justice/redress, environment, health, food security and safety, technical standards and utilities. However, levels of representation taper off in such areas as competition, trade/economics, education, communication and information technology, price controls, gender, financial service regulation and transport.

Pitfalls of representation

Representation imposes responsibilities on those who seek to represent. Though Asian consumer groups have in recent years substantially strengthened consumer representation, they need to address the quality and effectiveness of their role.

Weak representative base

Unlike unions, which campaign for unionization of workers and their inclusion in ever-larger unions, consumer associations are seldom involved in activities intended to raise membership. Consultation is an essential feature of true and effective representation. The absence of a significant membership and established consultation mechanisms can compromise their representative role. Can consumer organizations with limited membership truly claim to represent the consumer interest? Can consumer associations really be more successful in setting priorities, identifying regulatory targets and implementing strategies than are public agencies?

Competing claims

There are now consumer organizations in every Asian country and in many their numbers have grown rapidly. China and India together have more than 7500. Even Malaysia has more than 40. These organizations have succeeded in making consumer issues part of the national agenda and are now accepted as an integral part of the altered their operational mode to remain "legitimate" in the eyes of their governments. Some have tempered their criticism of government policies to be within "acceptable" limits since criticism may be regarded as outside the "rules of the game". Groups that are distrusted by government agencies often have difficulty in gaining access to information and in being included in the consultation process. Such exclusion impoverishes the policy making process and denies the expression of a diversity of views.

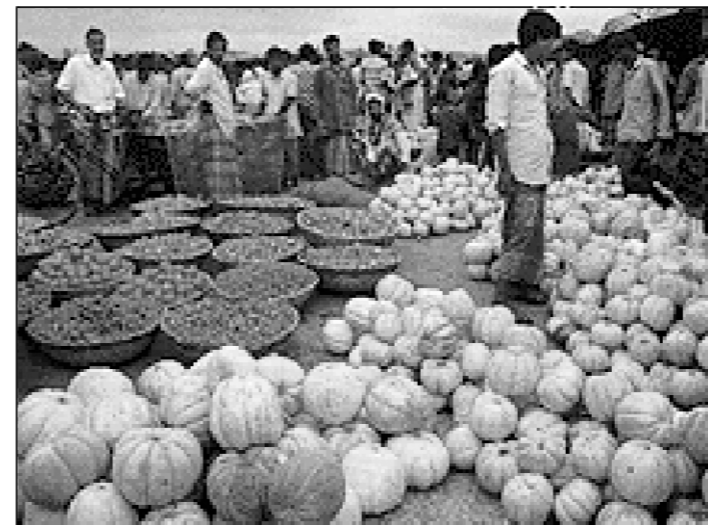
Competing interests

Rarely does an individual action represent the interest of all consumers. Consumer organizations often have to choose between the conflicting interests of various categories of consumers. For instance, remedies that rely on increasing choice and availability of information are likely to benefit middle and upper-income consumers more than others.

Are consumer groups capable of arriving equitably at the interest to be represented or are they guided by the biases of their office bearers? The problem is especially acute with consumer groups that lack the resources to undertake or commission research or have access to information, as is the case with many Asian consumer groups. The criteria by which consumer groups choose issues and the efficiency and equity dimensions of their actions are clearly areas that have to be critically appraised.

Quality, competence, and conflicts of interest

The range and complexity of consumer issues have increased over the



years and consumer representatives have to marshal the relevant expertise if they are to adequately represent the consumer interest. Consumer associations without adequate staff and networking cannot competently represent consumers in the wide variety of areas in which they represent consumers. Their task is made even more invidious because in many Asian countries there exist no law guaranteeing freedom of information. Worse, in most countries laws stringently guard "official secrets". Such laws inhibit the sharing of information and documents from government sources. Without the requisite expertise and the benefit of consultation, consumer representation cannot be competent. Consumer associations have to reach beyond their elected officials and employees to obtain the required expertise and have to network with local and foreign groups to have access to information.

Representatives clearly have to be paid, at least their out of pocket expenses, but consumer representation cannot be permitted to become so lucrative a vocation that incompetent persons vie to represent consumers in the more highly remunerated committees. Participation in industry initiated alternative dispute resolution mechanisms present even more troublesome issues. Consumer representatives have to guard against co-optation by industry and accusations of having 'sold-out'. Effective consumer representation is critical for good governance. Consumer groups need to not only seek more avenues for representation but also focus on the quality of their representation.

LAW advocacy



Communicating judges: Strategies for advocacy

MD. ABDUL HAKIM

A judge is as much a human being as an advocate or any other person. He is a man of flesh and blood with all human sentiments. The only difference is that he is the arbiter of the fate of your client. As soon as you take-up a brief you identify yourself with your client. So it is your fate that hangs on the scale of the judge. Although in exceptional cases, a judge may suffer from general prejudice or bias against certain kinds of offences or even whimsical one has to ally the sentiments of the judge most tactfully in favour of her or his client.

Advocates must always presume that the judge is fair and impartial and eager to seek the truth. In the court house there may be divergence of opinion between the judge and the lawyer. He or she needs not however suspect that the judge is unfriendly to you. In order to represent your case to the judge you have to communicate with him. This communication is made not through the common talks of the parlours or an emphatic demagoguery. It is through putting up before the court a well prepared case factually and legally and with graceful body language.

The first impression that a judge gets about an advocate is from his looks and manners. An advocate smartly dressed in his uniform and gown entering the court with a bow and smiling face immediately attracts the attention of the judge. If the gait and gesture and manner of your entrance in the court room and sitting are graceful you make a first impression upon the court which goes a long way. Receiving an adverse order with a bow and the words "most obliged your honour/lordship" creates a good impression in the mind of the judge about the lawyer. Too loud a voice and affected manners do not create a good impression in judge's mind. A quarrelsome attitude is disastrous. Good advocates are unassuming, they have local accent and informal demeanor and a pleasant approach. Adverse expressions and off-putting manners are never appreciated by the courts.

Above all a good preparation of a case, both its facts and law, gives such confidence to a lawyer that he establishes a natural and easy communication with the judge. In early preparation of any case, especially of that which is likely to go for trial there will have to be a preliminary identification of the basic subject area of law and investigation. The relevant law will have to be studied in order to decide what factual investigation will have to be made in order to take preparation for trial. If the lawyer has full grasp of facts supporting the legal proposition on the establishment of which the case with success, he can communicate his cause to judge easily and efficiently.

A particular judge may have a general bias against certain kind of crime or may be sensitive to certain social phenomena, which may, though undesirable, affect his attitude towards a particular case. In such situation an advocate may choose a different court, if available, or moment when the judge is more propitious or is in a better mood. A judge may be tired, may be very cross on account of any incidents which happened in the court or at his house. It is wise to avoid hearing of a case at that particular hour and to take adjournment of the case, if possible. In presenting a case one should have a well-cultivated voice, one should be audible. One should vary the pace and tone of your voice.

Give the facts of one's case to the judge like telling a story. One should admit one's bad points candidly and prove oneself honest by not suppressing the facts and law in the case, which are against one's interest. This is the model way to communicate with a judge. One should not try to see a judge in his chamber in the absence of your opponent however trivial the matter may be. The communication with the judge will not be on the personal level. It will be in accordance with the rules and procedure of the court.

Finally a few words of advice: a. Put yourself on good terms with the court. b. State the facts of the case plainly. c. Pace yourself so that you are sure that the court is following what you are saying. d. Spell out your arguments by referring to the facts on which it is based. e. Tell the story of the case with word picture so that it becomes vivid to the mind's eye. f. State the law as simply and accurately as you can. g. Anticipate as far as you can your opponents case and construct your case accordingly. h. Argue boldly but, never, never quarrel with a judge. i. Keep an eye on the mood of the judge

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LAW news



Law Desk Assistant

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