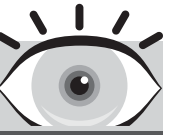


LAWvision



International organisation before national court Blanket immunity for the World Bank?

A.H. MONJURUL KABIR

In an increasingly interdependent world, international organizations appear to be playing a greater role in international relations. This is especially true in the wake of the recent protests concerning various high-profile institutions such as the IMF, World Bank, and the World Trade Organization. At the same time, we have seen global actors invoke public international law in a multitude of situations both at the national and international level. Confusions and controversies surround such attempt to apply public international law in national domain. The relation of international organisations with national courts, tribunals is an area, which demands, renewed attention and critical clarification.

Claiming blanket immunity in Bangladesh

The World Bank's Bangladesh Country Office has initiated impromptu attempts for signing an Executive Agreement with the Government of Bangladesh providing for full immunity from legal process although the WB's Articles of Agreement and The International Organisations Order 1972 have been in force since the operation of the bank in Bangladesh. It is learnt that the Ministry of Law, Justice and Parliamentary Affairs is opposed to signing a new agreement as demanded by the bank without first ascertaining whether such an agreement has been signed by regional countries like India and Pakistan. But the bank's senior officials are seizing every chance to press the government on the need for an Executive Agreement in order to ensure for itself absolute immunity. Signing such an agreement would take away the fundamental rights of a citizen of the country; a local employee or any citizen dealing with the bank will be deprived of his constitutional right to seek justice in a court of law.

Apparent background

It appears that the bank's latest move has been prompted by a lawsuit filed by a former official whose services were terminated in 2001. In the case lodged with the First Assistant Judges Court, Dhaka, in August 2001, it is alleged that the action was taken in violation of the law of the land and the rules of fairness and natural justice, and demanded reinstatement. In September 2001, the Ministry of Finance requested the Ministry of Law to provide legal assistance to the World Bank to protect its immunity as per "The International Organisations Order, 1972" in respect of the case. The WB did not want to appear before the court and wanted the government to fight the case on its behalf.

The Assistant Judge's court later issued an ad interim injunction on the World Bank's Dhaka office restraining it from filling the post left vacant by the termination of the plaintiff, a national staff member. The court had issued summons directing three defendants, the World Bank, its Country Director, and Human Resource Officer of Dhaka Office to appear before the court on September 24, 2001. The bank did not appear before the court on the pre-text that it enjoys immunity. The Court then ordered the local World Bank authority to submit a written statement on the case. The Country Director asked the Government to intervene in the matter and stay all proceedings for at least 60 days. In almost all correspondences, the Country Director threatened that the issue of granting the Bank the privilege and immunity is a matter of great importance that touches upon the foundation of the Bank's relationship with Bangladesh. However, it is difficult to understand being a champion for separating the judiciary from the executive, how the WB can strongly advocate for such executive intervention in the matters of the court of law. Relating the whole affair with the foundation of Bank's relationship with Bangladesh is also unacceptable, to say the least.

Legal position of the Government

The position of the World Bank with regard to judicial process is stated in the Articles of Agreement in clear terms: "Action may be brought against the Bank in a court of competent jurisdiction in the territories of member in which the bank has an Office, has appointed an agent for the purpose of accepting service or notice of process..."

Perhaps the most promising idea is the adoption of a result-oriented immunity standard protecting the functioning of international organizations including the World Bank. This would exclude reasonable claims from immunity but would shield the organization from unfounded claims that threaten their existence or interfere with their core functions. Domestic courts may feel uncomfortable with the broad discretion that such a method engenders. The existence of alternative dispute settlement arrangements would be an important factor in weighing the respective inter-

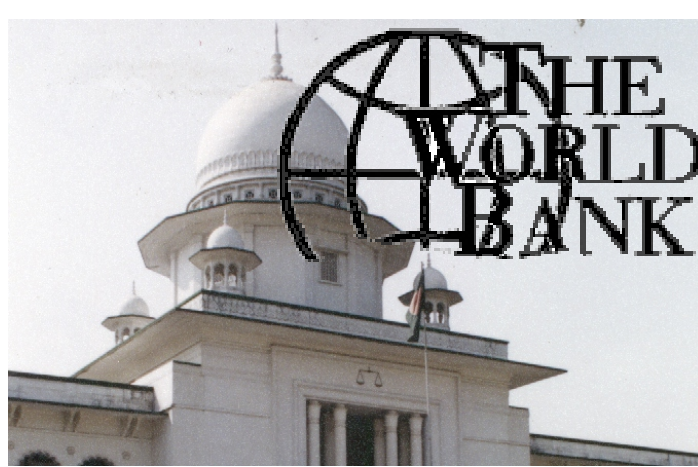
After a thorough examination by the former Attorney General Mahmudul Islam, and the then Adviser for Law, Justice and Parliamentary Affairs Barrister Ishtiaq Ahmed, the government opined that under the said law the officers of the bank enjoyed immunity, but the bank itself did not have immunity from the legal process. The then Adviser for the Ministry of Law, Justice and Parliamentary Affairs confirmed the position in a ministerial note signed on September 6, 2001.

The episode, however, was reopened after the present government took over in October 2001. The new Attorney General, Hassan Arif concurred with the opinion expressed by his predecessor that the government was under no obligation to provide legal assistance in respect of the law suit and suggested that the World Bank be advised to consult its legal advisers regarding appropriate steps in respect of the law suit filed against it. It is learnt that the present Law Minister, Barrister Moudud Ahmed, endorsed the AG's view on the complex issue. The Ministry of Law, Justice and Parliamentary Affairs opined that it could not initiate the process of signing an "Establishment Agreement" providing for immunity for the bank (which the bank as a body does not enjoy under the 1972 Order) without a policy decision of the government and without examining the status the bank enjoys in other countries of the world.

The Ministry of Finance seems to be very sympathetic to the World Bank's plea for granting it blanket immunity. Finance Minister M Saifur Rahman recently referred to a money suit (The Farakka Barrage Case) filed by a citizen against the World Bank. The case was dismissed by the District Judge's Court and is now pending before the High Court Division of the Supreme Court. The government gave legal support to the bank to protect its immunity in the Farakka case. The Minister feels that by the same token it is the responsibility of the government to provide similar legal support in respect of the case filed by the former World Bank official (The Independent, 6 February 2002).

Latest position: The World Bank violates court order

After failing to receive positive response from the government as per its demands, the Dhaka Office of the World Bank appeared in court and filed an objection claiming immunity of the World Bank from legal process. While a court's decision on the matter is still pending after a hearing held on June 1, 2002, the World Bank violated the Court Order of injunction by giving appointment to a staff member. Another case was filed against the Bank on July 3, 2002 for violating court order. The issued a notice on the World Bank to show cause by July 15, 2002, as to why the Bank or those involved will not



be punished according to the provisions set out in law for contempt of court order.

Politics, human rights and the World Bank

World Bank officials refer to Article IV, section 10 of their Charter to claim that they can only look at poverty alleviation issues (and not human rights concerns) when approving a loan. Other legal experts argue, however, that this clause is meant only to prevent World Bank interference in internal political affairs of beneficiary countries; it does not prevent Bank officials from incorporating human rights concerns into loan-decision criteria. As a specialised agency, the World Bank may be legally bound to uphold the principles of the UN Charter, including articles that ensure the universal protection of human rights. In 1998 the Bank surprisingly changed its position and states, "The World Bank believes that creating the conditions for the attainment of human rights is a central and irreducible goal of development. By placing the dignity of every human being - especially the poorest - at the very foundation of its approach to development, the Bank helps people in every part of the world build lives of purpose and hope. And while the Bank has always taken measures to ensure that human rights are fully respected in connection with the projects it supports, it has been less forthcoming about articulating its role in promoting human rights within the countries in which it operates." (Development and Human Rights: The Role of the World Bank - a World Bank publication)

Sadly, still the World Bank is not interested to consider human rights as priority concern. The World Bank, the International Monetary Fund, the Inter-American Development Bank, and many transnational banks and companies, empowered many illegal or undemocratic regimes - by maintaining (and profiting from) financial and commercial relations during the years of repression. Like the Bank, many western nations - particularly the US - actively supported these regimes with weaponry, military training and intelligence, and money. The impunity that former Chilean dictator General Pinochet enjoyed (for quite a long period) - that many others continue to enjoy - has been and is an international phenomenon.

A reform agenda

Globally, the World Bank is keen to draw diverse reform agenda for different countries. It does so for Bangladesh during successive governments. Capacity building is one of the key priority areas. The World Bank is currently funding a judiciary capacity building project in Bangladesh. Interestingly, the Bank is now trying its best to escape the jurisdiction of Bangladeshi courts through a proposed executive agreement! A number of international civil

society coalitions and networks, however, focus the following aspects of reform the World Bank should undergo internationally:

1. **An UN-mandated investigation into the accountability of the international financial institutions involved in various projects:** This recommendation stems from the World Bank's failure to adhere to its own policy guidelines and standards in force at the time of project implementation. As well, given the fact that conflicting claims continue to exist regarding the Bank's level of responsibility.

2. **The establishment of a human rights evaluative body for World Bank projects:** At present, World Bank review mechanisms fail to ensure that human rights concerns are incorporated into project planning and prevent the institution from learning from past mistakes. The UN should establish criteria for determining the need for a human rights investigation prior to initiating development projects in a particular country or region. Then, the UN should establish a mechanism for conducting human rights assessments for projects, which do not meet the stated criteria. In establishing this mechanism, the extreme difficulty faced by the Bank's current Inspection Panel to adequately influence the policies of the Bank's Board, should be taken into account.

3. **Liberalization of World Bank policies regarding access to information:** In many cases around the globe, large gaps of information about World Bank knowledge and action have prevented any party from successfully evaluating conflicting claims about responsibility for the violations that occurred. Several reforms should be undertaken - along the lines of the UN's own information policy - to increase access to information and to make the Bank's own review procedures more accessible to those affected by the Bank's activities.

Changed notion of immunity

The traditional notion of immunity has undergone a radical change. The era of human rights challenges the very practice of granting blanket immunity to any institutions or individual for certain grave acts or conducts. In the pretext of a mere of administrative issue, no institution should remain above the law of the land. Although article VII of the World Bank charter claims legal immunity for the institution and its employees, recent legal precedents suggest that international law (which prohibits human rights violations such as genocide) takes precedence over these immunities.

A core element in this endeavour is the identification of an appropriate functional immunity standard that falls short of absolute immunity. A functional necessity concept, while convincing in principle, is elusive in its precise circumscription. A simple transplantation of concepts developed in the context of state immunity does not seem practicable. The *iure imperii / iure gestionis* dichotomy is not likely to produce satisfactory results for international organizations. A number of international organisations conduct their primary activities through commercial transactions. Financial institutions borrow and lend money. Commodity organizations buy and sell goods. Analogies from functional necessity standards in diplomatic and consular law may offer alternatives by denying immunity for patently non-functional acts.

Perhaps the most promising idea is the adoption of a result-oriented immunity standard protecting the functioning of international organizations including the World Bank. This would exclude reasonable claims from immunity but would shield the organization from unfounded claims that threaten their existence or interfere with their core functions. Domestic courts may feel uncomfortable with the broad discretion that such a method engenders. The existence of alternative dispute settlement arrangements would be an important factor in weighing the respective interests. Their significance for decisions on immunity would also create an added incentive for international organizations to create such alternative procedures. The division of adjudicative powers between the Court of Justice of the European Communities and domestic courts may serve as a viable example.

A.H. Monjurul Kabir is a legal and human rights analyst <monjurul@yaho.com>

LAW opinion

Judiciary needs to play a pro-active role

JUSTICE MAINUR REZA CHOWDHURY

I began my career as a lawyer in 1973. It has been a satisfying career, with challenges and approbation both coming my way. I consider it a privilege to have served with my seniors. I was fortunate to enjoy the fraternity of my contemporaries. I have had the honour of enjoying the trust of my junior colleagues in profession. As a Judge since 1990, I have had the most harmonious relationship with both the Bar and the Bench. I thank you all for being kind and generous with your understanding. The Bar and the Bench constitute integral parts of the highest judicial administration of the country.

We have stepped into a new century beset with problems accumulated over the years. A most crucial issue that the judiciary now faces is the problem of delay in dispensing with justice. Socio-cultural and economic reasons play their role in creating this delay. At times, lack of professionalism is held responsible. The age-old adage of 'justice delayed is justice denied' holds true. Therefore it is our obligation to the people of this country to see that justice is not delayed or denied. We therefore need to devise alternative method of adjudication which would speed up the process of dispensation of justice and yet entail the minimum of expenses and reduce the tensions that a legal process through the courts involve. As you are aware, an initiative has been taken in this regard under a pilot project for introduction of mediation and alternative dispute resolution mechanism in the family courts. However, I hardly need to mention here that no system or device will work unless we, the adjudicators of justice the Bar and the Bench at all levels feel committed to make it work. On this day, I renew my commitment to the goal of achieving speedy process of justice without infringing upon the sanctity of law. I would expect your informed and considered thoughts on the advantages of such alternative mechanisms. I believe that a system must evolve responding to the needs and exigencies of time. It is now time that we adjust our ways and our thinking to present day needs and make the judiciary work and retain the confidence of people by efficient dispensation of justice in the Courts and by introducing effectively functioning alternative methods of adjudication.

The judiciary has traditionally lived in 'ivory towers', in the glory of detachment and distance. The recognition of the principle of democratic governance, entailing both transparency and accountability, have brought the judiciary closer to the public eye and made it subject to public scrutiny. The judiciary must take cognizance of this and conduct its business in the full glare of public view. However, neither the Bench nor the Bar is constituted on the principle of election. Therefore, the concept of accountability of the judiciary is different from that of public representative offices. The judiciary does not derive its mandate from the people. Its objective is to dispense justice so that people's freedom and rights are preserved, and the foundations of a congenial and enabling social environment are laid and preserved. It is accountable to the supreme law of the land

the Constitution, and ultimately, to its own collective conscience. Dispensation of justice is one of the noblest deeds that one can perform. This is why our Holy Prophet has said that one hour of justice is worth a hundred prayers. And the Holy Koran cautions, "O ye who believe. Be staunch in maintaining justice and if you swerve or turn aside, then verily Allah is aware of what you do."

You are aware that as per directive of the Appellate Division of the Supreme Court, the government has taken steps to initiate the process of separation of the judiciary. There will



All that I can strive to do during this short period is provide continuity and carry on with initiative undertaken by my distinguished predecessors. Nevertheless, there are two issues to which I feel myself strongly committed. I would like to see the speedy disposal of backlog of cases and the com-

merely facilitates the performance of the assigned responsibilities it does not necessarily guarantee their performance; in fact, the guarantee of independence will depend on the performance of both the Bench and the Bar.

In reply to felicitation on being appointed the Chief Justice of the High Court of East Pakistan, Justice Syed Mahbub Murshed said, "The strength of the judiciary does not depend on the panoplied authority of physical might, but in the command it has on the minds and hearts of men. Such respect and prestige are the result of just decisions given with independence and courage. The Court that cannot stand before the unjust fury of an impassioned mob or the arrogant high-handedness of misguided authority is not worthy of its great tradition." (unquote)

The judiciary needs to play a proactive role in meeting new issues and developments. It is obvious that societies have undergone transformation through ages in terms of priority area of concerns. Just as the judiciary needs to be mindful of these shifting priorities, so it also ought to see that the disadvantaged and vulnerable groups in society, such as the poor and women, are not denied access to justice either because they are not aware of laws or they are unable to bear the financial or social costs of justice.

We have a rich tradition of having great legal minds in both the Bench and the Bar, who have been source of inspiration to all. Their deliberations and judgments have set precedents and remain unparalleled, there seems to be a general concern that the standard has fallen. To some extent I also share the concern, but I am proud to say that I see the makings of great lawyers amongst our younger generation, both men and women. They are now better placed than their predecessors in terms of access to Internet and other developments in the field of information technology. They should make full use of these opportunities and at the same time learn court room manners and the art of presentation of their case from the seniors who are sitting in the front rows of this court room.

I would like to urge upon our women lawyers to be more articulate and regular in their court appearance. I am not aware of the reasons why their approach is not more participatory in a profession they have chosen for themselves. All I can say to them is that if it is the working environment that does not encourage you to bring out your best talents, you need to change the environment yourselves, nobody will do it for you.

Finally, I would like to say that I will retire from office one year from now. All that I can strive to do during this short period is provide continuity and carry on with initiative undertaken by my distinguished predecessors. Nevertheless, there are two issues to which I feel myself strongly committed. I would like to see the speedy disposal of backlog of cases and the commencement of the actual process of separation of the judiciary.

merely facilitates the performance of the assigned responsibilities it does not necessarily guarantee their performance; in fact, the guarantee of independence will depend on the performance of both the Bench and the Bar.

In reply to felicitation on being appointed the Chief Justice of the High Court of East Pakistan, Justice Syed Mahbub Murshed said, "The strength of the judiciary does not depend on the panoplied authority of physical might, but in the command it has on the minds and hearts of men. Such respect and prestige are the result of just decisions given with independence and courage. The Court that cannot stand before the unjust fury of an impassioned mob or the arrogant high-handedness of misguided authority is not worthy of its great tradition." (unquote)

The judiciary needs to play a proactive role in meeting new issues and developments. It is obvious that societies have undergone transformation through ages in terms of priority area of concerns. Just as the judiciary needs to be mindful of these shifting priorities, so it also ought to see that the disadvantaged and vulnerable groups in society, such as the poor and women, are not denied access to justice either because they are not aware of laws or they are unable to bear the financial or social costs of justice.

We have a rich tradition of having great legal minds in both the Bench and the Bar, who have been source of inspiration to all. Their deliberations and judgments have set precedents and remain unparalleled, there seems to be a general concern that the standard has fallen. To some extent I also share the concern, but I am proud to say that I see the makings of great lawyers amongst our younger generation, both men and women. They are now better placed than their predecessors in terms of access to Internet and other developments in the field of information technology. They should make full use of these opportunities and at the same time learn court room manners and the art of presentation of their case from the seniors who are sitting in the front rows of this court room.

I would like to urge upon our women lawyers to be more articulate and regular in their court appearance. I am not aware of the reasons why their approach is not more participatory in a profession they have chosen for themselves. All I can say to them is that if it is the working environment that does not encourage you to bring out your best talents, you need to change the environment yourselves, nobody will do it for you.

Finally, I would like to say that I will retire from office one year from now. All that I can strive to do during this short period is provide continuity and carry on with initiative undertaken by my distinguished predecessors. Nevertheless, there are two issues to which I feel myself strongly committed. I would like to see the speedy disposal of backlog of cases and the commencement of the actual process of separation of the judiciary.

Mainur Reza Chowdhury is the Chief Justice of Bangladesh. This is a slightly edited version of his speech delivered in response to felicitations from the Bar on June 19, 2002 following his taking of oath as the Chief Justice of Bangladesh.

RIGHTS corner



Implementing CEDAW in Bangladesh

LUNA NOOR AND SHARIFA SULTANA

WOMEN in Bangladesh have long been deprived of their rights. Even worse is the women's lack of awareness about their rights. "I'm a university student. To tell the truth I have little idea about CEDAW. Then how the backward and deprived rural women of the country know about it?" said Parva Saha, a Dhaka University student. She said there is a serious lack of campaign on creating awareness on CEDAW among the women. "If women don't know about the convention, then it will be very difficult to implement it."

The United Nations General Assembly adopted the Convention on Elimination of all Forms of Discriminations against Women (CEDAW) on December 18, 1979 to establish gender equality between men and women.

The main objective of CEDAW was to remove all existing discriminations against women and gender inequalities in every sector including social, economic, legal and family-related disparities. CEDAW is considered as an internationally acceptable and recognised legal framework to establish women rights. 130 members of UN General Assembly signed this universal charter. Despite social and religious barriers to implement this convention most of the countries agree to abide by it. However, some 40 countries have reservations about some of the provisions.

Bangladesh became part of this conventions on November 6, 1984 but kept disagreed to its section 2, 13(ka), 16.1(ga and cha) showing the reason that these provisions are contrary to Islamic Shariah Law. Later, in the face of movement of women organisations, the government withdrew its reservation on section 13(ka), and 16.1(ga and cha) but did not reconsider its stand on section 2. "When Bangladesh Constitution envisages equal rights for both men and women its reservation on implementing section 2 of the CEDAW is meaningless," said Rokeya Kabir, a leading women rights activist. Termining section 2 of the convention as "heart of CEDAW", Kabir said the section denounces all discriminations against women and makes the countries agree to adopt policies to remove the discriminations. The section 2 of CEDAW suggests establishment of equality among men and women not only in words but also in social and legal actions.

About the government's reservation on section 2 of CEDAW, Rezina Khanam, former director general of Women Affairs Directorate, said the Prime Minister of the immediate past government assured of withdrawing the reservation but effective steps are yet to be

taken. The government formulated National Women Development Policy on March 8, 1997 in the light of CEDAW and the policy was renewed in August 31, 1999, but no other steps were taken to implement it. Rezina Khanam, however, thinks that it is essential to ensure proper enforcement of the convention, as there is no alternative to empowerment of women and creating social awareness about gender balance.

The women of Bangladesh have long been carrying out movement to realise equal rights through total implementation of the CEDAW.

College teacher AN Rasheda is not satisfied with the progress of the movement. "The movement is not so much strong. We must raise social awareness to accelerate the movement," Rasheda said adding women in Bangladesh are lagging behind in many respects. The Women Development Policy formulated by the previous government clearly recognises the urgency of implementing CEDAW and for this purpose the Ministry of Women and Children Affairs formed a committee with representation from women rights movement. The committee is supposed to submit a report within two years. "It has been a success of women rights movement," commented A.N. Rasheda. She informed that the movement for implementation of CEDAW was initiated in 1992 through formation of "CEDAW Forum" comprising 30 women organisations and NGOs.

However, CEDAW remains unknown among the common university students of Bangladesh. Even most female students do not have any idea of the universal charter for women rights. To improve the situation, media can play an effective role, suggested Sadaat Sayem, a final year student of Public Administration department of Dhaka University. "There is no alternative to awareness," he added. Jahangirnagar University student Marufia Noor Shifa has a different view on reasons of the inequalities between men and women. She thinks there is no religious or social barriers in implementing the charter of CEDAW. "These are mere excuses to avoid the responsibility. The real reason is lack of sincerity of the policymakers." Shifa said a section of so-called mullah, and some extremists and anti-civilisation elements have established the idea that religious and social norms are contrary to equal rights to men and women. "In fact, there is no bar. Our Constitution also recognises the equal rights of men and women," she pointed out.

News Network