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## LAW alter views



# The judiciary and its importance

**JUSTICE LATIFUR RAHMAN** 

T the outset I must say that an independent, impartial and efficient judiciary is the very foundation for democratic development. In a democratic polity like ours, the judiciary plays a vital role. The integrity of the judicial system is central to the maintenance of a democratic society. Through the judicial system, the rule of law is applied. Without an impartial judiciary democratic character of Bangladesh will be destroyed.



However, judicial system of Bangladesh by its very nature, has become excruciatingly slow and inefficient. I must honestly say that judicial reforms in Bangladesh has become imperative on various grounds to make the judiciary more dynamic, speedy, efficient and people oriented.

At the present moment there is an abnormal delay in litigations in Bangladesh, both in civil and criminal cases. Justice system is manifesting abnormal delays in litigation and huge pendency of cases in all courts from the subordinate judiciary to the Supreme Court of Bangladesh. The problem of delay in disposal of case in Bangladesh is a highly complex problem for which many factors are involved which need to be addressed in phases. The effect of delayed justice has tremendous adverse effect on economic growth

## **Criminal cases**

eps have been taken to dispose of serious and sensational criminal cases by setting up Speedy Tribunals in Bangladesh. But the appeal procedures of those cases are taking long time and as such effective steps must be taken to dispose of those cases in the appellate stage by the Supreme Court. I can suggest that separate Criminal Division Benches may he sten up for disposal of those cases. The government may request the Chief Justice to constitute such Benches for quick disposal of those criminal

From British time, the printing of paper book in 'Death Reference' case was in practice in all superior courts of India. Apart from printing in press, the FIR, evidence etc. in a criminal case were being translated from Bengali to English. Printing and translation were done primarily for the British Judges who did not know Bengali. Now that we have no British Judges, I do not think that there is any necessity to print paper book. In place of printing of paper book, the High Court Rules may be amended to computer typing. This will quicken the process of preparation of paper-book thereby help in quick

### Criminal justice system and prison reforms

The delay in criminal investigation is a great problem in Bangladesh. In Bangladesh, crime investigation has not vet been made separate, thereby the investigation has not been done efficiently and properly. The police commission headed by Justice Aminur Rahman Khan, in its report suggested for separate investigating agency with proper and adequate training of police. We need honest and well trained person for efficient investigation. Our Investigating Agency is very corrupt and as such people suffer to a great extent. Unless a separate investigating agency is established with proper training and knowledge, then it is difficult to get improvement in criminal

The Jail Reform Commission headed by Chief Justice Fazle Munim suggested many reforms in the prison houses. But no adequate tangible steps has yet been taken. The number of under-trial prisoners will be about 70% of the convicted persons in jail. The recommendations of the Jail Commission need to be implemented by phases. Unless the judiciary is separated we will not get full time magistrates for judicial work. The magistrates of today are performing both administrative and judicial works and thereby the criminal cases remain pending for a long time. The judgement of 'Mazdar Hossain' case need to be implemented soon.

### Number of judges

The number of Judges ought to be increased in the district level for quick disposal of criminal and civil cases. I feel that we have inadequacy in the strength of Judges and there should be adequate court room facilities. I have no idea as to court-room facilities at present, but during my time while I was the Chief Justice of Bangladesh, there was insufficient court-room facilities for which the Assistant and Subordinate Judges (now Joint District Judges) could not render full time court work. I will urge the government to improve the logistic support and court-room facilities for proper functioning of the Courts in Bangladesh. For efficient and effective functioning of the judiciary we need adequate facilities and proper atmosphere.

I understand that some judicial reforms have been undertaken by us individually and some are in the process with the help of the World Bank and other International Agencies, from the District Court to the Supreme Court.

Alternate dispute resolution, mediation and conciliation Non-formal settlement of legal and judicial disputes outside formal court system is very old in this sub-continent. Alternative dispute resolution by way of mediation, arbitration or conciliation is an alternative route to a more speedy and less expensive mode of settlement of disputes

Family Courts Ordinance had given jurisdiction to trial Judges to effect reconciliation between parties both before and after trial. This Ordinance dealt with divorce, restitution of conjugal rights, dower, maintenance and custody of children. At first three pilot family courts were setup at Dhaka to exclusively effect reconciliation between parties. Soon there were 16 Pilot Family Courts in 14 Districts of Bangladesh. The success is tremendous. Then it was extended to other jurisdictions. The amendment of Sections 89A and 89B of the Civil Procedure Code has opened the door for Alternate dispute Resolution in all other matters where the parties are willing to dispose of their disputes. The Civil Courts started mediation in non-family disputes since 1 July, 2003. In Money Loan Recovery cases, the Loan Courts had disposed of a large number of cases. Courts should refer relatively simple cases first to the mediators. Complex Cases involving complicated guestions of facts and law should not be placed for mediation at this new stage.

I may incidentally mention that in the United States 40/45 years back there were huge congestion of cases and the same has been substantially reduced by adopting conciliation and mediation procedures to while I was the Chief Justice of Bangladesh, I attended such conciliation proceedings in Washington, DC, USA. I am hopeful that if we adopt this method seriously

and effectively, in all Jurisdictions, this will bring good results in our country. From my experience as former Chief Justice, I can vouchsafe that old

pending cases numbering about ten lacs in all courts in Bangladesh would never be disposed of as a large number of new cases are being filed every

#### Commercial courts

In Bangladesh, the Bankruptcy Act, 1997 has been re-enacted in place of Insolvency Act of 1909 and 1920. As it was felt that re-enactment of law was necessary for economic development to realise debts from the bank loan defaulters and debtors. This new law is designed to handle problems relating to financial matters in a more effective and extensive manner, where company, association, partnership firm and their directors and owners are brought within the fold of the new law. Further, Money Realisation Loan Courts, the Banks and financial institutions are collecting loans/debts which is helping in formation of capital and in the growth of industries, commerce, trade, agriculture etc. by providing loans and advances to various compa-

#### **Environment Courts**

In Bangladesh, environmental cases are very few. India being a vast and industrially developing country, the increase in environmental awareness since 1980 has triggered a large number of cases in various courts. In India, every provincial High Court has a bench dealing with environmental cases, luckily, I sat in one such court along with the Chief Justice of Madras in 1995. During late 1987, Indian Supreme Court played a vigorous role in preventing environmental degradation.

In the case of 'Dr. Mohiuddin Farooque-Vs-Bangladesh and others', the apex court interpreted articles 31 and 32 of our Constitution and expanded the jurisdiction in environmental cases. I must put on record may deep appreciation for BELA for bringing this case to the Supreme Court of Bangladesh.

#### Amendments of civil procedure code

The Bangladesh Civil Justice system is based on British model and continue to operate under the 1908 Civil Procedure Code. This Code prescribes various stages in litigation process. Some amendments have been incorporated to quicken the process to avoid long and unnecessary delay. Those amendments must be effectively followed and implemented. The Law Commission ought to ponder whether further amendment is necessary

### Computerisation

Computerisation of all courts is a must in Bangladesh. Extensive use of Information Technology will make the judicial system more prompt and efficient. The judicial system is essentially a hand-written one, with some use of type writers. Oral testimony in subordinate Court is taken down by hand. Case load management techniques is to be introduced in Courts at all levels with a Computerised Management Information System (MIS) and upgrade office technology. The computer based case load management is expected to significantly reduce the case back-log and improve transparency in the system. To my knowledge, Computerised Management Information System has been set up in the Supreme Court of India. While visiting Supreme Court of India, I inspected all the Computer and Internet facilities in the Supreme

#### Judicial administration training institution Judicial education in Western Countries has been institutionalised systemat-

ically and has become an integral part of the judicial process. Further more. many countries have continuing legal education programs which have become popular with the Judges themselves. This Judicial Administration Training Institute is imparting training to Judges, at all tires of the subordinate judiciary, ministerial staffs of the courts and lawyers. This project was being finance by the World Bank and DANIDA.

## Law Commission

The Law Commission is functioning from 1996. Bangladesh has a Law Commission headed by a retired Chief Justice. The main function of the commission is to amend both substantive and procedural laws in keeping with the need of our time. To my knowledge, the law commission has updated Admiralty Act. Companies Act. Securities and Exchange Ordinance, 1969 and Arbitration Act. 2000. In Bangladesh, I understand, that law commission sends it report when asked for. But in India, the law commission, suo motto



gives its opinion an any legal matter to the Government for consideration, which the commission thinks necessary. The commission should review all existing laws and take opinion of the Legal Community and civil society to update laws to the need of the country.

#### Bar Council of Bangladesh This is the highest legal body of lawyers in Bangladesh. The Bar Council is

also imparting continuous legal training to the lawyers on various modern issues, like Human Rights, Environment, Jail reforms etc.

#### We have the Village Court Ordinance, 1976, but Village Courts are not functioning effectively. As large number of people live in villages, practical reform should be undertaken for the Constitution of Rural Courts for speedy justice.

Legal Aid The availability of legal aid is an important determinant of access to justice. We have a Legal Aid Law. Besides, a couple of NGOs are offering some legal

## aid services to helpless women, children and marginal poor people.

New legislative drafting wing I understand that the legislative and drafting wing of the Ministry of Law of Bangladesh was being funded by CIDA. Proper drafting standard ought to be developed for ensuring quality. The drafting wing has been provided with suitable computer netw system good library facilities and the like.

Finally, the solution lies in bringing some substantive and procedural changes in the Legal System of Bangladesh. We need honest and dedicated people to reform and manned the judiciary of Bangladesh. Ultimately, the man behind any system is of great importance.

The author is Former Chief Justice and Head of the immediate past Care-Taker Government.

## HUMAN RIGHTS advocacy



# International Justice Day

BARRISTER HARUN UR RASHID

NTERNATIONAL Justice Day is being observed across the world including in Bangladesh. This observance of this Day provides awareness among people that justice is to be rendered to all people irrespective of status, gender, and

International Justice simply

means justice is to be accorded to all persons under international norms accepted by all nations of the world. That means domestic laws must conform to international standard. Often it has been found that there is an inextricable connection between domestic law and international law The Bangladesh Constitution of 1972 has borrowed many of its fundamental rights from the 1948 UN Universal Declaration of Human

It would be naïve to think that there could be any adequate approach to international justice without constant awareness of the present state of knowledge concerning justice in the domestic context.

## Notion of Justice in gen-

Justice belongs not to this or that class, nor to particular relationship between classes but to society's functioning as a whole. Values have changed or at least the reasons for adhering to certain values, beliefs and subsequent social practices have changed. What may have once been considered fair and just treatment may today be considered

Justice evolves through the progress of society. Justice has its foundations on natural law of equal treatment. Nature does not discriminate among people. For example rich and poor will one day have to depart from this mortal world. The centrality of equality is the basis of justice natural law that is common to both domestic and international notion of justice.

We have some idea of the notion justice. This may be expressed that society shall be so organized that wants of people must be freely expressed, that law must be just and must at least protect the vulnerable section of society. Another precept is that the law's distribution of benefits and burdens should have regard to the principles of equality. Justice is related to adaptation to new situations. This is more so when the world is growing increasingly industrialised and mobile, powered by an unprecedented technological explo-

## Social Justice

Social justice refers to more than just equality before law or the equalof opportunity to achieve an adequate standard of living. Social justice is a matter of perception and attitude which are included within the broader community. Social justice includes three important fundamentalsequality, equity and inclusion. It is the civil society that performs as a watchdog to ensure social justice is rendered to the poorest poor.

Social justice is impossible if



gross inequality exists in a given society, although inequality is a pervasive fact of life in the real world. In every country, there is resistance to power and privilege. Social class is a major taken-for-granted factor in

the shape of inequalities. Inequality has many manifestations. There is inequality of power, resources, care, working and learning. Inequality embraces poverty and other forms of deprivation.

Privileged classes have more power, more resources, higher social status, better working conditions and greater access to education. Women are on the whole worse off in terms of resources, status, power, work and education than

Justice means existence affordable legal system

justice under the law and the constitution, protect human rights and keep the executive (government) in check and ensure laws enacted by Parliament conform to the provisions of the Constitution. The expeditious and affordable

The role of judiciary is to provide

justice system to poor and vulnerable section of community is one of the criteria of justice. Plato defines justice as what is due to every one should not be denied. According to him, justice is the mother of all

If justice is expensive and delayed, justice is eventually denied. The courts are unable to dispose of their cases within a reasonable time, much to the constraint of resources. Disposal of cases take a long time.

Experts believe that certain measures and remedies are necessary to improve upon the present justice system to meet the needs of poor. One of the ideas recently floated is the efficacy of the Alternative Dispute Resolution (ADR) system. In Bangladesh there is enough skilled persons who have intensively worked on ADR system. Inexpensive and speedy justice system needs to be introduced in rural areas so that poor gets proper justice under laws of the country.

Another fact is often poor people are not aware of their legal rights, especially rural women. Dissemina tion of legal rights constitutes another facets of justice. To be able to justice to poor, they need to know their legal rights. This is very important because if they are not aware of their legal rights, they will not be able to pursue redress for wrongs done to

## Public Interest Litigation

Justice is often meted out through the public interest litigation. Public interest litigation means litigation in the interest of public. The rationale of public interest litigation is to break through any apparent existing legal, technical or procedural constraints in providing justice to an individual or class or community who are prevented from bringing a claim before the court of law.

In Bangladesh, public interest litigation are increasingly playing an important role since the case in Mohiuddin Farooque vs Bangladesh (DLR: 1997) was decided. In that case, a non-governmental organization filed a suit to protect and preserve natural environment on behalf of a section of community and won the case in the Supreme Court of Bangladesh.

## Conclusion

The observance of International Justice Day will remind of the essential features of justice and also as to the means of providing justice to poor and needy.

Justice has to be done under the laws. If laws are flawed, justice cannot be done. International justice involves the application of ideas which have been explored in the contexts of domestic laws.

In 1945, the world's nations and peoples sought to build a new world through the UN. In 2003, the most powerful nation abandoned its obligations under the UN Charter and waged war in Irag that was termed "illegal" by the UN Secretary

General. International justice is in a state of crisis for peoples of Palestinian territory, Kashmir, Uzbekistan. Chechnya and in Darfur (Sudan). Let me conclude what English novelist Charles Dickens in 1859 wrote in, A Tale of Two Cities, at a time of great change in Europe, after the French Revolution (1789):

" It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, ...it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us.'

The above message of Dickens seems to apply at the dawn of the 21st century that is another period of great change. International Justice has a vital role to play in bringing stability in international order. The present century is incomparably richer than before. Yet it is a world of extraordinary poverty and deprivation. On this Day, we all hope that international justice can bring some sense of equality of treatment among all human beings.

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