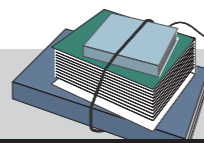




REVIEWING *the views*



LAW week



Access to justice: A simple explanation

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THE literal meaning of 'access to justice' is 'the scope or opportunity for seeking justice'. In this sense, there is 'access to justice' in almost all the countries where there exists a legal system or justice system. But what does the expression 'access to justice' actually mean? Before proceeding further please notice the following two examples.

a. Mohammad Ali is a poor cultivator living in a remote village. He possesses only two acres of cultivable land situated beside acres of land of an influential village landlord or Zamindar. Recently this Zamindar has taken a plan to make a big farm on this land. But the land the Zamindar possesses seems inadequate. So he Mohammad Ali's land. Consequently, he proposes to buy Mohammad Ali's land. This land is the sole property of Ali, so he refuses to sale it. Now, finally, the Zamindar is forcing Ali to sale his land. Mohammad Ali wants to protect his property. He knows that there are court, Judge, law, lawyers to help him. But he does not know where to go, how much money he needs to spend for a remedy, whether he can afford a suit. He does not have money enough to engage a good lawyer. Now there is only a vacant look in his eyes. He finds no one to stand by him.

b. Akhi is a fourteen years old beautiful girl passing her dreamy adolescence. A meritorious student of class nine, Akhi is the eyeball of her parents. Her teachers in the school are very much hopeful about Akhi that she will give a good name to the school by securing an excellent result. Akhi is also studying a lot and trying to make their dream come true. One day on the way to her school some Selim, a vagabond son of the Union Chairman, stops her, tries to imply something, and finally offers love to Akhi. Not surprisingly, Akhi refuses to accept the offer. Selim awaits several weeks for a response. Having no response from Akhi, he becomes revengeful. One afternoon on the way back from school Akhi is encountered by Selim. Before understanding anything, Akhi sees Selim throwing something liquid (acid) on her. Whole face of Akhi gets burnt and the beautiful Akhi turns the ugliest!

Akhi's father, a little shop-owner Abdul Alim, knows clearly that it is a crime, there is law to curb these crimes, there is court to provide justice. But he does not know what he can do. The Chairman is threatening not to file any case. Experiencing her dear daughter's fate, he is now like a mad man.

In the meantime some one advised him to go to thana to file a case. He goes to the thana accordingly, but to his great surprise, he experiences the thana refusing to take the case. He comes back home with an ocean of frustration.

In the examples, can we say that these poor helpless people do have access to justice? The answer will be somewhere between yes and no. In fact, it is not possible to answer the question by clear-cut yes or no. Because, the concept 'access to justice' does not mean merely 'the scope or opportunity for seeking justice'. In other words, access to justice does not involve only legal system, courts, other legal procedures and forums to seek redress. In fact, if the access is entangled in constraints like harassment, unfairness, threat, formidable cost etc., the access cannot be told true access. Likewise, if the opportunity or scope for seeking justice becomes inaccessible to poor and common public, it cannot be said 'access to justice'. Hence, 'access to justice' connotes the true and actual access to justice which is curative, cost-effective, corrective as well as remedial for all types of people, rich or poor, elite or common.

Unfortunately, access to justice in this true sense is very rare in most of the countries of the world, especially in the countries of third world. That is why this has become a topic being discussed widely. But why is this so important a topic to be discussed? What is the problem with 'no access to justice'?

The answer is simple. Access to justice remains in the climax of all human development. And the ultimate aim of all human social endeavours and initiatives is to ensure true access to justice.

Ensuring access to justice

Undoubtedly, the existence of an efficient justice system is in the core to ensure access to justice. However, access to justice is no less importantly linked with the rule of law, poverty eradication or human rights. Rather, rule of law, poverty reduction and protection of human rights are the fundamental factors in this respect. This is because if rule of law is not ensured, poverty is not reduced, human rights are not respected, it is impossible to ensure true access to justice.

If you take the case of Bangladesh as an example, you will see it does have a nice court system, a large scale of legislation dealing with almost all matters; but access to justice seems not only insufficient but also very poor in the country. And unfortunately, in some cases there seems no access to justice. The reasons are obvious. Given the allegation of widespread corruption in judiciary, administration and politics, the significant factor is that Bangladesh is a developing country where the vast majority of its population live in abject poverty. The usual expenses incurred in litigation are far beyond the reach of the mass population. Many petitions fail mid-way for non-prosecution because the petitioner is simply unable to afford to continue the action. While on the one hand there is limited scope for state-funded legal aid, on the other hand there are only a small number of non-governmental organisations who are actively involved in providing such legal aid and services. Again insecurity of the person also



PHOTO: AP

limits opportunities to obtain effective remedies through courts. Illiteracy and lack of awareness is another root social cause. Vast majority of the population is still illiterate, while the limited literate population are unable to comprehend the provisions of law described in complicated language. Hence, so long these causes are correctly detected and rooted out, ensuring true access to justice will be a dream.

Improving access to justice

Needless to say that ensuring access to justice is the toughest job for any nation. It requires thoughtful initiatives, strong commitment, effective actions and above all a lot of time.

However, improving access to justice involves a total process of

- Reforming justice sector;
- Simplifying and streamlining legal system;
- Strengthening national public defence system and improving legal aid for the poor;
- Providing legal information for judges, lawyers, prosecutors and public defenders;

- Increasing the availability of legal information to the public;
- Promoting alternative dispute resolution techniques and reforming informal mechanisms;
- Strengthening the active participation of civil society in justice sector reform;
- Promoting international human rights instruments;
- Integrating human rights with development programming;
- Reducing institutional and cultural barriers etc.

Consequently, access to justice relates not only courts, judge, legal process, but also government and administration, political leaders, influential local leaders, social activists, development organisations etc.

In this sense, all the development organisations, legal organisations, human rights organisations, who are working for poverty reduction, upholding human rights, empowerment of poor etc., are working to ensure the access to justice. As earnest they will be in their activities, as expeditious the access to justice will be.

The author is a legal researcher.

HUMAN RIGHTS *advocacy*



Lawyer tries to cast light on the suffering of Darfur

THE Sudanese human rights activist worries that the region's tragedy has been forgotten. He is documenting atrocities and hoping for justice. With the end of widespread killings, the troubled Darfur region of Sudan has faded from the world's headlines. And that, says Sudanese lawyer Salih Mahmoud Osman, is his country's latest tragedy. The systematic slayings of hundreds of thousands of rural Darfur people by militias believed to be backed by Sudan's government have stopped,

atic bloodshed that U.S. officials called genocide in 2004, stability in the Darfur region remains elusive. The conflict in the western part of the country has festered in the shadow of negotiations to end a separate conflict: Sudan's 21-year-long civil war between the nation's Arab Muslim north and Christian and animist south. A peace agreement between the north and south was finally reached at the beginning of this year, but it is faltering, pushing Darfur further into the background. Adding to its challenges,

responded to rebel attacks in 2003 by systematically cleansing the region of anyone associated with the rebels, suddenly injustice arrived at his own doorstep. Members of his own family, he said, were killed, tortured or burned out of their homes by the militias, which survivors call janjaweed. And so, his Sudan Organization Against Torture provides legal help, medical aid and psychological counseling to those who were targeted by the militias.

The organization's small legal team is working to have rape prosecuted as a war crime. Under Sudanese law, prosecution of rape requires proof or witnesses forcing victims to often settle for lesser charges if the case is heard at all. "The Sudanese justice system does not work very well," he said in an interview this week at the United Nations. "It is incompetent and unwilling to provide justice. There is impunity for these crimes, and victims have no confidence in the courts."

For his efforts to confront the government, he was imprisoned for more than seven months in 2004 and only released after a long hunger strike and international pressure on Khartoum. "We are putting crimes on the record," he said. "We're exposing the war criminals who continue to lie about what they're doing. And we're giving some comfort to the victims, who must know that they are not forgotten, that their suffering has been documented." Someday, his team's efforts may mean even more than that. His interviews with victims, done in coordination with the international monitoring group Human Rights Watch, have been turned over to the International Criminal Court. The prosecutors hold a sealed list of several dozen names of Sudanese officials and militia leaders believed responsible for the deaths of hundreds of thousands of people in the massive displacement campaign.

But action has stalled, as Sudan and its defenders argue that to start prosecuting officials who sit in the fledgling coalition government would cause the country to crumble into anarchy and war. Osman, for one, believes that holding leaders accountable is the first step to peace. "It is not ethical to leave war criminals in power," he said. "We cannot bargain away justice for politics. Two million people are still waiting in camps to go home. We cannot let negotiations come ahead of their lives."

Source: La Times.



said the activist who represents many survivors. But that is only because an agenda of "ethnic cleansing" has succeeded, he said.

"The international community has forgotten about Darfur," said Osman, a quiet man with watchful eyes. "You do not see us on the front page of your papers, even though in many ways, our suffering is worse than it was a year ago." Bloody confrontations between rebels and militia forces still flare up, and nearly 2 million displaced people are confined to camps. The militias attack those who try to reclaim their land, he said. While Deputy Secretary of State Robert B. Zoellick was in Sudan trying to shore up the country's tenuous peace, Osman was in the U.S. to be honored for his legal aid work and to plead for help in ending the violence and achieving justice.

Sudan is slated to take over the rotating African Union presidency in January. That will put the Khartoum regime in charge of the 7,000 AU peacekeepers meant to be protecting people in Darfur from militias widely seen as supported by the government.

State Department officials in Washington met Osman with sympathy, but little else no promises for action or additional support for AU troops. In fact, Congress already cut \$50 million in support for Darfur peacekeeping troops. In the absence of hope in Darfur, Osman has tried to provide at least a record of alleged war crimes perpetrated against the region's tribes. At most, he offers a chance for justice.

For two decades, Osman defended people who were allegedly arbitrarily detained and tortured by the Sudanese government. After Khartoum

LAW *event*

Workshop on gender justice

A gender justice-training programme was held in the BRAC Training and Resource Centre from November 12 to 14, 2005. The workshop was organised by Academy for Educational Development with the assistance of USAID.

Clear understanding on gender and enhance the participants competency (knowledge, skill and attitude) to end violence against women and gender based violence was the main purpose of that workshop. It provided participants an opportunity to increase their conceptual understanding, analytical skill, awareness and sensitivity to a range of gender and related concepts and terminologies and VAW issues. Understanding of the historical and cultural aspects of gender construction in Bangladesh and increase participants skill to analyse the reason of women's subordination from historical structural point of view.

Different organisations from the different parts of the country were



participated in the workshop and shared their own perspective and values regarding the issue.

Facilitator Sheeba Hafiza, Director, HR department of BRAC and Khadija Leena from Gender and Diversity unit provide the participants information regarding the issue.

The workshop highlighted the gender concept, patriarchy and its origin, power sharing, gender mainstreaming, gender violence on

sociological perspective, right-based approach on gender, international and domestic legal standards on violence against women etc. The workshop seeks to highlight the issues that adversely affect women's lives and simultaneously bring out the linkages and interconnections of these seemingly disparate phenomena.

--Law Desk

LAW *network*

Hollow words on human rights at UN Information Society Summit

THE information revolution, spurred by unprecedented new advances in information and communication technologies, has transformed the way we think, work, socialize and communicate.

The new paradigm of human rights in the Internet age has provided unprecedented opportunities for freedom of expression. From cyber-dissidents to online journalists to the over 8 million bloggers, the world's most repressive regimes have nowhere to hide.

The UN World Summit on the Information Society (WSIS) was convened by the International Telecommunications Union (ITU) in 2001 to respond to the rapidly evolving technological landscape, bridge the "digital divide" between the info-rich and info-poor, and harness the power of new technologies to serve

the Millennium Development Goals.

However, despite the explicit aims of an inclusive and rights-based information society, many of the signatories to the WSIS Declaration of Principles continue to crack down on freedom of expression, censor the Internet and flaunt the basic standards of international law and human rights.

The appalling record of Tunisia the host country of WSIS in Phase II has seen cyber-dissidents jailed, Internet sites censored, human rights organizations harassed and independent news agencies closed. It is stifling the very rights and freedoms of expression the Summit is intended to promote.

China's extensive censorship of the Internet has deleted thousands of individual links or web pages it considered "dangerous" or "subversive".

In recent years, there has been a dramatic rise in the number of people who have been detained or sentenced for expressing their opinions online or downloading information.

In Syria, Internet censorship is rampant and several cyberdissidents have been detained for such charges as "unlawful use of the Internet" and posting material that is "detrimental to the reputation and security of the nation."

Amnesty International calls on all members states to keep human rights at the heart of the information society. The principles enshrined in the Universal Declaration on Human Rights must be upheld in the face of Internet censorship, threats to online privacy, and increasing violations of freedom of expression online.

Source: Amnesty International.

Leaders join hands to fight terrorism

The 13th South Asian summit raised the curtain with the leaders of the Saarc countries agreeing to fight terrorism unitedly and take bold steps to promote regional economic cooperation. They promised to build a South Asia where political harmony and economic integration would be the cornerstones of development, prosperity and peace. The leaders also vowed to face the common challenges in order to realise the aspirations of the 1.5 billion people of the region. Four countries, including Bangladesh, so far have ratified the Additional Protocol to Saarc Regional Convention on Counter terrorism aimed at curbing financing of terrorism effectively. Prime Minister Khaleda Zia expressed the hope that the remaining three countries would expedite the ratification process so that the instrument could be enforced by the end of this year. In his speech, Indian Prime Minister Dr Manmohan Singh said no Saarc country should allow its territory to be used against the interests of another member country and there should be 'zero tolerance' for cross-border terrorism and harbouring of hostile insurgent groups and criminal elements. -- *The Daily Star, November 13.*

Three major agreements signed

Saarc members signed three major agreements, all for facilitating intra-regional trade as the seven South Asian countries are going to launch a free trade area next year. The accords are Agreement on Mutual Administrative Assistance in Customs Matters, Agreement on Establishment of Saarc Arbitration Council, and Limited Multilateral Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in Tax Matters. Officials said the deals were struck at the state guesthouse Jamuna during the retreat of the Saarc heads of state or government. The foreign ministers of the member countries inked the agreements in presence of their heads of state or government. -- *UNB, Dhaka, November 14.*

BSF pushes in 21 Indians

Indian Border Security Forces (BSF) pushed in 21 Bangla speaking Muslims. BSF of Petroghar camp in Malda district pushed them into Bangladesh at pillar No 204 near Bhangabari BDR camp in Gomostapur upazila in Chapainawabganj. The pushed in people, including four children, seven women and 10 men, were collected from different areas including Delhi. The ejected people claimed they hailed from Bagerhat and Pirojpur districts, BDR sources said. The people would be pushed back soon, BDR official Lt Col Jahid Hasan said. -- *The Daily Star, November 14.*

JMB suicide bomber kills 2 judges

Outlawed Islamist outfit Jama'atul Mujahideen Bangladesh (JMB) has struck again, this time killing two senior assistant judges and wounding three people in a suicide bomb attack in Jhalakathi. The JMB operatives launched two attacks on judges and courts last month and vowed no respite in their attempt to force the judges to deliver judgements based on Islamic laws and until Islamic rule is established in the country.

Police arrested the bomber, JMB cadre Iftekhar Hasan Al Mamun, 28, who claimed him Mamun Ali, a member of the JMB suicide squad, and seized an unexploded bomb strapped to one of his thighs along with 24 leaflets of the banned organisation. The slain judges are Shaheed Sohel Ahmed, 35, senior assistant judge of Nalchhiti upazila, and Jagannath Pandey, 38, senior assistant judge of the Sadar upazila. The injured are Badsha Miah, 45, a milk trader, Abdul Mannan, 40, a peon of Jhalakathi Judge's Court. -- *The Daily Star, November 15.*

Islamists see court as biggest hurdle

Islamic militants have chosen to relentlessly attack the judiciary, as it is relatively easy to target the judges in the courtroom and upset the justice system, and also because they see the judiciary as the most obvious barrier to establishing Islamic rules, eminent lawyers and intelligence sources said. The deadly bomb attack on the Jhalakathi judges was the fourth in a row in which the court and the administrators of justice have been the prime target of the Islamic militants since the serial bomb blasts across the country on August 17. After the serial blasts, the militants threatened through a leaflet that they would be unrelenting in their efforts to establish Islamic rules. Investigators have no clear idea as to why the militants have chosen the members of the judiciary and the court premises as their targets of attack in pursuit of their goal. -- *The Daily Star, November 15.*

Gunmen for SC, HC judges

The government provided gunmen for the Supreme Court (SC) and High Court (HC) judges and tightened security at the Dhaka courts after two Jhalakathi judges were assassinated in a suicide bomb attack. The authorities, however, did not take any steps to ensure security of the lower court judges who asked for security after the brutal killing. The police department has admitted its inability to provide gunmen for all the judges at this moment. Bangladesh Judicial Service Association (BJSa), an organisation of judges, leaders met Chief Justice Syed JR Mudassir Husain and requested him to take steps for tightening security for all the judges across the country. The BJSa leaders said judges in the country are now under threat and unable to conduct the court proceedings fearing bomb attacks, sources said. -- *The Daily Star, November 16.*

London wants to fight terrorism with Dhaka

Visiting UK Minister of State for Foreign and Commonwealth Affairs Kim Howells MP said the British government wants to work together with Bangladesh to combat terrorism.

Emerging from a meeting with Foreign Minister M Morshed Khan, the British minister told the diplomatic correspondents that "killing of two judges in Bangladesh by terrorists is certainly a big signal for all of us and we must think it deeply and work relentlessly to defeat the terrorists." Replying to a question, he said the British government has been assisting Bangladesh police and will further provide skills development and efficiency enhancement training so that police here can tackle the terrorists. When asked whether the Bangladeshi government failed to contain the terrorists, Kim Howells said, "I don't think the government has failed because terrorism is now a trend and many countries of the world came under terrorist attacks. The terrorists hate democracy and the rule of law and thus want to jeopardise democratic atmosphere". -- *The Daily Star, November 16.*

Panicked judges threaten to cripple judiciary

Bangladesh Judicial Service Association (BJSa), an organisation of judges, threatened to paralyse the judiciary if any more judges are killed or injured by the militants. "If another judge is injured or killed, we'll cripple the judiciary, one of the three main organs of the state," BJSa Secretary General Rezaul Karim Khan said at a meeting of the judges and magistrates with Communications Minister Nazmul Huda. The first attack was made on courts three months ago but the government did not take any safety measures, said Khan, also the Dhaka divisional special judge. "Had the government taken effective measures, the two judges would not have to die," he said, referring to the killing of two senior assistant judges in a suicide bomb attack by Islamist militants in Jhalakathi on November 14. "It seems the country has no government," he observed. The communications minister, who attended the meeting as the in-charge of Dhaka district, said: "The government is not taking the issue of bomb attacks lightly, all the perpetrators will be dealt with a strong hand...I'll take the matter to the prime minister." -- *The Daily Star, November 17.*

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