



LAW opinion

Politics and practice of law in Bangladesh

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THE noble profession of law has journeyed through progression over centuries of legal history. It has re-shaped from being a King's affair to that of a charity work for many. The legal system of Bangladesh is at last seeing its light at the end of the dark tunnel as the judiciary is being separated from the Executive. We require and ardently await the present caretaker government's Law Adviser to accelerate the complete separation of the judiciary from the Executive.

Lawyers in our country has the enormous responsibilities to help the judiciary remain fair and to ensure that we remain the vanguard for the judiciary at a time when we declare our allegiance to the Bench as well. The various associations of lawyers must work together with the associations of judges to work their way forward towards having transparent and common understandings so that both sides of the coin remain transparent and remain as one unit towards meeting the goal of delivering free and fair justice to the common mass.

We would like to witness examples where the officers of the courts and the Judges have resolved their differences in a learned, honourable and dignified manner. Violence is not the way forward for any civilised society.

There are various means to influence the judges by the ruling political parties which may be variegated in the forms of alleviation at the benches, making appointment of judges and also through corrupt means of after retirement packages. We can hardly think of any leadership amongst lawyers in Bangladesh without political affiliations at present. It has become a common practice to hear speakers on microphone calling for political motivation which tend us to think whether we lawyers are obliged to enter into politics owing to our enlightened citizenship or owing to our knowledge of law or whether we are allowing ourselves to be drawn into the vortex of power-struggle to be part of the ruling authorities.

At a time when the whole nation looks forward to the men of law for their opinion as the guardians of the Constitution, we are failing them through in-fights amongst us. Time is not far when people will become extremely frustrated with power politics and will expect us to comment and forge our power in a construc-

tive manner so that we dare not criticise our own political connections so that people can keep confidence in us. The basic principle of a good chess player is to sacrifice pawns so that ultimately the queen can be

cornered and the board game can be won. There is no shame in accepting faults rather being hypocritical about it will eventually harm certain group.

It is a known fact that most of the political parties in our country engage themselves in

power politics and do not engage themselves in constructive criticism of the other as that would require research, wisdom and time. We would like to see the political parties in the

opposition not only criticising the ruling party but also pointing out the way out. In UK, there have been innumerable instances where the ruling Labour Government accepted the Conservative political party's opinion in running the country and at the same time acknowledged their failures but when the opinion of the Conservative proved to be wrong when implemented in practice, the ruling Labour party did not hesitate to snatch the option of addressing the public in convincing that how bad it would be to choose such a party whose opinion made them fail to reach the desired goal.

In the question of national interest, we would like to see all political parties standing on common grounds irrespective of their political beliefs. In UK, although the Liberal Democratic Party was vehemently against the Iraq invasion, they did pledge their support to the British soldiers once they were inside Iraq.

There are lack of nationalistic political ethos and ideologies amongst political parties. We do have our political manifestos but not many have their individualistic political approaches which were designed especially for the people of Bangladesh taking their individualistic entity as Bangladeshis. The British style democratic system may not be realistically applicable to Bangladeshi socio-economic climate where there is a lack of enlightened citizenship. The educated mass have the responsibility of making the common people aware of their constitutional rights and in being responsible citizens. Enforced general strikes may not always reflect open and uncompromised public opinions and at the same time attempts to thwart peaceful mass gatherings to protest against the government



decisions will not fail in achieving its goal in winning the public opinion if dispersed.

There is a history of enacted black laws in Bangladesh. These black laws have never been repudiated by any of the ruling political parties to ensure that they have the invisible whip to control the opposition. The lawyers of the country should engage to challenge the relevance of these black laws at present times through writs without being worried about their political bosses.

ASEAN and European Union have

progressed a long way in taking the assistance from lawyers in creating unified territorial codes so that human rights of their citizens can be respected. The lawyers of South Asia can come forward through research materials so that a common South Asian Human Rights Law can be drafted and SAARC can have some serious issues to ponder over instead of ending with having lavish banquets at the

cost of poor peoples' money. I am aware of a South Asian Association of Lawyers and they are being implored

herein to draft proposals for a South Asian Central Court to address human rights issues. We should stop being sceptical about our neighbours as it is the time of zonal economic growth.

Bangladesh is politically a very important country for the West as we are surrounded by neighbours not so favourable to the west. Burma, Nepal, China, West Bengal of India, and even Assam have serious political issues which are not to the liking of the Western bosses. We should reap the benefits of being a democratic country whereby our economic freedom can be achieved.

In UK, they have the House of Lords, in USA they have the Senate. We require a group of think-tanks wherefrom our media and even parliamentary bodies can seek wise opinions. The creation of a permanent national advisory body acceptable by all political parties may require time but the process should start. Lawyers can help in drafting a constitution for such a body.

To endure that lawyers are cautious about their own professionalism, they should be vigorously checked by disciplinary bodies at the Bar Council. Complaints against any lawyer (with evidence) should be seriously investigated by non-partisan members of the Bar. If there is any complaint against any lawyer, I wonder how that complaint can be addressed beyond doubt if that individual lawyer in question belongs to a certain political party and the investigating lawyer heading the investigation belongs to the other. The necessity of having Indemnity Insurance (although I am not aware of any Bangladeshi insurance company offering the service) by lawyers against malpractice and of having separate Clients Accounts and Office Accounts for their practice may help in achieving a better professional environment. Our Courts urgently require technical assistance in attaining a modern structure. A fully computerised network may help clients and lawyers cut the encumbrances of having to bribe the Peshkars and Shereshdars for hearing dates and in promulgating judgements.

Those of us who are living abroad can only be persuasive in our views but the real responsibilities lie on those lucky ones who are living in Bangladesh in translating our dreams into reality.

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LAW news

US sees ICC in more benevolent light

"An international kangaroo court," thundered Sen. Jesse Helms. "A shady amalgam of every bad idea ever cooked up for world government," said Rep. Tom DeLay. The wrath of the two former conservative legislators was directed at the International Criminal Court around the time of its founding in 2002. As the comments suggest, the U.N.-mandated court presented a fat target for many in Congress - and the administration.

The concern was that American servicemen hunting down terrorists abroad might not be safe from politically motivated prosecutions. That concern remains, but the Bush administration is indicating a somewhat more benevolent overall view these days.

The court is the first permanent institution authorized to try individuals for genocide, crimes against humanity and war crimes when national courts are unable or unwilling to do so. Defenders of the court see it as a sorely needed "trap for tyrants."

When the administration formally rejected U.S. participation in May 2002, war crimes Ambassador Pierre-Richard Prosper said, "We've washed our hands (of the ICC process); it's over."

Well, not quite. While standing by its core opposition to ICC's claimed jurisdiction over Americans, the administration has noted with satisfaction that the court has swatted aside efforts by some groups to encourage ICC prosecutions of Americans in Iraq and elsewhere.

It also has relaxed sanctions on member countries that have refused to sign agreements with the United States to forbid ICC prosecutions of Americans on their territory. U.S. military training programs in many countries that had been suspended were restored because the Pentagon concluded the restrictions were undermining efforts to combat terrorist threats.

The most obvious example of an American change in attitude concerns Sudan. In 2005, the administration dropped a long-running effort to create a "hybrid" U.N.-African Union court to try Sudanese war criminals, deciding instead to accept ICC jurisdiction in the country.

"At least as a matter of policy, not only do we not oppose the ICC's investigation and prosecutions in Sudan but we support its investigation and prosecution of those atrocities," said John Bellinger, the State Department's top legal adviser.

In February, the ICC's prosecutor plans to submit evidence of crimes against humanity in Sudan to the court's judges, who must review the evidence and decide whether the case should proceed. The administration may even cooperate directly with the ICC on Sudan in appropriate cases.

The State Department also strongly supports ICC indictments in 2005 of five Ugandans (one has since died) accused of war crimes in the country's two-decade-old civil conflict. "The ICC indictments (are) extremely important and it is part of the process of accountability, and ending impunity," said Jendayi Frazer, the department's top African affairs official, speaking in Northern Uganda last June. All four indictees are members of the Lord's Resistance Army, derided by President Bush this past March as a "barbaric rebel cult."

The verbal attacks by U.S. critics were particularly virulent in early 2002 at the outset of the struggle against terrorism. Thousands of U.S. troops were deployed in Afghanistan as part of that effort. As of three years ago, there were more than 350,000 U.S. troops serving abroad.

There was a strong feeling here that these troops did not need ICC prosecutors looking over their shoulders, on the alert for misdeeds. To the extent that U.S. troops engage in excesses, the critics argued, the United States has national judicial processes to deal with them. They cite the prosecutions of soldiers linked to the Abu Ghraib scandal in Iraq.

To some, it was particularly galling that the ICC claimed jurisdiction over Americans even though the United States was not a member of the court. On this point, the administration has been unbending in its opposition to the ICC. "Our policy toward the ICC has not changed," Bellinger says. "We are strongly opposed to the ICC's covering us. In that regard, our policy is crystal clear."

Source: Associated Press.

HUMAN RIGHTS monitor

Endangered female migration

K N M HOSSAINUL HAQUE

IF twenty-first century is the age of migration, feminisation of migration is the current trend of this age. It is evident from the fact that 48 percent or around 185 million of the international migrants are women. Some women-centric niches like ready made garments, nursing, housework, childcare, elderly care etc.

psychological, social and cultural orientations. Most women of Bangladesh and other developing countries lack skills for formal sector employment. But they are at home in housework, childcare and elderly care due to their traditional gender roles. That is why in Asia, where women have traditionally enjoyed restricted mobility, they now constitute half of the migrant worker population. Furthermore, in some Asian countries, women

like them, our state of female migration is the stark opposite, thanks to our gender biased migration policy.

Female labour migration: Evolving policy

According to government estimates, women are less than 1 percent of the total labour migration from Bangladesh. This has largely increased over the last half decade. Saudi Arabia, UAE, Kuwait and Jordan are currently the major destinations of Bangladeshi women migrant workers.

Initially, when the labour migration began, no specific policy attention was given to female labour migration. Rather, our public policy on migration soon became a manifestation of gender discrimination at state level. In 1981, a presidential order was issued that approved labour migration of professional and skilled women but banned that of semi-skilled and unskilled women. In 1988, the ban was eased and it was provided that a woman can migrate for semi-skilled and unskilled jobs if she is accompanied by a male guardian. But in 1997, again a rigorous ban was slapped on female migration. This was a near complete ban since many of the skilled jobs like nurse, typist, secretarial assistant and garment or factory worker were also included in the ban.

Policy shift and rise in female labour migration

By the year 2003, government considerably revised its policy on female labour migration. Previously banned skilled jobs were off the hook by now. Moreover, unlike any other time before, labour migration of semi-

skilled women were allowed. Although subject to numerous conditions, allowing female migration for jobs like housework is indeed a great policy shift.

The new policy has set conditions for all the stakeholders of female labour migration: women, employers and recruiters. A woman has to be 35 years of age or more, physically fit and in good health to take up housework abroad. Besides, she will have to submit a 'No Objection Certificate' from her legal guardian. Moreover, she will have to undergo minimum 30 days of training in handling and operation of all kinds of household equipment and electronic apparatus.

Before recruiting women, a labour recruiting agency will have to set up a training centre for housework training approved by the expatriates' welfare and overseas employment ministry. This should have a minimum floorspace of 10,000 square feet, dormitory/hostel facilities and be located in a city centre. The trainee-ratio will have to be 1:30. Married women accompanied by husbands will be preferred for recruitment as house workers. The recruiting agencies must deposit an amount of US\$550 against each worker as security money. The minimum salary of women workers will be pre-fixed, depending upon the country of employment. Free health care, social security and insurance will have to be provided in addition. The employer will provide free air ticket after completion of the tenure.

Recruiting agencies cannot claim any service charge, from female workers except government prescribed fees, taxes and training expenses, which shall not exceed

10,000 taka per person. They have to ensure that the workers are paid their salary on monthly basis. This cannot be delayed by more than two months under any circumstance. The contract must not be of less than two years. Any violation of the conditions determined will be treated as a punishable offence and licence of the recruiting agency concerned will be revoked as per Emigration Ordinance of 1982.

Policy of giving preference to married women in recruitment has apparently pushed up women's labour migration. Because now a wife's migration necessarily means husband's migration as well. That is why female labour migration shot up +93 percent from 1,217 in 2002 to 2,353 in 2003. In 2004, Bangladesh witnessed the greatest annual growth of female labour migration: 9,350 or about 400 percent. A total of 11,703 women migrated in 2004. This number further grew to 14,063 in 2005.

Post policy-shift scenario: continuous challenges

What migration statistics of the preceding years tell us, majority of our labour migration take place in semi-skilled and unskilled jobs. Like their male counterparts, our females also have advantage in such jobs. As discussed in the beginning, emergence of some women-specific niches in global labour market have further broadened this advantage. The primary beneficiaries of unskilled and semi-skilled labour migration are the country's poor. Because due to their lower educational and skill level, it is only through such jobs that they can participate in labour migration and reap its benefits for getting out of poverty. Like in other

parts of the world, poverty has a gender face in Bangladesh. While about a fifth of the population lives below poverty line, incidence of poverty is highest among the women. In every respect, ranging from health and education to nutrition and income, women are the poorest of the poor. Semi-skilled and unskilled migration is a prospective livelihood option for the poor women as it is with the poor men. In this circumstance, policy restriction on female labour migration will not be able to curb it. Rather it will exacerbate unsafe female migration that might result in harmful consequences (i.e. trafficking) for the migrating women.

Although greatest increase in female migration has been witnessed in recent years, it is still nothing compared to male migration. Female migration was little over 5.5 percent of total migration flow in 2005. It is a great leap indeed from 2002 when the ratio was 0.5 percent. But it is meager if we take into account the huge demand for semi-skilled and unskilled female labour for jobs like housework, childcare and elderly care. Bangladesh is well placed to supply that labour as we have an ever growing surplus labour market where many poor women are desperately looking for better livelihood options who are traditionally capable in the aforementioned jobs. To suit their needs, migration policy will have to ensure their greater but safe international mobility. In this circumstance, government's policy shift about female migration can be praised as the initial step towards a gender-sensitive migration policy. But some further changes are yet to



be made to free the migration policy of gender bias.

Seven agencies (now approved by government) are not sufficient for facilitating the rising tide of women migration for housework and other such low-skilled and unskilled jobs. Government lacks appropriate monitoring mechanism to ensure whether women are over-charged by the recruiting agencies and employers are paying salaries timely. The minimum age of 35 years is also problematic.

Challenges of being a house-worker abroad include multidimensional nature of the job, new socio-cultural setting and different weather. Women younger than 35 years are much more capable to adapt to these changes than the older ones.

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have emerged in global labour market. Women from least developed countries like Bangladesh have comparative advantage in the last three of the above-mentioned sectors. These types of jobs require less of formal training and more of

dominate labour migration. In late 2000, women were 69 percent, 70 percent and 67 percent of labour migration respectively from the Philippines, Indonesia and Sri Lanka. Although Bangladesh is also a major labour sending country