



LAW opinion

# Independent judiciary: Some proposals

Sheikh Hafizur Rahman Karzon

AN independent judiciary is sine qua non for any democratic polity. The judges are put on a high pedestal. In countries with written constitutions the courts are regarded as temples of justice, the judges its oracles.

Constitutional supremacy presupposes the existence of a strong neutral organ, namely judiciary, which was entrenched in the original Constitution of Bangladesh, and undone by the Fourth Amendment.

Later on, some partial steps were taken to reinstate the independence of the judiciary, but there was no headway until 1999 when the Appellate Division gave a 12-point direction, in the Masdar Hossain case, to separate the judiciary.

The people had to wait a long time to see the publication of a gazette notification of four rules which the caretaker government took only five days to issue, to the dismay of previous democratic governments which passed seven years without doing it. The legal experts and civil society have lauded the initiative of the caretaker government, as they consider it the first step toward separating the judiciary from the executive.

Under the present scheme, if it goes smoothly, a Judicial Recruitment Commission will be established which will take the responsibility of the Public Service Commission and finalise appointments of judicial officers (of lower judiciary) through competitive examinations. A Judicial Pay Commission and a Judicial Service Commission will be formed to deal with the salary structure, posting, promotion, and disciplinary actions of the judges.

I, like other sentient people, also highly appreciate the steps of the caretaker government, but want to point my finger at the appointment procedure of the judges of the Supreme Court and allegations of corruption in the judiciary, both lower and higher.

The original Constitution placed the judiciary in an independent position so that



it could keep check and balance and act as the guardian of the constitution. In 1975, the Awami League government made the judiciary subservient to the capricious authority of the executive.

Numerically, five negative sides of the judiciary have come to the fore in the past years. First, the executive is appointing judges of the higher judiciary on political consideration, which affects the quality, integrity and high judicial standards of judges.

Under the existing constitutional scheme (articles 95 and 98), the law ministry prepares a list of persons from among the advocates of the Supreme Court, district judges and civil servants to be appointed as additional judges of the High Court Division for two years. The list is then sent to the office of the prime minister for her/his consideration, and then to the president for final approval.

After the completion of two years term, the additional judges are given fresh and

permanent appointment to the High Court Division, popularly known as "confirmation of judges."

The executive has no constitutional obligation to consult the chief justice either during preparation of the list or confirmation of additional judges, but there is a convention of consulting the chief justice during preparation of the list and their confirmation.

This practice has been consistently followed from the British period. Unfortunately, this was violated by the BNP government in 1994 when it appointed some additional judges without consulting the chief justice.

Second, confirmation of the additional judges is vested in the executive; hence it has been using power unscrupulously by not confirming the judges. In the last 20 years 22 judges were not confirmed on completion of their two-year period. Among them, 16 had to go back to the bar during the BNP-Jamaat government because they

were appointed by the Awami League government, which, itself, was also alleged to have selected the judges of the apex court on political considerations.

In 2003, the BNP-Jamaat government confirmed two additional judges out of eight, though the chief justice recommended confirmation of six additional judges. The same government confirmed services of 17 additional judges on August 22, 2006, ignoring the chief justice's recommendation to appoint 15 on the basis of their performance. In the confirmation list the government included two more judges, one of whom triggered a controversy as the Supreme Court Bar Association questioned the genuineness of his certificate.

Third, the executive violates seniority in appointing judges in the Appellate Division to place like-minded judges in the apex court. Starting from 1976, different governments violated seniority more than ten times.

Fourth, the appointment of chief justice, after the introduction of the Thirteenth Amendment, has been in danger of being starkly politicised, which the BNP-Jamaat government did by ignoring seniority, and increasing the age for judges. It outraged the 14-party alliance, and they created a situation in which Justice K. M. Hasan was compelled to refuse the post of chief adviser to the caretaker government.

The provision for appointing the chief adviser from among the retired chief justices and judges of the Appellate Division has, some contend, vitiated the whole higher judiciary.

Fifth, at least two judges of the Supreme Court resigned because of corruption charges. In a survey report of Transparency International, the police department and lower judiciary have been identified as the most corrupt service organisations. 83 and 75 percent of the citizens, respectively, fall victim to corruption in the police department and the judiciary when they require assistance of these departments (The Daily

Bhorer Kagoj, December 21, 2002.).

Given the present situation, if we cannot stop appointment of judges of the Supreme Court on political considerations, and curb corruption of judiciary, it will be dangerous to give unfettered power to a group of corrupt political stalwarts.

The revival of the provisions of the original Constitution may not suffice, rather we should think of introducing some well-guarded method of appointing judges of the higher judiciary.

There shall be a constitutional body comprised of the president, prime minister, speaker, leader of opposition, chief justice, last retired chief justice, chief adviser of the immediately past caretaker government, attorney general, president of the Supreme Court Bar Association, vice-chairman of the Bar Council, and senior most five advocates of the Supreme Court, for appointing judges to the High Court Division.

This body will appoint judges to the High Court Division from among advocates of the Supreme Court, district judges, district magistrates, university teachers, law researchers, and human rights leaders.

The registrar of the Supreme Court will prepare a list of probable candidates on the basis of their academic credentials, professional efficiency, honesty and commitment to rule of law and justice.

The constitutional body will then finalise the appointment of the High Court Division judges. The judges of the Appellate Division and the chief justice will be appointed according to seniority, adherence to which will be mandatory for the executive.

The author is an Assistant Professor, Department of Law, University of Dhaka.

LAW news



## Court upholds freeze on Islamic charity

A federal appeals court of US upheld the government's decision to freeze the assets of a Missouri-based Islamic charity with alleged links to a foreign group that supports terrorism. The Treasury Department claims the Islamic American Relief Agency-USA, of Columbia, Mo., is an affiliate of a Sudanese charity, the similarly named Islamic African Relief Agency accused of financing al-Qaida and other terrorist organizations. The U.S. Court of Appeals for the District of Columbia Circuit agreed with a lower court's 2005 decision finding that the charity is a branch of the Sudanese-based agency. Records describe the Missouri charity as an "affiliate" and a "partner" of the Sudanese group, and the charity sought permission to transfer funds to the group, the appeals court said. The Missouri charity did not contest the terrorist designation of the Sudanese group, but claims the organizations have independent leaders and separate bank accounts. The Missouri-based group was founded by a Sudanese immigrant in 1985 to raise money for humanitarian activities around the world. In 2004, federal agents raided the group's headquarters in Columbia, Mo., as part of a criminal investigation. No criminal charges have been filed against the charity or its employees.

While the court found the unclassified evidence was "not overwhelming," the three-judge panel noted that its review of national security cases is "extremely deferential" to the government.

The appeals court also rejected the charity's argument that blocking its



assets violated its rights under the Constitution. The law is clear that "there is no constitutional right to fund terrorism," the court said. "Where an organization is found to have supported terrorism, government actions to suspend that support are not unconstitutional."

Source: Associated Press

RIGHTS corner



## Child labour and lost opportunities for an educated nation

Yasir Mustafa

"Why do we have to pay the price of poverty? We didn't create poverty, adults did." Sultana, a twelve-year garment factory worker from Bangladesh, trafficked to Thailand, 14 February, 1998.

A few days ago, I went to the hardware shops near the Banani Bazaar to buy some materials for a design technology project. On the way back, I saw some children aged between 8 and 14 working in the shops and helping buyers to carry out the goods. I called one of those child workers. As I'm doing a project to raise awareness of child labour, I wanted to interview some of them and I took this opportunity.

"What is your name?" I asked one of them. "Tajul" He answered. Tajul is 9 years old and works as a porter in Banani Bazaar. He is the youngest among his four brothers and sister.

"Do you go to school, Tajul?" I asked him and he said he doesn't because his other siblings go to school and his family is not able to bear his educational expenses. It actually surprised me because the government provides primary education free for everyone, but lots of children are deprived of this opportunity.

Then I asked him if he gets a chance to go to school, would he take it or not. He was so glad to hear my offer. He agreed but he wanted to start from next year. He also introduced me to his other friends who work with him and want to go to school. I was surprised after seeing their eagerness for education.

### How big is the problem?

The child labour statistics varies by the sources. The child labour survey conducted in 2005 by Bangladesh Bureau of Statistics (BBS) was called 'Baseline Survey to Determine Hazardous Child Labour Sectors in Bangladesh-2005'. According to this, there are 7.9 million child workers in Bangladesh. The total number of working children aged 5 to 17 years in the rural areas of Bangladesh is 6.4 million whereas only 1.5 million children work in cities. Among these children, 1.3 million are estimated to work 43 hours or more per week. 52 percent of these workers were abused and scolded and 16.7 percent were physically abused.

There are thousands of Tajuls all over Bangladesh for whom poverty is the main obstacle to education. Bangladesh is one of the developing countries of the third world where about 55 million (approx. 40% of total population) people still live below the poverty level. Poverty plays a crucial role in child labour. Most of these children are from poor families and working for survival. Although government provides free education for everyone, in some cases, 'free' public education appears very expensive for them because they're expected to buy their books and stationery! So, education becomes a financial burden for them and they loose interest for it. From the story of Tajul, we can easily realise that poverty is the main cause of child labour in Bangladesh. Almost 45 percent of child workers could not attend school because they can't afford the expenses and 19.5 percent child workers could not go to school due to their work.

Most of the people in the rural areas of Bangladesh are illiterate and tend to have more children even though they're unable to bear the family expenditures. Most of the children from those families are deprived of schooling and start working for family income. Another reason for child labour is that illiterate people are unable to understand the importance of education and prioritize income more than education. Bangladesh has a father-led society



and most of the family depends on the father's income. They have to take care of the family after the death of their father. When their father dies, elder children of the family as well as the younger, have to work for survival. So, each year lots of children start working this way.

Child workers usually cost less than adult workers and some deceitful employers use them in their factories to get more profit. In most cases, working condition is poor and unsafe for the children. The biggest advantage of it is the children are less likely to complain and rebel against the superiors if they are paid lower wages than what they are supposed to be paid.

Children are the future citizens of a country. What will happen if this future gets damaged just because of our unawareness or intention of making a profit by using these children to work for our benefit? We should not let this future to be drowned in the dark. These children working as labour are the future generation of our country, but they are dealing with machinery instead of having books in their hands. Although it is difficult to stop child labour or prevent it from happening but we can try to control it. So, we all have to work together to ensure these children's future.

### What can be done?

To break the chain of child labour is a long process and it can't be done overnight. Many organisations are trying to address this issue but are facing immense challenges. As individuals, each of us should do something to save our future generation. Our small contribution can make these children happy and help them to lead a better life!

Poverty is the main cause of the child labour. So to stop child labour, we should first focus on reducing poverty. Most of the poor and developing countries like Bangladesh have internal payment difficulty. To balance this payment difficulty, International Monetary Fund (IMF) applies a Structural Adjustment Programme (SAP) for respective country which pressurises government to cut down social spending on health and education. It has hardest impact on poor people's life. These SAP projects are not helping people to lead a better life. So, we have to get rid of this kind of programmes. The donations from the developed countries should be spent on the people's health and education properly. We can reduce our poverty by making sure that the money and relief that are allocated for the poor people are given to them properly.

To stop child labour, we also have to make sure that

the parents don't have to send their children to work for the family budget. If the adults get enough wages to survive, they don't have to depend on their children to support family expenses. It can be done by providing the youth training to become more skilled which will help them to increase their wages

Child labour situation is worse in countries where children don't get proper education. Most of the people in the rural areas of Bangladesh are incapable to realise the importance of education. Besides free education government can also make vocational education available for everyone. People who are not able to go to school for longer period because they have to support their family can take these vocational trainings which will help them to improve their working skills.

According to CRC (Convention of Right of Children) any person below 18 years is considered as child. International convention like CRC and national legislative guidelines give authorities the right to convict any person who treats badly with the children. In 1990, 188 United Nations member countries approved the Convention of the Right of Children (CRC) to use it as monitoring tool. Despite that fact, very few of us have respect for Child Rights and some of us don't even know about it. To establish the rights of the children, we should abide by the CRC code and government can implement the laws properly where applicable. Many multi-national companies adopted a code of conduct to stop using children under age 15 in the factories. So, all companies should follow this policy to stop child labour.

Elimination of child labour is a long process and it can't be done without the help of everyone. The best way to stop child abuse is to make people aware about child rights. We should encourage the local communities to treat them well.

We must do something to save and take care of these children. We have to carry out their dreams towards realisation. It's not their fault they are poor. They also have rights to live like any other children.

The writer is a student of International school Dhaka.

LAW week



### Bribery, political consideration

#### Selection of 757 cops to be cancelled

The police authorities will cancel the selection of 757 sub-inspectors (SIs) and sergeants recruited through gross irregularities including bribery, political influence and nepotism in the last days of the immediate past BNP-led four-party rule. Inspector General of Police (IGP) Nur Mohammad told The Daily Star, confirming the decision taken in the light of the findings of a recent probe. Though the result was published last October, the authorities did not hand the new recruits appointment letters or start their training. They will soon issue a circular for fresh recruitment to the posts—496 male SIs, 41 female SIs and 220 sergeants. "We'll complete the recruitment in two or three months," said the IGP. Meantime, several police officers have called for the caretaker government to free the police administration of those who were appointed on political consideration and through underhand dealings. They observed that rampant politicisation through appointments, promotions and postings during the five years of the coalition government has weakened the police administration. - The Daily Star, February 11.

### Judiciary finally separated

The president promulgated Criminal Procedure Code (Amendment) Ordinance 2007 completing the legal process of separating the judiciary from the executive. "President Iajuddin Ahmed has approved the Criminal Procedure Code (Amendment) Ordinance 2007 for separation of the judiciary," said a communiqué from Bangabhaban. Attorney General barrister Fida M Kamal told UNB over cellphone that he would submit the Ordinance before the full hierarchy of the Supreme Court to meet the latest deadline. The long-awaited ordinance to amend the century-old Criminal Procedure Code (CrPC) for separating the magistracy from the executive control was earlier endorsed by the council of advisors of the caretaker government. Now, the promulgation of the ordinance completed the entire process of separating the judiciary from the executive in compliance with the Supreme Court edicts given seven years ago. Earlier, the present caretaker government had issued four rules relating to the Judicial Service Commission and its regulating mechanisms as per the Supreme Court directives in the landmark judgment in the Masdar Hossain case. Since the delivery of judgment for separating the judiciary from the executive by the Supreme Court in December 1999, none of the successive governments fulfilled the constitutional mandate. Rather, the past governments delayed the process by extending the time repeatedly on different excuses. -Unb, Dhaka, February 12.

### AL scraps fatwa deal with bigots

Awami League (AL) cancelled the controversial five-point Memorandum of Understanding (MoU) over issuance of fatwas with Bangladesh Khelafat Majlis (BKM). AL also cancelled all deals, agreements and seat sharing with different political parties in the grand alliance including 14-party coalition, which had been made prior to the cancellation of January 22 parliamentary polls. "We had made some deals and agreements with some parties as part of our election strategy centring the January 22 poll. Since the election was cancelled, those deals and agreements have automatically been cancelled," AL Acting General Secretary Obaidul Quader told The Daily Star. AL General Secretary Abdul Jalil signed the MoU going to the Azimpur residence of BKM Chairman Azizul Haque on December 23 last year, which stipulated that certified alements (Islamic clerics) would have the authority to issue fatwas in the country if the grand electoral alliance could come to power. The other points of the MoU included promises to impose a bar on enacting any law that would go against Quranic values, initiation of steps for proper implementation of the government initiative to recognise the degrees awarded by Qaumi Madrasas, and a ban on criticisms of Prophet Muhammad. -The Daily Star, February 13.

### 8th Parliament

#### Quorum crisis costs country Tk 20cr

Around Tk 20 crore went down the drain as members of the 8th parliament did not attend the sessions in time leading to quorum crisis while the House failed to resolve audit objections involving over Tk 12,500 crore. The findings came out in a Transparency International Bangladesh (TIB) research into the activities of the 8th Jatiya Sangsad. Of Tk 13,154 crore audit objections concerning 15 ministries, the communications ministry alone had Tk 12,775 crore. The Public Accounts Committee (Pac) could realise only Tk 12 crore from it and left the rest for the government to deal with. TIB Research Officer Tanvir Mahmud published the findings at a press conference at the Jatiya Press Club

yesterday. Prof Muzaffer Ahmad, chairman of TIB board of trustees, spoke on the research outcome. Throughout the tenure, the assembly had no sincere discussion on corruption, power crisis and terrorism. They were rather busy playing party politics in unscheduled discussions, the study noted. The sittings began on time only for nine occasions in the last five years. Out of a total of 373 working days, the prime minister and leader of the opposition did not show up for 178 and 328 days respectively. The opposition stayed away from the House proceedings for 223 days. - The Daily Star, February 13.

### Corrupt politicians, civil servants, magnates—none will be spared

Army chief Lt Gen Moeen U Ahmed said the armed forces are assisting the government in its crusade against corruption that has eaten up the vitals of the nation. Addressing a cross section of people at Borguna Circuit House, he made it clear that the civil government is ruling the country. "No martial law exists. The president has declared emergency under a compelling situation." "The armed forces are only assisting the civil administration...we all in the civil administration and the army is carrying out our respective responsibility," he added. About corruption that had bedeviled the nation, the army chief said, "Corruption had engulfed every sphere of life. This cannot be allowed to continue. Number of corrupt elements is not many but 95 percent of the country's population suffered from the pangs caused by corruption." Lashing at dishonest politicians without naming anyone Gen Moeen said, "It is not possible to count by calculator the enormous wealth they have accumulated. Their irresistible lust for wealth led them to gobble up the CI sheets allotted by the government for distribution as relief among the poor." -Unb, Dhaka, February 14.

### Brig Sakhawat made election commissioner

Brigadier General (ret'd) M Sakhawat Hossain was appointed as an election commissioner. President Iajuddin Ahmed made the appointment completing reconstitution of the Election Commission (EC) as the caretaker government had said the new commission would comprise three members. The president on February 4 appointed former bureaucrat ATM Shamsul Huda as the chief election commissioner (CEC), and Sohul Hossain as an election commissioner. With the former military bureaucrat's swearing into the office, the EC for the first time in its history will get a member with military background. Meanwhile, CEC ATM Shamsul Huda and Election Commissioner Sohul Hossain met Chief Adviser Fakhruddin Ahmed at his office. The CEC and the election commissioner informed the chief adviser (CA) that they are preparing a set of proposals for reforms in the electoral system, which will take a few more days to be completed, according to sources. Sources in the EC Secretariat said the commission will propose to make political parties' registration mandatory and to increase the ceiling on election expenditure in an effort to thwart the influence of black money on polls. -The Daily Star, February 14.

### UNDP pledges support in political reform

The United Nations Development Programme (UNDP) assured the caretaker government of all-possible support to carry out its political and economic reforms. UN Resident Coordinator and UNDP Resident Representative in Bangladesh Renata Lok Dessallien gave the assurance when she paid a courtesy call on Chief Adviser Fakhruddin Ahmed at his office. "We can assist Bangladesh in many ways and we're supportive of the present government," the UNDP official said. She said people's mammoth support and expectations have given the government a unique opportunity to give democracy a strong footing and carry out reforms. "Such opportunity does not come always," she added. Chief Adviser Fakhruddin Ahmed said the caretaker government is accountable to the people and press is free despite state of emergency. "We're accountable in many ways," he told the UNDP representative. He said the caretaker government is working to fulfill people's expectations as much as possible through identifying the high priority tasks on short-term basis and also taking long-term initiatives to be implemented by the next government. -Unb, Dhaka, February 14.

### Corresponding with the Law Desk

Please send your mails, queries, and opinions to: Law Desk, The Daily Star 19 Karwan Bazar, Dhaka-1215; telephone 8 1 2 4 9 4 4, 8 1 2 4 9 5 5, fax 8 1 2 5 1 5 5; e mail <dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net