

LAW *opinion*

ICT in the access to justice

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THE justice system is renowned for its ties with tradition. These ties combined with a lack of understanding of Information Technology has formed strong resistance to effective use of new technologies in the court system. So, in most parts of the world, unlike other areas of government, justice system is less advanced to implement the technology. But in this race (not to accept new technology in justice system) our country could be the champion in comparison to the neighbours.

Access and Communication are synonyms to some extent. For some improvement of communication system obviously can ease the access to not only justice but in every aspect of society. Not only access to justice but also the whole judicial system has been changed because of the improvement of the information and communication technology. An example could be the introduction of 911/999 numbers for police.

From the general perspective this change was a fairly straightforward procedure. It involved a mere 'technological replacement' -- from the old manual to a new electronic technology. For some, this was a minor change, a change in form not function, since the functionality of the previous judicial system remained the same. Staff were simply being given a more appropriate tool to perform their jobs. However, as this paper will demonstrate, the process was far more complicated. It involved the transformation of a stable working model into a new hybrid form of judicial system.

This paper highlights the complexity of the attempts to create this 'new' hybrid entity -- human and machine, body and computer -- and argues that part of this complexity derives from the fact that it presupposes a change in

the people's reality and identity. A crime reported to police in person, that shares his cognitive and personal experience, is qualitatively different from that of the 911/999 calls or even an sms via mobile phone.

So, there is an enormous job to do, now the question is from where to start. Mr Victor Perton, MP, Chairman of the Law Reform Committee of Australia said, "A useful start in formulating solutions for the justice area is to ask: How would one organise and administer a justice system if one were to devise a legal system today, given the historical context and politics surrounding the existing justice system?"

A comparison with neighbours

I had the opportunity to visit and examine two neighbouring countries' (India and Bhutan) recent implementation of computerised justice system. In India the computerisation of courts had been advanced a great deal since the incorporation of National Informatics System in 1990. It has been in use since then and now all court activities are computerised. With much of my surprise Bhutan, the small kingdom, has also taken positive step towards computerisation. I have seen similar computerised case management. Even the judge also takes his laptop in the courtroom and could type his judgements instantly. This is something unique I have seen, even not in UK or Singapore. The Honourable Dasho Lungten Dubgyur, Drangpon (Judge) was very kind to demonstrate the whole functions of the court. All the officials of the Paro District Court are using computers. They have a very modern software (since 2003) that enables a complete case management from filing to judgement.

Technology and the court system

If we look at the everyday job of the Supreme Court caselists is a major cost. Counselist is scheduling of cases to be heard by the courts on the following day. The caselist is the backbone of all courts as no court can function without that day's caselist. Hence this has become very critical in all the courts. The caselists of Supreme Courts are available in printed form. This is a huge job, in terms of both workload and cost. On the other hand in India there is a part in the NIC (National Informatics Centre) Web Servers where this list is available. As the Supreme Court of India and all the 18 High Courts and their 10 Benches are fully computerised, all these courts generate daily and weekly caselists from the computer servers installed by NIC. The previous manual process used to cost each High Court lakhs of Rupees every year. By making the caselists available on Internet, no High Court is incurring any expenditure as they are using the already available infrastructure and the software of NIC. Ever since NIC took up computerization in Supreme Court of India in 1990, many applications have been computerized which have impact on litigants. The following are some of the applications which have been successfully implemented at Supreme Court and 18 High Courts of India, and these applications have either direct or indirect impact.

List of Business Information System (LOBIS), is about scheduling of cases to be heard by the courts on the following day. It enabled the Registries of Supreme Court and High Courts in eliminating manual process of caselist generation thus any manipulation by vested interests. These databases contain details of fresh cases, disposed of and pending cases. It is the backbone application of every court. As caselists are generated automatically by the computer

manual intervention has been eliminated resulting in generation of caselist in time without any hassle. Cases are listed strictly in chronological order of date of filing, eliminating irregularities. All cases having the same law point(s) to be decided by the courts are bunched/grouped and posted before one bench. This has helped the courts in faster disposal of cases. It has become simpler to recall dismissed cases when review petitions are filed. On the spot reliable and instantaneous statistical reports are generated. It has helped Registry of Supreme Court in streamlining its day to day activities to achieve one of the main objectives of COURTIS Project.

Filing counter computerization is another step forward in the Supreme Court of India and all High Courts. Fresh cases are filed only before the computerized filing counters. As the advocates stand in queue for filing cases before the counters, the data entry operator enters preliminary details required for registration such as party names, advocate details, etc. The computer terminal at the query counter is used to attend to the queries of the litigants on the spot. The defects, if any, are listed out and handed over to the litigants/advocates for rectification. Time limitation is also checked by the system automatically. The filing process has been made easy and the advocates/litigants need not wait for a long time in the queue. The amount collected towards court fee in a day is automatically calculated thus saving the court official's time. Query counter helps the litigants avoid going around the sections to find out the filing status. Filing process is orderly which saves time and efforts of advocates and court officials.

COURTINIC is about providing Supreme Court's pending case status information to litigants/advocates on any node of NICNET. COURTINIC

answers about two hundred queries of litigants/advocates per day all over the country on the status of their pending cases. It is available on nominal charges. Primarily COURTINIC information is available in all NIC-High Court Computer Cells and in some District Court. It has been in use since 1993. The response to the COURTINIC from the public is over whelming, as pending cases' information is available at his/her district headquarters. It helps the litigants to avoid coming all over to Delhi from their place. The litigants need not find the status of their pending cases on phone as is the usual practice. Probably this facility is first of its kind in the world.

Technology and the legal profession

Not only the courts but the lawyers must change their tools too. With globalisation and rapid developments in information technology, legal practice as we know it today, will change beyond recognition in the next decade. Information technology ideally complements the clear trend towards globalisation of law and legal practice. Lawyers will have to learn to use technology to their advantage and come to terms with their changing role if they wish to continue to survive in the information age. Lawyers will also have to develop new markets in the information economy to remain competitive.

However, the commonwealth lawyers have yet to fully take advantage of the information age. While a few of the major firms are recognising the need to modernise practices, a majority still operate within a nineteenth century paradigm. I have found that many law firms had strange practices in relation to the Internet, restricting access rather than using it as a business and research tool. I am also very disappointed with the lack of



support and information provided by professional bodies such as the Bar Council to their members on new technologies and preparing for the information economy. Without such support, legal practices are very much under threat from the increasing availability of information through internet in all aspects of life. If we take the advantage of internet version of caselist then advocates would be able to receive the cause lists almost immediately after court. Even Advocate can generate their own caselists which will contain only their cases, thus helping them not go through hundreds of pages to locate their cases. As the application is available on Internet, the litigant public can easily find out whether their cases are coming for hearing or not, without bothering the advocates.

Summary of major recommendations

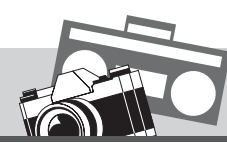
A centralised government entity should be formed to coordinate and implement a centralised approach to the introduction of technology across government, amalgamation of the administration and registry functions of all courts and tribunals, establishment of a law and technology clearing house that collaborates internationally to promote best practice uses of new technologies, comprehensive training for judges and court administrators on the use of new technologies. The Law Institutes and the Bar Council should provide greater support, information and training for members on new technologies. All courts and tribunals should provide electronic information to their lawyers for clients. The Department of Justice should be mandated to provide the best possible IT systems for justice. This includes providing the best possible case management system for all courts and tribunals enabling electronic

lodgement of documents and providing extensive electronic judicial support.

The Victorian government should evaluate and implement emerging automatic language translation software. The government should ensure greater integration of IT systems between the Department of Justice and other Departments specially the Department of ICT. Having looked at the possibilities IT offers the future of law, I believe the above recommendations represent a pragmatic approach to the implementation of IT.

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RIGHT *investigation*



Need to enact Consumer Protection Act

KHAN FERDOUSOUR RAHMAN

A consumer in a developed economy is literally submerged in an ocean of alternative choices, whereas his/her counterpart in a developing economy suffers from acute lack of purchasing power. Hence question is not what to buy, but how to buy? The first and foremost fundamental right of a person is 'Right to Life'. The main reason of weak consumer movement in Bangladesh is that consumers are not aware about their rights, whereas in market economy they are the king. Here it is still in its nascent stage as consumer vigilance grows with literacy and knowledge. As

Bangladesh Food Ordinance, 1959. But price hike of essential commodities is in alarming stage in the market in Bangladesh.

The said government changed the portfolio of the Commerce Minister twice within their term, but perhaps all of them failed to control the price of essentials. Some of them blamed the effect of market economy which does not allow controlling the market. But from the experience it has been seen that in open market economy the government should have more responsibilities to do so. Before the expiry of the tenure the Commerce Minister of immediate past government Mr. Hafizuddin Ahmed also suggested for a separate ministry to protect the consumers' rights and control price hike of essential com-

modities at the monthly luncheon meeting of the American Chamber of Commerce in Bangladesh (AmCham). The newly proposed ministry would monitor the commodity market to control the price spiral of essentials. The ministry would remain beyond the purview of the much talked the Purchase and Procurement Regulation (PPR) that helps it to

purchase any products in a short notice to stabilize the market. Presently the Commerce Ministry is mainly responsible for formulating export and import policies and unable to punish the syndicated people involved in the malpractice, because the country lacks a proper law in this regard, as viewed by the same minister. The country needs a powerful market watchdog including constant monitoring and effective laws to protect consumers' interests. He mentioned that the virtually defunct Trading Corporation of Bangladesh (TCB) is such an arm of the government that could be utilized for speedy public procurement as practically TCB lacks capacity and authority.

Under the present situation, there is an urgent need for enacting the Consumer Protection Act to look after consumers' interest against hoarding in order to protect the commodity market from the syndication business. Many countries including neighboring India have such ministries and there are separate arrangements for checking supply and price manipulation. Such a ministry would be able to procure consumer goods in a speedy manner without sticking to the provisions of the existing PPR.

The United States adopted first legislation concerning product safety was the Federal Food and Drug Act, 1906 signed by President Theodore Roosevelt. The Sherman Act, first legislative to attempt to control monopoly power was passed in 1890 and the Federal Trade Commission was created in 1914 to control unfair methods of competition. The Consumer Bill of Right was proclaimed by President John F. Kennedy in a message to the Congress in 1962. In United Kingdom, King John of England proclaimed the first English Food Law in 1202, prohibiting adulteration of bread. With the Fair Trading Act, 1973 two separate organs, i.e. the Department of Trade, and the Consultative Committee for Consumer Protection were established. The Fair Trading Act, 1973 provided nomination of a Director General (DG) obliged to regulate and control commercial activities in the field of selling goods and services. If the consumers are seemed to be inequitable, the DG can induce the Minister to legislate by the statutory instrument against such practice. The Fair Trading Act, 1973 was supplemented by the Unfair Contract Terms Act, 1977 and the Consumer Protection Act, 1987. The English courts have also developed a new concept of 'Fundamental Breach' of the contract. In the opinion of the court if breach is fundamental, any limitation or exclusion of liability by mutual agreement of both consumer and seller is considered void. Sweden also enacted a new law in 1971 prohibiting unfair trade practice, which was further amended in 1975. To protect the interest of Indian consumers, Mr. Rajiv Gandhi initiated the Consumer Protection Act, 1986.

The present Caretaker Government (CG) has made a landmark move by publishing the gazette notifications of four rules relevant to separating the judiciary from the executive, which was not made by the last two elected government. There is nothing unlikely that the

next elected government will not enact the Consumer Protection Act (CP Act) in their tenure and thereby will not allow the general people to escape from the higher price charges of the essential commodities by the syndicated businessmen, to whom they compelled to accept the price charges for the last five years. If it is done by the present CG, then the mass people of the country will remain ever grateful to all the Advisors specially to the Chief Advisor of the CG.

Few Suggestions:

- A CP Act to be enacted immediately during the tenure of present CG through President's Ordinance to look after consumers' interest against hoarding in order to protect the commodity market from the syndication business. Food safety standard also to be covered in detail in the Act.
- With the creation of new ministry, i.e. Ministry of Consumer Affairs; a Consumer Protection Council may be formed with the Minister as chairperson and both official and non-official members. Non-official members should be so selected that they should truly represent the consumers and preferably from civil society. Same should be formed at District levels with local govt. representatives.
- Consumer Redressal Agency/Bureau to be formed both at Central and District level, with provision of heavy penalties, to look after the interest of consumers like many developed countries.
- Legal process should be made pro consumer, as due to lengthy process of legal system consumer takes less initiative to go to the court.
- Price control process should be strengthened with heavy penalties depending on severity of crime.
- Services under public sectors, i.e. BTB, DESA, DESCO, WASA, Titas Gas, Biman, BRTC, BIWTC, BIWTA, BTV, Radio etc. also to be covered under the Act.
- The consumer individually to be authorized to sue against the violators instead of only few public agencies officials.
- Consumer Association of Bangladesh (CAB) to be more active, pro consumer, and governance of CAB to be ensured.
- Involvement of Civil Society Organizations (CSO) and local govt. representatives will bring better result.

As a philosophy and as a legal institute, consumer protection has achieved a universal character. Therefore, it is not too late to adopt those measures, to protect the interest of poor consumers of Bangladesh.

The author is freelancer and human rights activist.

RIGHTS *monitor*



Child marriage: Violation of human rights



Maliha Begum was 13 when she was wed. A year later, she fled back to her parents in Rupsha of Khulna district.

Neither widowed nor divorced, Maliha ran away from in-laws who she says mistreated her and pressured her poor and landless father to make good on a promise to pay a dowry an illegal but common practice throughout much of rural Bangladesh.

Grinding poverty has forced the villagers to accept both child marriages and dowries as an unavoidable reality in Bangladesh. Also due to childhood marriage many children are leaving primary school before due time in different districts. Concerned quarter think childhood marriage cannot be stopped if the enactment of birth registration cannot be implemented properly. Also illiterate guardians marrying off their under aged girls thinks that 'Childhood marriage entails low dowry'.

Poor parents feel marrying off their young girls will relieve some of their economic burden. The groom's family demands a dowry to grab some cash that helps ease their poverty," he said. Poverty traps both (families), but the worst victim is the girl, who has no real shelter.

Child marriage is a violation of human rights whether it happens to a girl or a boy, but it represents perhaps

the most prevalent form of sexual abuse and exploitation of girls. The harmful consequences include separation from family and friends, lack of freedom to interact with peers and participate in community activities, and decreased opportunities for education. Child marriage can also result in bonded labour or enslavement, commercial sexual exploitation and violence against the victims. Because they cannot abstain from sex or insist on condom use, child brides are often exposed to such serious health risks as premature pregnancy, sexually transmitted infections and, increasingly, HIV/AIDS. Parents may consent to child marriages out of economic necessity. Marriage may be seen as a way to provide male guardianship for their daughters, protect them from sexual assault, avoid pregnancy outside marriage, extend their child-bearing years or ensure obedience to the husband's household. In Bangladesh, this rate was 65 per cent.

Nearly half of Bangladesh's 140 million people live in poverty, according to official statistics. The government says it's striving to halve that number by 2015, under the UN millennium development goal.

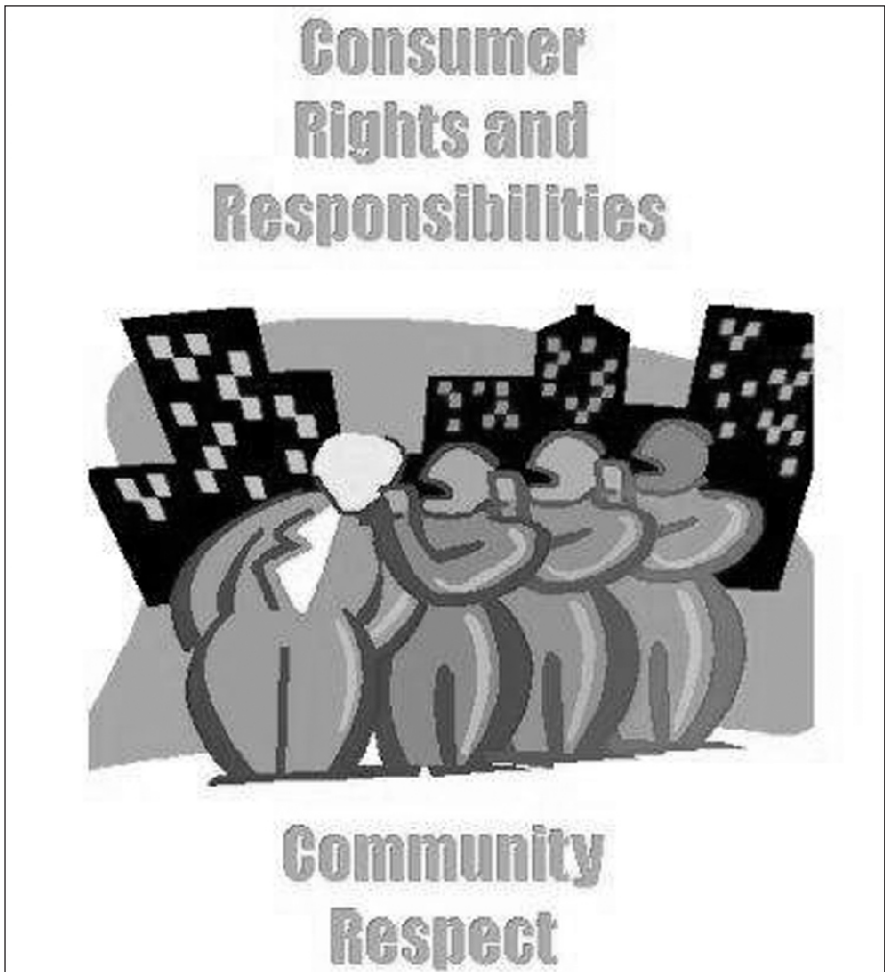
Uneducated young brides are unaware of their rights. Marriage to them means simply shifting homes,

said Rozifa Khatun from, 20, who wed at the age of 12 and lived with her husband for three years. To get around the legal ban, dowries are usually negotiated behind the scene. Women can also fall prey to husbands who are well off or wealthy but torture or even kill their wives over dowries or other family disputes, police and women rights groups say. Bangladeshi laws stipulate a maximum penalty of death for the torture and killing of women, but many victims or their families prefer not to lodge a complaint to avoid more trouble.

Government commitment and capacity

The role of government and civil-society institutions is to develop and implement systems to prevent or discourage this practice. Government action is required to review customary and civil law. Because child marriage is closely associated with poverty, government commitment to poverty reduction is likely to lead to a decrease in child marriages.

--A group of Child Journalist from Shishu Prokash, Children's Express, Rupsha of Khulna district.



her huge population is illiterate, so consumer movement is a complicated social step in her present socio-economic condition. Article 18 of the Constitution of Bangladesh makes govt. responsible to ensure food safety and public health. The immediate past government adopted Pure Food Ordinance, 2005 amending certain sections and sub sections and adding of few new provisions of half century old