



HUMAN RIGHTS advocacy



INTERNATIONAL DAY FOR THE ELIMINATION OF RACIAL DISCRIMINATION
Obstacles to development

"Racist practices hurt their victims, but they also limit the promise of entire societies where they are tolerated. They prevent individuals from realizing their potential and stop them from contributing fully to national progress." —Ban Ki-moon, United Nations Secretary-General

The International Day for the Elimination of Racial Discrimination was first established in 1966, following a tragic event that shocks the conscience: the massacre of young students peacefully protesting against apartheid laws, adopted by the South African government, a brutal regime that applied the theory of inequality between races, regardless of humanity's moral and ethical advances. Proclaiming the International Day, the United Nations General Assembly called upon the international community to redouble its efforts to eliminate all forms of racial discrimination.

The Committee on the Elimination of Racial Discrimination (CERD) is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination by its State parties.

All States parties are obliged to submit regular reports to the Committee on



how the rights are being implemented. States must report initially one year after acceding to the Convention and then every two years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations".

New forms of discrimination have arisen, in association with certain scientific developments and the process of globalization. As a result of these new threats and the outbreak of violent inter-ethnic conflicts in many parts of the world in recent years, the international community decided to convene in 2001 in Durban, South Africa, the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

Development is a comprehensive economic, social, cultural and political process that aims at constantly improving the well-being of the entire population on the basis of everyone's active, free and meaningful participation and the fair distribution of the available resources. Racism and other forms of discrimination are not only human rights violations but also major obstacles to achieving development.

Source: www.un.org

LAW opinion

Independence of judiciary: A dream comes true

KHAN FERDOUSOUR RAHMAN

The basic principles of the independence of the judiciary was endorsed by UN General Assembly in 1985 and referred by the UN Office of the High Commissioner for Human Rights as – "The judiciary shall decide matters before them impartially on the basis of the facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect from any quarter or for any reason". Separation of judiciary from the executive is the precondition for sound and independent judiciary. Judiciary redresses the grievances of the people and resolves disputes. The International Covenant on Civil and Political Rights (ICCPR), 1966 was also mentioned in Article 14(1) "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".

The judiciary has been defined as the last resort of the common people. It is the sector that actually protects and harmonises the varying interest of the members of the society. The judiciary has been the major recourse of the human rights community in the enforcement of human rights. Litigation has been identified as one of the key means of protecting and enforcing the rights of the individual. No other institution of the state is bestowed with the duty but the courts and other ancillary institutions. Most of the monumental achievements of the human rights community the world ever have been through the courts. The judiciary comprises of all institutions established there under for the administration of justice to protect, vindicate and enforce the rights of the people. The judiciary is charged with the responsibility of dispensing justice and safeguarding the rule of law. In any civilized society, judiciary is the last resort for the people to seek shelter and get relief against the offenders and wrong doers.

Independence of judiciary means a fair and neutral judicial system which can afford to take its decision without any interference of executive or legislative organ of the government. Independence of judiciary truly means that the judges are in a position to render justice in accordance with their oath of office and only in accordance with their own sense of justice without submitting to any kind of pressure or influence be it from the executive or legislative or from the parties themselves or from the superiors and colleagues. Independence of judiciary depends on some certain conditions like mode of appointment of the judges, security of their tenure in the office and adequate remuneration and privileges.

The concept of separation of judiciary from the executive refers to a situation in which the judicial branch of the government acts as its own body free from intervention and influence from the other branches of the government particularly the executive. Principle of separation of powers is one of the vital elements of democracy. If the same individual assumes the functions of both executive and judiciary the necessary check and balance disappears and rights of the citizen are not adequately protected. Separation of judiciary from the executive universally ensures the independence of judiciary and safeguards the rights of the people. It is impossible to ensure the rule of law, upon which other human rights depend, without providing independent courts and tribunals to resolve disputes independently. The complete inde-

pendence of judiciary is the first major step in the process of its development. Without completing this, progress of work in other areas is not likely to deliver the intended full benefits.

While the Westminster system had largely developed because of the doctrine of separation of powers, our present system of government is largely based on the Westminster. This doctrine of separation of powers proposes that the three institutions of government, the legislature, the executive and the judiciary should be exercised as separate and independent branches. It is this doctrine that stresses the need for the independence of the judiciary from the other two government institutions in order to protect the freedom of individuals. It is under this doctrine that no person can be a member of parliament and a judge at the same time. The doctrine of separation of powers offers several advantages: it proposes separate, specialised and efficient branches of government and it also reduces the abuse of government power by dividing it.

The constitution is the supreme law of the country and for Bangladesh, the form of government has been spelled out in the constitution that it will be a Republic. The constitution lays down specific functions of different organs of the government. The judicial system in Bangladesh has been a legacy of the judicial system as introduced by the British during the colonial days. The parliament is supreme and the lawmakers alone bring about any change by amending the constitution as and when necessary. The Supreme Court has been authorised to interpret the provision of the constitution as and when required. Judiciary helps the government to carry out one of the functions of the state and in doing so it should be able to function independently with no interference from any quarter or under any influence of fear or favour (Article 116A of the Constitution of Bangladesh).

The question of separation of judiciary from executive is not new in our country. In fact, demand for separation of judiciary from executive had been a part of the movement for democracy itself and its implementation was part of the election pledges of both the major political parties. With same origin like us, both Pakistan and India separated their judiciary from the executive in 1973 and 1974, respectively. We earned our independence in 1971. But we have set up our democracy in 1991, after 20 years of independence. So far we could do little progress as far as the implementation of separation of judiciary is concerned. Article 22 of our constitution says, "The state shall ensure the separation of the Judiciary from the Executive organ of the state". Separation of judiciary is included in Part II of our Constitution, i.e. the fundamental principles of the state policy; and Part V of the Constitution deals with the judiciary.

But unfortunately no government since 1972 when the constitution was framed ever took steps to effect the separation. Finally in 1999 while delivering historic judgment in the famous 'Masder Hossain's case', popularly known as 'separation of judiciary' the Appellate Division of Supreme Court asked the government to take steps for separation as per Article 22 of the Constitution. The Appellate Division also gave 12 points directive or road map on how the separation should be given effect to. The Caretaker Government (CG) of 2001 took all measures to ensure the separation of judiciary, but stopped at the request of both the major political parties, who expressed their desire to implement once came to power. But unfortunately, it is not ensured by the winning



party within their full tenure. It has been more than six years since the judgment was pronounced, but in this long period three consecutive governments respectively have only sought 22 extensions of time.

A full bench of the Appellate Division of the Supreme Court on January 10, 2007 ordered the present CG to publish various rules on separation of the judiciary through gazette notification within a week and remove major hurdles for the separation. The four rules are Judicial Service Commission Rule 2002, Bangladesh Judicial Service Pay Commission Rule 2002, Bangladesh Judicial Service (Service Constitution, Composition, Recruitment Suspension, Dismissal and Removal) Rules 2002 and Bangladesh Judicial Service (Posting, Promotion, Leave, Control, Discipline and other Service Condition) Rules 2001. The government has been given as many as 22 deadlines to implement the 12-point directives of the Supreme Court on the matter, beginning from 1999.

Finally the present CG in a landmark move on January 16, 2007 published the gazette notifications of

four rules relevant to separating the judiciary from the executive. The Chief Adviser of the CG and finally the President of the Republic have also endorsed their consent to the documents of those rules. The whole process was done in a hasty move with the Supreme Court deadline of publishing the gazette notifications.

The much expected separation of the judiciary now requires only an amendment of CrPC as per 12-point directives of the Supreme Court given in 1999. With the implementation of those rules, the magistrates working under the executive branch of the government will come under the authority of the Supreme Court, and the lower court will also be free of government control.

Now, it is expected that the complete separation will take place during the present CG by implementing the amended the CrPC in order to fulfil the expectation of the people.

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LAW event

Yet implementation of laws to protest dowry at local level

The system of giving and taking dowry is a social stigma in this patriarchal society. Dowry is considered, as an illegal act and giving and taking dowry are penalized. Even though it is in practice in rural and urban areas in different way. To prevent the dowry system and to eliminate it from the society the Government already adopted significant laws. Government of Bangladesh has passed Dowry Prohibition Act Repression of Violence Against Women and Children Act 2000. Unfortunately, there is very little or no implementation of laws exists at local level.

Very recently the Participatory Trinomool Advocacy Centre of MMC organized a consultation meeting at Boktarpur Union in Naogaon district. The center chairperson Mr. Golam Rabbani presented at the meeting as chief guest and around 50 people from the grass root community participated at the discussion where they discussed various aspects of dowry provision that is hampering the sound and healthy existence of local people in the village.

Dowry refers to a marriage practice in our society where gifts of cash or other valuable items are exchanged between the families of the bride & groom. Dowry is paid in the form of cash, furnitures, jewelry, property etc and it is paid before or during the marriage ceremony, sometime after marriage. But delayed payment of dowry raise the problem of abuse against the women.

The participants opined that the custom of giving Dowry has changed and it is now more essential part in good marriage and has taken a harmful form. They also cited many examples of dowry related victimization. Sitara Begum (30), Fajila Khatun- pregnant wife of Maniruzzaman who resides in the village, Parul (26), Doli Bibi (22) and Bijli rani (22)- all are some few examples who had to go through the agony of dowry and suffered a lot. This is a social practice carried out both in urban and rural areas in different manner according to the expectation and demands. Like other neighboring countries Bangladesh is also facing the violence related to dowry. Along with the time dowry is becoming a practice from custom.

The advocacy center already is working together with the villagers to fight dowry problem and the steps they are taking against dowry are:

- Creating awareness
- Educating women about the legal right
- Providing legal assistance
- Empowering women
- Campagin against dowry



The simple gesture of jamai ador or special affection shown to the bridegroom has been transformed to the shape of daabi or demand by the bridegrooms. Local UP chairman Shahid Hasan said that even poor men are taking this chance of exploiting the bride's family to improve their fate from poverty and unemployment. This is making marriage a commercial transaction, giving more value to property and money than the bride herself.

As the roots of the problem of dowry appear to be social, remedies can only be achieved by changes of attitude in society; this can be attempted by legislation, but will need to be supported by education and legal awareness. The parents of a bride should understand that

by giving dowry they may not be giving their daughter any happiness; it has been claimed that it is only increasing her misfortune. Finally the participants agreed that the parents of the bride are not in fact giving the dowry to their daughter but to their son-in-law and his family; this increases greed for more dowry. Parents should rather safeguard their daughters from economic deprivation and violence by educating them about their rights within marriage as the dowry right.

Bishwajit Moni, an activist working for Mass Line Media Centre (MMC).

LAW week

Faizee's Removal Supreme Judicial Council might be formed

A Supreme Judicial Council (HC) Judge Faisal Mahmud Faizee who has yet to resign despite cancellation of his LLB certificate. "We are seriously thinking of forming a Supreme Judicial Council against him," Law Adviser Mainul Hossain told reporters at his office. He however hopes that Faizee would step down voluntarily before that. Referring to cancellation of certificates of 2,350 people for tampering with their mark sheets, he said, "That the decision came after 18 years is not supportable either." He added that the government plans to act against the Chittagong University (CU) authorities for delay in revoking the certificates. The CU authorities on March 11 published a gazette notification cancelling LLB certificates of 50 including Faizee. Earlier on March 3, the university syndicate took the decision to cancel the certificates on charge of doctoring mark sheets. The embattled judge was taken off the cause list amid a growing clamour for his resignation. He has not attended his court since March 4. He filed a writ petition with the HC on Thursday challenging the legality of the CU syndicate's decision. Recently, the law adviser told The Daily Star that he thinks there is no room for Faizee to continue as a judge. *The Daily Star, March 19.*

Decision to form national HR body

The council of advisers approved in principle a National Human Rights Commission (NHRC) to be formed, and decided to amend the Money Laundering Prevention Ordinance 2007 and the Banking Companies Act, 1991. Headed by Chief Adviser (CA) Fakhruddin Ahmed, it also decided to approve the purchase guidelines for buying electricity from captive power plants. CA's Press Secretary Syed Fahim Munaim briefed reporters on the council's meeting at the Press Information Department auditorium. The council ordered formation of a committee to look into details of the proposed NHRC. The cabinet secretary will head the committee to be comprised of the secretaries of law, home and foreign ministries. The foreign ministry proposed establishment of the commission that had been approved in principle by successive governments, said Fahim. Setting up a human rights commission was an electoral pledge of the BNP-led four-party alliance. Currently, a number of fundamental rights remain suspended and indoor politics banned under a state of emergency. *The Daily Star, March 20.*

HC stays CU gazette on certificate cancellation

The High Court (HC) stayed operation of the gazette notification of Chittagong University (CU) canceling LLB certificate of Justice Faisal Mahmud Faizee for tampering with his examination results. Passing the stay order, the HC issued a rule upon the university authorities to explain why their action in canceling the certificate of Faizee should not be declared "illegal". Making the rule returnable within two weeks, the court asked the CU authorities to produce the tabulation sheet of Faizee's examination marks during the next hearing. The court order came following a writ petition filed by Justice Faizee challenging legality of the CU action against him. In his writ petition, Faizee challenged the validity of the CU Syndicate meeting's decision that cancelled his LLB certificate for "tampering" with his examination results and subsequent gazette notification in this regard. On March 3, the CU Syndicate in its special meeting decided to scrap a large number of certificates on inquiry committee's reports. On March 11, the controller of examinations of the university published a gazette notification canceling 50 LLB certificates, including that of Faizee, after the syndicate had approved the inquiry reports. *Unb, Dhaka, March 20.*

Non-submission of Wealth Statements ACC prepares to sue 12 graft suspects

The Anti-Corruption Commission (ACC) is preparing to file cases against 12 corruption suspects out of 15, who did not submit their wealth statements within the ACC's stipulated timeframe. ACC Commissioner Habibur Rahman confirmed this, saying that the 12 will face charges of non-submission of their wealth statements. They are – Harris Chowdhury, political secretary to former prime minister Khaleda Zia, Giasuddin Al-Mamun, business partner of Khaleda Zia's son Tarique Rahman, former Awami League (AL) state minister Mofazzal Hossain Chowdhury Maya, former AL whip Mostafa Rashidi Suja, former AL MPs Shaim Osman, Moqbul Hossain, Mirza Azam and Joyanal Hazari, Jubo League Chairman Jahangir Kabir Nanak, Munshiganj AL leader Mohiuddin Ahmed, Bashundhara Group Chairman Ahmed Akbar Sobhan (Shah Alam) and former National Board of Revenue (NBR) member Zahurul Haque. The name of three others, AL leaders and former parliament members – Abdul Hasnat Abdullah, Akhteruzzaman Chowdhury Babu and Haji Selim – were dropped as the High Court (HC) recently ordered the ACC to receive their wealth statements from their representatives. *Prothom Alo, March 20.*

Court accepts charge sheet against Tarique, Apu

A Dhaka court accepted a charge sheet in the Tk 1-crore extortion case against Tarique Rahman and his close aide Mian Nuruddin Apu. Metropolitan Magistrate Abdur Rouf Khan of the Speedy Trial Court-2 also issued an arrest warrant against Apu and ordered to attach his moveable and immovable properties for not surrendering to the court. He directed the authorities concerned to report back by March 29 on the progress in execution of the order [for arrest and property attachment]. Amin Ahmed, owner of Al-Amin Constructions, filed the case against Tarique, eldest son of Khaleda Zia and senior joint secretary general of BNP, on March 8. Gulshan police submitted the charge sheet to the Court of Chief Metropolitan Magistrate (CMM), Dhaka showing 12 people as prosecution witnesses. The investigation had been completed in seven work-days as per provision of the Speedy Trial Act. *The Daily Star, March 20.*

Emergency Powers Rules Amended

The government promulgated an amendment to the rules under Emergency Powers Ordinance 2007, suspending the rights to appeal for bail and seek redress from any higher court until a case is resolved in trial court. The amendment also gives sweeping powers to the Anti-Corruption Commission (ACC) to investigate, arrest or seize property by itself without the permission of the government or the official appointed by it. The government issued a gazette notification promulgating the amendment with a retrospect effect from February 13. According to the amended law, an accused will not be able to file a bail petition during the investigation or trial of a case. Additionally, an accused will not be able to seek redress from any higher courts against any order given by any court or tribunal before or during the trial—until the delivery of the final verdict. *- The Daily Star, March 22.*

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