



Star LAW analysis

Office of Ombudsman -- need of the hour

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THE present caretaker government (CG) has taken decision in principle to ensure human rights in the society. Substantial steps have also been taken to ensure separation of judiciary from the executive, strengthening the Anti Corruption Commission (ACC) and the Election Commission. These efforts can be more effective by establishing the office of the Ombudsman of the



State.

The need of Ombudsman arises for undertaking preventive and corrective actions with a view to containing bad governance committed by the officials or employees of the public administration. In modern times, governments in both developed and developing countries have assumed varying number voluminous, and enormous amount of functions and roles in the field of socioeconomic welfare of the citizens. The scopes and dimensions of work of public agencies have thus expanded enormously.

The term 'Ombudsman' is relatively unfamiliar in Bangladesh, but it is widely used and practised in Western countries to ensure the transparency and accountability of the administration. The word Ombudsman and its specific meaning have since been adopted into English as well as other language. In Bengali we have made it 'Nyayapa' who is charged with representing the interests of the public by investigating and addressing complaints submitted by individual citizens. The objective of Ombudsman is to secure fairness, integrity, accountability and efficiency in public affairs. The office of the Ombudsman is an institution. It is the general jurisdiction watchdog of

the government and serves as deterrent to the bureaucratic lapses and excesses. However, an Ombudsman need not be appointed by government; they may work for a corporation, a newspaper, an NGO, or even for the general public.

A prototype of modern Ombudsman flourished in China during Qin Dynasty (221 B.C.) and in Korea during the Choseon Dynasty. The Romans also grappled with the problem, but it was the example of the second Muslim Caliph Omar (634-644) and the concept of Qadi al-Qadat (developed in the Muslim world), which influenced the Swedish King, Charles XII. In 1713, fresh from exile in Turkey, Charles XII created the Office of the Highest Ombudsman. The modern use of the term began in Sweden with the Swedish Parliamentary Ombudsman instituted in 1809 to safeguard the rights of citizens by establishing a supervisory agency independent of the executive branch. Ever since most European countries have adopted the institution of Ombudsman, where the Ombudsman is elected unanimously by the parliament. The scope of work of the Ombudsman varies from country to country.

The Ombudsman system has its basic purpose of protecting the human rights of the citizens. The existing mechanisms for addressing grievances in modern system are inadequate. In law courts litigation is expensive, tension-causing and protracted. If an institution fails to comply with what should have been done; if it does it in the wrong way or does in a way it should not have done, there may be reason to complain to the Ombudsman. Some of the common problems he deals with are unnecessary delay, refusal of information, discrimination and abuse of power.

Transparency is an essential part of democracy. As a citizen, the individual has a right to know how and why decisions are taken. If the individual has such information, then he can very well evaluate how the political representatives are performing, which can ensure accountability of public authority. Being well informed enables the individual to participate effectively in the ongoing public debate that is the part of healthy democracy. The rule of law implies that no person or body, however powerful, can break the law with impunity. The Ombudsman can bring a number of cases to his attention, based on the complaints he received regarding violation of rule of law and denial of information.

The Ombudsman investigates complaints about maladministration in the institutions and bodies of the government, and usually conducts inquiries on the basis of the complaints, but can also launch inquiries at own initiative. The Ombudsman investigates charges of illegality, negligence or the misuse of official position; pay special attention to offices involving fraud, abuse of power or those impeding the cause of justice. The Ombudsman ensures that no one in an official position bypasses either the constitution or the laws of the land or the rules and regulations which administrative agencies are assigned to uphold.

The main purpose of the institution is to maintain integrity and honesty among the civil servants in general, and contain any kind of administrative excesses done by civil servants in any field of administration in particular. The Ombudsman may simply inform the department or establishment concerned about any complaint in order to resolve the problem. If the case is not resolved satisfactorily during the course of the inquiries, the Ombudsman will try to find a friendly solution which puts right the case of maladministration and satisfies the complainant. If the attempt of conciliation fails, the Ombudsman can make recommendations to solve the case. If the institution does not accept his recommendations, he may make a special report to the parliament.

Many private companies, universities and government agencies in various countries also have an Ombudsman (or an ombudsman department) which serves internal employees or other constituencies. These Ombudsman's roles are structured to function independently, by reporting to the board of directors, and do not serve any other role in

the organisation. Recently since 1960s, the position has grown in US, particularly in corporations, universities and government agencies. Using an alternative dispute resolution (ADR) sensibility, an organisational Ombudsman can provide options to whistleblowers with ethics concerns, provide mediation in conflicts, track problem areas, and make recommendations for changes to policies and procedures in support of orderly systems change.

The necessity of the office of Ombudsman has been felt in Bangladesh since its independence in 1971, which is why the authors of the constitution of Bangladesh incorporated a provision for that in 1972 when it was drafted. The preamble of the constitution of Bangladesh, and Article 77 of the constitution in particular, indicate the spirit of Ombudsman. Article 77 provides the parliament may by law establish the office of the Ombudsman. Once established, the Ombudsman shall have the power to investigate any action taken by a ministry, a public officer or a statutory authority and such other powers and functions as may be prescribed by parliament. The Ombudsman shall prepare an annual report concerning the discharge of his functions and such report shall be laid before the parliament.

The Ombudsman Act was passed in the parliament in 1980. As Bangladesh is a very densely populated country, so there has been a wide expansion of governmental functions of various kinds. The executive officials are always vested with unlimited and often unguarded discretionary power which has given rise to widespread abuse and maladministration often causing indescribable sufferings to the ordinary people. Corruption is the biggest problem of our administration. From 1991, the issue of appointing an Ombudsman has gained much prominence and it was the election pledge of both the major political parties to implement before the general elections.

The first Bangladeshi Ombudsman was introduced in development sector, in BRAC with Mr. Manzoorul Karim in 2004 with a comprehensive mandate to investigate any incident of maladministration and misuse of power within BRAC that includes grievances, corruption, abuse of power or discretion, negligence, oppression, nepotism, rudeness, arbitrariness, unfairness and discrimination, especially gender based discrimination. The second and last Ombudsman of the country is the introduction of the office of the Tax Ombudsman in 2006 with Mr. Khairuzzaman Chowdhury who will help to curb corruption of tax officials and take preventive measures against bribery and tax evasion having the authority to summon the accused official. After hearing any case he will appraise the Finance Minister with his recommendations, who in turn may ask the NBR to follow the recommendations or ask the Ombudsman to review the recommendations or he would take steps that he considers appropriate.

In the context of Bangladesh, an Ombudsman should be appointed by the parliament on the consensus of all political parties in the parliament. The impartiality of the Ombudsman should not be questioned who should not have been accused of bias or of merely acting as a rubber stamp. The Ombudsman's office should be supported with e-governance through automation. There should be a basis what good administration means in practice and there should be a code of good administrative behaviour. In order to reach his work directly to citizens, the Ombudsman should make frequent visits to various areas within the country. There should be Ombudsman sectorwise, i.e. police, land, defence etc. Finally, it is the expectation of general people from the next elected government, that it should take all out efforts to introduce the office of the Ombudsman at the earliest, with a view to promoting and protecting the human rights of the ordinary people.

The writer is a human rights activist and freelancer contributor to The Daily Star.

RIGHTS monitor

ICC issues first arrest warrants in Darfur case



The International Criminal Court (ICC) has issued its first arrest warrants over the Darfur conflict for a Sudanese minister and a Janjaweed militia leader accused of murder, torture and rape. In documents released the judges said there were "reasonable grounds" to conclude that Ahmed Haroun, Sudan's secretary of state for humanitarian affairs and a former minister in charge of Darfur and Ali Kosheib, a principal leader of the Khartoum-backed Janjaweed, were "criminally responsible" for war crimes and crimes against humanity committed in Darfur. Khartoum was quick to reject the warrants, saying the court had no jurisdiction in the matter.

The ICC arrest warrants, dated April 27, charge Haroun and Kosheib with a long list of 51 counts including murder, torture, mass rape and the forced displacement of entire villages during a series of attacks in western Darfur in 2003 and 2004. ICC chief prosecutor Luis Moreno-Ocampo hailed the move as "a big and important step ahead". "These two will have to face justice, they will be in the dock, in two months or two years... they know that," he told AFP Wednesday.

Moreno-Ocampo focused his 20-month investigation on events alleged to have occurred between 2003 and 2004, the most violent period in the crisis. The Arab Janjaweed, armed and backed by the Sudanese government, are accused of the worst violence, involving attacks on civilians of black African origin following a rebellion against Khartoum. "The judges have issued arrest warrants. As the territorial state, the government of the Sudan has a legal duty to arrest Ahmed Haroun and Ali Kosheib. This is the International Criminal Court's decision, and the government has to respect it," the prosecution said.

Sudan meanwhile insisted that the ICC has no jurisdiction to try alleged crimes committed in Darfur. "Sudan rejects the ICC prosecutor's decision and our

position is in line with international law because Sudan is not a member of the treaty that founded this jurisdiction," Sudanese Justice Minister Mohammed Ali al-Mardhi said. Some critics of the ICC have said the arrest warrants could hamper efforts to broker a peace in Darfur. "We are one piece in a more complicated problem," Moreno-Ocampo said. "I cannot provide peace and security." The conflict in Darfur is in its fifth year and has caused 200,000 deaths and has displaced two million people, according to the United Nations. Sudan contests the figures, saying that only 9,000 have died.

"The judges' decision clearly shifts the burden on Sudan to adhere to its responsibilities as it must under the Security Council resolution," Richard Dicker of Human Rights Watch told AFP. The case was referred to the ICC by a UN Security Council resolution passed on March 25, 2005. The judges had the choice between issuing a summons to appear or an international arrest warrant. They explained that because Haroun is part of the "inner circle" of Sudanese government and there are allegations that he may have concealed evidence his arrest is necessary "to ensure that he will not obstruct or endanger the investigation."

Kosheib, who is also known as Ali Muhammed Ali, one of the key leaders of the Janjaweed militia, is currently in custody in Sudan. The judges said his arrest was necessary to ensure his appearance in The Hague because his detention "prevents him from willingly and voluntarily appearing before the court." If the men are handed over to the ICC there will first be a so-called confirmation of charges hearing, where judges will have to decide if there is enough evidence to proceed to an actual trial.

Source: Global Policy Forum

COURT corridor

Juvenile offenders and justice system

OLI MD. ABDULLAH CHOWDHURY

When dealing with juvenile justice system, Bangladesh as a state has dual responsibilities. As a signatory to a number of international conventions, Bangladesh is accountable to international communities in matters of ensuring rights of the children. On the other hand, implementation of law is a constitutional obligation of all in the country. However, it is a matter of great regret that those responsible have failed in the administration of juvenile justice.

International Covenant on Civil and Political Rights (ICCPR) also dealt with the issue of juvenile offenders in Article 14(4): "In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation". Although there are scopes in both national and international laws, practices are often arbitrary in case of administering juvenile justice. Penal Code and the Children Act, 1974 are contradictory in determining the age of criminal responsibility.

Even though Children Act 1974 came into being long before UNCRC, it is a comprehensive piece of legislation. There are alternative options available other than imprisonment in Article 48 of Children Act 1974 for law enforcing agency. Section 48 provides that when a person apparently under the age of 16 years is arrested on a charge of non-bailable offense but can't be brought forthwith before a court, the officer-in-charge of the police station may release him/her on bail. Children Act 1974 provides magistrate's discretionary power to exercise in releasing children, nevertheless.

In case a child is convicted the court may order him to be committed to a certified institute. This provision is not mandatory because section 53 of the Children Act has given option to the court which can, instead of directing any youthful offender to be detained in a certified institute, order the juvenile to be discharged after the admonition, or released on probation of good conduct and committed to care of his parent or guardian or other relative.

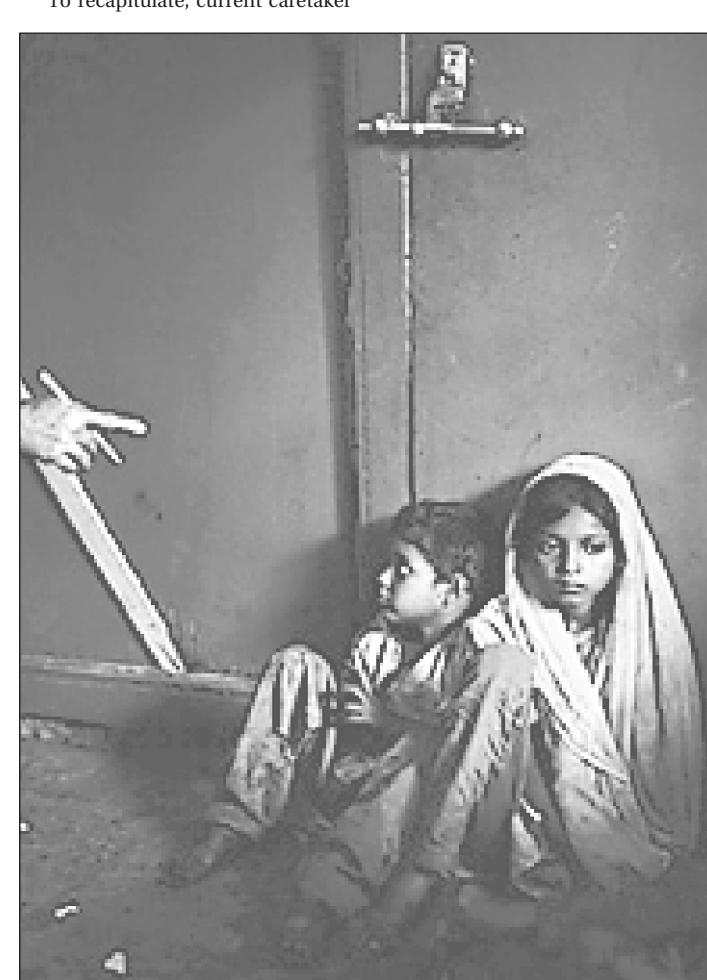
However, magistrates rarely came

forward in implementing Children Act 1974. Dr. Mizanur Rahman, Professor of Law in Dhaka University while evaluating Children Act in his study *Tracing the Missing Cord: A Study on the Children Act, 1974*, observed, "Since most of the magistrates have no legal backgrounds, they do not understand the inner meaning of a specific law. Most of the magistrates are unaware of the existence of the Children Act". He also observed that very few lawyers represent the juveniles except victims of trafficking.

To recapitulate, current caretaker

government has taken a number of steps in the establishment of rule of law. In this respect, this government has taken prompt action in separating judiciary from executive branch of the government. Since children are the future citizens, juvenile justice system should be one of the priorities for the government. Ensuring implementation of Children Act 1974 would certainly be a good progress.

The writer is a law graduate and currently working for Friends in Village Development Bangladesh (FIVDB).



LAW week

UN offers help in holding fair polls

The United Nations (UN) will provide technical and financial assistance for holding a free and fair election in Bangladesh. UN Secretary General Ban Ki-moon gave the assurance when Farooq Sobhan, special envoy of the chief adviser, called on him at UN headquarters. Sobhan apprised the secretary general of various reform measures adopted by the caretaker government to hold the election before the end of 2008. He also met a number of UN high officials including Lynn Pascoe, under secretary general, Department of Political Affairs, Vijay Nambiar, chief of cabinet of the secretary general, Hafiz Pasha, assistant administrator of the UNDP, Craig Jenness, director, UN Electoral Assistance Division, and Sergey Karev, deputy executive director of UN Counter-Terrorism Executive Directorate. During the meetings, the special envoy said the Bangladesh government will welcome UN support in recovery and repatriation of the money siphoned out of the country in the past. He informed the UN officials that an excellent team of civilians is running the caretaker government, which is fully committed to good governance. -UNB, Dhaka, May 13.

Corruption charges

HC's first rule on bail under emergency

After its recent ruling, the High Court for the first time exercised its power of hearing application seeking bail of a person facing corruption case under the Emergency Powers Rules (EPR) 2007. On April 22, the High Court, after inviting a legal debate on the revocation of right to bail, ruled that it has the jurisdiction to dispose of petitions seeking bail by any person facing criminal case under the emergency rules. The amended EPR had revoked the right to bail of those being herded up during the current nationwide operation against crime and corruption. Exercising the power, a High Court division bench comprising Justice MA Matin and Justice MA Hyd issued a couple of rules upon the government to explain why the two petitioners "should not be granted bail." The court rules came on separate applications filed by Sabera Aman, wife of former state minister for labour and employment Amanullah Aman, and industrialist and Awami League leader Salman F Rahman. The rule in Sabera's case is returnable in a week while Salman's in two weeks. Sabera, facing a corruption case, was denied bail and sent to jail on May 9 when she appeared in the special graft court at the Jatiya Sangsad Bhaban complex. -UNB, Dhaka, May 14.

ACC boss for local anti-graft bodies

Anti-Corruption Commission (ACC) Chairman Lt Gen (retd) Hasan Mashhud Chowdhury stressed the need to form anti-corruption committees with neutral persons at the local level. The ACC is going to adopt a new action plan to intensify the ongoing anti-corruption drive and the local committees would play a vital role in this regard, he said at a view exchange meeting at Cox's Bazar Cultural Centre. At the meeting that was held as part of his nationwide campaign against corruption, he suggested forming anti-corruption committees in cooperation with the deputy commissioners and with the participation of professionals. Terming the present environment conducive to anti-corruption drive, the ACC chairman urged all to forge a social movement against corruption. There might not be the opportunity to raise voice against corruption after two years, he added. Local people can take a strong stand against corrupt people through non-violent means and raise mass awareness about it, he said. At the meeting, the local people expressed their keen interest to be involved in the anti-corruption drive. -The Daily Star, May 14.

EC plans to complete voter list in 8 months

The Election Commission (EC) intends to finish preparing the voter list with

photographs in 8 months and assesses that the number of voters will not exceed 7.5 crore, about two crore less than the number on the last electoral roll. By increasing the number of teams that will register voters in phases by being stationary at voter registration camps across the country, the EC believes it will be possible to complete the task by March or April next year if the eligible people show just enough enthusiasm for visiting the camps to register their names, sources close to the commission said. Although the EC earlier had planned to complete the field level task in 12 months by engaging 8,000 teams, it now has a changed plan to increase the number of teams to 12,000 in a bid to expedite the job, but by setting up voter registration camps instead of going from door to door. The new plan however triggered a debate about whether prospective voters will respond favourably to the new methodology. The EC will refrain from going past the timeframe by any means, which will end in September next year, the election commissioner said. -The Daily Star, May 16.

Mamun sent to jail after 50 days in custody

After 50 days in police custody, detained controversial businessman Giasuddin Al Mamun was finally sent to jail custody. Meanwhile, he confessed before a magistrate his involvement in extorting Tk 5 crore from a local agent of Chinese Harbin Power Engineering. Proceedings of an arms case filed against Mamun were adjourned until May 20, as he was not produced before a Dhaka court. Mamun, a close friend of BNP Senior Joint Secretary General Tarique Rahman, was finally sent to jail custody after his arrest on March 25 at his Banani DOHS house in connection with an arms case filed with Cantonment Police. Police seized a .22 bore Spanish pistol and eight bullets at his house. Later, an arms case was filed against him. Mamun was taken on a four-day remand after being produced before the Court of Chief Metropolitan Magistrate (CMM) on March 26. On April 26, Cantonment police submitted the charge sheet against Mamun to the CMM, Dhaka showing 12 people as prosecution witnesses. -The Daily Star, May 16.

UK seeks consular access to its nationals held in Sylhet dragnet

The British government has formally sought consular access to the British nationals who were arrested in Sylhet for allegedly holding a meeting in a house violating the rules of state of emergency. Responding to media enquiries, British High Commissioner in Dhaka Anwar Chowdhury said, "We are aware of the arrest and detention of a number of British nationals in Sylhet. We are in touch with the relevant authorities." "We have asked for confirmation of the details of the arrests and we have formally sought consular access to the British nationals," he added. The high commissioner said the United Kingdom expects that the detainees will be well treated and will be given full access to their consular rights. Law enforcers arrested some 40 Awami League (AL) leaders and activists. A number of them were British-Bangladeshi nationals learnt to have come from London with AL President Sheikh Hasina on May 7. A Sylhet court sent the arrested people to Sylhet jail with a one-month detention. -The Daily Star, May 16.

Corresponding with the Law Desk

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