



LAW opinion

Judiciary's journey to independence



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THE legacy of a century or more thus came to an end. November 01, 2007 went down in the annals of Bangladesh as a golden day. The long cherished desire of the common people of the country to have an absolutely independent judiciary became a reality. What necessitated urgent implantation of such a radical change in our legal system can be a very pertinent question one can ask. To find an answer to it we shall have to allow ourselves some

moments to reminisce over the past situations observed in this part of the world, precisely in the pre-partition Indian sub-continent during British rule.

Two distinguished institutions, viz. the magistracy and the judiciary representing the legal system in British India used to enjoy universal respect and credibility of the people at large. The district magistrate and collector used to be the head of the civil administration in the district which included all the magisterial courts. The District and Session Judge headed the judiciary

part of the whole administration. The magistrates looked after those cases falling under the purview of the Criminal Procedure Code (CrPC). Deputy magistrates and sub-deputy magistrates used to sit in these courts for disposal of criminal cases mostly. Besides, there used to be other kinds of magistrates designate -- lawyer magistrates and honorary magistrates or honorary deputy magistrates. They belonged to group of lawyers, often non-practising and the last named represented mostly the feudal aristocracy and social

elite. At the end of their term they were awarded titles like Khan Bahadur, Khan Saheb, Rai Bahadur, Rai Saheb etc.

In the sub-divisions of yesterday (today's upazila) the administrative head used to be designated as sub-divisional officer, briefly SDO. Concurrently there were Sub-divisional Magistrates (SDM) looking after the criminal cases mostly. On the judiciary there were sub-judges accountable to the District Judge.

So, these were roughly the organisational structures of the magistracy and judiciary in the British days and continued after partition of India. The people who represented these two organs of the legal system had to get through written examinations conducted by the Public Service Commission. There was a strange coincidence that those who sat for such competitive examinations wielded immaculate scholastic faculties. And in the majority cases they belonged to highly enlightened families, some representing families of intellectuals, eminent teachers, educationists and feudal lords of those days. There was an indirect and unwritten rule followed by the selectors at the instance of the British masters to take in the qualified candidates representing aristocratic families alone. Undemocratic though, the selectors had to go by the so-called 'blue blood' philosophy to ensure good performance from the incumbents in all these positions.

The status of the two wings of the legal system obtaining in the bygone years is alluded to only for affording ourselves an instant comparison with today's situation. Following the partition of India the civil service of Pakistan, organised anew, maintained the old,

replicable tradition without allowing any transgression of the values it upheld meticulously. Both the criminal and civil courts enjoyed relative freedom from touts, sycophants and briefless lawyers thriving on crooked means and exploitation of the innocent, uneducated clientele within court premises.

The scenario started taking perverted looks with the passage of time. Large-scale infiltration aided by crude politicians with direct or indirect support from the power centre soon commenced creating devastating impact on the whole legal system. In particular, the magistracy reporting to the executive part of the government, precisely the political party in power rapidly aggravated the situation to the worst. Belated though, the realisation of an absolutely independent judicial system gained rapid momentum. Mazdar Hossain vs the State case of 1999 was indeed the turning point and November 01, 2007 added a new page to the history of Bangladesh. The long cherished desire of the people of the country became an irreversible reality. We have now a fully independent judiciary free from all intrusive intervention of the executive part of the government.

It is premature to make any comment on the prospects and possibilities of the newly installed independent judiciary. Everything will depend on the personal integrity, clear understanding of the thematic value of the new system, staying off the tauts and crooks from the court premises once for all. We have now a sacred, noble and inalienable mission to fulfil. Let us hope for the best.

The writer is management consultant.

RIGHTS monitor

UN human rights chief condemns violence in Kenya

The United Nations High Commissioner for Human Rights, Louise Arbour, reiterated her deep concern about the continued violence and reports of grave human rights abuses in Kenya, following the December 27 elections. She strongly denounced the numerous inter-ethnic killings and conveyed her sympathy to the families of the victims and those who have been wounded and displaced in the past few weeks. She also condemned the use of live ammunition by Kenyan police in responding to protests, reportedly resulting in numerous deaths, including children.

The High Commissioner recalled that Kenya is party to a number of Human Rights instruments that provide for among others, the right to life, freedoms of expression and peaceful assembly. In reminding the Government to abide by its human rights obligations,

she called for an impartial investigation into the serious allegations of breaches of those standards. "The killings have to be investigated expeditiously and impartially, and anyone found responsible for human rights abuses must be brought to justice", the High Commissioner said. "There must not be, in any case, impunity for what has occurred in Kenya in the past few weeks". In expressing support for the efforts undertaken by the international community to restore peace, the High Commissioner called on Kenyan leaders to engage in open and constructive dialogue, including addressing the serious human rights violations that have occurred. "Any lasting peace in Kenya must be based on truth and accountability", the High Commissioner said.

Media Centre, The Office of the United Nations High Commissioner for Human Rights (OHCHR).



HUMAN RIGHTS monitor

Darfur camps flooded with weapons

THE security situation for internally displaced people is on a knife-edge as the UN forces end their third week of operations in Darfur. Launching a new report on the country, Amnesty International warned that a generation of Darfuris is growing up in extreme fear and insecurity in camps awash with weapons a potentially explosive combination.

Displaced in Darfur A generation of anger outlines the current state of insecurity in camps

peace without ensuring that the security and human rights of these people are respected and upheld.

Armed groups continue to use the camps to recruit fighters including children. "Ali," an internally displaced person in Abu Shouk camp, told Amnesty International: "The boys of 18 they are lost. They have no work, especially the graduates, they live on relief."

The internally displaced in Darfur have been left largely unprotected. The African Union force that was supposed to pro-

recorded more than 10 armed incidents in Kalma camp between 16 and 22 October 2007.

Displaced women are at constant risk of rape when they venture outside their camps to find firewood or food. Although most victims of rape accuse Janjawid militia, there are also reports of rape being committed by members of the Sudanese army, the police and other armed opposition groups including SLA/MM soldiers. Women also say that they are



for internally displaced people (IDPs) in Darfur and the potential consequences and possible remedies. "Almost all of the camps in Darfur are flooded with weapons. The security situation in and outside of the camps continues to deteriorate, as hopes of a political resolution to the Darfur conflict recede and hostilities between the government and armed groups continue to escalate," said Tawanda Hondora, Deputy Director of Amnesty International's Africa Programme.

The welfare of displaced people continues to be ignored while armed groups and the government bicker and impede the complete deployment of UNAMID forces [UN forces in Darfur]. There can be no durable

protect them was outmanned and outgunned by Janjawid and armed opposition groups who attacked them.

The Sudanese army and police, on the other hand who are also meant to protect civilians are seen as antagonistic rather than protective by the IDPs, who they often arbitrarily arrest outside IDP camps on suspicion of being members of armed opposition groups.

Some camps, such as Kalma, have members of as many as 29 different ethnic groups. Most Kalma camp residents have arms. Amnesty International has learned that many of the youth in the camp have formed vigilante groups based on their ethnic origin Fur, Masalit, Zaghawa and Dajo. The UN

sometimes raped by displaced men inside the IDP camps. "Mahmud," an international displaced person in al-Jeneina, told Amnesty International: "Women are still going out to collect firewood, which is a danger to them as they may be raped. But we men are still letting them go because the men who collect firewood may be killed."

Amnesty International calls on the UN forces in Darfur (UNAMID) to ensure the protection of the internally displaced, including by stationing units near each camp and by constant patrolling including accompanying people collecting firewood.

Source: Amnesty International.

LAW week

Illegally set up factories may be legalised

The government is mulling the legalisation of factories set up illegally in the Bhawal National Park, but has decided not to allow any new factories on the protected forest. The director general of the Department of Environment (DoE) has been asked to look into specific and stringent regulations for the factories to continue operating in the 2,572-acre core area of the nature reserve, said the Chief Adviser's Press Secretary Syed Fahim Munaim, after the meeting of the council of advisers. The meeting chaired by Chief Adviser Fakhruddin Ahmed decided that the government would consider giving clearance certificates to the factories and other structures there if they meet the conditions set in the new regulations. As of 2006, the DoE handed out such certificates to 16 factories. New conditions would include eco-friendly provisions in the factories such as effluent treatment plants and limit of their size and operations, Fahim said. The press secretary said that not many people had followed the existing rules on constructing structures in the protected area, and that's why the government would also look into better enforcement of the rules. --The Daily Star, January 22.

BDR hands BSF list of 1,626 criminals hiding in India

Bangladesh Rifles (BDR) has handed Border Security Force (BSF) a list of 1,626 Bangladeshi criminals hiding in India as a three-day high-level meeting between the two border forces concluded in Bogra. In addition, BSF agreed not to open fire on innocent Bangladeshi citizens, except in self-defence, along the border areas during daytime. At a post-meeting joint press conference, both sides said they had reached consensus on all the issues on the agenda regarding border problems and interests of both nations during the deputy director general level meeting. BDR Deputy Director General Brig Gen MA Bari led the 12-member Bangladesh team in the meeting while the 18-member Indian delegation was led by Inspector General of BSF North Bengal Frontier RA Tiwari. Asked if India provided any specific information in support of its allegations that Bangladesh harbours Indian separatists and terrorists, Brig Gen MA Bari replied in the negative. He, however, said that they would examine whatever information the BSF has given. Earlier at a BDR-BSF director-general level meeting, India had given Bangladesh a list of 1,000 Indian criminals hiding in Bangladesh, IG RA Tiwari said. Both sides also agreed to solve the issues of push-back and push-in on the basis of dialogue if those arise again. Brig Gen MA Bari said that the nationals of both the countries detained by BDR and BSF would be released on humanitarian grounds as per the laws of the respective countries. --The Daily Star, January 23.

Verdicts were based on poor evidence

The verdicts sentencing three teachers and four students of Dhaka University (DU) in two cases for violating Emergency Power Rules (EPR) were based on "poor" evidence as most witnesses did not name the students and teachers, observed renowned jurists. The jurists said going through the documents of 28 prosecution witnesses of the two cases they found that only two named the convicted students and teachers. Rest of the witnesses did not corroborate the oral evidence of the two witnesses given before the courts. Reviewing the facts, noted jurist Shahdeen Malik said such weak prosecution evidence in criminal cases invariably leads to acquittal. Preliminary perusal of the evidence could not but evoke surprise about the conviction, he said. "It seems the evidence was not sufficient for finding of guilt and imprisonment," Malik told The Daily Star. Justice Ghulam Rabbani, a former judge of the Appellate Division of Supreme Court, termed the criminal cases against the DU teachers and students mysterious. "The scenario regarding the criminal cases against the teachers and students of Rajshahi University and Dhaka University appear to be mysterious and cannot be equated with the normal process of law," Rabbani told The Daily Star. "I may be incorrect but the suspicion, which looms in my mind as a person who was in the bar for 32 years and in the bench for 10 years, is dangerous and must be removed by the persons concerned in the scenario," he added. Advocate Masud Ahmed Talukder, an expert on criminal cases, said, "There was no evidence in the two cases to convict any teacher or student." In December, a Rajshahi court convicted four Rajshahi University (RU) teachers to two years' imprisonment for violating the EPR by

bringing out a silent procession during unrest on the campus in August last year. The verdict triggered strong criticism as many said it was also based on poor evidence. --The Daily Star, January 24.

SC to hear govt petition against HC order

The Supreme Court will hear today government petition seeking stay on the High Court order that halted further proceedings of trial of detained former prime minister Sheikh Hasina in a Tk 3-crore extortion case. Meanwhile, the rule-hearing on a writ petition challenging the legality of placing the extortion case under Emergency Power Rules (EPR) began in a High Court division bench. Barrister Shafique Ahmed, a counsel for the Awami League president, put forward his arguments before a two-judge bench, comprising Justice Shah Abu Nayeem Mominur Rahman and Justice Shahidul Islam. The hearing remained inconclusive. Earlier, the HC bench turned down Additional Attorney General Mansur Habib's time prayer for preparation for the legal battle from government side. --The Daily Star, January 24.

Nizami, Mojahid face murder charge

A freedom fighter (FF) filed a murder case against Jamaat-e-Islami Ameer Motiur Rahman Nizami, Secretary General Ali Ahsan Mohammad Mojahid, five of their party men and three non-Bangalees for the massacre of 345 people during the Liberation War. Mohammad Amir Hossain Mollah, a wounded FF and resident of Pallabi's Duairpara, filed the case with the Chief Metropolitan Magistrate's Court, Dhaka. The complainant stated that the Jamaat men killed them in the capital's Mirpur area. The victims included 21 of his relatives, one colleague, 43 locals of Mirpur and 280 others from different areas of the country on April 24 and December 18 in 1971, he said. Meanwhile, another case was filed against Nizami, Mojahid and seven other party men with a Dhaka court on December 17 last year for killing two FFs during the Liberation War. The case was later treated as a regular one with Keraniganj police. In the case filed, Metropolitan Magistrate Mohammad Emran Hossain Chowdhury recorded the complainant's statement and directed the officer-in-charge (OC) of Pallabi Police Station to register the murder case as a first information report (FIR). The court also asked the OC to investigate the case and submit report to it. Amir showed 15 people, including himself and the victims' parents and relatives as witnesses in the case. --The Daily Star, January 25.

Tk 3cr extortion allegation

Azam Chy did not file case against Hasina Industrialist Azam J Chowdhury told the press that he did not file any case "directly" against former prime minister and Awami League chief Sheikh Hasina. "What I did [say in the case] has been distorted and has not come to the public properly," Azam told newsmen at a local hotel following the Annual Business Conference of Prime Bank of which he is the chairman.

Azam said he filed the case against Sheikh Selim. Referring to the Tk 2.99 crore extortion, he said Selim had taken the money saying he was taking the money for the prime minister who had asked him to do so. "Bangabandhu Sheikh Mujibur Rahman is the father of the nation and his daughter Sheikh Hasina is a former prime minister...A prime minister is a respected person. Why should I file a case against her directly?" Azam said. "There has been a wrong perception about this case," he added. Azam J Chowdhury filed the case on June 13 last year, accusing Hasina and her cousin Sheikh Fazlul Karim Selim of taking Tk 2.99 crore as extortion from him for awarding a 210MW power project contract. Azam is the local agent of a Russian company that won the contract. --The Daily Star, January 25.

Corresponding with the Law Desk

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LAW lexicon

Action Case - Cause, suit, or controversy disputed or contested before a court of justice.

Additur - An increase by a judge in the amount of damages awarded by a jury.

Adjective law - Also, procedural law. That body of law which governs the process of protecting the rights under substantive law.

Adjudication - Giving or pronouncing a judgment or decree. Also the judgment given.

Administrative agencies - Agencies created by the legislative branch of government to administer laws pertaining to specific areas such as taxes, transportation, and labor.

Administrator - 1. One who administers the estate of a person who dies without a will. 2. A court official.

Admiralty law - Also, maritime law. That body of law relating to ships, shipping, marine commerce and navigation, transportation of persons or property by sea, etc.

Admissible evidence - Evidence that can be legally and properly introduced in a civil or criminal trial.

Admission - A statement tending to establish the guilt or liability of the person making the statement.

Admonish - To advise or caution. For example the court may caution or admonish counsel for wrong practices.

Advance sheets - Paperback pamphlets published by law book publishers weekly or monthly which contain reporter cases, including correct volume number and page number. When there are sufficient cases, they are replaced by a bound volume.

Adversary proceeding - One having opposing parties such as a plaintiff and a defendant. Individual lawsuit(s) brought within a bankruptcy proceeding.

Adversary system - The system of trial practice in the United States and some other countries in which each of the opposing, or adversary, parties has the opportunity to present and establish opposing contentions before the court.