



LAW & our rights

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"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW" - Article 27 of the Constitution of the People's Republic of Bangladesh



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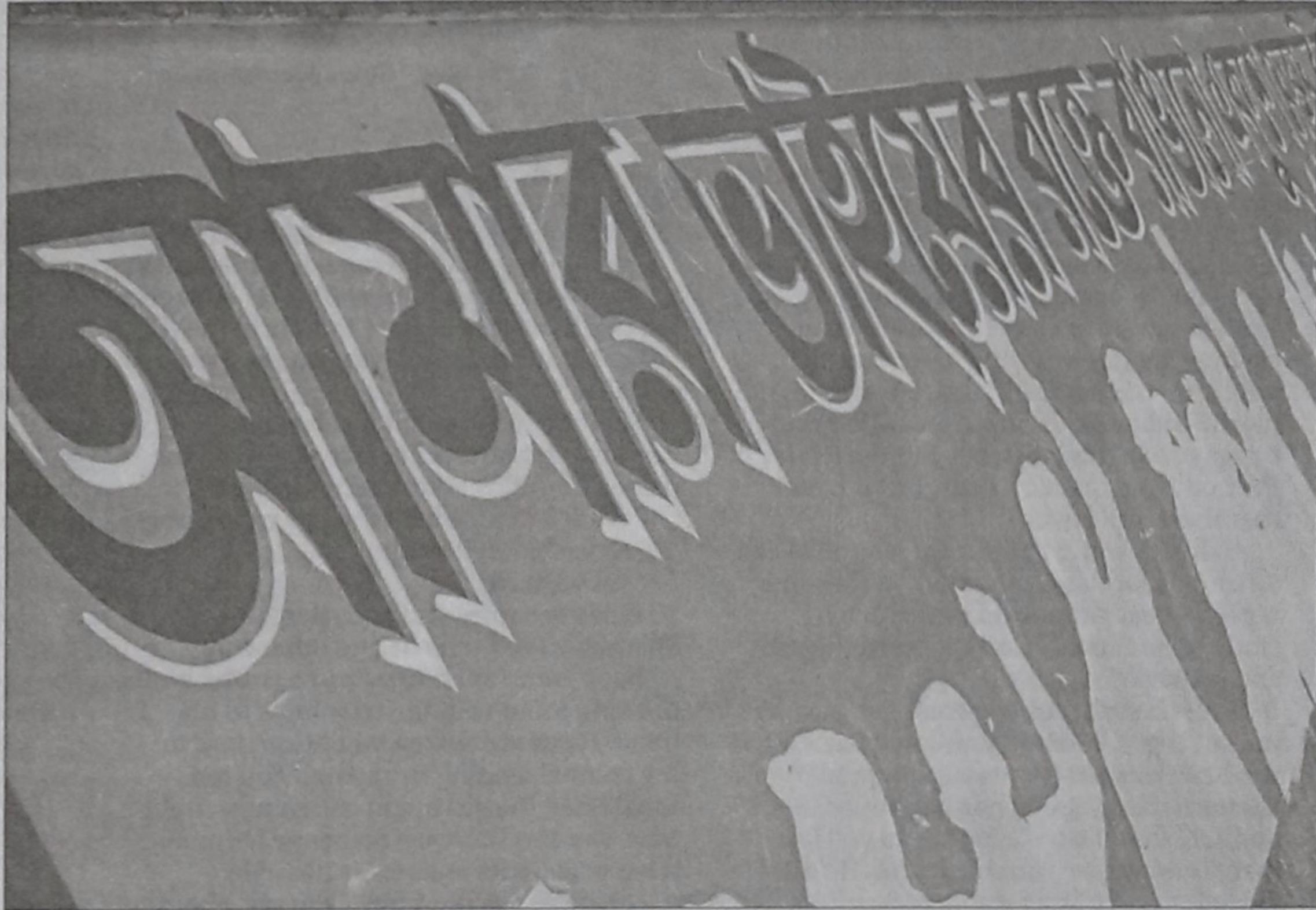
LAW opinion

Do our courts speak our language?

MD. RIZWANUL ISLAM

IN terms of language, Bangladesh is one of the world's most homogeneous countries where an overwhelming majority of the population speaks in Bengali. Indeed, the genesis of its statehood and the very name of the state owe to its primary language. Article 3 of the Constitution of the Republic reaffirms the standing of Bengali as the state language. It is natural that Bengali would be the working language of the courts - higher or lower. However, this natural course of events does not take effect in our higher courts where except in rare cases Bengali is not embraced as its language. Government's enactment of Bangla Bhasha Proclamation (Bengali Language Implementation Act), 1987 could not ensure the use of Bengali in our higher courts.

A number of contentions are raised in defence of usage of English in higher courts. The first argument often aired is that there is not an adequate amount of quality texts written in Bengali which can be used in undergraduate studies in law. Therefore, the lawyers and judges who are basically trained through English cannot practice law in Bengali. It is undeniable that there is a shortfall in quality legal texts in Bengali. However, if Bengali is widely used in higher courts, that could be an incentive for quality text book writing in Bengali. Again, irrespective of the curriculum and texts used in Bangladeshi universities, it is hard to imagine any student having studied law in Bangladesh to be incapable of practicing law in Bengali. If



Bengali can be effectively used in lower courts, it is hard to understand why that cannot be done in higher courts too. If students of Bangladeshi origin, having studied law in an English speaking country cannot practice law effectively in Bengali, it should be their concern, not the concern of our legal system. Let's put it straight: if a person cannot practice law in Bengali, she/he should not be allowed to have the right to practice law in Bangladesh.

Another contention in favour of English usage is that we are not self-reliant (no state in today's world can be so) and need to know English for facilitating our international competitiveness in attracting foreign investment and

trade. Therefore, we should continue to use English in our higher courts. This too is only partially true and overemphasizes the role of language of higher courts in business decision making. Any foreign entity considering a business decision may take the language of the population at large into account, but the language of higher courts would play a very minor role, if at all any. Even in this case, to accommodate the needs of these entities, the Ministry of Commerce can take up the responsibility of translating trade and investment related laws and regulations in English. But in any case a blanket use of English for the benefit of a very small segment is a disregard for

the rights and interests of the masses.

It is also argued that English should be the language of our higher courts so that the judgments of our courts can be cited as persuasive precedents in higher courts of other countries in the Indian Sub-Continent and vice versa. This argument also bears some truth but is not sufficient to persuade the rationality of usage of English in higher courts. More than the language of a judgment, the quality and strength of its analysis of law make it persuasive. A judgment that is powerful in its legal analysis would be referred to irrespective of its language. Whatever it is, the argument along this line too is

not cogent enough to justify the use of English in our higher courts.

The rationality of the above arguments can be defied on the sole ground that courts do not exist for lawyers or judges; but for the litigants whose causes are settled by courts. Language of courts should follow the language of the populace; the populace should not be required to follow the language of its courts. Unless the greater population of Bangladesh embraces English as their primary language or an officially recognised second language, there can be no moral ground for it to be used as the working language of its higher courts. If Bengali is used in higher courts that would be a right step in the direction of improving people's access to and understanding of the functioning of higher courts.

Colonial masters have left us but we have not been able to leave their language in the affair of our courts. In a globalised world where English is the primary language of communication, it is not being suggested here that we abandon English in our education system. Far from that, we should strive to improve our proficiency in English. However, unless and until we can make our mass population proficient in English, it is grossly unfair to conduct the affairs of our higher courts in English. It is difficult to comprehend whose interests are being served by the usage of English in higher courts, but very clearly not that of the majority of the population of Bangladesh.

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FACT file

The Human Rights Council after two years

NEARLY three years since its creation, more patience is needed in judging the work of the United Nations Human Rights Council, which is still in an "evolutionary" stage, the body's President told the General Assembly today.

The Council was set up in 2006 to replace the Commission on Human Rights, which had been dogged by accusations of bias and politicisation, as part of ongoing UN reform.

"All too often, and most times without any real justification, the Human Rights Council has been criticized in the manner and outcome of its work. Let me appeal for greater circumspection, objectivity and patience in assessing the work of the Council," President Martin Ihoeghian Uhomobhi of Nigeria said.

"Two years is hardly enough time to be overly critical of an institution which we strongly believe holds great promise as a universal human rights body."

The Assembly decision to establish the Council showed nations' commitment to boost the UN's role in ensuring the enjoyment of human rights for all, said Mr. Uhomobhi, who was elected for a one-year term in June.

One of the reforms differentiating the Council from the Commission on Human Rights is

the Universal Periodic Review, a mechanism to examine the record of every Member State.

"In a very particular sense, the decision to empower the Council to consider human rights situations in all countries, through the mechanism of the Universal Periodic Review, not only empha-

The Council has also taken steps to address serious rights issues, with three special sessions being held during the reporting period on the situation in Myanmar, violations in the occupied Palestinian territory and the food crisis.

"Given that we live in a



sized the principle of equality among all states, but also underscored the universality of all human rights," the President said.

He highlighted some of the Council's activities to the 192-member body, including the adoption in June of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR).

globalising world where an event in one part has the potential of affecting life in other parts, the Council found it necessary to remain vigilant and seized with all situations namely of growing inequality, continuing armed conflicts or other menaces such as climate change and food crisis," Mr. Uhomobhi noted.

Source: UN News Centre.

FOR YOUR information

PROCEDURAL JUSTICE IN THE SUPREME COURT

A concern for new lawyers

BARRISTER MD. ABDUL HALIM

LET us look at the ways and means to improve the delivery of Procedural Justice in the Supreme Court.

As I have discussed in last three parts of this write-up the procedural justice associated with a writ matter is mainly depended upon the activities of as many as eight categories of people: Bench Officers, Commissioner of Affidavits, Ardalis, Notice servers, section people or court clerks, typist, comparists, and file keepers in the file section. These people may and usually do frustrate the fruits of substantive justice and the miseries of some petitioners or respondents know no bounds and these are all known and open secret to all junior and senior lawyers.

Very often the petitioners or respondents, including new lawyers, feel cheated, captive, humiliated and harassed and a justice seeker turns out to be victim of endless and suffocating procedural injustice at the corridor of the apex court. This is also the main reason for many new brilliant budding lawyers to drop and leave the profession before they can enjoy any zeal of it. There is a famous saying "A strong Bar begets strong Bench" but if brilliant new comers cannot be invited to get into and feel interested in this profession, this profession of learned advocates will certainly turn out to be a profession of hooligan advocates and this trend has already began to degenerate this noble profession.

This is the absolute domain of



the Supreme Court under the leadership of the Chief Justice from the side of the Benches and the President of the Supreme Court Bar Association from the side of the Bar and the government has in fact no role to play except for granting any budget if asked for. If these two honourable persons come forward to initiate some changes in the procedure, much of the problems

caused by these section of people can be eased to ensure justice. I would suggest the following to improve procedural justice in the Supreme Court:

(i) Maintaining a mandatory list for unlisted motion: Some Benches of the High Court Division are maintaining this informally but this should be made a binding rule to be followed in every motion bench. This will prevent the misuse of power

and foul play by the Bench Officers and a level playing field will be created among general practitioners. This can be done easily with the seniority rule keeping unaffected.

(ii) Introducing digitised system of daily court items: This is urgent for listed matters. At present you do not know when your item will be called up and either you or your junior lawyer will have to be on guard to see if your item is called up

and you may have to spend a whole day idle sitting in the court. All State High Courts in India also maintain this system and a lawyer can see from his court chamber whether his matter in the list is likely to call up or not. This will not only save times for judges, lawyers and clients but also reduce and eliminate the foul play by Bench Officers with listed items. The traditional tadbir system with

its entire evil outlook will certainly disappear from the daily affairs in the court. This will also minimise the unwanted outlisting of cases for default by the courts. Although such a project will cost a lot, I do think most of the lawyers will be eagerly willing to pay for this.

(iii) Creating a database of Judgment and Orders: This will help reduce the pressure of typing and comparing again and again of the same order or judgment. The most vexing problem of procedural justice is with the criminal and writ motion Benches where every motion day more than hundred orders and rules are issued and they are traditionally written by short hand typists and then they are to be typed by them and then sent for signature and verification and this causes not only huge time but also breeds endless corruption and foul play by Bench Officers, shorthand typists, typists, comparists, ardalis, peshkars on the one hand and lawyers and their clerks on the other hand. Although hundreds of orders and rules are issued by a Bench on a motion day, they all are in the same nature and if a database is maintained, they can all be delivered within an hour by changing the names and case numbers etc. Very often a single page certified copy of court order will claim 2000-4000 taka whereas the government fee is only 10 taka. Sometimes you will not get an important certified copy even after a month's struggle and spending of huge amount of money given by way of illegal gratification just because of bad practices by the opponent in collaboration with

section people or Bench Officers etc. "Justice delayed justice denied" goes the age-old proverb and to get rid of this problem, our move towards the modernisation of justice dispensation system in the light of modern technology is a must. Although such a database will cost a huge amount of money but still most of the lawyers will be readily prepared to pay for this and most importantly this will save our next generation from jumping into the races of bad practices against their will; it will save and protect the lofty image of the apex court; it will help keeping commitment given to client by lawyers; it will encourage new comers in the profession to keep their confidence up on the system.

(iv) Introducing central and unified system of supplying certified copy: We give fees for medical report to a diagnostic centre and the next day or the day after we get the certificate or report and there is no hassle or bad practice or bribing anyone for this and the same system may be introduced for certified copies. Obviously in cases of urgent matters like immediate stay orders, immediate injunction orders, urgent bail orders, or arrest orders in admiralty matters which are to be served next day, certification by presiding judges may be given and in such cases provisions may be made for supplying certified copies next day with extended fees.

(v) Introduction of a Complainant Venue: At present there is no effective process to make complains about malpractices by these people I am concerned in this write-up. As this type of practice is

largely administrative and procedural, a permanent Bench or department or a Judicial Ombudsman may be set up to hear these matters urgently and with investigative power.

(vi) PRO section: A post of Public Relations Officer should be created with necessary logistic supports. This will help journalists, lawyers and researchers to find up-to-date data on number of pending cases, decided cases compared to number of judges etc and different types of statistics whenever needed.

(vii) Number of Judges in the apex Court: Compared to pending cases and the rate of increasing number of filing cases in the apex court. It is undisputed that the number of Benches and judges should be increased.

Finally and importantly we earn our bread from this profession but can anyone of us say boastfully that our earning is not tainted with illegality, persuasion, illegal gratification? If administrative and procedural matters can be safely and satisfactorily delivered in most of the private sectors, why can we not achieve the same given that there is no government interference in the procedure of the apex court? No angel will come from above to change our age-old erratic system of procedural justice; it is our responsibility to start a new era and this is primarily the task of the Chief Justice and the President of Bar Association.

The writer is practicing in the Supreme Court.