

COURT corridor

# Delegation of jurisdictions

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ALL the Civil Courts are over-burdened with a backlog of cases in Bangladesh, and so is the case with the High Court Division of the Supreme Court. There must be a way out. The machinery of the civil justice should be more efficient and its load should be more evenly distributed. Therefore, in this situation, the High Court Division may delegate to and share some of its jurisdictions and functions with the Courts of District and Additional District Judges.

The High Court Division has already delegated some of its jurisdictions and functions to the District Courts but it can delegate some more. There are some jurisdictions and functions that can be shared with the District Courts and there are some jurisdictions and functions that cannot be shared with any of the lower courts including the District Courts.

These different jurisdictions can be discussed under the below heads:

- (1) which can be shared and are already shared with the District Courts,
- (2) which are not shared and can be shared with the District Courts,
- (3) which are not shared and should never be shared with any of the lower courts including the District Courts.

The jurisdictions and functions which should be shared and are already shared by the District Court

### Revisional jurisdiction

The Revisional Jurisdiction is provided in section 115 of the Code of Civil Procedure and in section 435 of the Code of Criminal Procedure. The Civil Revisional Jurisdiction of the High Court Division of section 115 of the Code of Civil Procedure is shared by the Courts of District and Additional District Judges. The Criminal Revisional Jurisdiction of the High Court Division of section 435 of the Code of Criminal Procedure is shared by the Courts of Sessions and Additional Sessions Judges.

### Companies jurisdiction

Companies Jurisdiction is provided in section-3 of the Companies Act 1994. According to this Act, the Court which has Companies Jurisdiction is the High



Court Division. But the government may, by special notification in the Official Gazette subject to such restrictions and conditions as it thinks fit, empower any District Court to exercise jurisdiction under the Companies Act 1994. Therefore, it can be observed that the Companies Jurisdiction is also shared by the High Court Division with the District Courts.

The jurisdictions which are not shared but can be shared by the high court division with the District Courts

### Banking companies jurisdiction

The Jurisdiction of the Banking Companies lies only with the High Court Division and is not shared by the District Courts. The Jurisdiction regarding the Banking Companies can very well be shared by the High Court Division with the District Courts. Section-61 of the Banking Companies Act 1991 provides that the government may constitute a tribunal for the acquisition of the undertakings of

Banking Companies. The government may very well delegate the Jurisdictions and functions for the acquisition of undertakings of the Banking Companies to the District Courts instead of forming a Special Tribunal.

### Admiralty jurisdiction

Section-3 (1) of the Admiralty Court Act 2000 provides that the High Court Division shall be the Court of Admiralty. But Admiralty Jurisdiction can be shared with the District Courts. Where the suits are of less value and are of less complicated nature, the High Court Division may delegate its jurisdiction to the District Courts to try those cases.

### Writ jurisdiction

Writ Jurisdiction is provided in article-102 and in article-44 of the Bangladesh Constitution. It means any citizen has the right to move the High

Court Division of the Supreme Court for the enforcement of fundamental rights that are provided in the Part-III of the Constitution. But the Writ Jurisdiction can be delegated to the District Judge too. It will not be unconstitutional as Article-44 (2) states "Without prejudice to the powers of the Supreme Court under article-102, Parliament may empower any other court, within the local limits of its jurisdiction, to exercise all or any of these powers".

### Appellate jurisdiction

Appellate Jurisdiction of the High Court Division can be shared with the District Courts and the Sessions Courts by increasing their respective Appellate Jurisdictions. According to section-21 of the Civil Courts Act 1887, an appeal from the Courts of Assistant Judge or Senior Assistant Judge lies to the District Courts. An appeal from a Court of Joint District Judge lies to the District Courts where the value of the original suit does not exceed 5 lac taka. When the value of the original suit exceeds 5 lac taka appeal lies to the High Court Division. The Appellate Jurisdiction of the District Court should be increased to unlimited amount instead of 5 lac taka. The District Court should be able to receive all the suits up to unlimited values from the Courts of Joint District Judges.

According to section 408 of the CrPC, Sessions Courts receive appeal from the decrees of the Courts of Assistant Sessions Judges, Metropolitan Magistrates or any other Judicial Magistrates of the First Class. But in any case, when an Assistant Sessions Judge passes any sentence of imprisonment for a term exceeding five years, the appeal shall lie to the High Court Division. The Appellate Jurisdiction of the Sessions Courts should be increased to sentences of 10 years of imprisonment from 5 years. The jurisdictions which are not shared and should never be shared with any of the lower courts including the District Courts

### Jurisdiction as to transfer of cases

Under article-110 of the Bangladesh Constitution, the High Court Division may transfer a case from any subordinate court to itself, where a substantial question of law is

involved. After withdrawing the case, the High Court Division may either,

- (i) dispose it to itself,
- (ii) return the case to the court from which it has been withdrawn or
- (iii) transfer the case to another subordinate court

According to section-22 of the Civil Courts Act 1887, the District Judge has the power to transfer appeal pending before him to any Joint District Judge, received from the Courts of Senior Assistant Judge or Assistant Judge. But this jurisdiction does not amount to or is equivalent to the Jurisdiction as to Transfer of Cases of the High Court Division, which is provided in Article-110 of the Bangladesh Constitution. The Jurisdiction of the District Court to transfer appeal can be explained as the power of distributing official functions, like any other establishment having the power of distributing official functions. Therefore, the Jurisdiction of Transfer of Cases is not shared by the High Court Division with the District Courts.

### Reference jurisdiction

Reference Jurisdiction in civil matters is provided in section 113 and order XLVI of the CPC. The Reference in criminal matters is made to the High Court Division according to the General Rules and Circular Orders of the High Court Division.

Reference Jurisdiction means, when any court subordinate to the High Court Division finds that any substantial question of law is involved or is in doubt regarding any suit or proceeding, the subordinate court may refer it to the High Court Division for opinion or order for disposal of that suit or proceeding. So, Reference can be made only by a court. It can be made by the court on its own motion or on the application of the aggrieved party.

### Supervisory jurisdiction

High Court Division has the Jurisdiction and Control over all the Courts and Tribunals subordinate to it. This Jurisdiction is provided in article-109 of the Bangladesh Constitution. This Jurisdiction is known as the Supervisory Jurisdiction of the High Court Division.

Therefore, the (i) Jurisdiction as to Transfer of Cases (ii) Reference Jurisdiction and (iii) Supervisory Jurisdiction should remain only with the High Court Division and should never be shared by any of the lower courts including the District Courts. These Jurisdictions are the matters of the higher courts.

### Conclusion

The essence of the above discussion is that, when the High Court Division receives any matter through parties to the suit either in its original jurisdiction or from the lower courts for reconsideration, that jurisdiction can be shared by the District Courts. When the High Court Division receives any case directly from the lower court i.e. when the lower court itself carries the matter to the High Court Division and not the party to the suit or when it involves any court to court relationship, that jurisdiction should not be shared with the District Court.

Thus, the High Court Division can offload itself to a great extent by delegating some of its jurisdictions which are appropriate to delegate to the District Courts. Presently, the High Court Division is over-flooded with many kinds of cases. One of the options is to increase the number of judges in the High Court Division but the other is to delegate some of its jurisdictions to the District Courts. It will on the other hand increase the number of cases in the District Courts. This can be solved by the appointment of more Additional District Judges. Section 8 of the Civil Courts Act 1887 provides, when the business pending before any District Judge requires the aid of Additional District Judges for its speedy disposal, the Government with the consultation of the High Court Division may appoint such Additional District Judges as required.

District Judges are the officials of high position. Therefore, the government should take proper care to impart continuing legal and judicial training to upgrade their competence and elevate their status, so that they can assist the Judges of the High Court Division in more effective ways.

The writer is advocate of the Supreme Court of Bangladesh.

RIGHTS monitor

## Rohingya refugee camps improved

CONDITIONS for thousands of Rohingya refugees at two government-run camps have improved, thanks largely to policy changes from the authorities in the past two years, aid workers say. There are 28,000 documented Rohingyas living in the camps in the southeast district of Cox's Bazar remnants of a mass influx of this ethnic, linguistic and religious minority when 250,000 fled Myanmar's western Rakhine state in 1991.

"Things have progressed over the past two years, but we have a long way to go," Pia Prytz Phiri, country representative for the UN Refugee Agency (UNHCR), told IRIN in Dhaka. Almost half the camp residents were born in Bangladesh. Close to 11,000 live at the Kutupalong camp, with another 17,000 farther south at Nayapara. Both camps are within 2km of Myanmar. However, the camp populations comprise fewer than a fifth of the overall estimated 200,000 Rohingyas in Bangladesh, many of whom may be stateless.

Poor conditions Although residents receive regular UN-supplied food rations, as well as access to rudimentary

healthcare, conditions are poor. Tension between local communities and camp residents is not uncommon, given the camps' close proximity to the host communities.

Officially, refugees are not allowed to travel or work outside the camp without permission, but many do so unofficially.

Children have access to only informal primary school education until grade five, after which there are no opportunities for further education and youth make up half the camps' population.

Yet over the past two years, significant steps, spearheaded by UNHCR, and helped by a more flexible approach by the authorities, have been made to improve the lives of camp residents while a durable solution to their plight is found.

"Conditions before were really bad. We've made significant progress and it's visible," said Nobenour Rahman Khan, a field assistant for UNHCR.

Since the beginning of this year, more than 50 percent of all camp shelters have been replaced with semi-permanent structures, in line with recommendations made by the refugees themselves,

providing them with greater space and ventilation, while small shops have also been allowed inside the camps.

More than 50 solar street lights have been installed in an effort to improve security, and latrines, bathing cubicles and tube wells have been replaced to UNHCR standards. And with NGOs now allowed to work in the camps, hundreds of refugee women have been able to access a variety of vocational training projects, including tailoring, laundry soap production, and clothes dyeing, while for the first time this year, more than 100 men received tailoring and carpentry skills training as well.

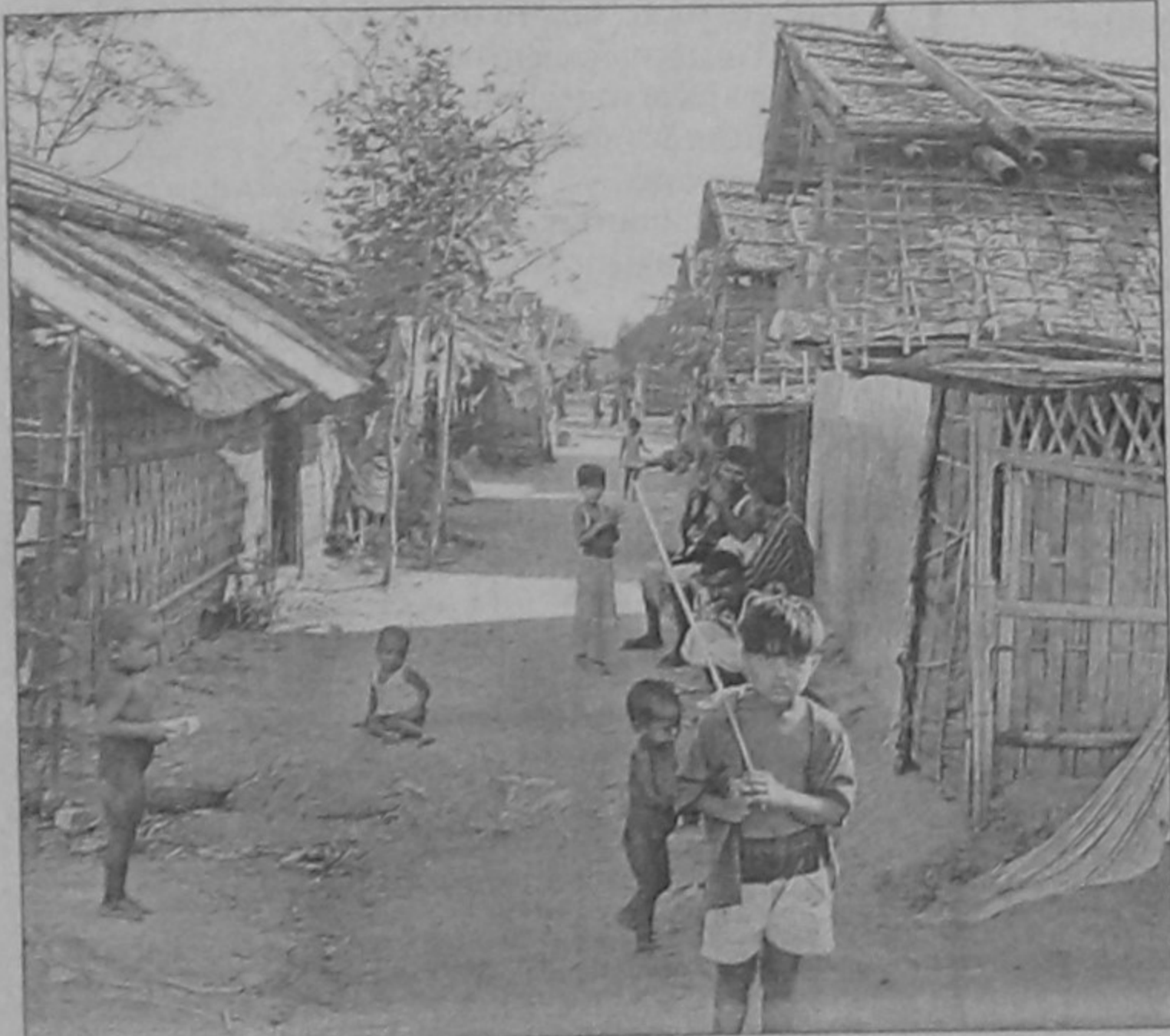
In addition, more than 1,000 adults and adolescents have attended adult literacy classes.

Following the approval of the government, UNHCR successfully distributed identification cards to all documented refugees inside the camp over the age of five in July, providing them with a form of identification for the first time an important step given they are not considered nationals of Myanmar.

Moreover, a national birth registration campaign supported by the UN Children's Fund (UNICEF) is also being extended to refugee children in the camps.

Refugee camp committees help manage the camps a system put in place after the government agreed to disband the "Maji" system, in which a few local officials and select residents allegedly exploited camp residents. As a result, instances of arbitrary arrests, bribery and extortion have dropped, and refugees are able to access humanitarian personnel and services more easily.

And while education opportunities remain limited, UNICEF has plans to formalise the camps' informal primary school education programme in line with the Bangladesh national curriculum.



Source: Integrated Regional Information Networks.

RIGHTS corner

## Guantanamo prisoners in danger if released

EUROPEAN governments should provide humanitarian protection to those Guantanamo detainees who will not be charged with a crime but cannot be returned to their countries of origin for fear of torture or other serious human rights violations, five leading human rights organisations said today. European governments should agree to accept them into their countries and ensure they are provided with adequate support.

Amnesty International, the Centre for Constitutional Rights, Human Rights Watch, Reprieve, and the International Federation for Human Rights (IFHR) urged governments to work with the new US administration to take this important step in order to facilitate the closure of the detention facility at Guantanamo. The human rights groups made their call after a two-day closed strategic workshop in Berlin, convened by the organizations with other international actors active on the issue of humanitarian protection.

"We must find a solution to the 50 men imprisoned at Guantanamo simply because they have nowhere to go," said Emi MacLean, staff attorney at the Centre for Constitutional Rights. "The US government has twice previously tried to send our client, Abdul Ra'ouf Al Qassim, to Libya even though it is undisputed that he would likely be tortured, or disappeared into Libyan jails, if returned. His survival depends on the simple humanitarian gesture of another country opening their doors to him."

It is the primary responsibility of the United States to find solutions for all those held at Guantanamo, since it brought them to the detention facility and is holding them there unlawfully. If the United States is not planning to charge and try them in ordinary US courts, and cannot release them to their own countries safely, it should immediately offer them an opportunity to be released into the United States.

It is also clear, however, that governments in Europe and elsewhere can and should play a vital role in providing such individuals with humanitarian protection in the form of a safe place to get on with their lives after years of suffering. The

involvement of European governments will be instrumental in reaching a solution to this problem a solution that is critical to the international aim of closing Guantanamo.

"Everyone appears to rightly agree that Guantanamo must be closed, and President-elect Obama has said that he will close it," said Daniel Gorevan, Counter Terror with Justice campaign manager at Amnesty International. "Clearly, other governments can help make this happen by offering protection to individuals who cannot be released to their own countries. This would have a double effect: helping to end the ordeal of an individual unlawfully held in violation of his human rights, and helping end the international human rights scandal that is Guantanamo."

Around 50 of the detainees currently held in Guantanamo cannot lawfully be sent back to their countries of origin because they would face a real risk of human rights violations such as torture or other ill-treatment. They come from countries including China, Libya, Russia, Tunisia, and Uzbekistan.

"This is a key opportunity for both sides of the Atlantic to move beyond the misguided acts of the 'war on terror': rendition, secret detention, and torture," said Cori Crider, staff attorney at Reprieve. "President-elect Obama says he will close Guantanamo the question is when and how. One of Reprieve's clients was sent back to Tunisia, drugged, hit, and threatened with the rape of his wife and daughter. Another is fighting, even now, to stay in Guantanamo because Tunisia threatened him with 'water torture in the barrel'. The US still asserts total authority to send him back. Europe can send a powerful message by reaching out to Obama and providing a safe alternative for these few people."

"President-elect Obama has committed to closing Guantanamo, but he is going to need Europe's help," said Joanne Mariner, Terrorism and Counterterrorism Program director at Human Rights Watch. "European governments could provide much-needed assistance by agreeing to take in some of the detainees who cannot



be sent back home." "FIDH and CCR mobilised 77 members of the European Parliament who issued a joint call to EU member States to offer relocation for Guantanamo detainees," said Souhayr Belhassen, president of FIDH. "As an important strategic partner of the US, the EU should help the Administration relocate these men."

Statements of support from international actors "The efforts must be renewed now with European governments and the U.S. government working to close Guantanamo and offer protection to those unable to be returned safely to their own countries. The efforts of human rights NGOs are coming at the best moment, in order to use the next months in the most positive way." Anne-Marie Lizin, Special Representative on Guantanamo for the Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE), and Vice-President of the Parliamentary Assembly of the OSCE.

"I urge European governments to open their doors to a small number of men who fear persecution or torture if transferred to

their home countries. Such assistance is both the right thing to do, and of critical importance in our attempts to push for the immediate closure of Guantanamo Bay."

Thomas Hammerberg, Human Rights Commissioner of the Council of Europe "We are at a critical juncture. It is now possible to anticipate the closing of Guantanamo, the end to the US practice of executive detention, and the reaffirmation of fundamental human rights principles, including the prohibition of torture in all circumstances. But European engagement and support will be essential to get there. One step that European governments should take is to accept into their borders the small number of men at Guantanamo who cannot be repatriated safely. Guantanamo cannot be closed until these men have a country which will accept them, and where their lives and liberty are not in jeopardy."

Manfred Nowak, UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment

Source: Human Rights Watch.