



LAW campaign

Unfolding the untold truth

FAYAZUDDIN AHMAD

RIGHTS based approach to development for the (dis)abled people is recent in Bangladesh. The (dis)abled people are extensively deprived of the opportunity of fully participating in the life of the community. In certain cases law forbids (dis)abled people to exercise the rights affirmed on their behalf by international instruments. In other cases (dis)abled persons do not receive the support they need in order to participate. Let's (dis)uss some of the key areas where the situation is more susceptible. WHO estimates that (dis)abled people make up 10% of the population as a whole i.e. more than 15 million (dis)abled people live in Bangladesh without fulfilment of their basic needs and with denial of their rights. The government adopts a welfare and charity approach instead of rights based approach for the development of (dis)abled people.

Article 17 of Bangladesh constitution says "the State shall adopt effective measures for the purpose of- uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law" The enrollment of school going (dis)abled children is 4%, while the average enrolment rate is more than 90%. The teachers are not trained; materials not available and school buildings are not accessible. The primary education policy is not (dis)ability inclusive.

Article 29 says "there shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic. No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or (dis)criminated against in respect of, any employment or office in the service of the Republic". The former Prime Minister declared that quota will be for the (dis)abled people in BCS. Article 20 says "work is a right, a duty and a matter of honor for every citizen who is capable of working and everyone shall be paid for his work on the basis of the principle 'from each according to his abilities to each according to his work'". However, the (dis)abled people (intellectual and hearing loss people) are paid half or even nominal in the community although they do the same job as other people in the community.

Article 36 of Bangladesh constitution men-



tions "subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to move freely throughout Bangladesh, to reside and settle in any place therein and to leave and re-enter Bangladesh". However, the (dis)abled people cannot move for the inaccessibility of buildings, transports and environment. The Bangladesh Building Code is not (dis)ability sensitive. Article 38 of Bangladesh constitution says that every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order; according to (dis)ability Welfare Act 2001, the Government will "Create opportunities for formation of Self-help Organizations of the (dis)abled people" (Section- 1). But the Bangladesh National (dis)ability Foundation gives fund to more than 100 organizations that hardly include the Self-help Organization of (dis)abled People. The tokenism of (dis)abled people's representation is ensured in the seminar, workshop organized on the (dis)ability issue.

The right to vote in elections is acknowledged for all persons including the (dis)abled persons. Although (dis)abled people are entitled to vote, they seldom have the opportunity of actually doing so. There are also a lot of problems connected with the actual voting procedure. Polling stations are not physically adapted for (dis)abled, voting papers are unavailable in Braille. The polling stations are so far away from the (dis)abled person's home and the way there so impassable, that people with physical (dis)abilities are prevented from voting. Under the constitution all citizen of Bangladesh are equal before law. But this seems far from reality for the (dis)abled people.

Violence to (dis)abled people, especially women has increased in numbers during last one year. Neither these incidents had been addressed duly nor did the victims receive legal relief. Here the (dis)abled Peoples' Organizations played a noteworthy role, in cases of violence to (dis)abled person, especially (dis)abled women, the local administration and law enforcing agencies have shown sensitivity and initiated due action. However, in

most cases there is a lack of proper follow up in fulfilling their responsibilities according to the legal procedures. And there is a tendency among the victims and their families to make a compromise and not proceed legally in exchange of cash or kind. Both print and electronic media are playing a very noteworthy role, supporting campaigns for (dis)abled people in establishing their rights.

As most of the (dis)abled people are not organized, they are not empowered to fight against (dis)crimination and violations of rights. The DPOs adopt rights based approach for the development of (dis)abled people. The DPOs have plans to organize other (dis)abled people in the union, thana and district level and build their capacity through awareness, advocacy and campaign programme for the rightful inclusion of (dis)abled people in the society. Reality is that most of them do not know about their rights. They should be aware of the national and international human rights instruments that protect their rights. The (dis)abled women are doubly vulnerable because of gender and (dis)ability. The violence against women increases gradually for the unrest and intolerance of the society.

Article 26 of our Constitution says that *all existing law inconsistent with the provisions of fundamental rights shall, to the extent of such inconsistency, become void on the commencement of this Constitution.* The DPOs may campaign for laws that will be consistent to protect the rights of the (dis)abled people. The (dis)ability Welfare Act 2001 passed in the parliament is under the process of amendment. The (dis)ability movement needs alliances from all sectors to bring a change in the mindset of society and to introduce inclusive policies so that they enjoy equal rights like other citizens of the society. The economist, policy makers and civil society support the struggle of the (dis)abled people and the government formulates (dis)ability inclusive poverty reduction plan and programme so that education, employment, social dignity and participation of (dis)abled people are ensured at every level of the society- and as a party to the UN Convention on the Rights of Persons with Disabilities, our Government is now under international legal obligations too.

The writer is an advocate and researcher.

Ban on cluster munitions signed

The new international treaty banning cluster munitions, which opened for signing on December 3 and 4, 2008, is one of the most important measures that nations have taken to protect civilians from the deadly effects of armed conflict, Human Rights Watch said in a press release issued on 4 December 2008. By the close of the signing conference in Oslo, 94 nations had signed the treaty, which bans cluster munitions outright and provides strong humanitarian provisions for their cleanup and assistance to victims.

"This treaty is a major advance in international humanitarian law that will strengthen protection for civilians both during and after armed conflict," said Steve Goose, director of the arms division at Human Rights Watch. "Clusters have been one of the most ubiquitously used weapons and also one of the most harmful to civilians."

The convention prohibits the use, production, transfer, and stockpiling of cluster munitions. It commits participating nations to clear affected areas within 10 years, declare and destroy stockpiled cluster munitions within eight years, help affected nations with clearance, and provide comprehensive assistance to victims of the weapon.

"Nations such as the United States will find it difficult to use this weapon when its closest military allies have given it up," said Goose. "The stigma created by this convention will have a powerful effect even on those who have not joined."

The new treaty has a groundbreaking provision requiring states that join it actively to discourage other nations from using cluster munitions in joint military operations.

Signatories include dozens of stockpilers and former producers and users of the weapon. Eighteen of 26 NATO nations, including the UK, France, and Germany, signed the agreement. Those signing included some of the most severely affected states, such as Laos, Lebanon, and Afghanistan, which made a surprise announcement that it was signing after a change of heart by President Hamid Karzai.

The agreement will become binding international law six months after 30 signatories have ratified it. Four ratified in Oslo: Holy See, Ireland, Norway and Sierra Leone.

"There's a healthy competition now under way to be among the first 30 to ratify," said Goose.

Many states announced early steps toward carrying out the treaty's provisions. Austria, Belgium, France, Germany, South Africa, and the UK are already destroying their stockpiles of cluster weapons. Spain said it would destroy its stockpile within the next seven months.

Cluster munitions can be fired by artillery and rocket systems or dropped by aircraft, and typically explode in the air and send dozens, even hundreds, of tiny bomblets over an area the size of a football field. Used in urban areas, they invariably kill and wound civilians. Used in any circumstance, they can harm civilians decades after the war is over, as "duds" on the ground act like landmines, exploding when touched by unwitting civilians.

The treaty will now be available for signing at the United Nations in New York and will remain open for signature until it enters into force, after which states must join directly through a process known as accession (a one-step process for signing and ratifying).

Source: Human Rights Watch.

LAW opinion

SEPARATION OF JUDICIARY

Expectation and achievement

DR. MUHAMMAD ASHRAFUZZAMAN

INDEPENDENCE of Judiciary is not a matter for jurists only but an important pillar of democracy. Many countries across the globe have begun transitions from authoritarian rule to democracy, marking what has become popularly known as the third wave of democratization. Democracy can never be complete without and unless the four pillars are independent and strong. However, there must be links between and among the pillars. The organs of the states are dependent on each other as current British Lord Chancellor rightly pointed out "The independence of the judiciary, as opposed to that of individual judges, is dependent on the willingness of the popular branches of government". The unique status and character of the judicial wing emerges out of its objectives, namely, the maintenance and protection of individual rights. While a society without legislative organs is conceivable, one without a judicial organ is inconceivable. In the absence of the legislature, courts might apply rules derived from other sources, such as custom or their own previous decisions. Not only is the judicial organ said to be a necessity but also a test of the excellence of a government, "for nothing more nearly touches the welfare and security of the average citizen than the feeling that he can rely on the certain and prompt administration of justice" (Lord Bryce). In his 2004 report, the UN special rapporteur on the independence of judges and lawyers described how the rule of law and separation of powers are the pillars of the independence of judiciary.

The rule of law and separation of powers not only constitute the pillars of the system of democracy but also open the way to an administration of justice that provides guarantees of independence, impartiality and transparency. These guarantees are universal in scope.

The Supreme Court direction
The Bangladesh Constitution clearly lays

down the foundations of a judiciary that is separate and independent from the other branches of government. It was introduced in recognition of the fact that the efficiency of the judiciary and the entire justice system depends to a great extent on the independence of the judiciary.

One year has elapsed since the historical day of independence of judiciary. Now we need to look back to the achievements of independent judiciary. In Secretary of Finance v. Masdar Hossain, the Supreme Court provided a road map for implementation of judicial independence in the form of 12 directions. To create a separate organization the judgment provided the followings to be done:

Changes after separation

The former Chief Justice Mostafa Kamal said, "The administrative and supervisory works of the Supreme Court have now registered a manifold increase. I hope that the Supreme Court will not disappoint the countrymen in the due discharge of its extended functions." Let us now look at the administrative functions and what has been done since separation.

General Administration Committee

Headed by the Chief Justice and composed with three other members selected by the Chief Justice from amongst the Judges of High Court Division, this committee is responsible to take decisions regarding posting, promotion and other departmental action.

The Bangladesh Judicial Service (Service Constitution, Composition, Recruitment, Suspension, Dismissal and Removal) Rules 2002, and the Bangladesh Judicial Service (Posting, Promotion, Leave, Control, Discipline and other Service Condition) Rules 2001 were made effective from July 1, 2007.

Judicial Pay Commission

Under Article 115 of the constitution there has to be a separate Judicial Pay

Commission which is to review the pay, allowances, and other privileges of the judicial officers. Meetings of the Commission shall be convened at stated intervals to keep the review process continuous. The Bangladesh Judicial Service Pay Commission Rules 2002 is there for its implementation.

After separation, the Judicial pay Commission Headed by an Appellate Division Judge has reviewed the present pay structure of judges. The Judicial Pay Commission made recommendations for 100% judicial allowance, increase of House Rent allowance and robe allowances. Only robe allowances has been increased but the other two recommendations were not time-honoured.

Judicial Service Commission

Immediately after 1.11.2007 around 600 executive magistrates entrusted by the administration with judicial job returned to their administrative duties and the Supreme Court appointed 218 judicial magistrates to carry out the duties at the magistrate courts following the Judicial Service Commission Rules 2002.

Implementation status

Let us now look at the implementations. Judicial Service Commission has been working and the first group of judges appointed by the Commission are now working at various courts. The process of second appointment through this Commission is ongoing.

The Code of Criminal Procedure has been amended. A number of judicial magistrates are already working (many of them are appointed by the new Judicial Service Commission) and the second recruitment by JSC is underway.

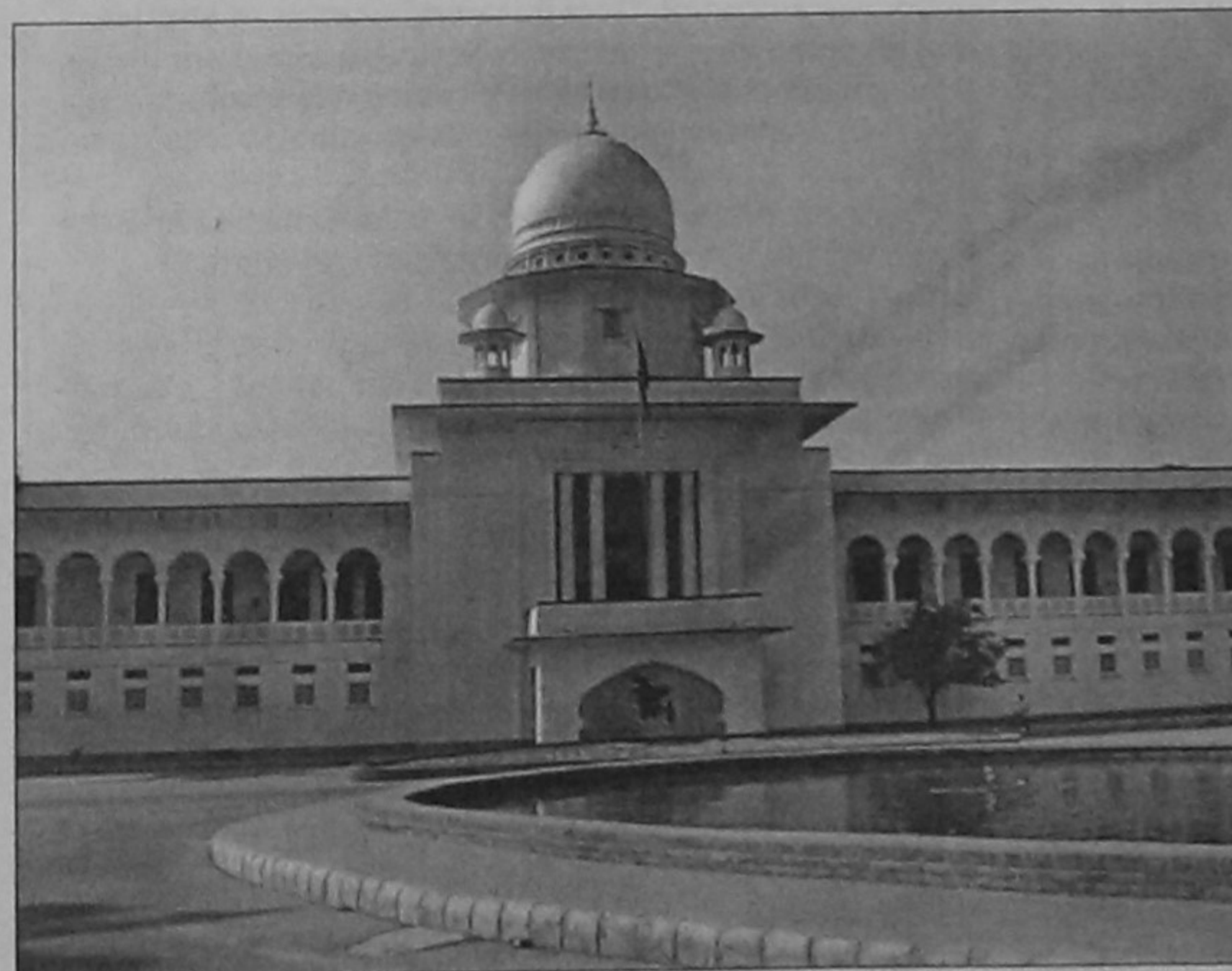
Public Prosecution Department must be strengthened

Public prosecution department has not seen much change since the independence. Although, it is claimed that there is no longer political pressure or selection on extraneous consideration, the appointments are still under the control

of the Law ministry and not open enough for people to know the selection process. At present we have an Attorney General to protect the interest of the public. His office is in charge to defend the State interest in all matters in the Supreme Court. However, surprisingly, the other parts of state lawyers (Public Prosecutor in Criminal cases and Government Pleaders in civil cases) have no connection whatsoever with this office. Today the Attorney General for England and Wales probably holds the most multifaceted legal profession around the globe. He is utterly a political appointee and must be a member of either house of the

himself, termed it "the pain fullest task in the realm". Though, a political insider, the Attorney General of England is generally expected to differentiate between 'politics' and 'law' so as to enable him exercise his judgment independently. Here in Bangladesh, we fail to see such an attitude among the state lawyers.

The Public and the general prosecutors are appointed by the Solicitors wing of the Ministry of Law, Justice and parliamentary affairs. The solicitor general is a civil servant of Joint Secretary rank therefore the appointment of government counsel is now entirely depending on civil servants.



Parliament. He has to represent his constituency in the parliament, account to the Parliament for his doings, defend public interest in the apex court, supervise criminal prosecution, represent the Crown in the court and advise government functionaries. No wonder Sir Francis Bacon, once Attorney General

Litigation management of all suits, and cases in which the government/public or private parties are involved, is one of the major functions of the Ministry. For that matter, there is a Solicitor's Office under the Law and Justice Wing. Solicitor's Office takes care of and monitors litigations by or against

the government in different courts of the country including the Supreme Court. This Office is also responsible for appointment and discipline of all Government Pleaders and Public Prosecutors. Appointment of the Attorney General and other Attorneys in the Supreme Court are also processed by this Office. Payment of salaries and fees of the government law officers and disbursement of all other expenses connected with litigation management are made by the Solicitor's Office.

Judicial accountability mechanism

The need for an effective Code of Conduct for regulating judicial conduct on and off the bench at all levels of the judiciary is generally agreed. The code, which should apply to the Supreme Court as well as Subordinate Court judges, would inform the judge of the standards he/she is expected to rise to, create peer pressure for the judge to observe those standards, and, through wide dissemination (via print, audio and/or visual media), inform the public of the standards they have the rights to expect of the judiciary. The code should, among other things, set out the principles or judicial ethics; explanatory comments and hypothetical problems with answers drawn from actual disciplinary actions taken; and remedial and punitive sanctions for code violations. It should cover such matters as disclosure of assets, participation in trade or business ventures, seeking or acceptance of financial benefits which are not clearly available by virtue of office, involvement in conflict of interest situations and engagement in public or media controversy. A provision should be made for a judicial committee to advise judges on difficult and/or doubtful potential ethical issues, so as to enable them, if possible, to avoid future sanctions.

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