



## LAW campaign

## Telecommunication laws and rights of the consumers

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BA NGLADESH Telecommunication Act (Act 18 of 2001) paved the way for the establishment of Bangladesh Telecommunication Regulatory Commission (BTRC). There had been hardly any independent monitoring mechanism for the telecommunication sector before BTRC came into being. Bangladesh Telegraph and Telephone Board (BTB) had the sole monopoly and they were the only telecom operator until mobile phone technology flourished and foreign companies (trans-national corporations) started operating in Bangladesh. Earlier laws and regulation neither covered modern aspect of telecommunication nor were the regulatory implementation mechanisms in place.

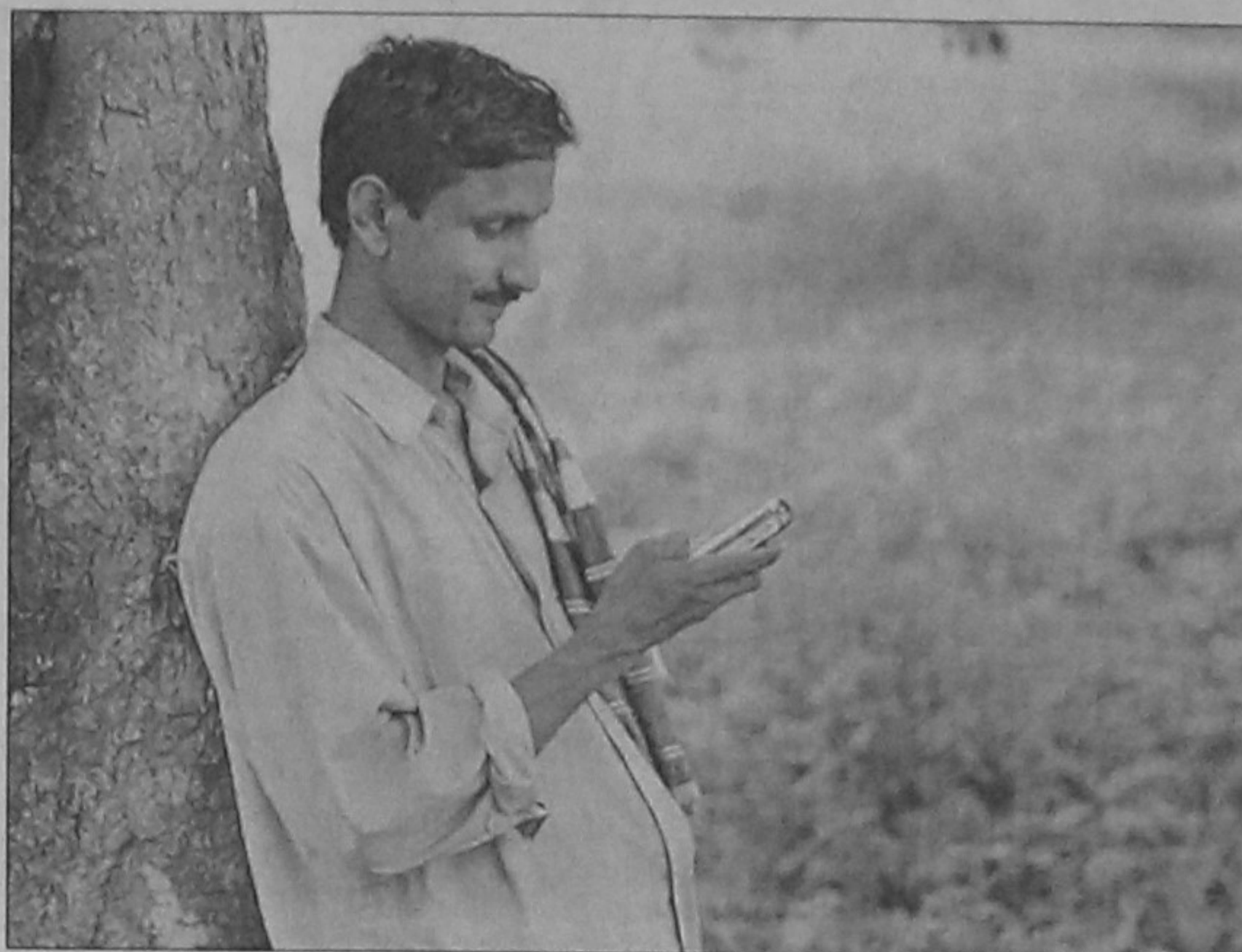
After foreign mobile operators started their operations in Bangladesh, BTB faced intense competitions. Consumers were gradually turning their faces towards mobile companies though service charges of these operators were relatively higher in the initial years. In this changing operating environment, necessity was felt for a regulator. BTB was unable to be a regulator as it was also service provider and competitor for the private sector. In order to regulate telecommunication sector, Bangladesh Telecommunication Act was promulgated. It has been stated in Section 6 of the Act, "On the commencement of this Act, a Commission to be known as the

Bangladesh Telecommunication Regulatory Commission shall be established".

## Status of consumers in the telecom sector

According to the website of BTRC, the total number of mobile phone active subscribers has reached 46.50 million at the end of April 2009. Though the number of subscribers is quite huge, consumers have got little attention in the telecommunication sector. Call charges went down due to intense competition, although there are allegations of hidden charges for different offers and packages offered by the different service providers. Giant operators often block access to other networks and consumers fail to get connection during peak hours. There are other forms of exploitation also reported by consumers and the media. There are specific allegations against mobile operators for breaking the laws of the land. One such example is the recently reported case (Case No. 46 under Gulshan Police Station, Dhaka), filed by BTRC on Jan 16, 2008 against Grameenphone for illegal VoIP business. It is not the first instance though. Earlier in 2007, most of the private operators paid fines for facilitating illegal VOIPs trading.

Such irregularities and alleged illegalities also raise questions about the relationship of the telecommunication service providers with their customers. As per the purview of the Bangladesh Telecommunications Act, it has been stated in Section 59 (1) "Every operator



providing telecommunication service shall establish sufficient number of complain-centres so that he can collect information on the inconvenience or complain of the consumers in respect of that service or related matters, and shall, from time to time, publish notice about the location of, and communication with, such centres". It has been articulated further in the later sub-section, "Any consumer may, by telephone message or written complaint, present his inconvenience or complain". If operator fails to address the issue or con-

sumer is not happy, Telecommunication Act still provides option for consumers.

Moreover, there is provision in the law to complain directly to regulating authority. There is also a specified timeframe for regulator to respond.

It has been stated in Section 59 (6), "Within 7 (seven) days of receipt of such application, the Commission may, after necessary inquiry, give proper directions to the service provider to take necessary steps for resolving the said inconvenience or complain."

## Processes for addressing consumer redress

A compulsory enforcement order might be issued by the regulating authority when operator fails to comply with the provision of subsection 59(6). "If a licensee or the holder of a certificate or permit- (a) violates any provision of this Act or regulations or any condition of the license or permit in operating a system or in providing a service; or

(b) has procured the license or permit or technical acceptance certificate by furnishing a false information, the Commission may direct the licensee or the holder of the permit or certificate to show cause within 30 (thirty) days as to why an enforcement order shall not be issued or why the license or permit or certificate shall not be cancelled".

Where there is satisfactory explanation unavailable, the Commission may impose upon the violator an administrative fine. The fine could be up to 3 (three) lac taka and, if the violation continues after the issuance of the order, an additional administrative fine could be charged.

The piece of law also authorises BTRC to suspend or cancel the license. There is a provision in Section 63. There is also scope to impose additional conditions. Therefore, Bangladesh Telecommunication Act has comprehensively authorised BTRC to take every action.

All the provisions, referred above would have very little impact if the consumers

themselves are not aware of the protective mechanisms and willing to take recourse to such measures. Raising awareness of the consumers, therefore, is really crucial. Consumers are largely unaware of the rights enshrined in Bangladesh Telecommunication Act. Nor do they know about the function of BTRC as regulatory body. As a result, they fail to get remedies when rights are violated.

Mobile service consumer forum could be formed to address the issues raised by consumers. If consumers are united, there would be a scope to deal with mobile operators effectively. The Consumer Rights organisations in the country could facilitate such processes on the part of the consumers.

BTRC has done a commendable job in earning extra revenue for the country and punishing mobile operators for illegal VOIP. However, there are growing expectations on the side of consumers. Telecom regulator should come forward in upholding the rights of consumers in mobile sector. And the consumer rights organisations need to play a proactive role in this process by raising awareness of the consumers, as well as assisting in facilitating telecommunication consumers forums under the Constitutional freedom of association.

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The views expressed here are those of the writers themselves and do not necessarily convey the views of the organisations they are associated with.

## REVIEWING the views

## Serving the nation not the executive

M. JASHIM ALI CHOWDHURY

I NDEPENDENCE of judiciary if not ensured is meaningless in all respects and from all perspectives. Appointment in the judiciary must not be executive overridden. Tenure, discipline and removal etc should be essentially internal for the judiciary. Most importantly, it must be secured that judgments are delivered without fear or favour. This is exactly what the framers of our constitution intended. They seemed vehemently opposing every probability of submissiveness on the part of the judiciary and tried to seal every leak in the constitution in this regard. Accordingly, articles 147(3) and 99 were included in the constitution disqualifying the Supreme Court judges from holding any office of profit in the Service of the Republic both during the continuance of their service and after the retirement or removal therefrom.

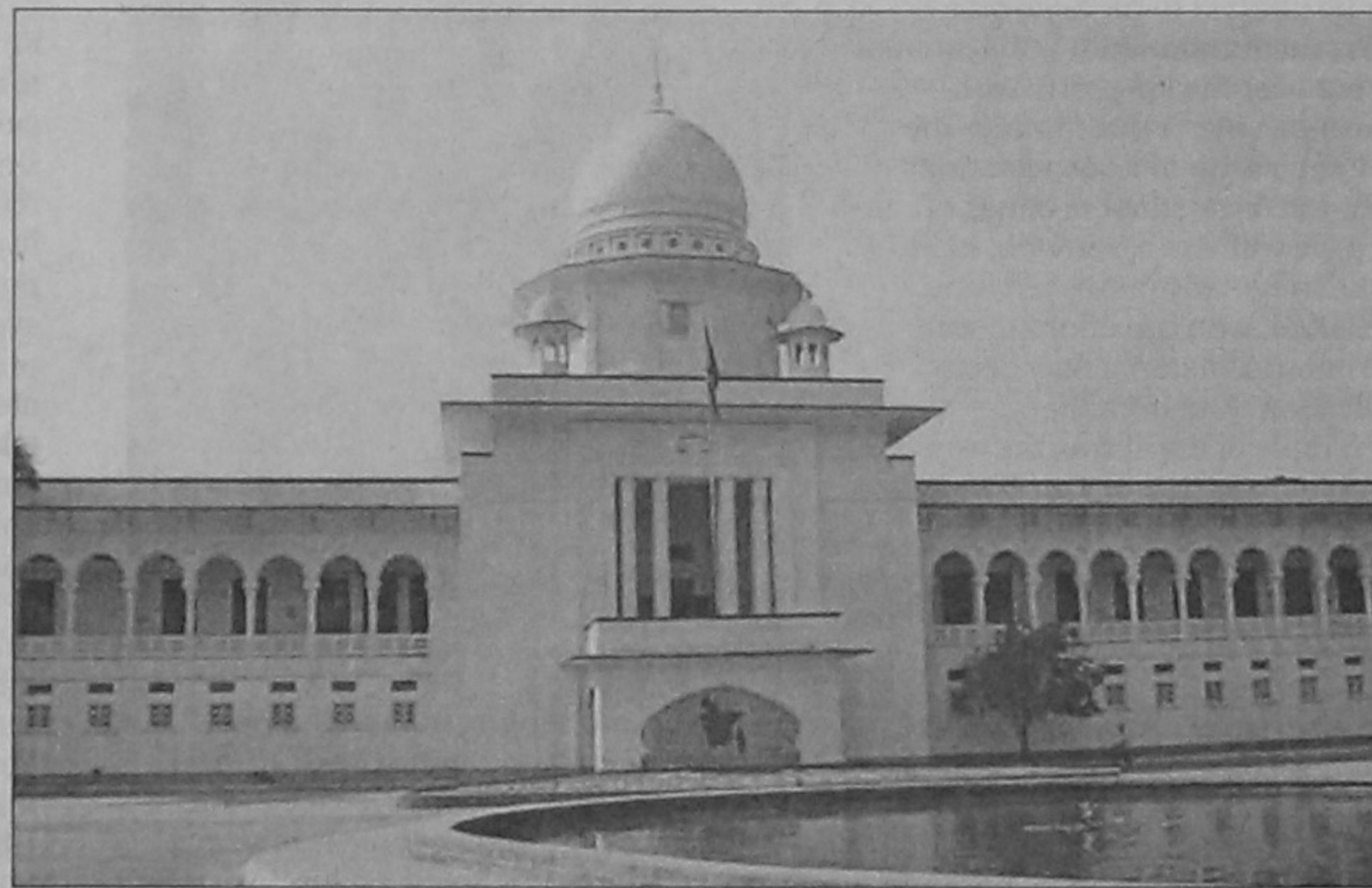
This two-tier prohibition was intended to immunise the judges from all sorts of favoritism and allurements for possible future appointments. Though the original article 99(1) put a total bar on judges' appointment to any post or office, it was re-tailored by a military ruler to lift the embargo partially by making a retired judge eligible for appointment to judicial or quasi judicial offices. Inclusion of 'quasi judicial' was disingenuous. In *Anwar Hossain Chowdhury v. Bangladesh* 1989 BLD (AD)(Spl) 1 Justice Shahabuddin Ahmed observed, "Under the colour of quasi judicial office judges may be appointed to executive office also" (para 365). The later events have proved this observation. While disposing of the challenges in this regard on different occasions, the central question the Supreme Court faced was what should be the true meaning of 'office of profit in the service of the Republic'. The court's judgments varied over times. This endeavor aims at surfing through different standings of the Supreme Court over the past years to find out the genuine connotation of service of the Republic.

## A bona fide mistake

The first glance over the concept was made in *Abu Bakar Siddique v. Justice Shahabuddin Ahmed* 17 BLD (1997) 31. Justice Shahabuddin Ahmed was nominated to the office of President in 1996. His nomination was challenged in the High Court Division by Advocate Abu Bakar Siddique. Mr. Asrarul Hussein appearing on behalf of the petitioner challenged the nomination on the ground that the office of President being an office of profit in the service of the Republic, Shahabuddin Ahmed was barred by article 99(1) from being elected to that post. Right from the President down to a peon of a government office, everybody is holding his post in the service of the Republic as all of them are getting remunerations from the exchequer of Bangladesh and -- rendering services to the Republic, Asrarul Hussein argues (para 25). All the civil servants gazetted, non-gazetted or constitutional post holders -- are discharging their duties towards the state and so all are to be treated as persons holding offices in the service of the Republic (para 26). Hence a judge of the Supreme Court is barred by article 99(1) from appointment to any civil or constitutional post.

Dr. Kamal Hossain, Barrister Rafiqul Huq and Barrister Mainul Hussein appeared before the

Court as amicus curie. They along with the Attorney General, dwelt on the hypothesis that a person in the service of the Republic is necessarily governed by Part IX of the Constitution containing provisions regarding appointment, tenure etc (para 27). They summed up the technical differences between positions of the holders of constitutional posts and persons in the cadre services. Persons in the cadre services serve during pleasure of the President. They are entitled to seek relief in the administrative tribunal constituted under article 117 (para 51). They may not be removed or reduced in rank until given a reasonable opportunity of showing cause under article 135(2). They are regulated by the PSC and other government rules and regulations. All of these are definitely not intended for the holders of constitutional posts. In this sense, only government officers and employees hold



office of profit in service of the Republic (para 60). So it is absurd to think that persons holding constitutional posts are holding office of profit in the service of the Republic (para 28). Accordingly a Judge of the Supreme Court may be appointed to any constitutional post after retirement.

The High Court Division was engulfed by arguments of the reputed experts and the enlightened arguments of Mr. Asrarul Hussein were silenced mistakenly. Shahabuddin Ahmed's neutrality and integrity was undoubtedly beyond question. The intention of the then ruling party also could not be termed as mala fide. But it produced a weak interpretation of the constitution and hence a bad precedent to be misused later. That day the Court forgot that article 99(1) prohibited all sorts of offices not to disadvantage a particular person but for the greatest interest of judicial independence. Now the Court warns us, "One encroachment leads to another. What has been done may be done again in a lesser crisis and less serious circumstances" [Advocate Ruhul Quddus v. Justice M A Aziz 60 DLR 2008 (HCD) 511, para 372].

## A Judge on deputation

Justice Md Abdur Rouf, then a Judge of the High Court Division, was appointed as the Chief Election Commissioner of Bangladesh in December 1990. He was appointed a Judge of the

Appellate Division in 1995. His new appointment was challenged in *Shamsul Haq Chowdhury v. Justice Md Abdur Rouf* 49 DLR (1997) 176 on the ground of being grossly violative of article 118(3). Under article 118(3)(a) of the Constitution, a person who has held office as Chief Election Commissioner shall not be eligible for appointment in the Service of the Republic.

In this case as well, the High Court Division held that holders of constitutional posts are not persons in the service of the Republic. Therefore holding the office of CEC by a Judge does not stand as a bar against his appointment as Judge of the Appellate Division.

## Service of the republic redefined

Service of Republic came under consideration of



the Appellate Division in Secretary, Ministry of Finance v. Masder Hossain 2001 BLD (AD) 126. This was the case for separation of judiciary. Naturally the respondents' main focus was on establishing the judicial service as a distinct one from other cadre services. Barrister Amirul Islam appearing on behalf of the respondents submits that judges are not in the service of the Republic as service in respect of Government means the executive or administrative functionary of the State. He, like the amicus curie in Shahabuddin Ahmed case underscored the theoretical distinction that judges hold office during the good behavior while persons in the service of the Republic hold office during pleasure of the President under article 134 i.e., part IX (para 28).

But Mahmudul Islam, the then Attorney General echoes the voice of Mr Asrarul Hussein in Shahabuddin Ahmed's case arguing that all officers whether judicial, civil or military are members in the service of the Republic in respect of the government. Here government includes three branches of the state parliament, executive and judiciary (para 10). Government may be sued in the name of Bangladesh (Article 146) and so government means the Republic (para 26).

The Appellate Division acknowledged that it was not right to claim judicial service not to be a service of the Republic (para 27). It is also not

proper to say that existence of rules and regulations different from those in part IX to govern a particular service takes it out of the ambit of service of the Republic. Persons appointed to the Secretariat of the Parliament and the staff of the Supreme Court, although governed by separate terms and conditions of service, are in the service of the Republic (para 27). So the holders of constitutional posts are very well in the service of the Republic. This is a clear negation of the submissions of the amicus curie in Shahabuddin Ahmed case.

## A charade on the constitution

Justice M A Aziz was appointed as CEC while he was a Judge in the Appellate Division. He didn't even resign from his post. His appointment was challenged in Advocate Ruhul Quddus v. Justice M A Aziz 60 DLR 2008 (HCD) 511. The petitioner argued that since M A Aziz was holding an office of profit in the service of the Republic (Judge of the Supreme Court), he was barred from appointment to another office of profit (CEC) by the combined operation of articles 99(1) and 147(3). The defence argument sang the old song offices of a judge of the Supreme Court and Chief Election Commissioner being constitutional posts are not office of profit in the service of the Republic (para 226). Amicus curie appearing at the request of the court argued that 'service of the Republic' should be given a broader meaning and even the President is in the service of the Republic (para 60). If one receives salary from the exchequer, he serves the Republic (para 75).

The High Court Division relied on the intention of the framers of the constitution (para 193) and emphasized on the common sense approach. Any kind of jugglery of words will be fruitless if it does not make common sense (para 219) and common sense tells that the 'service of the Republic' mentioned in article 99 includes all post or office of the Republic (para 223). Republic means the State which is defined to include parliament, government, statutory public authorities (para 230) and the judiciary (para 239). The definition does not use the word 'in the Government' rather it uses 'in respect of government' (para 286). So it is service not only in government but also service, post or office in relation to the governance (para 256), the governance of the whole Republic (para 251).

So the conclusion becomes inescapable that as per article 99(1) judges of the Supreme Court are barred from assuming any post whatsoever after their retirement (para 277). Even the exception of judicial or quasi judicial offices in article 99(1) being offensive to the basic structure of independence of judiciary cannot sustain (para 321).

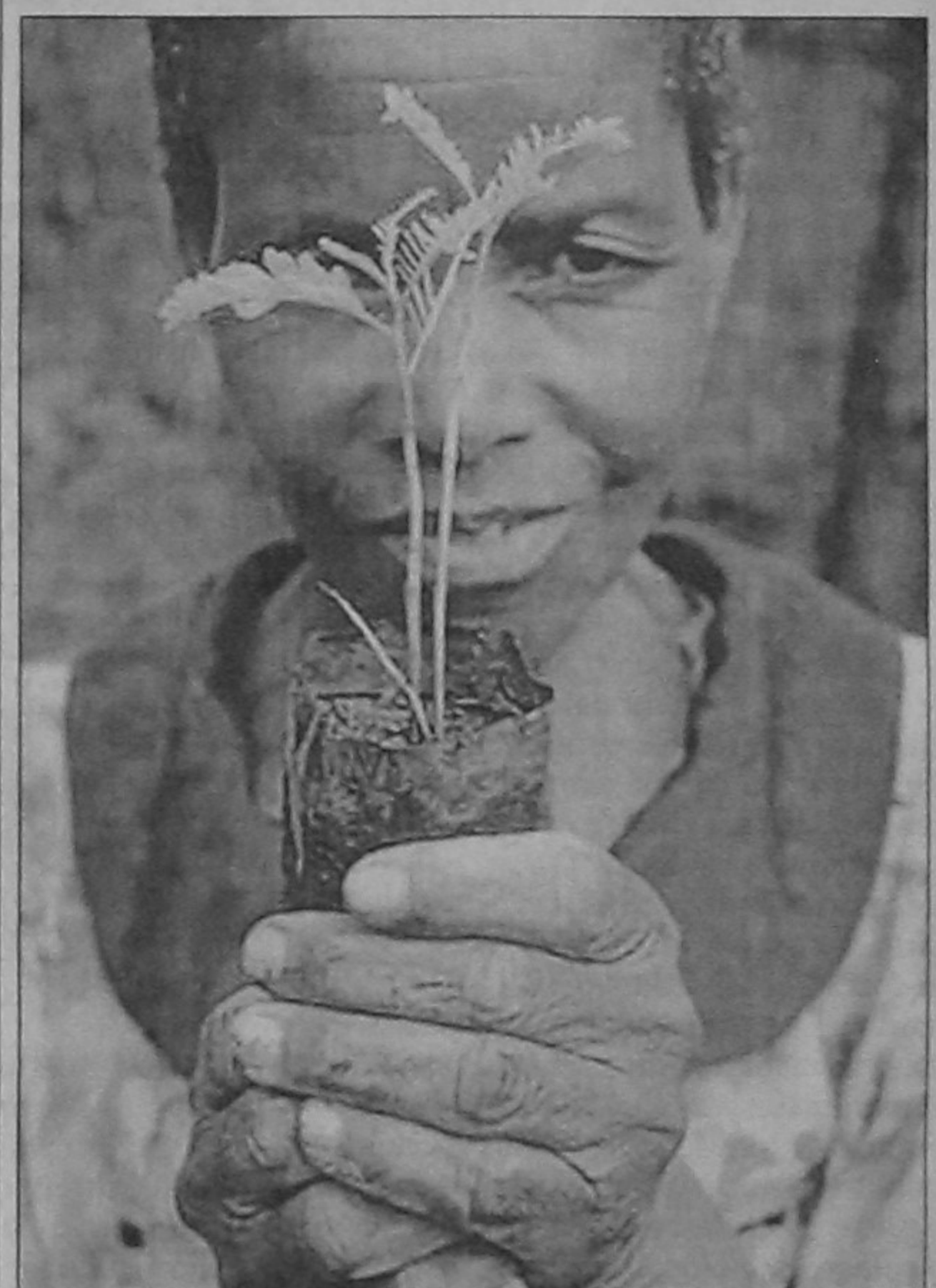
## Concluding remarks

Judges are more often bribed by their ambition and loyalty than by money (MA Aziz Case, para 376). The slightest scope of inducement during their service in the court is bound to affect the performance of the judiciary. So better we revive the original article 99. The Judges of the Supreme Court must not take any appointment judicial, quasi judicial or non judicial made pursuant to the recommendation of the executive (MA Aziz Case, para 354). They being the servant of the Republic must serve the nation not the executive.

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## RIGHTS corner

## Empowering the world's poor



A new Amnesty International campaign to give a voice to people living in deprivation will empower 'prisoners of poverty' as previous campaigns empowered prisoners of conscience, says Amnesty International's Secretary General Irene Khan.

Irene Khan unveiled the Demand Dignity campaign at the launch of Amnesty International's annual report on the state of the world's human rights, which warns that the world is sitting on a 'time bomb' fuelled by an unfolding human rights crisis.

"The economic downturn has aggravated abuses, distracted attention from them and created new problems. In the name of security, human rights were trampled on. Now, in the name of economic recovery, they are being relegated to the back seat," she said.

Demand Dignity is a long-term campaign that will focus on tackling exclusion, discrimination, marginalisation and poverty.

Its first action will be launched when Irene Khan leads an Amnesty International delegation to Kenya on 8 June. She will visit a number of Nairobi's informal settlements including Kibera, Africa's biggest slum.

"Economic recovery will be neither sustainable nor equitable if governments fail to tackle abuses that drive and deepen poverty, or armed conflicts that generate new violations," said Irene Khan.

The first stage of the new campaign will focus on ending forced evictions and preventable maternal deaths of women, as well as calling on the G-20 nations to develop clear rules to hold extractive industries to account for human rights abuses.

She added that the Demand Dignity campaign would enhance Amnesty International's more traditional work.

"Demand Dignity will not dilute our mission, poverty is a major human rights issue in itself and it is absolutely essential that world leaders tackle it now. Amnesty International has always stood up for the individual and for the vulnerable. Ignoring one crisis to focus on another is a recipe for aggravating both," she said.

Source: Amnesty International.