



LAW campaign

Ensuring access to justice

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THE avowal that Lord Hewart made *Justice should not only be done, but should manifestly and undoubtedly be seen to be done* was meant to ensure justice as and when necessary. Timely implementation of law is the basis of justice in the society. Recognizing the confidence upon the credibility of administration of justice in our country, the scope of development in this sector cannot be overlooked. For achieving development in this field, the client, lawyers and the judges have to play an upbeat role in their respected area. In addition to this, some societal factors such as illiteracy, ignorance of law, lack of awareness and poverty must be removed from the society. For those features in the society and for complex legal procedures existing in formal legal method, the aggrieved become puzzled from beginning to the end to their effort to get justice.

Scope of law

Notwithstanding the above factors, ensuring of access to justice is envisaged in almost all the international human rights instruments. The right is recognized irrespective of sex, social status etc., though in practice it is yet to be appeared. The Universal Declaration of Human Rights (UDHR) acknowledged the right to be protected against tyranny and oppression. The whole text of the UDHR is about the recognition, protection and promotion of human rights. Protection of human rights is not possible without ensuring access to justice. Article 7-12 of the Declaration emphasized on the protection of human rights and access to justice for the people irrespective of civil and criminal matter.

International Covenant on Civil and Political Rights also confirmed the protection from violation of human rights and access to justice. The right to get effective legal remedy by the competent authority is also recognized in

Article 2 of this Covenant. Article 9-11 & 14-17 and some other articles of Part III of the Covenant describes about the right to protection and access to justice by appropriate manner. Beside ICCPR, article 5 & 6 of the International Convention on the Elimination of All Forms of Racial Discrimination specifically recognized the equal protection and treatment before law without any discrimination. The same treatment is also applicable in terms of remedy by law. The non-discriminatory measures in the protection of access to justice is also seen in article 2(B) & (C) of the CEDAW. The states responsibility in this regard has been underlined in article 2(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Beside the women, the access to justice is also important to be protected for the child. Article 16 of the Convention of the Rights of the Child protects the child from being subjected to arbitrary or unlawful interference with his or her privacy, family etc. The convention clearly defines the states responsibility to take legislative, administrative or others measures to this end under article 19. The general principle of law would be applicable to the child in the process of trial and even when he is found guilty of offence. They deserve special care in the process of law under article 40.

However, the access to justice was specifically focused in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. In this declaration the victims of crime and the victims of abuse of power are treated separately. The provision of fair treatment and adequate compensation is ensured in this declaration. Article 12 of the declaration guaranteed the states responsibility to compensate the victims when it is not fully available from the offender or other sources. The compensation is payable to the victims and his family as per the provision of this article. There are many other international human rights instruments which

focused on access to justice in civil and criminal matters.

Even with all those instruments in hand, why the people are being deprived of their right to get justice is a question which cannot be answered by pointing finger upon a particular body or institution. Without considering the entire course of action for administration of justice, the origin of the denunciation in legal remedy cannot be identified and the sufferings of the aggrieved cannot be healed and prevented.

Focusing timely dispensation of justice

Long delay to deliver justice is one of the gravest reasons for denial of access to justice for the poor. It is said that justice delayed is justice denied. But to some extent justice delayed is injustice when it is not timely. For delay to get justice, the aggrieved bear a negative thought to seek justice from the formal legal system. Undergoing the sufferings seems better to them rather than submitting to the traditional system. Delay to deliver justice is also a fact in India. Commenting on the issue, the Chief Justice of India Mr. K G Balakrishnan warned that long periods of delay in disposing of cases would lead people to "revolt" and the legal system to crumble. The warning of the Chief Justice of India cannot be ignored in Bangladesh. In our country, a civil suit is dragged for 10 years or more where it should take one year or two for disposal which brings no result to some extent. The requirement of the cases to some aggrieved is ceased by the time the judgment is pronounced. Delivery of judgment in the quickest possible time depends on many grounds which are missing in our present system. Among others, the scope of frequent amendments of the pleadings at any stage of the trial obstructs the development of the proceedings.

Management of resources

Persistent absence and transfer of



judges affects the delivery of justice. Motivation for the judges in this regard is important which can prevent frequent absence from their duty. Adequate number of judges should be engaged or recruited to ensure timely and quality justice to the people. It will reduce the workload upon them. On the other hand, frequent transfer of judges impedes the progress of towards judgment. We see in many instances that the judge who set in motion the case and hear the testimony may not continue to settle the dispute. This creates problem to the next judge who has to repeat some of the procedural requirement or any event for the cause of justice.

Owing to inadequate administrative and logistic support, timely and adequate remedies are not available from the court. Poor salaries and messy working environment cause aversion to the minds of the judges to be sincere in the profession.

Cost involvement by the poor

People of the country have to spend a lot of money to get justice from the court, even if the value of suit is lower than the amount spent to this end. This puts the economically stronger party at an advantageous position than the weaker aggrieved.

Absence of accountability and procedural dilemma

Wide range of liberty given to the lawyers in conducting the cases according to the whims of the lawyers puts the clientele into ambiguity. Excessive authority of the lawyers and domination over the clientele cause impasses to the case and the client into doubt about the future of the case. So, to bring change in this scenario, transparency and accountability from the lawyers must be ensured and ignorance of the client must be removed. Leading the case for the interest of the lawyers

should be checked. The lawyers having judicial minds cannot linger the case for his vested interest, rather they should conduct a case for free every month for the poor and the destitute litigants, who otherwise would have no access to justice, as proposed by the Chief Justice in the inaugural ceremony at his office. The concerned Bar Association and the office of the Judge can coordinate the issue.

There are some procedural problems arising out of production of witness & evidence, repeated time seeking and amendment of pleadings etc. The expected course of proceedings are perturbed by the poor performance in the production of witnesses, repeated time seeking by the parties over a trifle reason and so on.

Rethinking some issues to way out

The lawyers and the judges have a role to change this disgraceful condition to establish rule of law. When an aggrieved submits to the court, the court has a responsibility to see the welfare of the client. The supervising and monitoring role in this regard should be played by the court. But unfortunately, our judges can spend little time on, as a result of intense workload. To ensure rule of law, access to justice and human rights both the formal and informal system should be applied and strengthened by the government. As a good omen to popularize informal system, the government has introduced the provision of ADR by amending the Code of Civil Procedure. Beside this, Chapter V of *Artha Rin Adalat Ain* has also been incorporated to settle the dispute between the parties. But alternative method of dispute settlement is yet to receive proper focus to the expected and required level. Sufficient funding and focus is urgent in this field. A revolutionary approach by all concerned in this field is the call of time.

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Star LAW history

The legacy of Titanic tragedy and maritime law

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THE tragic shipwreck of RMS (Royal Mail Steamer) Titanic has left an indelible imprint in the maritime history. A century elapsed; still it attracts the people around the world. Countless books, fictional novels and movies have been generated out of it. On the other side, the Titanic tragedy reinforced the maritime safety! The tragic disaster prompted the international community to seriously revise their laws concerning the safety of life at sea.

sea. The Titanic sank in just under two hours, taking with her 1,502 out of the 2,207 passengers and crew.

Inquiry

Immediately after the accident, investigating committees were formed in both sides of Atlantic. In America, Senator William Alden Smith of Michigan conducted his six weeks long investigation from April 18th. Focal point was 'how' it happened. Smith and his committee began questioning certain individuals (such as J. Bruce Ismay, chairperson of the White Star Line, all the surviving

inquiries devoted a great deal of time towards making recommendations concerning the safety of life at sea. Both committees concluded that the existing regulations were far outdated and needed immediate revision. Additionally, they also focused on the conduct of wireless operators, actions to be taken by ship captains in presence of ice, lifeboat regulations, and ship-building codes.

New Radio Act

The American inquiry committee made several recommendations that become part of the Radio Act of 1912. It was urged that direct communication should be established between the wireless room and the bridge by means of a telephone, voice tube, or messenger. Auxiliary power sources should be installed to keep the wireless working at all times. In response to the third International Conference on Wireless Telegraphy, held in London shortly after the Titanic disaster, the British inquiry committee made its own recommendations regarding wireless regulations. All ships should be fitted with wireless equipment; a sufficient number of trained operators should be provided to ensure continuous operation and service of the wireless; and where practical, a silent room for "receiving" messages should be installed.

International Ice Patrol

An international conference on the safety of life at sea met in London on November 12th, 1913. It produced an agreement to establish a permanent ice patrol in areas deemed the most dangerous to shipping, signed on January 20th, 1914. On February 7th, the United States Coast Guard assumed responsibility of running the International Ice Patrol (IIP). The patrol's functions are specifically outlined by both United States law and international treaties.

Lifeboats

The Titanic was fully compliant with the lifeboat regulations of the day, yet carried only sixteen of them, enough to

hold 1,178 persons and the Titanic was booked with 2,207 passengers and crew. However, due to the reluctance of many passengers to leave the ship, believing that it was unsinkable, nearly all the lifeboats were lowered away without their full complement of passengers. At the end, only 705 were saved.

Both the American and British inquiry committees made numerous recommendations towards the revision of existing lifeboat regulations. The American committee proposed that every ship carry sufficient lifeboats to hold all passengers and crew onboard in the event of an emergency. No less than four crewmembers with knowledge of handling boats would be assigned to every lifeboat, and lifeboat drills for the crew would be conducted and noted in the ship's log a minimum of twice a month. Both crew and passengers would be assigned to lifeboats before the start of the voyage; the assignments would be allocated as to provide passengers the shortest route possible to a lifeboat, and both assignments and directions to the lifeboats would be posted in each stateroom.

The British committee's plans for revising lifeboat regulations were much more detailed. Lifeboat accommodation on passenger ships would be based on the projected number of passengers to be carried, rather than tonnage, and such accommodations would be considered independently of the subdivision of the ship into watertight compartments. In special cases where the BOT believed the provision of lifeboats for all on board to be impractical, requirements would be altered accordingly. This involved changing the sizes and types of lifeboats on board, changing the manners of stowing them, or setting aside an entire deck to the storage of lifeboats and the drilling of the crew. All lifeboats would be fitted with a "protective fender" or bumper, to prevent damage when being lowered.

Revised shipbuilding regulations

The American inquiry set forth the

following recommendations: All steel ships carrying more than one hundred passengers should have an interior watertight skin in the form of bottom or longitudinal bulkheads extending no less than ten percent of the load draft above the full-load waterline. The watertight skin should run from the forward collision bulkhead to no less than two-thirds the length of the ship. Bulkheads should be spaced so that any two adjacent compartments could be flooded without destroying the stability or "floatability" of the ship. Watertight transverse bulkheads should extend between each side of the ship and attach to the outside hull. Transverse bulkheads surrounding the ship's machinery should continue vertically to the uppermost continuous structural deck, which should be made watertight as well. Bulkheads near the machinery should extend no less than twenty-five percent of the ship above the load waterline, and all should end at a watertight deck. All watertight decks and bulkheads should be able to withstand water pressure equal to five feet more than the full height of the bulkhead without critical damage, and smaller bulkheads should be tested by subjection to actual water pressure.

General recommendations

Both the American and British inquiry committees made a number of general recommendations. By law, the United States accepted the inspection certificates of foreign ships whose home countries had similar inspection laws. The committee proposed that unless other nations saw fit to alter their inspection laws accordingly as well, such "reciprocal arrangements" would end. No ship would be licensed to carry passengers from American ports until it conformed to the rules and regulations set forth by United States law. In addition, each steamship carrying a hundred or more passengers should be equipped with two electric searchlights to aid in the detection of ice and other potential obstacles. Firing rockets or other distress signals for any reason other than to communi-

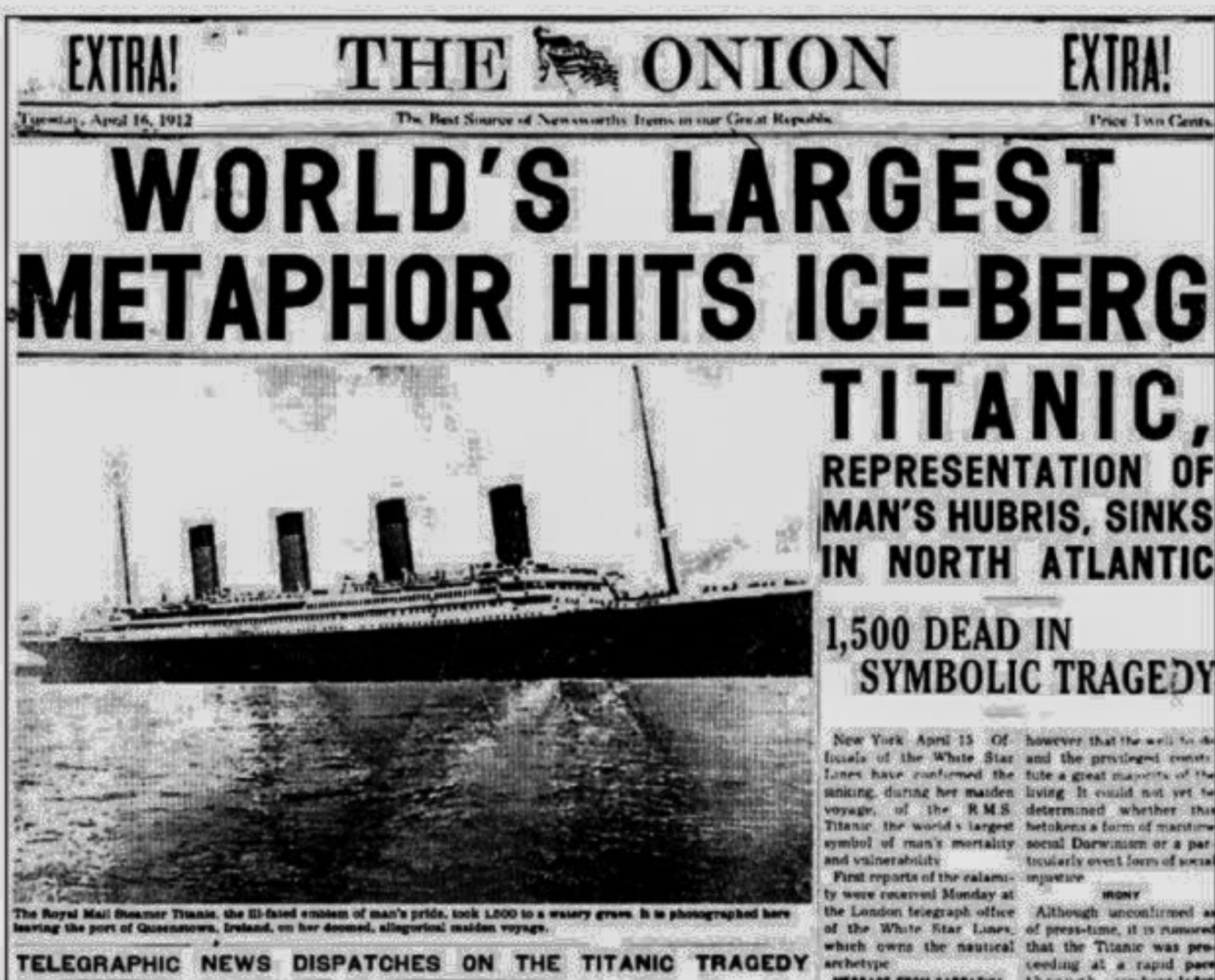
cate an emergency should be made a misdemeanour.

The British recommendations included: all lookouts should undergo sight tests at regular intervals. On all ships, a police system should be devised to ensure control on board in times of emergency. All steamship companies should include in their regulations that when ice has been sighted near or in the path of a ship, the ship should either alter its course to steer well clear of the danger or proceed at moderate speeds during nighttime. All ship captains should be made aware that under the Maritime Conventions Act of 1911, it is considered a misdemeanour to not aid a ship in distress when it is possible to do so. All regulations required of emigrant ships should also apply to all foreign-bound passenger liners.

Final words

Finally, the recommendation was made that an international conference should be convened to establish common laws concerning construction of ships, provision of lifeboats, installation and operation of wireless sets, courses of action in regards to ice, and the use of searchlights. In the years that followed, the joint recommendations of the American and British inquiry committees were passed into law by nations around the world. This heralded a commitment to the continuing preservation of safety of life at sea that has continued to this day. Since the implementation of the International Ice Patrol, no ship that has heeded its warnings has been lost or damaged near the Grand Banks. All passenger ships are now required by law to carry enough lifeboats for everyone on board, and they all have exact guidelines to follow in any type of emergency. The days of ship owners conducting "business as usual" are gone. This is the Titanic's enduring living legacy. And it is indeed to this day, there has never been another tragedy quite like that of the RMS Titanic.

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White Star Line's enormous luxury liner Titanic was the grandest ship of her time. She commenced her maiden voyage from Southampton, England on April 10th, 1912. Making stops at Cherbourg, France and Queenstown (now Cobh), Ireland headed for her final destination in New York. Shortly before midnight on April 14th, the ship struck an iceberg, opening six of its sixteen watertight compartments to the

ship's officers, and prominent passengers). A total of 82 witnesses were interviewed. The British Board of Trade (BOT) inquiry began on May 3rd, 1912 that lasted five weeks. The focal point was 'why' it happened. 96 witnesses were interviewed; most of them officers and crewmembers from the Titanic, Carpathia (rescuing ship), and Californian (rescuing ship). American and British - both the