



LAW analysis



RIGHTS corner



Modernising defamation law

ABDUR ROKIB

£ 10,000 bill for Facebook joke. This is not a joke, it was the lead news of Metro, a daily morning Newspaper in UK, on July 28, 2010. Raymond Bryce a law student claims for defamation when his friend posted some obscene link on his Facebook wall and comment negatively. The UK law gives him a fair trial under defamation law.

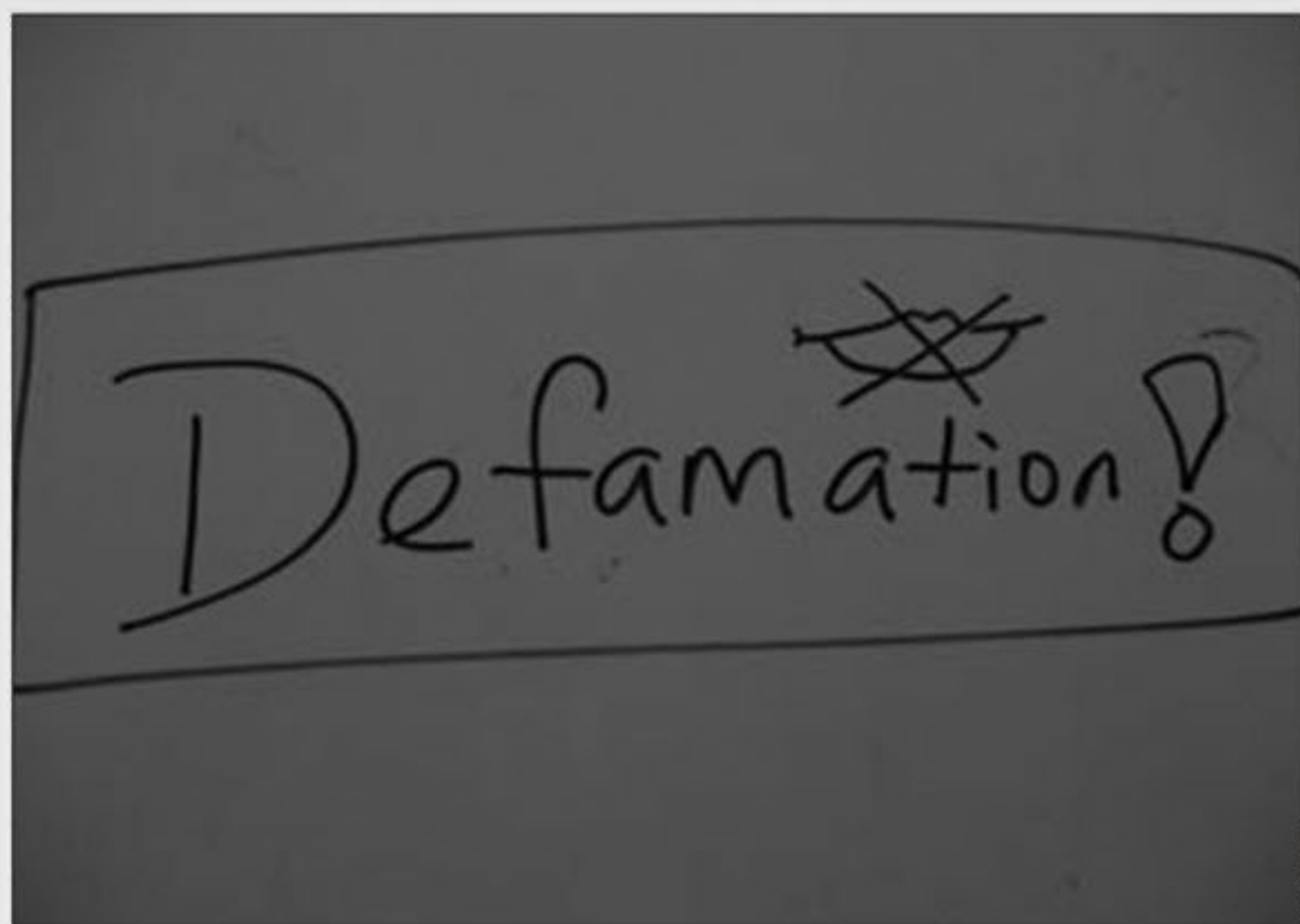
In Bangladesh, a popular newspaper reported that Facebook was blocked and a man was arrested over 'cartoon' of two heads of the major two political parties. For this matter a comment of one IT scholar was the government did it because someone posted cartoons of the VIPs. "But many people including girls are being abused in Facebook every day. Would they have done the same for them or me? You cannot block an entire population for some wrongs done by one or two individuals."

As a law student and citizen of Bangladesh I always expect law will be equal for all and government should ensure rule of law. I don't know what happened to Mahbub Alam Rodin the suspected defamer of VIP. But we expected he got fair trial. We never support anyone suffer any pain through exercising so called section 54 of the Code of Criminal Procedure.

I feel refrained to write down anything about Section 54 and 167 of CrPC given the space constraint. So many scholars have written about it. Even Hon'ble Justice Hamidul Haq and Justice Salma Masud Chowdhury of the High Court Division of Bangladesh Supreme Court have given milestone judgement on point in the case of BLAST v. Bangladesh (reported in 55 DLR page-363).

In Bangladesh defamation case is a hot cake for headline of daily newspaper. Most of our prominent Editors Journalists and Politicians have had that experience. Even more evidence acknowledge that powerful authority exercise power when fail to get fair trial.

Defamation law and an analysis:
In UK, defamation is a tort which protects claimants' reputation. Simply defamation is a statement which tends to lower a person in the estimation of the right thinking member of the society. For better understanding it is defined as Slander and Libel. The old maxim was 'slander to the ear and libel to the eye'. The permanent statements are Libel. Spoken words are known as slander.



Historically defamation was usually tried by Jury. Generally a Jury is a group of people from society who find the fact. As for example Mr X publicly say Mr Y is an 'insane'. Mr Y claim for defamation. In this scenario the Jury (a reasonable person from UK society) will decide whether by this word Mr 'X' underestimated or not. Mr Justice considering the fact and law give judgement.

18th July BD News reveals that a defamation suit has been filed against the main opposition party BNP's senior joint Secretary General Mirza Fakhrul Islam Alamgir. The harsh reality is that the suit was filed by someone else than the victim. In UK conventionally the victim files a case for defamation. To succeed defamation suits claimant must prove the statement was defamatory, referred to him and it is published to third party.

For any defamation suit the UK law has accorded wide scope of defence. Under (S.2-4) Defamation Act 1996, the defendant may make an 'Offer of Amend'. Normally the media (Print/TV/Radio) can make correction, pay apology, damage before a writ is served on them. It is known as 'qualified offer' to stop writ in court. If the claimant gives 'consent' to publish the statement then no action will lie. This procedure if followed could have stopped the load of defamation suit in Bangladesh.

Parliamentarians enjoy absolute privilege in the proceedings of Parliament but are not exempted from defamation charge for blasphemous statements

outside of the Houses. For a strong democratic base, the UK law gives the members the right to make any constructive comment but does not encourage underestimating any members. To attain a better democracy we should grasp and nurture this culture. Our opposition should continue to go parliament and criticise the government fairly in the house.

The defence of qualified privileged is a hot cake in the defamation law. The Article 10 of European Convention Human Rights has made freedom of expression a parliament topic. On the other hand, judges are giving some milestone judgements and contributing in the development of law. Lord Nicholls has given some guidelines in Reynold's Case and underlined, 'It is in the public interest that the reputation of public figures should not be debarred falsely in the political fields, in order to identify the good as well as bad'. To solve all loopholes Lord Lester proposes some reform as 'Defamation Bill 2010-11' in parliament which is now in the Committee Stage.

In Bangladesh Article 39 of the Constitution has provided freedom of thought, and conscience, and of speech. There is no statutory law concerning defamation except what is contained in Chapter 21 of the Penal Code. Regarding civil liability for defamation, any person can file a petition with a civil court for compensation. Every citizen has right to protect his/her reputation this is the ground for which courts entertain suits for damages for libel and slander in

Bangladesh as well as in United Kingdom. The civil liability for defamation to pay compensation is not governed by any statutory law in Bangladesh, rather it is determined by the principles of justice, equity and good conscience, originated in England and later on these principles were imported in this sub-continent including Bangladesh. The criminal liability for defamation is codified and embodied in section 499 of the Penal Code of Bangladesh. It is to be mentioned that before the enactment of the Indian Penal Code in 1860 defamation was considered merely as a civil wrong.

As per section 499 of the Penal Code, if any person by words, spoken or written, or by signs or visible representations, makes or publishes any imputation, which will harm the reputation of another person, the former person will be liable to defame the latter person. This section provides a list of exceptions. If any situation fits with any of the prescribed exceptions that will not come within the purview of defamation.

Under the present dispensation of law, the wrong of defamation is a bailable offence. So any accused can easily get bail. But apprehension mounts when any affluent person or a person holding state apparatus files a case of defamation with any magistrate court to harass any citizen. After taking the case into cognisance if the court (not because of the merit of the case, but due to the influence of powerful state functionaries) issues any warrant of arrest and if the accused person, though innocent, is arrested before getting bail and kept in police custody and later on if that person is adjudged innocent, who will be going to compensate for the suffering of the person? This area of apprehension should be taken into consideration by the main actors of existing system and also by the lawmakers.

There are so many loopholes in defamation law. Frankly this area did not get any modern touch in Bangladesh. At the digital age and booming media culture this area demand some reform and specific statute. We expect the Law Commission of Bangladesh would come forward with suitable recommendations or the judiciary would render some specific guidelines from running cases. Even a legislator can come forward like Lord Lester introducing a Private Bill in our Parliament.

The writer is a student, University of London, UK.

UNIFEM calls for gender justice and ending discrimination against women

DESPIITE promising progress on many of the Millennium Development Goal targets, national averages mask large disparities in terms of gender, income and location, with large numbers of women and girls being left behind, especially in rural areas. Coinciding with the UN High-level Summit on Millennium Development Goals, data from the forthcoming Progress of the World's Women 2010/2011, Access to Justice, released by the United Nations Development Fund for Women (UNIFEM, part of UN Women) on September 20, 2010, spotlights how many women and girls, particularly in rural areas, continue to live in exclusion and poverty.

"Ending discrimination against women and enhancing gender justice are at the heart of meeting the MDGs," said Ms. Inés Alberdi, Executive Director, UNIFEM (part of UN Women). "With five years remaining to achieve the Millennium Development Goals, this Summit challenges world leaders to commit to actions to accelerate progress. There is no shortage of promising practices to end inequalities between women and men, but there remains a critical shortage of resources to scale up investment of best practices that work."

The findings and analysis calls for urgent action in four areas that are critical to gender justice and the MDGs:

1. Women-friendly public services to meet women and girls' rights to education, health and food
 - Education: Secondary education is especially important for girls because it enables them to access jobs, lowers their chance of getting HIV and gives them more of a say in decisions within the household.
 - Abolishing user fees and introducing cash incentives make a difference.
 - Reproductive health: Data shows that poor women in rural areas are particularly unlikely to have access to skilled health personnel at the birth of their children.
 - Female service providers help to improve access for women and girls.
2. Land and jobs for women ensuring the right to decent livelihood, through access to economic assets
 - In Tajikistan, the government has taken important steps to increase women's control over land, through providing them with practical support to make land claims, including legal aid, and awareness raising among officials and religious leaders. Between 2002 and 2008, the proportion of farms headed by women rose from 2 percent to 14 percent.
 - Although female farmers play a critical role in food security in developing countries, OECD statistics show that of the US\$18.4 billion spent on agricultural aid between 2002 and 2008, donors reported that just 5.6 percent included a focus on gender.
3. Increasing women's voice in decision-making more women in leadership positions from the community to the global level
 - Women's lack of voice in the public sphere starts in the home. Early marriages have the biggest impact, leading to disempowerment of girls throughout their lives.
 - Positive action or special temporary measures work. They have shown to rapidly increase female representation in corporate decision-making as well as politics from Rwanda to Norway. Globally, women make up only 18.6 percent of parliamentarians. However, 29 countries have now reached or exceeded the 30-percent mark. Of these, 24 have used quotas.
 - In the United States of America across 10 key sectors, including politics, business, law, the media, and the military, women make up an average of just 18 percent of leaders.
4. Ending violence against women and girls, which too many women and girls face daily, stunting their opportunities, curtailing their mobility and denying their rights
 - Violence against women is widely regarded as a missing MDG target, undermining efforts to reach all the goals. For example, one in four women experience physical or sexual violence during pregnancy.
 - The UN Trust Fund to End Violence against Women (UN Trust Fund), managed by UNIFEM on behalf of UN System, is the only multilateral grant-making mechanism exclusively devoted to supporting efforts to end violence against women and girls. One of the goals of the UN Secretary-General's Campaign UNITE to End Violence against Women is to raise US\$100 million dollars by 2015, and it is imperative to reach this target.

Source: Human Rights Education Associates (HREA)

LAW interview

"Human Rights should be integral part of legal education"- Professor David Weissbrodt

DR. UTTAM KUMAR DAS

It has been a blessing for me to be a student of Professor David S. Weissbrodt.

He had been my Faculty Mentor for the Hubert H. Humphrey Fellowship Program for the year 2009-2010 at the University of Minnesota Law School (UMNLS) in Minneapolis, U.S.A.

I was in the Programme from August 2009 through May 2010. Apart from that he had been the Lead Faculty for the courses on International Human Rights Law and Immigration Law which I have studied there. Also he was my Supervisor for an Independent Research Project.

This gave me a rare opportunity to listen to his scholarly lectures, interact on contemporary legal and human rights issues, and at the time of social gathering even to share our personal ideas as well. I was amazed how a scholar of highly repute like him is so simple and humble while meeting or talking to others, even to junior students.

Professor Weissbrodt has been a legend for his human rights activism, teaching, research and publications.

He is presently the Regent Professor and Fredrickson and Byron Professor of Law at the UMNLS. He was appointed in 2005 as the first Regent Professor at the UMNLS where he joined as a Faculty back in 1975. Professor Weissbrodt is also the Founder and Co-Director of the Human Rights Center at the UMNLS. He helped to establish the Human Rights Library (which is accessible in online as well).

Professor Weissbrodt attended Columbia University and London School of Economics. He earned his J.D. (Juris Doctor) from the University of California at Berkeley (Boalt Hall). After graduation, he clerked for Justice Mathew O. Tobriner of the California Supreme Court. He was also in law practice with the law firm, Covington & Burling.

Professor Weissbrodt was the U.N. Special Rapporteur on the rights of the non-citizens for 2000-2003. He also served as a member of the U.N. Sub-

Commission on the Promotion and Protection of Human Rights from 1996 to 2003, and was elected the Chairperson of the Sub-Commission for 2001-2002. He was elected Chairperson of the Board of Trustees of the U.N. Trust Fund for Contemporary Forms of Slavery in 2008. He has been a Member of the Board since 2005.

He has represented and served as an Officer or Board Member for numerous human rights organizations like Amnesty International, the Advocates for Human Rights, Center for the Victims of Torture, International Human Rights Internship Programme, Readers International, and International League for Human Rights.

Professor Weissbrodt has been a visiting Faculty to a number of universities and institutes in the Europe, Asia and Australia. He had been a Public Member for 1991-1993 of the U.S. Delegation (in President Bill Clinton's Administration) to the U.N. Commission on Human Rights. He is the lead author of the widely consulted and referred book, International Human Rights: Law, Policy and Process (LexisNexis, Fourth Edition 2009).

Following is the excerpt of an interview with this eminent and widely published Professor (which was taken on 11 March 2010 at his office at the UMNLS in Minneapolis, U.S.A.):

What did prompt you to take Human Rights as an area of work?

Professor David S. Weissbrodt (DSW): My father was involved in activities promoting rights of American Indians. That prompted me to work in the area of human rights.

After graduating I had the opportunity to attend a summer programme on human rights at the University of California at Berkeley (UCLB). I also did a clerkship with Justice Mathew O. Tobriner of the Supreme Court of California for two years. (Clerkship involves working for a judge for legal research and drafting judgments among others; it is a paid job for law graduates in the U.S.A.). Then, the UCLB offered a fellowship and placed me

at the International Commission of Jurists in Geneva. I was assigned to research events in the then East Pakistan following the movement for the liberation. After a year I returned back to the United States.

That was the early days of the human rights movement in the U.S. I worked for a law firm for three years. At the same time I helped to establish chapters of the Amnesty International in Washington D.C. and Minneapolis.

How did you come to Human Rights Education?

DSW: I joined UMNLS in 1975 and subsequently introduced Human Rights Law in the curriculum and I started to teach. At the same time I was doing other work; some other colleagues and friends also joined me in this work. We introduced the International Human Rights Internship Programme. Along with Attorney Sam Heins we established the Minnesota Lawyers International Committee for Human Rights in Minneapolis, which is now called the Advocates for Human Rights, an international human rights organization known for its own work. We also established the Center for the Victims of Torture (CVT) in Minneapolis.

In 1988, we established the Human Rights Center at the UMNLS. The Center is now renowned for its education, training, advocacy, research and publications on human rights issues. It hosts a group of Hubert H. Humphrey Fellows working on legal and human rights issues. This Humphrey Law programme is sponsored by the U.S. Department of State. The Center also runs a Human Rights Education Programme and the Midwest Human Rights Fellowship Programme among other activities. The Center has become a platform for human rights academics, researchers, practitioners, and activists.

What is the need of Human Rights Education?

DSW: Study of Human Rights should be an integral component of a full-fledged legal education. It also makes a

valuable contribution to a variety of disciplines like sociology, anthropology, gender studies, political science, and medical fields among others.

Knowledge of Human Rights principles, norms and institutions is an indispensable aspect of understanding the inter-relationship between states, as well as between states and those persons within their territories and under their control. The subject of Human Rights deals with many concerns that also are the focus of national civil rights laws. Especially, law students and lawyers who expect to practice civil liberties and civil rights law should study Human Rights.

How does a Human Rights Lawyer contribute?

DSW: A human rights lawyer could play a great role in society. Human rights lawyers could work as a catalyst for promoting and protecting human rights. They could work in drafting laws incorporating human rights principles and implementing them. Also, they could contribute to professional education and training on human rights.

A human rights lawyer, if qualified and capable, could also work beyond his or her national boundaries at regional and international levels.

How do you evaluate the role of the UN with regard to human rights?

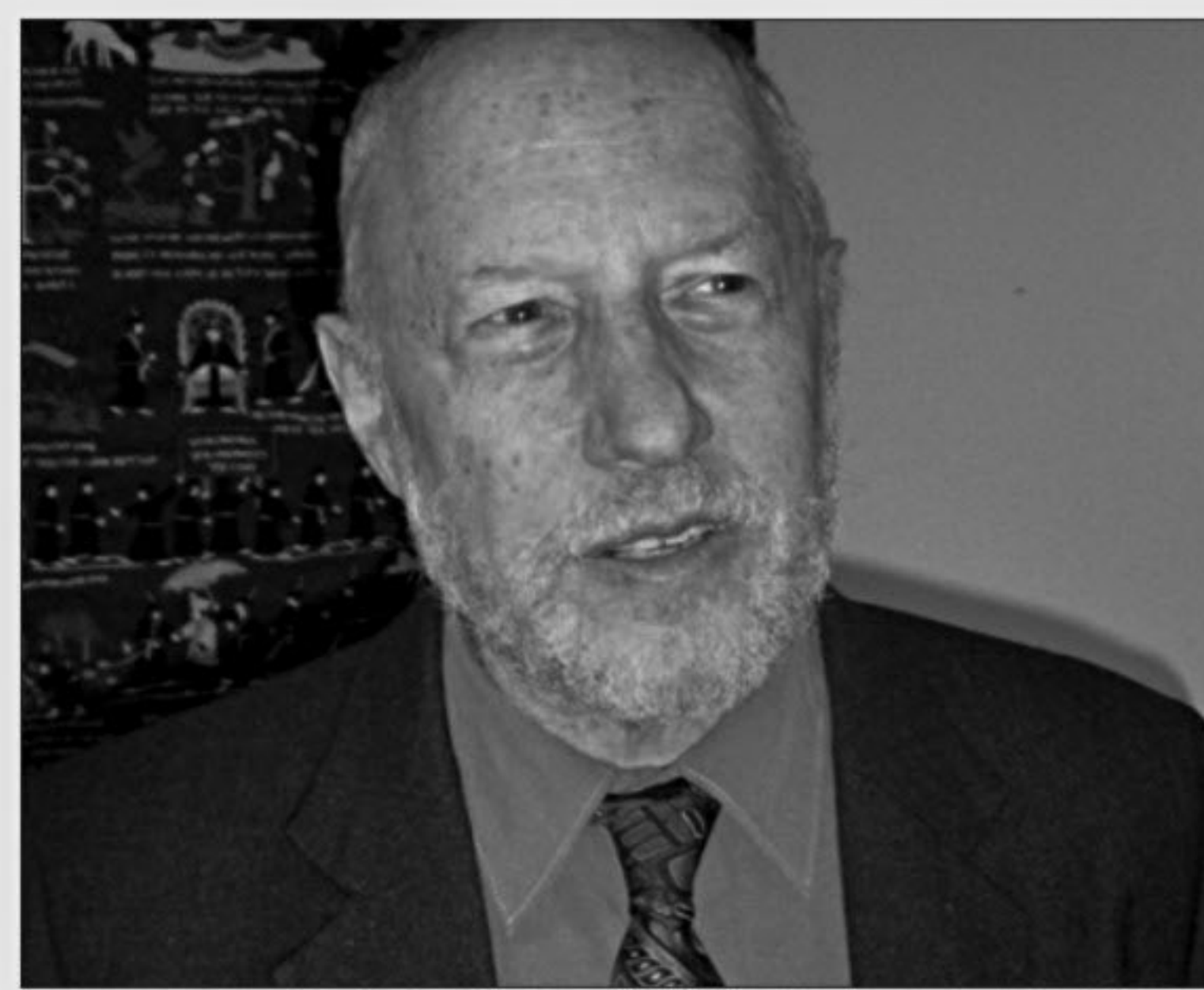
DSW: The UN has been most successful in establishing human rights standards. It drafts standards for promotion and protection of human rights; some of them have become treaties.

Any weakness in UN's role?

DSW: The UN has been less successful in developing implementation mechanism. It is in some ways counter-intuitive that governments would develop forceful implementation measures vis-à-vis their own compliance with human rights standards.

Sometimes the agency misses its target as the member states have their political, economic and regional allies, friends and interests.

However, we all have to work to make



Professor David Weissbrodt

the world body a success one. We also need to be patient.

What about human rights situation in the U.S.A.?

DSW: The United States has taken a leading role in promoting and protecting human rights globally. In this regard, names of Franklin Roosevelt and Eleanor Roosevelt should be mentioned.

What about the Bush (Junior) era?

DSW: That era was not consistent with the human rights tradition of the United States. There had been arbitrary detention, torture, extra-ordinary rendition etc. However, it is understandable that the Bush Administration was responding to the terrorist attack on the United States. But the activities of the Bush era have diminished credibility of human rights work as a whole.

What is the impact of that mistreatment?

DSW: No government is perfect. Those violations of human rights in the U.S. will definitely have negative impact on the other parts of the world. However, we have to join hands to overcome the violations in the U.S. and elsewhere.

As a scholar and activist I have been critical of the human rights treatment during the Bush era.

What about the performance of the Barack Obama Administration with regard to human rights?

DSW: This administration is taking some steps to overcome wrongs of the previous era. Some good people are being appointed in the office.

The interviewer is an Advocate (Attorney) at the Supreme Court of Bangladesh and specializes in International Human Rights Law. He is also the Deputy Director at the South Asian Institute of Advanced Legal and Human Rights Studies (SAILS), Dhaka. E-mail: udas1971@gmail.com.