

Judicial supersession

When appointing judges their seniority should be kept in mind, provided the judges being considered are at least equally meritorious. Merit should be the pre-dominant criterion, and where a judge possesses outstanding merit he should be appointed even if he is not high in the seniority list.

RASHNA IMAM

THE appointment of Justice A.B.M. Khairul Haque to the prestigious office of Chief Justice of Bangladesh, superseding two senior judges Justice M.A. Matin and Justice Shah Abu Nayeem M.R., brings to the fore perplexing questions regarding the many alleged ramifications of judicial supersession (judicial appointment disregarding seniority) on the independence of the judiciary.

An independent judiciary, as we all know, is vital to the establishment of participatory democracy, maintenance of the rule of law, and delivery of social justice to vulnerable sections of the community. So, is supersession really a threat to that all-important independence?

The president, as the head of the executive government, has the power to appoint judges and the chief justice [Articles 95(1) and 48(3) of our Constitution]. In appointing judges, he must comply with Article 95(2), which provides that a person is not qualified for judicial appointment unless he is a Bangladeshi citizen, has been a Supreme Court advocate or a judicial officer in Bangladesh for at least ten years,

or meets any other legally prescribed qualification.

When appointing judges other than the chief justice, he must also consult and comply with the advice of the prime minister. When appointing the chief justice, there is no consultation requirement, nevertheless, the president always consults the prime minister, as widely reported in the newspapers.

There being no other prescribed law for the appointment of judges or the chief justice, the president, strictly speaking, is not constitutionally required to appoint judges in order of their seniority. However, constitutional convention (longstanding political practices which are not legally binding but nevertheless generally accepted) in Bangladesh and in the rest of the Indian sub-continent dictates seniority to be respected in judicial appointments.

The Indian Supreme Court has confirmed this convention and discouraged any deviation from it unless "strong cogent reasons" exist. Nevertheless, in our legal tradition, supersession in high judicial offices is hardly a rare phenomenon.

In India, in a Habeas Corpus case during the Indian Emergency, Justice H.R.

Khanna stated in a landmark dissenting opinion against the government of Mrs. Indira Gandhi that the Constitution did not permit the right to life and liberty to be subject to executive decree. This allegedly cost him his appointment as the chief justice in 1977.

In our own country, during the BNP-led four party alliance government, Justice K.M. Hassan and Justice Syed J.R. Mudassir Hussain were successively appointed chief justices in 2003 and 2004, superseding their senior colleagues Justice M. Ruhul Amin and Justice Fazlul Karim respectively.

In 2006, President Iajuddin Ahmed, after consultation with Prime Minister Khaleida Zia, appointed Justice M. Joynul Abedin to the Appellate Division superseding three senior judges - Syed Amirul Islam, MD Hassan Ameen and A.K. Badrul Huq. The Supreme Court Bar Association protested alleging politicisation of the judiciary.

With the above appointment Justice Syed Amirul Islam was superseded for the fourth time. This is somewhat ironic given his own judgment in a case upholding judicial appointments to the Appellate Division by supersession. His judgment stated that this was not a case of supersession, which can only arise in a case of promotion to a higher post.

Appointment to the Appellate Division is not promotion but fresh appointment by the president under Article 95(1). In any case, he observed, appointments should be based on seniority-cum-merit to instil a sense of competitiveness in the judges and ensure elevation of brilliant judges.

One could say that there exists a culture

of supersession in the Indian sub-continent. Yet, it has and still continues to evoke serious criticism. So what is all the fuss about? Critics of supersession argue that in most, if not all, cases of supersession, judicial appointments have been politically motivated and not merit-based -- and there are examples aplenty. Political appointments, they argue, impair the independence of our judiciary [express requirement of Article 94(4)] by making them susceptible to external pressures or controls, thus bringing into jeopardy the entire system of administration of justice.

No doubt, an independent judiciary is indispensable in protecting civil liberties against the tyranny of executive powers. But, by apotheosising the independence of the judiciary, we cannot lose sight of the fact that it is not a priori justifiable. The concept must be interpreted within the framework of the Constitution and the independence must be exercised to attain constitutional goals only. Too much insulation from the executive might have the undesirable effect of erecting the ivory tower attitude amongst judges where they distance themselves from society at large.

While politically motivated appointments should be denounced, judicial supersession should not be made out to be the monster that it isn't. When appointing judges their seniority should be kept in mind, provided the judges being considered are at least equally meritorious. Merit should be the pre-dominant criterion, and where a judge possesses outstanding merit he should be appointed even if he is not high in the seniority list.

However, a judge's merit should be broadly construed to encompass his



Merit is crucial for promotion.

awareness of high priority tasks like eradication of poverty, removal of economic disparity, lifting of the curse of illiteracy and ignorance, protection of the environment and enforcement of human rights coupled with a conscious commitment to deliver socio-economic justice and estab-

lish an egalitarian society. The judiciary must keep pace with changing times and reflect popular will if it is to become an effective and viable instrument of change.

Barrister Rashna Imam is an Oxford scholar and an associate at Akhtar Imam & Associates.

Teachers deserve better



Many scholars and researchers of today are working in different renowned universities of the world. Many wanted to stay in teaching in the country, but extremely low wages and lack of facilities forced them to leave. Thus, we failed to stop the brain drain. This should not be continued endlessly. It is not yet too late to give special attention to address the issue.

M. A. BARI

WORLD Teachers' Day was proclaimed by Unesco on October 5, 1994, in an International Conference on Education at Geneva to recognise the contributions and achievements of teachers. This resolution

was confirmed in a General Conference of Unesco in Paris in 1996. October 5 was chosen because, on this date in 1966, Unesco adopted some recommendations concerning the status of teachers in a special Inter-Governmental conference in Paris in co-operation with ILO.

In this conference they adopted 146

recommendations concerning the status of all teachers in both public and private educational institutions, including those providing technical, vocational and art education. The documentation on recommendations concerning the status of teachers was signed in confidence by the then president of the special Inter-Governmental Conference on the status of teachers, Jean Thomas the then Director General of Unesco and Rene Matheu the then Legal Adviser of the Unesco.

In 1966, Unesco and ILO jointly organised a survey in about 120 countries to see the status of teachers. Their reports reflected that the profession had reached an intolerably low point. In many places salaries had fallen, especially in comparison with other professionals. Teachers in some parts earned, in 1992 and 1993, less than half the salary they would have received in 1979-80.

Unqualified and untrained teachers often replace the qualified teachers who leave for better-paid jobs. Students/teacher ratios and teachers' hours have increased, training has been reduced. In industrial countries violence in schools was taking place in alarming numbers. The situation was exacerbated by the increasing demands made on teachers as a result of educational reforms due to technological advances, social environment and problems caused by poverty, drugs and Aids. Mean while the expectations of parents and communities made teachers vulnerable to criticism.

At that juncture Unesco and ILO started to think that positive new approach to teachers should be taken and one day should be dedicated to the world's 50 million teachers. Accordingly, October 5 was proclaimed as the World Teachers' Day in 1994 to commemorate the signing of the Unesco/ILO recommendation concern-

ing the status of teachers.

Unesco and ILO recommended the following five measures for governments to ensure immediately:

- Give teachers the moral and material recognition they need and deserve, appropriate to their qualifications and responsibilities;
- Ensure that they have proper working conditions, including basic tools for their tasks;
- Pay them a salary comparable to other professionals;
- Involve teachers and their professional organisations in the formulation of educational policies;
- Provide good teacher education as well as training on the job.

Today, teachers sometimes work in challenging circumstances with high rate of poverty and violence outside and within the classroom. In January last, the devastating earthquake in Haiti claimed the lives of 38,000 pupils and 1,300 teachers and educational personnel. In Pakistan, half of the 20 million people affected by the floods are children.

Teachers provide reassurance and a sense of normalcy both during and after natural disasters and other crises. They provide psychosocial support to ease the trauma of children. Education is key to the achievement of all millennium development goals (MDGS). The world needs about 10.3 million new teachers to reach the target of "Education for all" by 2015.

Supporting teachers in such situations is an investment in peace and development. Unesco and others appealed to governments, communities, national and international institutions worldwide to renew their commitments towards the teachers, particularly in the poorest countries. In their joint message they said: "Recovery begins with teachers."

In Bangladesh, there are about 7.5 million people in teaching profession. Political polarisation amongst the teachers is very strong. As such, teachers' organisations cannot start a movement and draw the attention of the authority. Non-government teachers of secondary education, who teach about 95% of the students had to go for movement for 10% increase of their basic salary during the BNP/4 party government from 2003 to 2006. House rent and medical allowance are very poor.

The education minister placed a new education policy in the parliament on October 3. Non-government teachers have been included in the new national pay scale. But a big difference still exists between government and private schools and colleges in respect of benefit and salary structure of teachers. The parliamentary permanent standing committee on education formulated some proposal to minimise the problems prevailing in the education system.

The following recommendations on the status of teachers adopted by Unesco deserve ratification:

- Salary of teachers should be reviewed periodically to take into account such factors as rise in the cost of living, increased productivity leading to high standard of living, or a general upward movement in wage or salary levels;
- Every teacher should enjoy safeguards at each stage of any disciplinary procedure and, in particular, the right to defend himself;
- Teachers' organisations should be recognised as a force which can contribute to educational advancement, and should be associated with the determination of educational policy;
- Working conditions of teachers should be such as to promote effective learning and enable teachers to concentrate

on their professional tasks;

- Teachers and their organisations should participate in development of text books and teaching aids;
- Teachers should be granted study leave on full or partial pay at intervals;
- Recognising that the status of their profession depends to a considerable extent upon teachers themselves, all teachers should seek to achieve the highest possible standards in their professional works;
- Teachers and teachers' organisations should seek to cooperate fully with the authorities in the interest of the pupils, of the education service and of society generally.

Teaching may be considered as a mother profession. It is based on skills. New teachers, even in tertiary education, must have an opportunity to learn about the practical requirements of the profession from experienced mentors. Teachers' training, both initial and in service, should be integrated in the national policies.

In today's changing world, a society needs to pay special attention to education, not only in terms of knowledge but also in terms of skills and aptitude that would allow the learner to adapt to the changes taking place every now and then.

We have a proud history of producing renowned scholars and teachers on our soil. Many scholars and researchers of today are working in different renowned universities of the world. Many wanted to stay in teaching in the country, but extremely low wages and lack of facilities forced them to leave. Thus, we failed to stop the brain drain. This should not be continued endlessly. It is not yet too late to give special attention to address the issue.

M.A. Bari is Senate Member, University of Dhaka.

IN MEMORIAM

Brac's Field Marshall

MARTY CHEN

AMINUL Alam's sudden and untimely death has shaken all of us who know, respect and love Brac. From 1975 to 2010, Amin bhai was at the heart of Brac's field programmes, translating Brac's vision into practical reality. Working alongside Sir Fazle Hasan Abed for thirty-five years, Amin helped develop Brac's programmes in all sectors -- microfinance and enterprise development, health and livelihood promotion, agriculture and education, human rights and legal aid, disaster preparedness and response, and more.

Amin helped expand all of Brac's programmes across Bangladesh, and then translated many of them to 10 countries around the world. During the past year, Amin spearheaded Brac's response to the earthquake in Haiti and the floods in Pakistan.

Amin bhai was known for his uncanny ability to translate needs into opportunities and problems into solutions by identifying key needs and challenges facing the

poor, analysing the underlying constraints, testing solutions to overcome these constraints, translating these solutions into programmes, and then expanding the programs to scale. Like Abed, Amin bhai could break down a problem into manageable tasks and then develop a management system to coordinate them.

He once spent three days talking to farmers in the ox bow area of the Bangladesh delta to come up with a solution to local farming problems. He told the local Brac field staff to leave him alone with the farmers for as long as it took to get to the heart of the problem -- and to keep supplying them with food, tea, and cigarettes.

When Brac was opening field operations in Pakistan, Amin bhai asked for a car and driver for two days. He drove around talking to poor communities to identify their needs, problems, and opportunities; relying, as always, on his special gift of observation and communication.

Amin bhai developed grounded expertise in many areas -- micro-finance and banking; poultry rearing, poultry feed

production, and bird-flu prevention; agricultural production and marketing; seed production and marketing; dairy production and marketing; primary education and functional literacy; artisan production and marketing; public health; legal literacy and legal aid; disaster preparedness and response; and so much more.

In Bangladesh, he spearheaded the development of integrated sector-specific support systems for poultry rearing, silk rearing, fish production, vegetable cultivation, artisan cultivation, dairy production, and more. In the process, he learned how to breed poultry and produce poultry feed, how to grow silk worms and spin silk, how to revive traditional handicrafts, how to cultivate vegetables and harvest fish, and how to rear cows and buffaloes. When Brac expanded to Africa, he became an expert on maize production. When Brac responded to the earthquake in Haiti, he became an expert on artificial limbs.

Amin bhai did not have a rhetorical or ideological streak; he embodied pragmatism. He always preferred being in the field

to attending meetings or conferences. He made relatively few trips abroad until Brac started operating internationally. Once Brac began its international operations, however, Amin bhai quickly became a globe-trotter, overseeing the establishment of Brac operations in 10 countries.

Amin bhai was known for his commitment to the poor, especially women. When Brac began working in Afghanistan, Amin was told that it would be difficult, if not impossible, to engage women staff. Amin was not one to take "no" for an answer. Under his leadership, Brac opened centres for women -- the one option acceptable to local village elders.

At the centers, Brac asked local women whether they would like to take loans for livelihood activities -- they said they would -- and whether they would work as loan officers -- they said they would. Brac is now the largest NGO in Afghanistan, with many women borrowers and staff.

Most fundamentally, Amin bhai had a deep affinity and affection for the poor. The affection was reciprocated by the poor people and communities wherever he

worked or travelled. Amin bhai judged everyone -- especially Brac staff -- by whether they were genuinely committed to the poor. He did not tolerate indifference or hostility towards the poor. He also did not tolerate those who thought "small was beautiful." Like Abed, he believed in taking anti-poverty programmes to scale.

Amin bhai was at the heart of all of Brac's programmes for all but its first three years. He will be profoundly missed in immeasurable ways. But he has left a rich legacy to Brac; of programmes firmly in place around the world, of staff and members inspired by his pragmatic vision, and of practical solutions to many of the world's seemingly intractable problems.

I had the privilege of working closely with Amin bhai from 1975 to 1980 in the formative years of BRAC. In Jamalpur and Manikganj, together with other Brac staff, we organised village women into local organisations -- what Amin bhai and I named "Sromojibi Mohila Shokti" -- and designed sector-specific schemes to transform their subsistence activities into commercial activities.



Mr. Aminul Alam

When I returned with Amin bhai to Manikganj on two recent occasions, I learned from the early women leaders of those village organisations that Amin bhai had never forgotten their pioneering roles, that he brought them gifts every Eid holiday. We will miss you, Amin bhai, but your legacy will live on.

Marty Chen is Lecturer in Public Policy, Harvard University