

LAW OPINION



Capital, Dhaka and Dhaka City Corporation: Some discursive thoughts

KAWSER AHMED

LET us imagine an earthquake has wiped out our Dhaka city from the face of earth. Fortunately, the president, the prime minister, the cabinet, the members of parliament, the speaker, the judges of the supreme court, the mayor of Dhaka city and many of us have escaped the doom. The president and the prime minister want to hold an emergency session of parliament to discuss the situation. Eventually, the question comes up where the parliament should sit now. Dhaka the capital, the seat of parliament, the seat of supreme court has ceased to exist. The members of parliament have assembled in an unofficial meeting to find a way out. A member of parliament suggests that according to the Constitution the seat of parliament and supreme court should be in the capital of the country. Therefore, wherever the parliament will assemble and the supreme court will sit will be ipso facto the capital of the country. A second member of parliament contends by pointing out that the boundaries of the capital, according to the Constitution, shall have to be determined by law. Therefore, the sessions of parliament cannot be convened at a place whichever has not been designated as capital yet. He suggests that the capital should be moved in the north-west part of the country which is relatively less earthquake-prone. He thinks that the parliament can pass law designating any area as the capital of the country provided that the capital must be named 'Dhaka' because the constitution specifically stipulates this name by which the capital of the country should be recognized. A third member of parliament and scholar disagrees with the proposition that 'Dhaka' signifies merely the name of capital only. According to her, Constitution provides that the capital and the pre-existing Dhaka make one inseparable concept. There had been an identifiable pre-existing Dhaka city before it was accorded the status of capital of the country. For example, Dhaka was designated as capital

of the newly established province of East Bengal and Assam after partition of Bengal in 1905. She points to the grammatical construction of article 5(1) 'The capital of the Republic is Dhaka' (see Bengali text). Making specific reference to the word 'is' in the said provision, she then draws analogical comparison among the wordings of article 5, 65(1) and 94(1) of the Constitution. She argues that unlike article 65(1) and article 94(1) of the Constitution which respectively provide that there shall be a Parliament and there shall be a Supreme Court for Bangladesh, article 5(1) takes present tense verb (indicative mood). There was already a pre-existing Dhaka city at the time of adoption of the Constitution, whereas the sovereign parliament or the supreme court were yet to be established for independent Bangladesh. That is why article 65(1) and 94(1) have employed imperative mood alongside future tense verb 'shall be'. She concludes that the Constitution has recognised the pre-existing Dhaka city as its capital. A law claiming to set boundaries of the capital should conform to the boundaries of pre-existing Dhaka. A law which does not set boundaries of the capital in conformity with the boundaries of pre-existing Dhaka is unconstitutional. Article 5 has become redundant since Dhaka has ceased to exist. Therefore, article 5(1) is to be amended in order to establish a new capital although it may share the same name 'Dhaka' like the earlier one. A legislative enactment will not be enough. At this point, the second member of parliament again argues that the provision of capital and its name 'Dhaka' is the creation of the Constitution like the parliament or the supreme court. The provision of capital in the Constitution finds its relevance because the Constitution provides for establishment of the seat of parliament and that of the supreme court in the capital. The Constitution neither obliges in article 5 that the capital Dhaka and the pre-existing Dhaka should have to be the same city, nor does it provide for establishment of a capital Dhaka formed of the pre-existing



Dhaka. The legislature simply chose to declare the area or part of the pre-existing Dhaka as the capital Dhaka and set boundary accordingly. Should have the parliament wished otherwise, it could have designated any area as capital and name it 'Dhaka'. In a same vein, should the Constitution have envisaged capital Dhaka as a fixed/pre-existing territorial concept, it would have set the boundary itself in article 5. Reflection on the foregoing discussion will unveil two different lines of interpretation of article 5 of the Constitution - whether the pre-existing Dhaka has been designated as the capital of Bangladesh and will continue to be so until there is a contrary Constitutional amendment or whether the capital of Bangladesh should be officially known as 'Dhaka' regardless of wherever it is located, irrespective of the fact that the capital Dhaka's location or area do not correspond with the pre-existing Dhaka. While according to the one approach, Dhaka signifies a fact, a preordained territo-

rial concept inseparably connected with the name of the city historically known as 'Dhaka', the other approach attests to 'Dhaka' as a formal appellation, a legal fiction and a creation of the Constitution for functional reasons.

Now let us turn to the present controversy about division of Dhaka City Corporation. The Local Government (City Corporation) (Amendment) Act, 2009 was brought in to replace Dhaka City Corporation with two separate city corporations namely, Dhaka North City Corporation and Dhaka South City Corporation. People are divided into pro-division and anti-division camps as to whether distribution of area of Dhaka City Corporation between two newly established city corporations defies territorial integrity and indivisibility of the capital. The legal issue that merits consideration in this regard is whether the Local Government (City Corporation) Act, 2009 is a law that determines boundaries of the capital Dhaka

under article 5(2) of the Constitution, and more precisely, whether distribution of area of Dhaka City Corporation between two newly established city corporations under section 3(2) of the same Act defies territorial integrity and indivisibility of the capital. The reason is if the Local Government (City Corporation) Act, 2009 has nothing to do with determination of boundaries of capital Dhaka, further examination of the issue would be simply pointless and may be dismissed on the ground of ripeness. Arguments can be made for and against either side of the aforesaid legal issue. The pro-division camp may argue that since article 5(2) provides for a dedicated law for the purpose of determining boundaries of the capital, no law can be construed as fulfilling this requirement unless such intention has been sufficiently expressed. The purpose of Local Government (City Corporation) Act, 2009 is to facilitate establishment of city corporations, not to determine boundaries of capital; and the said Act has been enacted for the purpose of article 59(1) [see section 3(7)], not for the purpose of article 5(2) of the Constitution. Therefore, splitting up one city corporation into two and distribution of area accordingly does not defy territorial integrity and indivisibility of the capital. Conversely, the anti-division camp may argue that an Act for the purpose of article 59(1) may still give effect to article 5 depending on its nature and purport, in point of fact it is so in the present case particularly in absence of any law specifically dedicated for the purpose of article 5(2); and for the same reason the Local Government (City Corporation) (Amendment) Act, 2009 defies the territorial integrity and indivisibility of the capital. Whatever side the Supreme Court takes, it should decide first whether the concept of capital in the Constitution refers to a 'pre-existing Dhaka' or a 'legal fiction'.

The writer is LL.M. (NYU). Advocate, Supreme Court of Bangladesh.



HUMAN RIGHTS ADVOCACY

Declaration of Migration Decade: 2012-2021 A proposal to the Prime Minister

DR TASNEEM SIDDIQUI

TOMORROW is 18th December, International Migrant Workers' Day. We are extremely happy that our honourable Prime Minister, H.E. Sheikh Hasina, personally taking part in this celebration. On behalf of thousands of migrants workers of Bangladesh, private sector and civil society organisations, we urge our Prime Minister to declare 2012-2021 as the Decade of Migration. Honourable Prime Minister, we urge you for such declaration for the following reasons: Recently Bangladesh has been identified as one of the next eleven countries with high potential to become world's emerging economies in the 21st century. Three sectors have contributed in placing Bangladesh to such a status. These are garments, services and remittances. Labour migration and remittances are indeed integral parts of Bangladesh's economy. Since the 1970s more than 7.1 million Bangladeshis migrated to the Gulf and Southeast Asian countries. Their income sustains millions of households. In 2010 short and long term migrants remitted US\$11.4 billion. This is 3.22 times higher than the net foreign exchange earnings from the remittance sector, 12.5 times more than foreign direct investment and 6.4 times more than the foreign aid received by the country. The Government of Bangladesh has undertaken different steps to reduce hardship and exploitation of the migrants. The 2010 Global Forum on Migration and Development and the 2010 'World Migration Report' of IOM, have identified capacity building of structures to govern migration as the key area of attention for both receiving and sending countries. Capacity building for governing migration will not be possible if they are done in a piecemeal fashion. It requires long term vision and actions and has to be made integral part of upcoming five year development plans and the 10-Year Perspective Plan. We are proud that this year the Government has ratified the 1990 UN Convention on Migrants. Now it

is incumbent on the government to reflect the provisions of the treaty on national laws and practices. Performing such tasks requires time, resources and capacity. Declaration of a Decade will help orderly reform of existing laws.



The Foreign and Expatriates' Welfare Ministries need to articulate knowledge based evidence to convince the receiving countries of the contributions that migrant workers make to the economies of those countries. The regional initiatives such as the Colombo Process and the Abu Dhabi Forum as well as multilateral forums such as the Global Forum on Migration and Development and the Global Migration Group may serve as appropriate platforms for such engagement. These will necessitate long drawn activities and

the Declaration of a Decade of Migration will help such engagements.

The potential of migrants' remittances as source of capital formation for large scale development projects needs to be unleashed. If migrants are given incentives then bringing in migrants' investment in projects such as Padma Bridge may not be a difficult proposition. To transform migrants' remittance into tool for development we at RMMRU urge the Prime Minister to declare 2012-2021 as the Decade of Migration.

The global financial crisis and the recent political turmoil in the Middle Eastern countries have brought forth the issue of social and economic reintegration of the returnee migrants. Over the next five years the concerned ministry needs to undertake comprehensive programme that should include national level drive for data generation of all returnee migrants to link them with jobs and investment schemes.

Declaration of the Decade of Migration (2012-2021) will certainly help building of infrastructure and capacity of policy making and service providing public and private bodies. It will also help the country attain the ultimate goal of transforming labour migration into an effective tool for economic and social development of migrants, their families and the nation.

Declaration of the Decade will ensure due emphasis on governance of labour migration, particularly by those who are engaged in preparing long term development plans. Ten year is a good time span for planning and attainment of short term, mid-term and long term goals.

We therefore, through the Hon'ble ministers for Finance and Expatriates' Welfare and Overseas Employment and the Chair of the Parliamentary Standing Committee on Ministry of EWOE request the Prime Minister to consider declaring 2012-2021 as the Decade of Migration.

The writer is Professor in Political Science and Chair of RMMRU.



HUMAN RIGHTS CAMPAIGN

20 years of fighting modern slavery

WISLAND, 13 years old, was mistreated for years by a relative in Port au Prince, Haiti, who had taken her in because her mother could no longer support her. Wisland's mother had hoped her daughter would get an education and a better future in the capital, away from the hard countryside existence. Instead, in exchange for board, the little girl fetched water for the family, cleaned the house and dishes and carried the heavy merchandise the woman she lived with sold on the street.

Eventually, one day in 2010, a neighbour noticed that Wisland was not attending school and she signed her up for the Foyer Maurice Sixto, a non-governmental organization (NGO) supported by the UN Voluntary Fund on Contemporary Forms of Slavery that offered her food and schooling and where she finally felt safe. Wisland was what is commonly called a 'restavek', or literally translated 'stay with', child in Haiti. 'Restavek' children are under the age of 18, usually from poor rural areas, who are placed by their parents in the care of a slightly better off family in the city. The family accepts to take care of the child in exchange for domestic help. However, many of these children live in conditions which have been described as a contemporary form of slavery by the Special Rapporteur on contemporary forms of slavery, Gulnara Shahinian.

2011 marks the 20th anniversary of the establishment of the Voluntary Fund which was created to support NGOs that help victims of contemporary slavery regain their independence, lives and dignity. Four hundred projects supported by the Fund have directly assisted thousands of victims and potential victims all around the world. Speaking at an event to mark the anniversary, Gulnara Shahinian said that an estimated 27 million people lived their lives every day in slavery or slavery-like conditions, despite efforts by the UN, Governments and civil society to end the scourge. "The main reason for this is that slavery continues to evolve and transform itself in various ways but its essence the situation or condition whereby one person is owned by another remains the same," she said.

Source: Office of the United Nations High Commissioner for Human Rights (OHCHR).