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THE successful outcome of a criminal case is largely dependent upon the accurate account of a witness. If a witness is not able to speak freely, fearlessly because of threat given by accused or his accomplice, the prosecution will fail to prove the case against the accused. Ultimately, it creates a society where the accused commits an offence with impunity. After starting trials of war criminals in Bangladesh, it were reported in numerous occasions that witnesses were intimidated, threatened by accused's family members and followers. In fact, they executed those threats by killing a witness of Ghulam Azam's case. In such scenario, only very few witnesses will dare to go to the court and give their deposition against such powerful criminals. Enactment of witness protection law is an imperative necessary for the purpose of maintaining administration of criminal justice in Bangladesh.

Common special measures for witness protection
Different types of witness protection measures are taken in the western legal system. Measures like video testimonies or the exclusion of the general public from a hearing are intended to prevent the accused or his accomplices from violating the witness's physical integrity in the courtroom.

In video-link testimonies, witnesses usually testify in a location which is physical distance from the courtroom. It creates an environment where the witness feels secure enough to testify. Their statement is transmitted in actual time via video-link to the courtroom, where the judge, the defendant, the defence counsel and the public prosecutor watch and listen to the transmission and can ask questions of the witness. This method protects the witness from direct confrontation with and intimidation by the accused.

Other drastic measures like witness anonymity are aimed at protecting their physical security. The court will pass an order of witness anonymity in the interest of justice and extreme necessity. When this order is passed, the identity of witness will not be disclosed to the accused. These additional measures may be necessary to avoid the witness being recognized by the criminal. Sometimes, the witness is given new identity, relocated and given up all social contacts places. That means starting a new life in a new place.

Witness protection and its impediment

All special measures for witness protection have some inherent drawbacks. If the witness anonymity order is passed, there is a chance that the accused will be deprived of



the right to fair trial. Article 35 of the Constitution guarantees the right to fair trial. It is well recognised principle for ensuring fair trial that the accused or an advocate on behalf of accused must be given the opportunity to cross examine the witness for the purpose of verifying the credibility of the

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Witness protection is at stake

witnesses. If an accused is convicted on the basis of deposition of witness but he hasn't given opportunity to cross-examine, his right to fair trial will be infringed. Such infringement of the right of the accused should not be taken lightly. Only it should be permitted in extreme necessity

after considering public interest connected with the offence.

Practical difficulties to implement witness protection laws in Bangladesh

In our country, we have noticed that the government always tries to oppress the opposition party by lodging false cases. We have seen the abuse of the Special Power Act 1974. By using the Special Power Act 1974, the government has detained thousands of people without holding any trial. So, any laws which will permit the prosecution to conceal the identity of witness will be abused by the government to convict the opposition activists without holding fair trial. This will open the floodgate of political convictions.

Some special measures like video testimonies are very expensive. It requires technical equipment, well-trained personnel and adequate financial resources. Therefore, it will be very difficult for country like Bangladesh to implement such measures owing to fund shortage. Likewise, the government will require huge resource and manpower to execute other measures like keeping witnesses in safe house or giving a gunman with a witness. In my opinion, such measures are not realistic option to adopt in Bangladesh.

Witnesses are routinely threatened, intimidated by the accused or his accomplices. The culture of witness intimidation must be stopped. In my opinion, the witness anonymity order is the best measures to adopt in Bangladesh. Because of risk of potential abuse, such order should be made only in exceptional cases. My recommendation is that the witness anonymity order will be passed by a board. This board will consist of three judges. When there is a possibility of witness intimidation because of nature of offence or criminals, the investigating officer will inform the matter to the prosecution team. Thereafter the prosecution will apply to the board. On receiving such application, the board will take into account the importance of case, the importance of particular witness's deposition in deciding the case, the circumstances which is compelling the witness not to turn up in the court. In the interest of justice, if the board is of opinion that the particular witness should give deposition and because of giving deposition in open court, his life will be endangered, the board may make witness anonymity order. At the time of passing such order, the board must be satisfied that there is a good reason to disregard the accused's right to cross examine. This might strike a balance between the right of accused and public interest underlying with the case to bring justice in society.

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LAW OPINION

A national law style: Possible?

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BDANGLADESH has never got a national legal style and citation guide. Legal citation and style is important than any other branch of knowledge, because law always speaks with authority. In our country, the publishers publish law at their own whim, judges are at liberty to give reference in writing their judgments and law schools enjoy full-fledged liberty in following styles of legal referencing. This anomaly creates an unsatisfactory state of affairs. The first casualty of this condition is that our works are not being referred and cited, not being trustworthy. Secondly, if a judge writes judgment in one particular pattern and then its style gets changed in law reporting, it may cause confusion in many cases. Even a judge might have to refer his own judgment from a changed version! Thirdly, learning a particular citation style in their law schools, students receive their first rebuke in the hands of their Seniors going to the Bar for not learning the correct style of legal formatting. This is how law schools doom the students into disappointments! Lastly, the teachers themselves suffer, as because, the reference style, may itself become the cause of rejection of a paper for publication in esteemed journals. Therefore, can we think of a National Law Style Guide? My proposition is not to reach in a conclusion but to foster a debate on the point. I admit that such a guide would not solve every riddles we face, yet, at least it has the following advantages:

i) This certainly would help paving the way to build a legal culture in the country. In a computer age, horse and buggy style of law referencing is really pathetic. The soon we will understand it, better will reap from it.

ii) This will bring a certainty and commonality in legal form and style. Referencing being an inextricable part of legal reporting, drafting and research, commonality in it, will establish a Bangladeshi outlook of law and jurisprudence. This in turn would portray a distinctive feature of our legal system. We have leaned too much to common law legal system (England), throwing all the possibility of having good things in other jurisdictions. Exposure of own commodity (law as commodity) should have its own trademark and brand. Why not?

iii) A national law style will contribute in fine researching. The students and teachers will have a ready made guide to follow while writing papers. This also will shed the burden of law schools to prescribe their own format. It will minimize the option to question the publication quality. As because, a publication in a law school journal other than its own is sometimes seen in a susceptible eye. This will relieve the law schools in one aspect to define the 'recognised journal' paradox as such. However, it is not to say that every law school will have to accept the national law style guide. A law school may have their reservation with logic and reason. It sounds ridiculous that someone will write in a below standard, but follow Harvard, Chicago Style of referencing or the like.

iv) In Bangladesh, it seems that law departments compete with each other without knowing why they should compete or what should be the content of competition. An initiative to formulate a guideline of such type, will bring them closer primarily and to know each others achievements. This will foster further to cooperate in the field of legal knowledge. Same is the case with interactions amongst members of the Bar and Benches. The effort of making the law style guide will bring together the academicians, judges and lawyers in the same table. Legal education in Bangladesh can best be served by a conglomeration of the members of these three platforms.

v) This will further a legal movement in the country. Simplification of legal language, for example, may be the second target of this association. Unless we can free the text of law from the clutches of language, we will not be able to set the rule of law in fine tune. Once such national guide can be formulated all law schools will love to adopt it, as it would be the outcome of their participation. Then all the publishers and law reporters may start to follow it. Courts, tribunals, law commission and other law entities may also join the procession. Question is: how to go for that? Under the auspicious of Law Commission, a core group taking representation from law schools may be formed. Burden would then be largely vest upon this group, amongst whom three or four will take the lead to author the guide. Once the authors will come up with a draft, this can be discussed and validated by a national workshop. The guide then can take its final shape after compliance of the observations made in the workshop. The authors must be drawn from the three diversified area of Legal Academia, the Bench and the Bar. New Zealand has formulated such a law style guide following roughly this procedure.

A National Law Style at least can forge a legal tradition by influencing the research behavior of a law writer. Should we not go for that?

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HUMAN RIGHTS ANALYSIS

Right to education: Still not ensured

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MANY readers might be surprised to come across the news on primary education published in The Daily Star, entitled, "Children in Jamuna chars denied proper learning" on August 8, 2013. Knowing that Bangladesh is on track regarding primary education related MDG, it came as an apparent shock for the informed group of readers. Many children living in Chars and other geographically-challenged areas are still out of school and denied basic rights to education. Let alone quality, state of primary education is in a shamble in many geographically-challenged areas largely due to shortage of institutions and infrastructural facilities.

Although Bangladesh has already met the target in nine MDG indicators, including poverty reduction, attaining gender parity at primary and secondary level education, and reduction in the prevalence of malaria and mortality rate under the age of five; significant numbers of children are still denied their right to primary education and environmental sustainability is under severe threat.

Article 17 of the Constitution guarantees free and compulsory education. The Article reads as follows: The state shall adopt effective measures for (i) establishing a uniform mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law; (b) relating education to the needs of the society and producing properly trained and motivated citizens to serve these needs; (c) removing illiteracy within such time as may be determined by law".

However, education is a fundamental human right and essential for the realisation of all other human rights. It promotes individual freedom

and yields important development benefits. It has been stated in Article 28(1) of the UNCRC, "States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in

tional agreement setting out the civil, political, economic, social and cultural rights of every child, regardless of their race, religion or abilities.

Recently, the draft Education Act 2013 has been shared on the education ministry website in order to get feedback from the people on the draft. It has been suggested in the draft law that compulsory primary education will be up to Class VIII from Class I and Bangla, English, mathematics, religious instruction, moral education, Bangladesh studies, information technology, science, and introduction to environment will be made compulsory in general schools, madrasas and kindergartens.

Several researches also suggested addressing regional inequality issues. A study conducted by UNICEF, entitled "A Case for Geographic Targeting of Basic Social Services to Mitigate Inequalities in Bangladesh" revealed relative poor performance of the isolated regions in terms of achieving development goals. It appears that progress has been limited so far in addressing regional deprivation.

However, it has been suggested in the constitution to bring about a radical transformation in the rural areas. It has been said in Article 16 of the constitution, "The State shall adopt effective measures to bring about a radical transformation in the rural areas through the promotion of an agricultural revolution, the provision of rural electrification, the development of cottage and other industries, and the improvement of education, communications and public health, in those areas, so as progressively to remove the disparity in the standards of living between the urban and the rural areas". Will there be necessary steps from government functionaries in order to improve education facilities in Chars and other deprived regions?

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case of need; (c) Make higher education accessible to all on the basis of capacity by every appropriate means; (d) Make educational and vocational information and guidance available and accessible to all children; (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates". Bangladesh is one of the earliest signatories of the United Nations Convention on the Rights of the Child (UNCRC) and the convention is a legally-binding interna-



LAW NEWS

Forced disappearances violate fundamental human rights



THE International Day of the Disappeared also known as the International Day of the Victims of Enforced Disappearances observed on 30th August 2013. This day draws attention to the fate of individuals abducted or detained by agents of the state (or those acting with support of the state), and held in locations concealed from their relatives and legal representatives. Forced disappearances violate fundamental human rights, such as the right to be exempt from arbitrary arrest and detention and the right to liberty and security. They inflict terrible suffering upon victims and their loved ones, some of whom will never learn the fate of their family member, partner or friend.

The initiative for the Day came in 1983 in the midst of an alarming rise of disappearances by authoritarian regimes in Latin America. From the 1970s through the 1990s, a total of several hundred thousand people in countries such as Guatemala, Argentina and Chile were disappeared. The Latin American Federation of Associates for Relatives of the Detained-Disappeared (FEDEFAM), an association of delegates from associated member states and regional groups working against secret imprisonment and forced disappearances, led the campaign for the Day.

In recent years, activists, NGOs, courts and international organizations have increasingly sought to prevent enforced disappearances and obtain retroactive justice for victims. In 2006, the United Nations adopted the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED). Yet disappearances remain all too frequent. As of 2012, the UN Working Group on Enforced or Involuntary Disappearances estimates that at least 42,889 people worldwide have been forcibly disappeared with fates unknown.

In particular, enforced disappearances play a major role in the crisis in Syria. Human rights groups estimate that anywhere between 10,000 and 120,000 Syrians have been forcibly disappeared by security forces. Activist groups worldwide continue to urge states to ratify ICCPED (as of August 2013, only 40 have done so) and call for truth and justice for victims past and present.

SOURCES: AMNESTY INTERNATIONAL.