



Multiplicity of problems hinder criminal justice

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JUSTICE delivery system, specially the administration of criminal justice of Bangladesh has been somewhat utterly different to its original concept admitted by prominent leaderships, think-tanks and role-players as well as endorsed by numerous research report and perception studies. So, is it bad? If yes, how bad is it? Let's explore and find out the answer for ourselves.

Inter-linkages and territory of Administration of Criminal Justice:

The Justice Sector of Bangladesh is a relatively complex setup with multiple of agencies and with diverse range of services offered to the citizens of Bangladesh. Here, the Administration of Criminal Justice comprises three dimensions of agencies and their staffs. These are- investigating agencies like police, the judiciary as trial management agency and the prison. These prime agencies are also assisted by a number of other agencies when it comes to cases of legislative support, law enforcement, providing legal support to citizen etc. By definition, the Administration of Criminal Justice basically knits all agencies involved in promoting rule of law in the country.

Challenges so far

The Administration of Criminal Justice has been suffering from multiplicity of problems, most prominent of them are-

Delayed delivery of justice: starting from reporting of criminal cases, investigating, trial management process, sentencing and finally responding to verdicts and managing sentenced persons in prison; it takes an extensively long procedural and administrative set of processes to completely dissolve a criminal case. Although, there are time frames for stages of a criminal case earmarked by relevant legislations-often it's a challenge for all the agencies to put concerted efforts in maintaining the least time the case might require. This challenge is attributed specially to the lack of technical knowledge of the staffs in both general and specialised cases, practice of encouraging and engaging power and money to receive verdicts in favour, slow inter-agency communication and follow-up process, out dated legislative provisions etc.

Low conviction rate: Bangladesh has a conviction rate of around 10% which is frighteningly low when comparing with the healthy figure of conviction rate of some developing countries. The low conviction rate arises out of lack of trust of general people in the justice delivery mechanism, insecurity and visible threats to the victim and witnesses of a case and delayed processes as mentioned above. This low rate of conviction contributes to the factor that the offenders frequently getting discharged without being convicted as the Administration of Criminal Justice is yet to be known of discharging justice in an efficient, transparent and timely manner. This at the same time obstructs the opportunity of using guilty-plea as an effective tool of dissolving a case in a speedy manner. Furthering an alternative dispute mechanism in criminal cases (like plea bargain) is likely to be a bigger challenge for this particular reason also.

Effective Case and Court Management: Case Management relates to the management of cases and involves all the agencies as mentioned earlier. The process flow mechanism of Administration of Criminal Justice of Bangladesh is flawed because of the absence of unified channel of communication among agencies for a case, question of institutional superiority ruling out willingness of officials to coordinate and complement each other's work, non-engagement of information and communication technologies in managing cases and an increasing fear of confronting transitional



difficulties and loosing confidentiality. As an example- the chain of information in a case of investigation by police, different stages of trial by court and prisoner management by prison authority often stays disconnected as neither any visible coordination is seen among the agencies nor there is a sustainable and effective process in place for information management, prioritisation of cases, informing clients/justice seekers and pinpoint specific achievements. There is also this challenge existent of having ineffective and insufficient court management in terms of case allocation, close monitoring, record management, interaction and decision making in participation of a broader forum for a particular type or priority case.

Lack of logistical, administrative and technical resource: The Justice sector in Bangladesh as a whole has never been adequately budgeted as required. This trend left the sector (including the Administration of Criminal Justice) with inadequate human resource, insufficient infrastructural support, shortage of technical assistance and limited budget for technical skill-building and many more kinds of problems to deal with. Despite the national government and international development agencies putting their cumulative effort in providing assistance in a need-based manner; unless the national budget of Justice sector is increased especially in staff management, technical capacity building and enhanced administrative function- the goal of having a strengthened Administration of Criminal Justice will still be unfulfilled.

Lessons and plans for future

As I mentioned earlier, the government's firm intention and increased commitment coupled with international communities' persistent support have been bringing in significant positive changes in the system, still, there are rooms to incorporate more innovative changes. Here are few of them-

Legislative reform: there are a number of laws which need to be reviewed and adjusted through amendments to reassign the timeframe for specific cases and also to smoothen processing cases. Laws are also to be enacted/reviewed to incorporate practical measures to enhance the quality of justice. As an example- the Nari o sishu nirjaton domon ain in the area of timeline reduction, Evidence Act to allow electronic evidence which speeds up the evidence production process and appropriate ADR mechanism for criminal cases may be reviewed in this connection.

Public awareness and knowledge distribution mechanism: the government lack proper system and strategy to create public awareness about the services those are offered by the Administration of Criminal Justice of Bangladesh. This is the opportune moment for the government to plan a nation-

wide knowledge dissemination and management drive which should ideally encompass important information related to services such as specific mandate of the courts, periodic information on justice policy and sectoral budgeting, legislative briefing etc. issues. There can ideally be an administrative unit established and positioned in the justice sector to manage these tasks. This will bring back the trust of citizen into the administration of criminal justice of Bangladesh as end result.

Client-focused service delivery: another important addition in this task list is the transitioning of mind-sets of service providers and helping them to adopt a pro-client policy to act. This will require initial and periodic briefing and debriefing about the important responsibilities of the providers to the receivers. Merit-based recruitment at the onset and time to time arrangement of interactive sessions on ethics and morale can also assist the staffs to maintain their commitment to the people they serve and to keep their integrity intact.

Improved inter-agency relationship: the Criminal Justice agencies are required to function in a coordinated and complementary manner to get the best out of each other while disposing a criminal case. There should be a cross-cutting and multi-sectoral platform established for them to discuss on coordination mechanism, improved visibility and continued commitment towards an efficient case management system. Assistance of automation strategy and ICT integration should be sought to develop an affordable, durable, replicable and manageable mechanism to help case and court management.

National ownership: it is the increasing political will and substantive nature of leadership engagement which can ensure the full partaking of agencies of Administration of Criminal Justice of Bangladesh in the successful paradigm shift and turning into outstanding sectoral performers. Developments of policy, strategy, plan and programmes for justice sector and increasing national budget to rational proportion; these are to name a few of those that show the increased ownership and nationalization of efforts.

A sectoral reform approach for the Administration of Criminal Justice of Bangladesh will not only ensure a better functioning justice sector for the society but also will improve the rule of law situation of the country to a greater extent. The sooner we realise and act upon it, the better it is.

Disclaimer: "This write-up is the personal expression of the writer and does not officially represent his employer's view in anyway."

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YOUR ADVOCATE



This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies.

Query:

My father has died. We are three sisters, no brother and our mother is alive. My one uncle (chacha) and one aunty (fupu) are alive. Now how could we share our land among all successors?

Response:

Thank you for your query. I understand that your father has died leaving behind your mother and his three daughters including you. You do not have any brother. You have one paternal uncle and one paternal aunt, both of whom are alive. In Bangladesh, the law of inheritance is based on personal law, i.e. the religious law of the individual in issue. You have not mentioned which religion you are following. I am assuming that you are Muslim. Accordingly, as per section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, the Muslim Personal Law (Shariat) of inheritance will apply. Based on the Muslim Law, since your father has died leaving no son, your paternal uncle and paternal aunt will also inherit from your deceased father's properties. The distribution of the properties shall be done in the following manner:

1. Your mother will receive: 1/8, i.e. 12.5%;
2. Each of your sister including you will receive: 2/9, i.e. 22.22% each, meaning 2/3 or 66.66% collectively;
3. Your paternal uncle will receive 5/36, i.e. 13.89%; and
4. Your paternal aunt will receive 5/72, i.e. 6.94%.

I hope that the above shall help in ascertaining your query of inheritance.

For detailed query contact: omar@legalcounselbd.com



Fostering Human Rights study

MOHAMMAD GOLAM SARWAR

RECENTLY I have got the opportunity to attend in an International Course on Human Rights and Asia organised by Seoul National University, Korea. This course was unique in the sense that it accumulated diverse voice of human rights dimensions from the participants of more than twenty countries of the World.

This two week intensive course intended to contemplate human rights jurisprudence with particular focus on the importance of Asian human rights mechanism to protect and promote human rights in this region. It was designed to enhance the ability to critically examine human rights issues in Asia by combination of lectures, presentations and discussions and visual aids. This forum offered both general sessions on the International human rights norms and human rights protection mechanism including UN Human Rights Institutions and Processes. Starting from basic understanding of human rights jurisprudence it course focused on Asian values and Human rights, Rule of Law and Human Rights, Cultural rights in Multi-cultural society with particular emphasis on Asian Context and Human Rights based approach to development. It also comprised thematic sessions on contemporary issues and case studies in Asia. Human rights experts including UN Special Rapporteurs who have wide-ranging experience of working in the field of human rights made lucid discussions throughout the course which facilitates the participants to learn human rights from various perspectives.

During the whole course participants attempted to examine the co-existence and clashes of human rights cultures as they impinge on human rights issues. Each Culture certainly has dynamic influence to understand human rights norms. However, if we look back to the development of human rights



Participants of the course.

standards originated in 1948 it would be found that the concept of human rights secured universal recognition from its beginning.

Over the years human rights violations are perpetrated in each part of the world but universal reaction against these violations deserves utmost significance till date. The cultural context attached with the norms of human rights is adding significant values to contemplate human rights jurisprudence and at the same time to ensure and implement human rights with its pragmatic sense. The course which I have completed enlightened my human rights knowledge with particular context. It is to be noted that in order to stimulate the movement for the creation of human rights culture, the universal as well as contextual approach attached with human rights should be duly considered.

Though the Universalists stressed on the cooperation with each other in order to promote 'universal respect for' and observance of, human rights and fundamental freedoms for all without distinction but in reality are human rights really universal? Given the global prevalence of massive human rights violations, a negative answer seems to be warranted. In this backdrop the contextual approach to human rights deserves to be attended.

It is worth mentioning that the concept of human rights is closely associated with specific social, political, and economic conditions and the specific history, culture and values of a particular country. Different historical stages have different human rights requirements. Countries at different development stages or with different historical traditions and cultural backgrounds also have different understanding and practice of human rights. Participants of the aforesaid course while analysing the context of each countries in terms of understanding and realising human rights concluded that we cannot think of a unique model or standard of human rights in certain countries. It is not feasible to compel all the other countries to comply with the standards of a specific country rather it is the specific context of a particular country which would decide the standard of human rights.

The course which I have undertaken has enlightened me on the point that we have failed to underscore the importance of our specific context and values in terms of understanding the jurisprudence of human rights with its pragmatic essence.

Coming to the point of Bangladesh which was born with a view to ensure true emancipation from exploitation and victimisation but unfortunately after 42 years of independence we are still live in a society devoid of human rights.

While this is an evident truth that we have signed and ratified number of International Human Rights instruments but unfortunately the reality suggests a horrifying picture of human rights realisation. Here it is to be noted that states including Bangladesh are expressing commitments for protecting and promoting human rights in the International forum/arena but in the domestic level states are often found to act as perpetrators while restricting and manipulating human rights entitlements.

In this backdrop Human Rights education demands immediate attention to be incorporated in our nation education curricula. By virtue of human rights education (not in terms of quantity but ensuring quality) we can make people more aware about human rights which would enrich their capability to hold the state accountable and compel as well to ensure their entitlements.

THE WRITER IS LAW DESK ASSOCIATE



Can a handsome salary snatch away the employment rights?

IN recent times agitation by a faction of employees of a few renowned private corporations in relation to employment disputes, created commotion among wider spectators. These agitations primarily arose out of unfair dismissal of employees working mainly in administrative and managerial capacities at offices. The concern grew bigger as at the advent of globalisation and rapid growth in international trade a large number of people these days are employed in offices rather than in conventional factory settings.

The well drafted Human Resources policies of many large private organisations are impressive but what role are they playing in ensuring the rights of employees in our country where plutocratic values aspire to prevail over rule of law and the concept of good governance? Do we have effective legislative provisions and governance mechanisms for protecting the interests of the citizens employed in these commercial establishments?

The Bangladesh Labour Act 2006, a long awaited piece of legislation, consolidated a bunch of statutes enacted over the past century for governing employment and labour relations. Despite criticisms of various interested groups, the legislation was enacted with a view to regulating relations between employees and employers including, but not limited to, matters such as termination, notice period, severance payment, labour welfare fund, maternity benefits and many more.

However, the scope of the Act was made limited by making it applicable only with regard to a certain types of employees who fall within the definition of "worker". This legislation principally intends to protect the interests of the wage earners working mainly in industrial undertakings and thus the Labour Act excludes a certain class of employees who mainly work in managerial or administrative capacity from seeking redress under the Act. This class of employees are left on their own to 'freely negotiate' for themselves and match the bargaining power of their employers in pursuit of setting the standard of employment relations under the employment contract.

Relationship of an employee who is not a worker and the employer is governed purely by the law of contract. The employers often defend legal actions against such contracts by holding the employment to be mere "con-

tractual" in nature and make unscrupulous attempts to deprive the employees of their rights. Such unprincipled trend thus equate employment contracts with ordinary commercial agreements and deny the very core principle of employment relations which is the inequality of bargaining power and that the employees' standing in a relationship of relative dependence. Therefore, in the absence of any special employment rights enforceable against the employers, the management or administrative employees would have to go on a crusade with their limited resources against their financially well resourced employers. The employees, more often than not, decide to suffer quietly.

It is a very unpleasant situation in Bangladesh that although there is a specialised court and specialised provisions for enforcing labour rights by workers, a certain class of employees comprising of a significantly large number of citizens have been left stranded without any recourse to such specialised courts. Why should these employees not be protected by such special statutory provisions? Or should we simply wait till a big enough case pops up and then proclaim reclamations for appropriately drafted and amended legislation?

The importance of industrial tribunals is immense in developing countries with fast-growing economy like the one we have in Bangladesh. The enactment of the Bangladesh Labour Act 2006 was indeed a remarkable achievement for a large number of wage earners who can seek protection under it.

It should, nonetheless, be appreciated now that given the rate and pattern of economic growth in our country it is high time we addressed the issues of people who are ordinarily employed in commercial undertakings in managerial or administrative capacity. It is a timely demand to the government that policy decisions are taken in order to bring the employment issues under principled regulation and pave way for a significant number of salary earners (also taxpayers!) to enforce their fundamental rights with regard to their employment in the true sense.

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