

LAW ALTER VIEWS

STATUS OF 'BANGLA' IN LEGAL ARENA

Let's not go against the flow



KAWSAR MAHMOOD

ON the month of February The article "Status of 'Bangla' in legal arena" was a timely publication in the same page. The author Dr. Nahid Ferdousi, rightly observed the dilemma of using mother language in all official procedure of Apex Court. Her appeal to respect the martyrs of the Language Movement is morally legitimate, concerns for the interest of uneducated litigants in understanding the reasoning behind judgment does not necessarily go amiss. But prospects in this regard are practically unable to be met. Despite of utter willingness, an attempt to clear out using English language from Court is essentially associated with many difficulties and downsides as well.

Supreme Court is, constitutionally, a 'court of record' in the meaning that its acts and proceedings are recorded for a perpetual memorial. Here, legal principles from different ages are dissected, theories from different disciplines analysed and ideas from several foreign courts explored. The whole Judiciary is also erected on hundred year exclusive English dominance in judg-

ments, precedents, academic standards; those all are guiding and binding in the current procedure and would be doing the same in the next progress. The word 'impossible' is not enough to denote the exhaustiveness of the task to translate them all. Even if it is possible, suspicion remains how far the translation would do justice to the meaning and context when interpretation and construction plays a significantly complex role in Supreme Court.

More importantly, if we deny the necessity to import reference from foreign courts, we cannot expect to export our own judgments be used in other countries or tribunals and be contributing in global legal knowledge. Moreover, with the exponential increase of global interaction, Supreme Court deals with a growing number of issues primarily relate to international entities, e.g. MNCs, INGOs and Agencies etc., who are often the direct parties to the matter.

The writer also pointed out that Lawyers often manipulate the parties who are unable to understand judgment in English. If the lawyers are less scrupulous, just Bangla Version Judgment is not enough to check the 'harassment and sufferings' while the parties seldom possess legal knowledge especially about anything comes from the Apex Court.

Acknowledging that there should be proper facilitation towards accessibility of law and flow of information to justify the principle 'Ignorance of Law is not an Excuse'. But, medium of language is not the root cause behind that ignorance nor can Bangla judgment alone ensure accesses to law and information in all walks of life.

On the point that other government organs carry their business in Bangla, it is evidently noticed that officials lack necessary competencies when they come to deal with foreign interactions, i.e. sit for negotiations and design any deal. Despite the paramount pressure to increase language efficiency when our officials are lagging

behind, how can we ensure that occasional practices in English is enough for judicial officers or practitioners to perform their best when they come across foreign party, counterpart and competitor?

The argument that our majority mass people are uneducated cannot discard our dream for cent percent education in near future. The neighboring country, India, aggressively adopted English as one of the state languages. Even the very common people, too, reached to certain level of English efficiency in there. But, we are crawling on this regard although 'hundred marks compulsory English' is taught for consecutive 12 years in our education. That many of our highly educated people and professionals are, still, much comfortable in their local dialect and awkward in speaking Bangla with standard pronunciation refers our serious apathy to learn language in any case let alone willingness to glorify the sense of national language.

Getting to the root of this dilemma, we must say mass education and legal awareness is to be targeted instead of a blanket ban on English. Moreover, it is better to have confidence in learned judges and expert counsels to take care of the litigants then to day-dream that lay men would understand the law more better in Bangla when there is no convincing evidence that how many times litigants in lower court themselves go through the pages and papers which are of course in Bangla most of the time. It is much better to expect our people to get educated than to alter hundred years tradition and sophisticated system. While English is pervasive in every other part of our lives, i.e. media, television, education, research and communication, and blanket ban is impossible, rational to pay tribute to the martyred souls by bringing Bangla in only legal field is not enough convincing.

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Free the freedom

MOHAMMAD GOLAM SARWAR

WHILE reading a book called 'Freedom is not free', by Shiv Khera, I find an undeniable truth that every generation needs to earn its own freedom. That means freedom is not free, in order to achieve freedom there should be some sacrifice. Even the historic four freedoms propounded by Franklin Roosevelt had arisen out of sacrifice of millions of people in the event of unprecedented danger and instability during the World War II. Coming to the birth of Bangladesh, it was the freedom for which three million people sacrificed their lives. But unfortunately, freedom is not free at all in Bangladesh even after forty three years of independence. Protection of freedom is constantly charging human lives amidst fear and instability. Now the question is how many more we have to sacrifice to secure freedom? A definite uncertainty might be the response.

The recent brutal killing of Avijit Roy, a writer and co-founder moderators of a popular blog Mukto-Mona (free thinker), reminds us again that the cost of freedom or free thinking can only be compensated by sacrificing human lives. This is not the only incident where freedom is compromised, rather it is becoming a common phenomenon in the present context of Bangladesh. According to the recently released human rights report of Amnesty International (AI) (2014/15), journalist, human rights defenders and bloggers were continued to be attacked and harassed during the year of 2014. It explicitly reported that "the government's use of Section 57 of the Information and Communication Technology (ICT) Act severely



restricted the right to freedom of expression".

The curtailment of freedom by virtue of legal instruments not only disregards constitutional commitment of freedom of expression but also jeopardises the rule of law which demands individual liberties.

It is true that freedom of expression guaranteed under Article 39 of the Constitution of Bangladesh is not absolute it also encompasses permissible restrictions but that does not in any way mean the curtailment of freedom without reasonable justification. In the case of *Santokh Singh v Delhi Administration*, AIR 1973, SC 1091, it was held that in determining the reasonableness of a restriction upon freedom of expression, a reasonable balance must be drawn between the need for the freedom in a democratic system of government provided by the constitution and the social interest in the prevention of disorder and anarchy.

In this regard, the extent to which people can exercise their freedom and the extent to which the state can impose restriction by virtue of saving clauses are yet to be ascertained in the context of Bangladesh. Since the voices of individuals are not empowered at all and on the other hand the voices of state mechanisms are more powerful, it is obvious that the vulnerability will be borne by people at large.

Freedom is regarded as an essential tool by virtue of which a citizen of a country can pursue legal avenue with a view to realising his or her entitlements. But amidst of lawlessness prevalent in Bangladesh accompanied by many enforced disappearance cases, number of extra-judicial killings, impunity of wrongdoers, it would not be an exaggeration to say that freedom of individuals are hindered by the hands of powerful state mechanisms and the availing of legal avenue by virtue of the tool of freedom remains a far cry.

The alleged misinterpretation of legislation by state machineries and the impunity of law enforcing agencies, as reported by Amnesty International (AI) facilitate the religious groups in Bangladesh to exploit the religious sentiments of common people and at the same time threaten the free thinkers. The AI report went on to state that "freedom of expression was also threatened by religious groups. In at least 10 instances, these groups were reported to have spread rumours that a certain individual had used social media to insult Islam, or had engaged in allegedly anti-Islamic activity in the workplace. At least five people were subsequently attacked; two were killed and others sustained serious injuries".

These incidents not merely carry the story of brutal killings and sufferings but also reveal the dominant presence of anti-freedom elements even within the state machineries.

A culture devoid of freedom and freethinking cannot enlighten the torch of liberty rather it generates intolerance, disharmony and bigotry which lead to deviate from the core values of society.

Let me conclude with the words of Gilbert Francklyn that every deprivation of freedom is a species of servitude or slavery. Are we indulging in new form of slavery?

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RIGHTS MONITOR

Child rights also at stake



OLI MD. ABDULLAH CHOWDHURY

MANY of the readers must have been touched by the story of injured Tara and his 12-year-old son Suján appeared in the front page of The Daily Star on February 8, 2015 entitled "He had a choice: Starving to death". To explore livelihood option, the family took a bus for Dhaka and they had to pay dearly for this venture. Alleged blockaders hurled a petrol bomb at their bus in Tulsighat area of Gaibandha on February 6, 2015. Both Suján and his mother died while his father was undergoing through treatment for burn injury in the hospital. Like Suján, a total of 10 children died in the current spate of violence.

It has been stated in Article 6(1) of the Convention on the Rights of the Child (CRC), "States Parties recognise that every child has the inherent right to life" and Bangladesh is one of the earliest signatories of CRC. However, Bangladesh has failed to protect children from current string of violent political campaign initiated by the opposition alliance of 20 parties. Apart from those killed by fire bomb, a total of 20 children at least are undergoing through treatment after surviving bomb injury.

It has further been stated in Article 6(2), "States Parties shall ensure to the maximum extent possible the survival and development of the child". Let alone development, ensuring survival of children in a volatile political climate appears to be a daunting task. Many of the arson victims were breadwinner of the family and children of those families would suffer as result of reduced income and increased vulnerability.

Those children who are undergoing through treatment in medical facility require long-term support from government. It has been stated in Article 24 (1) of CRC, "States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services" and treatment of children affected by recent political campaign, therefore, must be a high priority.

Bangla daily Prothom Alo reported on February 10, 2015 that several attempts to involve children in renouncing violent political programme. Interestingly, Bangladesh Shishu Academy (BSA) allegedly patronised forming human chain where children mostly took part. Those children had to carry placard and horrific photos of arson victims. Human rights defenders of the country have long been protested against involvement of children in any form of political campaign and recent activities affiliated by BSA are evidently a clear violation of child rights.

Involvement of children has clearly been prohibited in National Children Policy 2011. "The children cannot be used in the political activity, neither they could be lured and compelled to be involved in such activity"- said in Article 6.7.4 of the policy.

Would policymakers and government agencies adhere to National Children Policy?

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LAW NEWS

RAISUL ISLAM SOURAV

SEMINAR titled "Judicial Activism & Judicial Self Restraint", organised by the faculty of law, Dhaka International University (DIU) was held on 22 February. Barrister Shameem Haider Patwary, Vice-Chairman, Board of Trustees, DIU presided over the seminar while Dr. Adish C Agarwala, President, International Council of Jurists & Chairman, All India Bar Association addressed the seminar as chief guest and key note speaker of the seminar. Among others Rofiqur Rahman Patwari, Retired District & Sessions Judge; Asst. Prof. Mily Sultana, Chairperson (Acting), Dept. of Law; Raisul Islam Sourav, Coordinator, Dept. of Law; Proctor and faculty members of Law Department were also present at the seminar.

Barrister Shameem Patwary exchanged his views on Judicial Activism, Judicial Self Restraint and Public Interest Litigation (PIL) in Bangladesh & India. Apart from Judges and lawyers, law students can play vital role to protect public interest, he added. He discussed on

Seminar on judicial activism held at DIU

requirement of filing PIL in India & Bangladesh. At the time he respectfully remembered Justice Vaidyanathapura Rama Krishna Iyer, who was a pioneer of strengthening PIL in Indian sub-continent. Barrister Patwary also told the necessity of judicial self restraint to ensure separation of powers.

Dr. Adish C Agarwala, Senior Advocate of Indian Supreme Court then delivered his speech to the students of law of DIU. He emphasised on goals of Judicial Activism & PIL. This time he mention present scenario of Indian public interest litigation and made a comparison between Indian & Bangladeshi PIL.

The president of International Council of Jurists shared his experiences to deal with various types of public interest litigation in his country with the students. Besides judicial activism & PIL, Dr. Agarwala focused on various socio-economic issues of India & Bangladesh.

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LAW EVENT

EMRAAN AZAD and SHAKIL AHMED

ORGANISED by Liberation War Museum (LWM), a three-day international conference on 'Bangladesh Genocide and Justice' has been held at CIRDP, Dhaka. From February 27 till March 01, 2015, the conference was attended by scholars, teachers, researchers, human rights activists, government officials, lawyers, judges, university students and many others from home and abroad. Honorable Foreign Minister of Bangladesh Mr. Abul Hassan Mahmood Ali MP inaugurated the conference.

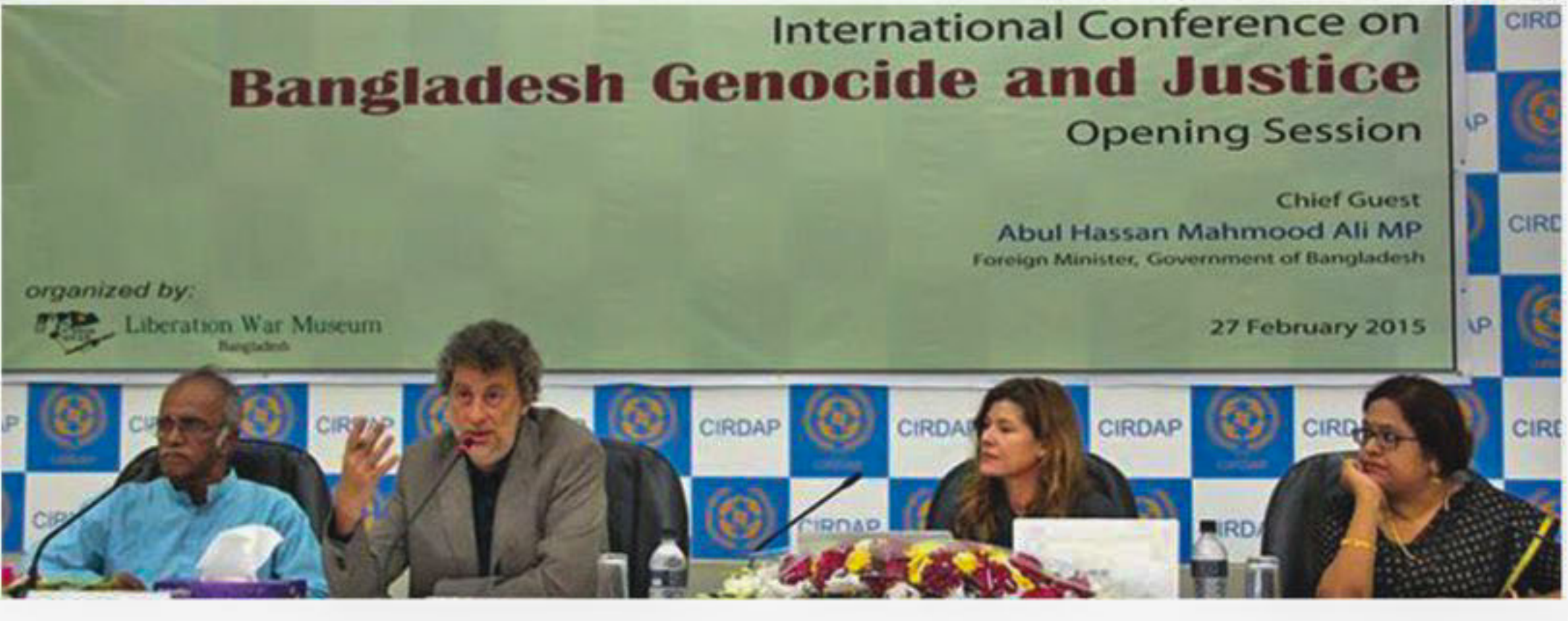
Started with an introductory panel discussion on the issue of victim nation's right to justice, Daniel Feierstein, President of International Association of Genocide Scholars; Elizabeth Silkes, Director of International Coalition of Sites of Conscience; and Barrister Tureen Afroz, a Prosecutor of International Crimes Tribunal-

Prevailing justice for the victims of Genocide

and Umme Wara, Faculty of Criminology Department, University of Dhaka discussed on the subject of crimes of sexual violence and remedies for the survivors.

Paulo Casaca, President of South Asia Democratic Forum; Helmut Scholz, a Member of EU Parliament; Irene V. Massimino, a Professor of University of Lomas de Zamora; and Barrister Tapas K. Baul, Prosecutor of ICT-BD highlighted the role of international community in promoting justice for the genocide victims through recording memories and spreading out the same with the help of mass-media.

Among others, Judge Daniel Horacio Obligado, a Member of the Argentinean Tribunal; Judge Agnieszka Klonowicka-Milart from ECCC; Justice ATM Fazle Kabir, a Member of Bangladesh Law Commission and Former Chairman of ICT-BD(1) shared their experiences concerning the trial of offences such as crimes against humanity, geno-



Bangladesh (ICT-BD) opined that different realities have followed different paths in designing and implementing judicial processes, as well as in efforts of documentation and memorialisation undertaken over the years in the history of genocide studies in various parts of the world.

Dr. Helen Jarvis, Former Chief of the Public Affairs Section at ECCC; Michel Gottret, Special Adviser to the Task Force for Dealing with the Past;

cide, war crimes and others.

In the valedictory session, Special Adviser to the Prime Minister of Bangladesh Dr. Gowher Rizvi urged the international community to analyse the issues relating to ICT-BD from a neutral point of view.

THE WRITERS ARE THE STUDENTS OF LLM AND LLB IN THE UNIVERSITY OF DHAKA AND JAGGANATH UNIVERSITY RESPECTIVELY.