

LAW OPINION

Why JAMAKON deserves constitutional status?

KAWSER AHMED

THE term, 'human rights' appears twice in the Constitution of Bangladesh. Although the Preamble and Article 11 of the Constitution provide that human rights will be guaranteed for the citizens of Bangladesh, until recently the term, human rights could not have gained much currency in our jurisprudence. In fact, 'human rights' remained overshadowed by 'fundamental rights' which basically include certain constitutionally guaranteed civil and political rights. The sole focus on fundamental rights has somewhat resulted in a narrower appreciation of human rights. However, with the enactment of the National Human Rights Commission Act, 2009 (the NHRC Act) purportedly based on the Paris Principle, human rights got breakthrough as a legal term of functional importance in the legal system of Bangladesh. The said Act provides for establishment of the National Human Rights

personnel, social workers, students and ordinary people. The suggestions proposed at the said round-table discussion include reforms concerning composition of JAMAKON, designation/emolument of its Chairman and Commissioners, powers and functions of JAMAKON, financial freedom etc. It deserves mention that International Coordinating Committee for NHRIs (ICC) has also recommended for similar reform of the NHRC Act. JAMAKON first and foremost needs constitutional status which will solve many of the issues already mentioned above. An obvious reason is constitutional status, if accorded to JAMAKON, will not only signify the State's commitment to human rights but also turn the Commission into a robust institution, and ensure its institutional autonomy. First of all, how much importance the State actually attaches to human rights could be legibly inferred from the status and prestige of

it is actually many Commissions under one name. The myriad of functions envisaged for JAMAKON leaves virtually no one out of its scope of work – whether living, dead or unborn, whether citizens, non-citizens or aliens, whether empowered or marginalised, whether residing in or outside Bangladesh and so on. In this respect, one must not forget that actualisation of JAMAKON's works, however valuable and instrumental they might be, ultimately depends on how genuinely they are appreciated and acted on by the mainstream government machineries. Since in Bangladesh the authority and influence of an institution comes from its position in the hierarchy, constitutional status will equip JAMAKON with greater leverage so as to command better co-operation from the concerned government authorities. And finally, constitutional status will not only safeguard but also confirm the autonomy of JAMAKON. The Constitution provides that the highest echelons of the Public Service

JAMAKON has identified a few of its own shortcomings such as, lack of binding effect of JAMAKON'S recommendations, non-compliance with or delayed response to JAMAKON'S request by the government authorities, lack of power to investigate allegations of human rights violations by the law enforcement agencies, insufficient budgetary allocation and human resource deficit etc.



Commission, Bangladesh (JAMAKON) with a mandate to carry out a broad spectrum of activities for the purpose of promotion and protection of human rights. Although JAMAKON has been accredited with a 'B' status in a short while, it has been felt that JAMAKON is unable to live up to the expectations of the all concerned. Whilst ordinary people have often voiced their expectations for a vibrant, venerable and robust Human Rights Commission capable of defending human rights in any situations in the face of any undue pressure, JAMAKON has identified a few of its own shortcomings such as, lack of binding effect of JAMAKON'S recommendations, non-compliance with or delayed response to JAMAKON'S request by the government authorities, lack of power to investigate allegations of human rights violations by the law enforcement agencies, insufficient budgetary allocation and human resource deficit etc. In the circumstances, on 21 October 2013 a round-table discussion was held on the reform of the NHRC Act with the participation of intellectuals, government officials, NGO

its national human rights institutions. In Bangladesh context, the term 'Commission' itself does not indicate any hierarchical superiority; rather it refers to a diverse array of legal entities assigned with equally diverse types of functions. As an autonomous statutory entity, JAMAKON is just one among many commissions currently functioning in Bangladesh. Therefore, conferment of constitutional status on JAMAKON will certainly elevate its prestige in everybody's eyes including the machineries of the government. Bestowing constitutional status on JAMAKON would dispatch a strong message as to how the government views the importance of human rights. This will help raise human rights awareness among the people at large. Furthermore, constitutional status will help JAMAKON to gain more efficacy, competence and overall influence. JAMAKON has the most diverse nature and range of works to perform. JAMAKON is simultaneously a research institute, a law reform commission, a policy advocacy forum, an event manager, an investigation agency etc. To be precise, JAMAKON'S mandate is so extensive that

Commission and the Election Commission cannot be removed from office except in like manner and on the like grounds as a Judge of the Supreme Court. Much as the NHRC Act extends similar safeguard to the Chairman or any Member of the Commission, such safeguard is not certainly on a par with constitutional guarantee for the simple reason that an Act of Parliament is susceptible to amendment or may be repealed by another parliamentary legislation, or even by an executive enactment known as 'Ordinance'. Suffice to point out that, an NHRI safeguarded by constitution would not feel daunted in the face of unfavourable gestures of the government. In order to transform the fundamental rights discourse into the human rights discourse, there is no alternative to a strong and vibrant National Human Rights Commission. All the reform proposals made would serve better only if JAMAKON is accorded constitutional status. THE WRITER IS AN ADVOCATE, SUPREME COURT OF BANGLADESH.

LAW LETTER

Village courts A dilemma within...



IN Bangladesh, the court system is mostly urban-centric. Therefore, delivery of justice in rural disputes has been rare for a long time. However, to address the serious need of protecting the majority of rural population through law, a separate court system had been introduced in 2006. The legislation introducing such a unique system was titled the Village Court Act, 2006. It established courts for rural areas, sitting in the local government institutions named 'unions', working independently from both the Ministry of Law and Parliamentary Affairs and the national judiciary. The judge panel of a village court consists of the Union Parishad Chairman as the head and four other members; of whom two must be Union Parishad Members. Hence it is safe to deduce that village court carries out duties related to the executive of Bangladesh being regulated through a specific local government body. This court can take cognizance of certain specific civil and criminal cases as determined under the schedule of the Village Court Act, 2006. Main functions of village courts of Bangladesh therefore include: filing of a case, summoning, witness examining, oath-taking under Oaths Act, 1873, giving written judgment and imposing fine up to 75 thousand taka as penalty. As Unions are the functioning core of these village courts, changes in structure of this local government body are bound to bring changes in affairs of village courts. Such an instance has been brought forward through a groundbreaking amendment in the legislation regulating the 'unions', namely the Local Government (Union Parishad) Act, 2009. Under section 19A of this Act, a provision newly added in 2015, to become a UP Chairman, candidates now have to be nominated by political parties or have to compete as independent candidates. When we picture a judge sitting in his court, we cannot but consider such a person to be dedicated toward ensuring true justice. Because the post

of a judge is the most impartial position ever created. Can an executive officer with a political agenda ever be a nearly suitable option for carrying out such tasks of a judge? The answer would obviously be negative. The Constitution of the Peoples' Republic of Bangladesh clearly provides that every accused person shall have the right to a speedy and public trial by an independent and impartial Court (article 35). Moreover, executive organs of the State must be separate from the judiciary in order to ensure such independence and impartiality (article 22). These provisions are being violated seriously by the existing law relating to village courts. Not only are the judicial acts deciding fate of millions are being carried out by executive post holders, but also their political identity is now going to get utmost preference under the latest addition of section 19A in Local Government (Union Parishad) Act, 2009. In the current era, when political rivalries threaten peace so often and corruption among politicians run rampant, we can hardly expect these political representatives to be impartial in delivering court judgment. Such situation is also opposed to the promise of removing the disparity between the urban and rural areas (article 16) in the Constitution. Unlike the courts situated in urban areas, which are equipped with judges trained in the skill of delivering judgment, villagers of Bangladesh are bound to accept decisions delivered by elected executive officers of Union Parishads. The newly surfaced dilemma due to the change brought in Union Parishad election system definitely appears to be opposing the spirit of our Constitution. The possible consequences of allowing politically elected leaders to lead a court room cannot be expected to uphold the sanctity of rule of law or ensure independence of judiciary. Preeti Sikder Lecturer of Law University of Asia Pacific

LAW REFORM

Urge to amend colonial stamp law

MD. FARIDUZZAMAN

AMONG various colonial laws, the Stamp Act of 1899 is one of the most important and economy-oriented laws. The Act is to increase and levy the revenue of the government, specify rules so that no casualty arises while determining stamp duty, and determine the rules about how to affix stamp at what rate in various instruments, etc. The above purposes may be more clarified by a short overview of the Act. The Act contains 79 sections among which sections 6A, 19A, 29A and 48A were omitted by the Bangladesh Laws (Revision and Declaration) Act of 1973. Likewise, section 79 is repealed by the Repealing and Amending Act of 1914. This Act has also a schedule covering 65 instruments showing the catalogue of specified amount of stamp

(Amendment) Act of 2013, section 2 has been amended. But in most cases, schedules are amended. Entry 26 of Schedule-1 has been amended by the Stamp (Amendment) Act of 2010. On the other hand, most of the amendments in the Schedule are done by the Finance Act almost in every fiscal year. The legislature may have thought that by changing the financial provisions of the Schedule in almost every fiscal year, the increase in revenue collection would be easier. Examples of increase in revenue may be worth-mentioning here.

On 3 July 2012, by amendment to the Schedule of the Stamp Act of 1899, the government increased the amount of duty on nearly 50 types of stamps (non-judicial), in some cases upto 900 percent. Moreover, the government fixed revenue target of 45.65 billion taka from non-NBR taxes during fiscal year 2012-2013. But it is a matter of tension that around 20 percent of yearly total revenue income of the government comes from tax. Out of that, only 3 percent comes from non-NBR tax (which is actually non-judicial stamp duty) whereas 17 percent is collected from NBR taxes. So, there is a huge gap between target and actual turnover of revenue collection.

The above functions of the government envisage that the academic ideology in the mind of the government in the case of the Stamp Act is absent. The State should not only concentrate on the financial outcome but also on the creation of time-befitting human resources. In doing so, the need for changing the Stamp Act is the demand of time. Section 4 of the Act states about duty of three taka; Section 11 (a) states about the duty of Ten (10) Paisa or Five (5) paisa; Section 28 states about Five taka; Section 30 states about Twenty taka and Section 31 states about Five taka and Five paisa. If the meager monetary reference in the above provisions is replaced with the present rate of money in Bangladesh, the budgetary target would be pragmatically successful and the gradual target-increase in the next budget would be positively persuaded.

As the cost of immovable and movable properties has increased, the government cannot now be insouciant in mulling over how to augment the revenue by amending the above provisions along with the routine amendment of the Schedules.

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LAW NEWS

Migrants abused ahead WC 2022



PHOTO: CNN

AMNESTY International reports that migrants from Bangladesh, India and Nepal working on the refurbishment of the showcase Khalifa Stadium and landscaping the surrounding gardens and sporting facilities known as the "Aspire Zone" are being exploited. Some are being subjected to forced labour. They are prohibited to change their jobs and leave the country. They are even being paid late. Meanwhile, FIFA and its sponsors as well as the construction companies involved are set to make massive financial gains from the tournament. The Amnesty International has revealed the following factors to be responsible for the workers being exploited. **1. Expensive recruitment fees** Many migrants seek work in Qatar to escape poverty and unemployment in countries such as Nepal, Bangladesh and India. But to get a job they have to pay high fees. The workers we spoke to paid amounts ranging from US\$500 to US\$4,300 to unscrupulous recruitment agents in their home country. Many are in debt, which makes them scared to leave their jobs when they get to Qatar. **2. Appalling living conditions** Workers often live in cramped, dirty and unsafe accommodation. Men are found to sleep on bunk beds in rooms for eight or more people. But Qatari law and the Workers' Welfare Standards allow for a maximum of four beds per room and prohibit bed sharing and the use of bunk beds. **3. Lies about salary** Recruitment agents also make false promises about the salary workers will receive, and the type of job on offer. One worker was promised a salary of US\$300 a month in Nepal, but this

turned out to be US\$190 once he started work in Qatar. When workers tell Companies that they were promised higher salaries, they are simply ignored. **4. Delayed salaries** Sometimes, salaries are not paid for several months. This can be disastrous – workers are unable to buy food, send money to their family back home or make payments on recruitment-related loans. **5. Can't leave the stadium or camp** Some employers do not provide or renew residence permits, even though they are required to by Qatari law. These ID cards show that workers are allowed to live and work in Qatar. Without them, workers can be imprisoned or fined. Because of this some of the men working on Khalifa Stadium are scared of venturing beyond the work site or their workers' camp. **6. Can't leave the country or change jobs** Many workers had their passports confiscated by employers. If they want to leave Qatar they have to get an "exit permit" approved by their company. But employers often ignore these requests or threaten workers. **7. Threatened** If workers complain about their conditions or seek help, they are often intimidated and threatened by their employers. **8. Forced labour** One of the companies supplying workers to Khalifa Stadium subject its employees to forced labour. Workers who refuse to work because of their conditions are threatened with having their pay deducted, or handed over to the police for deportation without receiving the pay they are owed.



duty on the execution of the instruments. But it is matter of surprise that the Bangladeshi regime after 1972 has not felt necessary either to amend or redraft the Stamp Rules which was framed in 1925. This Rule has 22 rules and they are also encircled with many discrepancies and inconsistencies in the case of applicability of the Rules (the Rule is applicable in India as it was not declared to be applicable in Bangladesh by any Act of Parliament) and their monetary references of Poisha instead of taka in many places. It appears plausible to take for granted that the Legislature has been eschewing the amendment of the provisions of the Act since the birth of Bangladesh. A few sections have been amended in minor places of little essence. For example, by the Stamp