

LAW INTERVIEW

'International law is something more than a problem-solving tool'



Dr. Mohammad Shahabuddin is a Senior Lecturer in Law at Birmingham Law School, University of Birmingham, UK. He was the founder head of the Department of Law & Justice, Jahangirnagar University. His research and teaching interest covers histories and politics of nationalism, ethnicity, colonialism and human rights. He is the author of Ethnicity and International Law: Histories, Politics and Practices (Cambridge University Press, 2016). Emraan Azad from Law Desk talks to him on the following issues.

Law Desk (LD): How did you get interested in studying international law, more specifically on Third World Approach to International Law (TWAIL)?

Mohammad Shahabuddin (MS): It is quite ironic that I was introduced to TWAIL scholarship only during my PhD research at the School of Oriental and African Studies (SOAS), University of London, under the research supervision of a white Englishman. SOAS (initially SOS) was established as a training facility for British colonial officers. Although I had my basic legal education in the Third World, the curriculum was heavily dominated by European worldviews. In this sense, my training in critical engagement with international law and its imperialist projects came from an old imperial institution.

LD: Do you think that Bangladeshi law schools are yet to produce good numbers of graduates who are desired to be knowledgeable enough in international law? What could be the reasons for the failure of our law schools?

MS: Bangladeshi law schools traditionally attract best quality students. How much intellectual support and mentoring (beyond conventional academic activities) these fantastic students receive during their time at law schools is a different question. But I believe the quality of law graduates is definitely much better than what

happened to be the case 15 years back. I am informed that many of recent graduates made their way to top global institutions for further studies with specialisation in international law. Self-motivated learning with really limited resources is a signature quality of students in the Third World.

LD: Do you believe that our law schools should consider adopting new approaches in teaching international law? Would you suggest any teaching approach that we can practice for us?

MS: I think the more relevant need is to keep pace with recent developments in international law scholarship – both critical and orthodox. Orthodox approaches offer the necessary premise upon which critical scholarship can meaningfully develop. It is, therefore, imperative that students are well-informed of recent developments in international law as a whole.

It is quite paradoxical that most advanced research in alternative approaches, including Third World approaches, to international law got shaped in elite institutions of the developed world. Resource constraint is, of course, a practical problem for our law schools. But at the same time we need to acknowledge the lack of research initiatives and continuous professional development among academics. A vibrant research culture in law schools, if nurtured, will help develop and disseminate new

research and teaching approaches to international law despite typical resource constraints. Macro- and micro-level institutional support is also necessary for creating an environment for research-led teaching that has the potential of transforming international law teaching in Bangladesh.

LD: As you regularly interact with Bangladeshi youth through teaching, do you see any change in thinking (on legal issues) of our generation? How would you evaluate their role for future Bangladesh which is believed to have huge potential to contribute in different areas of international law?

MS: Very recently in last July, I was a part of a workshop on 'Researching and Teaching International Law in the Third World' that was jointly organised by the Department of Law & Justice at Jahangirnagar University and the School of Law at the University of Birmingham. One of the most prominent TWAIL scholars - Professor Antony Anghie – also joined the initiative. This workshop brought together 25 young academics with interest in international law from 15 Bangladeshi public and private law schools. I was most impressed with the quality of their research and teaching practices. As a part of the Workshop, the participants were asked to come up with ideas for research and teaching collaborations that they themselves could initiate without

any external help and within the existing resource and institutional constraints. They came up with an impressive list of creative ideas. This makes me optimistic about the future direction of international law scholarship in Bangladesh. There are challenges ahead but I hope they learn from the frustrations of their senior colleagues and carve their own paths where necessary.

LD: If you are asked to inspire Bangladeshi law students who have a special feeling of interest for studying international law, how would you like to do that?

MS: In this increasingly complex global political, economic, and security landscape, international law is more pertinent than ever. This presents an immense opportunity before Bangladeshi law students. But they have to prepare well. To stand out in a crowded market, they need to think big. International law is something more than a problem-solving tool. Bangladeshi students should aim to bring their own life-experience in the Third World into their political imagination of the global order and the political roles that international law plays therein. With this added element of originality, legal scholarship in the able hands of future Bangladeshi international lawyers will go a long way.

LD: Many thanks for your time.
MS: You are welcome.

GLOBAL LAW UPDATES

ENFORCED DISAPPEARANCE

A strategy to spread terror

ENFORCED disappearance has frequently been used as a strategy to spread terror within the society. The feeling of insecurity generated by this practice is not limited to the close relatives of the disappeared, but also affects their communities and the society as a whole. Once largely the product of military dictatorships, enforced disappearances can nowadays be perpetrated in complex situations of internal conflict, specially as a means of political repression of the opponents.

According to the Declaration on the Protection of All Persons from Enforced Disappearance, proclaimed by the General Assembly in its resolution 47/133 of 18 December 1992, enforced disappearance occurs when "persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law."



Both the Rome Statute of the International Criminal Court which came into force on 1 July 2002 and the International Convention for the protection of All Persons from Enforced Disappearance, adopted by the UN General Assembly on 20 December 2006, state that, when committed as part of a widespread or systematic attack directed at any civilian population, a "forced disappearance" qualifies as a crime against humanity and, thus, is not subject to a statute of limitations. It gives victims' families the right to seek reparations, and to demand the truth about the disappearance of their loved ones.

On 21 December 2010, by its resolution 65/209, the UN General Assembly expressed its deep concern about the increase in enforced or involuntary disappearances in various regions of the world, including arrest, detention and abduction being part of or amounting to enforced disappearances, and by the growing number of reports concerning harassment, ill-treatment and intimidation of witnesses of disappearances or relatives of persons who have disappeared.

By the same resolution, the Assembly welcomed the adoption of the International Convention for the Protection of All Persons from Enforced Disappearances. It further decided to declare 30 August the International Day of the Victims of Enforced Disappearances, to be observed beginning in 2011.

Enforced disappearance has frequently been used as a strategy to spread terror within the society. The feeling of insecurity generated by this practice is not limited to the close relatives of the disappeared, but also affects their communities and society as a whole.

COMPILED BY LAW DESK (SOURCE: UN.ORG)

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
I am a Masters student from Rajshahi University and my thesis paper requires some data from the Finance Ministry. My query is whether I have the right to ask for any data if so, how? Further, is the ministry under any obligation to provide the data?
Naureen Rahman
Rajshahi University

Response
Thank you for your question. The notion about a person's right to information and to what extent it can be legally demanded is an uprising subject that is being asked quite frequently. The concept is still relatively new in our country and seems to have created some confusion. It is a rather pressing issue and requires

to seek, receive and impart information is not explicitly mentioned, although the preface of the Right to Information Act 2009 (hereinafter referred to as "RTI Act") instructs that this right is an unchallengeable part of freedom of expression.

According to Section 4 of the RTI Act, every citizen shall have the right to information from the authority, and the authority shall, on demand from a citizen, be bound to provide him with the information. In the question you mentioned about seeking "data" which is included in the broad definition of "information". The Finance Ministry of Bangladesh is a government organization and it falls within the definition of "authority" as defined in the RTI Act.

its easy access to the citizens of the country.

However, there are some restrictions, not all information is allowed for unveiling at the public domain; not everything can be disclosed. Section 7 of RTI Act lists down this prohibited information. Thus, it is not mandatory for the authorities to disclose or provide certain types of information. It is specifically mentioned that the publication or disclosure of such information that will or is likely to threaten the security, integrity and sovereignty of Bangladesh; any information that can affect the existing relation with foreign countries or international organization etc. is not required to be revealed. Disclosure which would obstruct enforcement of law or expose business underlying privacy or reveal the privacy of person's personal life or may jeopardise the life or physical safety of a person etc. are all also not mandatory.

Therefore, whether you have a right to ask for the "data" you require for your thesis depends on the "type of data" you are seeking. Your question does not specify exactly what "data" you are soliciting from the ministry. However, if it is generalised data or any other material that does not fall within the list of prohibited information the ministry is under an obligation to provide you with it.

In order to ask for the information you have to submit a formal application to the ministry. The application for information request can either be made in the form printed by the authority or in a prescribed form. On the other hand, if forms are not printed or not easily available or format has not been prescribed, then the application can be written on a plain white paper. You need to mention your details including name, address, contact information, correct and clear description of information sought, and the method in which it is sought. I hope that the above response shall help you in your course of action.

FOR DETAILED QUERY CONTACT:
OMAR@LEGALCOUNSELBD.COM.

LAW TRIBUTE

AKHLAQ UR-RAHMAN CHOUDHURY

The First Bangladesh-origin British Justice



SOURCE: COLLECTED

THE heart of every Bangladeshi swells with pride, even though someone residing miles away from the country brings glory to the nation with their exceptional feat. A Bangladesh-origin lawyer has not only uplifted the legal fraternity but also the whole nation, being appointed as a judge to the High Court in the United Kingdom by Queen Elizabeth II. Akhlaq Ur-Rahman Choudhury, a 50-year-old barrister, is the first British-Bangladeshi to have achieved such a prestigious position of honour in his legal career. He has been assigned to the Queen's Bench Division, effective from 2 October 2017, form when he will be respected and known as the Honourable Mr. Justice Choudhury.

Justice Choudhury was born in Winchester into the family of Azizur Rahman Choudhury and Sultana Choudhury. His parents migrated to the UK from Zakiganj, Sylhet before the liberation war. However, during the war in 1971, Akhlaq's father and mother raised funds for contributing in the fight for liberation and were also recognised by General MAG Osmani. He attended Bishopbriggs High School, as he grew up on the outskirts of Glasgow. He obtained a BSc in Physics from University of Glasgow. Later, he pursued his law degree at University

of London. He was called to the bar in 1992. He became a Recorder in 2009. In 2015, Justice Choudhury was appointed as Queen's Counsel. Before being selected as one of the five new High Court Judges in August 2017, he had been working as a Deputy High Court Judge since 2016.

Justice Choudhury specialises in commercial, employment, procurement, information and public law. He was a long-standing member of the Attorney General's A-panel of Approved Counsel and advised the Foreign & Commonwealth Office, and various other government departments. He consulted on various matters concerning human rights violation.

He was retained as counsel for the Information Commissioner and has appeared in many of the important cases in the developing area of freedom of information and data protection law. He represented Timothy James Consulting Ltd. in *Timothy James Consulting Ltd. v Wilton* [2015] UKEA where £10,000 was awarded for the damage. This is one of the leading cases on taxation of injury to feelings awards. In 2014, he represented appellant DWF LLP in the first automatic suspension case in the Court of Appeal against Secretary of State for Business, Innovation & Skills. Some of his other notable recent cases include; *Allan v Wandsworth LBC* [2014] Eq. L.R. 30 (employment – disability discrimination; local government councillors); *BUQ v HRE* [2012] IRLR 653 (privacy injunction, right to fair trial); *Humphreys v Norilsk Nickel International (UK) Ltd.* [2010] EWHC 1867 (QB); [2010] IRLR 976 (bonus claim); *R (Ofcom) v Information Commissioner* [2010] UKSC 3; [2010] Env LR 20 (environmental information and the public interest).

Justice Choudhury is highly appreciated amongst his peers for his depth of knowledge, leadership skills and amicable nature. He advises not to hesitate to take an approach and finds being a judge enjoyable which he thinks leads him into making himself a better lawyer. The result of his hard work is really exemplary which would hopefully inspire the native legal career pursuers in the long run as the name of Bangladesh continues to be dignified worldwide.

PREPARED BY RAIHAN RAHMAN RAFID,
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(SOURCE: LEGAL500.COM).

FILE AN RTI



clarity for the betterment of the society in general. True knowledge about one's legal right to information will empower the people and help to provide fluid access to necessary information and also ensure transparency.

Originally Article 39 of the Constitution of Bangladesh ensures the right of every citizen to freedom of speech and expression and freedom of press, and subjects these rights to reasonable restrictions in the interest of state security, public order, etc. The right

Thus, at an initial glance it can be said data can be sought from the Ministry.

Section 6 of the RTI Act provides a list of information that citizens can ask from the authorities. Right to information is laid down as a principle underlying the functioning of the government or governmental organizations and every other authority shall make all information of decisions, actions available to the citizens. Furthermore, authorities are forbidden from concealing any information or limiting