

LAW INTERVIEW

SIGNIFYING POLITICAL WILL

for realising human rights

Law Desk (LD): Will you please tell us about the significance of drafting state party reports to the treaty bodies as well as to the Human Rights Council?

Kawser Ahmed (KA): The reporting procedure constitutes the most fundamental part of the UN mechanism for monitoring the implementation of human rights at national level. This mechanism is followed by both the charter-based bodies as well as the treaty bodies. Not only the state party submits report, but also the national human rights institution, civil societies, NGOs and other stakeholders submit their respective reports. Therefore, the consideration of the state party's report is not an isolated process. Practically, the state party report tells what has been done or at the least attempted at by the government, while the stakeholders' reports mostly tell what should have been done. Through this exercise, it becomes possible to conjure up the picture of human rights situation of a country under review. At this point, the question arises as to how this exercise helps a country under review improve implementation of human rights norms and standards domestically. At international level, the mechanism for making a state to do or not to do something includes breaking off diplomatic ties, trade measures and embargos, sanctions or use of force. Will human rights be better realised by any of these means rather than through dialogue, capacity building, sharing experience of good practice and advocacy? My experiences suggest that reporting procedure constitutes a dialogue with and among the country under review, the stakeholders and finally the international community.

LD: How do you evaluate the efficacy of report based monitoring mechanisms in checking grave violation of human rights?

KA: If you mean the deterrent value of reporting mechanism in checking grave human rights violations, to be honest, I don't think that reporting mechanism was envisaged to serve that purpose. Rather, I would say,

reporting mechanism, being an apparatus most general in nature, is meant to help states achieve steady progress in realising their human rights obligation. There are other mechanisms which have more specific mandate in dealing with human rights issues, for example, optional protocols and special procedures, however, one may still point out that these mechanisms have also been less successful in forestalling the occurrence of grave violation of human rights. In my opinion, the reason is what we designate as

KA: Political commitment could be taken as common and shared agreed views of the majority members of a society in relation to attainment of a political goal. In a politically organised society, any decision, be it good or bad, first comes along as a result of political commitment. Political commitment is a must to initiate any move towards realisation of human rights. The objective of political will or commitment is largely realised through law. Human rights norms and standards are also implemented by and under the authority of

by the judiciary of Bangladesh; and how can the judiciary successfully refer to such instruments without breaking away from its common law traits?

KA: Back in 2006, in an essay published in the Daily Star (Why JAMAKON Deserves Constitutional Status', The Daily Star, April 5, 2016) I argued that it was high time we had transformed our fundamental rights jurisprudence into human rights jurisprudence. Referring to international human rights

gives effect to 'equality before courts and tribunals' as embodied in Article 14 of the Evidence Act, 1872 puts a victim of rape in a position equal to that of the accused person during trial could be examined in the light of Article 14 of the ICCPR via Article 31 of the Constitution. Recently the government has passed a few laws, for instance, the Children Act, 2013; the Torture and Custodial Death (Prevention) Act, 2013 and the Protection of the Rights of the Persons with Disabilities Act 2013 with express objectives to give effect to international instruments. Our court should positively consider interpreting these laws in line with international jurisprudence in appropriate circumstances.

LD: What, in your opinion, should be the future direction in the development of human rights?

KA: A look at the history of the normative development of the human rights under the auspices of the UN reveals that the development has come about in a way that could be described as 'from general to particular'. Back in 1948 the UDHR set the most general statement about contents of human rights law. Then in the Sixties the two Covenants further explicated and streamlined the provisions of the UDHR in two major areas called, civil and political rights and economic, social and cultural rights. The subsequent Conventions were more specific about subject matter or issues. The last major UN supported Convention is the CRPD. To put it simple, the aim of human rights is to give us protection when we are vulnerable. The areas where I would like to see development sooner or later include treatment of victims of crimes, human rights of the transgender persons or sexual minorities, nomads and people traditionally living in extreme environmental conditions, old and infirm persons.

LD: Thank you for your time.
KA: You are welcome.



Kawser Ahmed

Kawser Ahmed is an Advocate at the Supreme Court of Bangladesh. He has also been serving the Government of Bangladesh on human rights reporting for more than five years. He assisted the Ministry of Foreign Affairs in drafting the national report for 2nd Cycle Universal Periodic Review (UPR). Thereafter he was assigned to draft the initial state party reports on the ICCPR and the ICESCR in a row. Of late, he assisted the Ministry in drafting the national report for 3rd Cycle UPR which is going to be considered by the Human Rights Council in May 2018. Psymhe Wadud from Law Desk talks to him on state party's human rights reporting mechanism and different aspects of UPR.

grave violation of human rights can hardly occur without some degree of involvement on the part of highest level of political authority of a country. Therefore, grave violation of human rights will witness more reaction than prevention.

LD: How much does political commitment really matter in promoting and protecting human rights? Which one will you put first if you are to choose between political commitment and rule of law in this regard?

law. While political commitment is about what to be done, law sets forth how the same is to be achieved in a legal way. Rule of law here comes in to make sure that law operates in the most efficient and beneficial way, and thus contributes to realisation of political commitment. Hence, there is also no alternative to rule of law in realising human rights goals.

LD: Do you think it is at all worth referring to international human rights instruments

instrument may work up to the goal. However, the problem is that Bangladesh is a common law country and international treaties are not directly applicable in common law legal system. The issue is then how do we bridge the gap? The Court can adopt one approach in this regard, for example, court may interpret a law purporting to give effect to any international human rights instrument in line with the interpretation of the concerned treaty. For example, the initial state party report on ICCPR mentions that Article 31 of the Constitution

LAW WATCH

LDC graduation and legal challenges

KHANDOKER M. S. KAWSAR

ON 16th March 2018, we have come to know that Bangladesh has attained all three criteria (Gross National Income, Human Assets Index and Economic Vulnerability Index) for graduation from the least-developed country (LDC) group to developing one. Bangladesh has set a goal to establish itself as a middle-income country by 2021 and a developed and prosperous country by 2041. Until today, being an LDC, Bangladesh is getting some flexibilities and facilities (i.e., Special & Differential Treatments - S&DTs), particularly from duty-free and quota-free market access and TRIPS exemptions in exports which we will lose after graduation. The export of Bangladesh has been facing and will be facing some challenges of Non-Tariff Barriers (NTBs) from different countries after graduation. Anti-dumping is the biggest challenge among them.

such as failing in facing the allegations. If Bangladesh could face appropriately based on the basic points, such as, 'Dumping', 'Material Injury' and 'Causation', probably Bangladesh could win the cases. Bangladesh could themselves investigate the economic factors of these countries, such as, a decline in sales, profits, output, productivity, return on investment, or utilisation of capacity, factors affecting domestic prices, magnitude of the dumping margin, and negative effects on cash flow, employment, wages and capital. Also Bangladesh could bring good results, if they could study on the matter of 'causation' and other substantive laws.

Most of the cases of anti-dumping against Bangladesh are yet to be resolved. If we fail in the cases, the most important causes of our failure in such cases would be our lack of skilled trade lawyers, lack of knowledge in regulating laws and lack of negotiation skill. The regulating laws for

THREE CRITERIA FOR ELIGIBILITY

	Gross National Income	Human Assets Index	Economic Vulnerability Index
Required	\$1,230 or above	66 or above	32 or below
Bangladesh score	\$1,272	72.8	25

Some of the recent examples of anti-dumping are alarming for Bangladesh. India imposed anti-dumping duty ranging from USD 6.30 to USD 351.72 per ton on export of jute and jute products to India



anti-dumping are GATT Article VI and the Anti-dumping Agreement (Agreement on implementation of Article VI of the GATT, 1994) which was concluded during the establishment of the WTO in 1995.

Bangladesh needs more skilled negotiators, specially skilled in international trade negotiations. To develop our expertise, we need to develop our skill in terminologies like, BATNA (Best Alternative To a Negotiated Agreement); ZOPA (Zone of Possible Agreement), etc. and other negotiating tools.

If Bangladesh is graduated, we will lose tariff facilities of LDCs and then if we are faced with more anti-dumping measures, we will be economically in vulnerable position. We would be in most vulnerable position, if we face anti-dumping measure against our garments and textiles industry. Therefore, we need preparation for facing such obstacles. To prepare ourselves for the post-LDC situation, we need to enhance our negotiating capacity as well as conduct study and analysis in various areas of trade law including anti-dumping.

THE WRITER IS AN ADVOCATE, SUPREME COURT OF BANGLADESH.

LAW EVENT

ALI MASHRAF

A team representing Dhaka University (DU) created history in India after bagging the runner-up title at the 8th Justice P.N. Bhagwati International Moot Court Competition on Human Rights, organised by Bharati Vidyapeeth, New Law College at Pune, India from March 24-25, 2018. The team consisted of Rifat Zabeen Khan, Mollik Md. Wasi Uddin Tami and Ali Mashraf from the Department of Law, DU.

Justice P.N. Bhagwati International Moot Court Competition has a great reputation at international echelon and is one of the most revered global moot court competitions on human rights. The team DU qualified to the semifinals as the first ranked and only international team ahead of 29 other teams from various countries, including the UK, Singapore, Kenya, Tanzania, Afghanistan, Kyrgyzstan, Mauritius, Nepal, India and Bangladesh. Afterwards, they defeated JSS Law College, Mysore to move on to the finals.

JUSTICE P.N. BHAGWATI INT'L MOOTING COMPETITION

Dhaka University emerges as runner-up



They ultimately became the runner-up after a nail-biting final against Symbiosis Law School, Pune. Justice A.S. Oka of Bombay High Court, Justice J. R. Midha and Justice Deepa Sharma of Delhi High Court, Justice V.S. Siradhana of Rajasthan High Court, Justice Ajay Mohan Goel of Himachal Pradesh High Court and Justice C.T. Ravi Kumar of Kerala High Court were adjudicators of the final round.

Rifat won the Best Speaker (Foreign) award while Mashraf won the Best Male Speaker (Foreign) award. The team also achieved the 2nd Best Memorial (Foreign) award. This is a significant accomplishment for Dhaka University and Bangladesh in the international level.

THE WRITER IS A MOOTER, DHAKA UNIVERSITY MOOT COURT SOCIETY (DUMCS).

LAW NEWS

Health for all: right, not charity

THE World Health Organization was founded on the principle that all people should be able to realise their right to the highest possible level of health. For more than seven decades, therefore, "health for all" has been WHO's guiding vision. It's also the impetus behind the current organisation-wide drive to support countries in moving towards Universal Health Coverage (UHC). This means ensuring that everyone, everywhere can access essential quality health services without facing financial hardship. "Universal" in UHC means "for all"-without discrimination, leaving no one behind. Everyone everywhere has a right to benefit from health services they need without falling into poverty when using them.

Time and again, Experience has illustrated that UHC can be achieved only when political will and commitment is strong. So in this 70th anniversary year, WHO is calling on world leaders to live up to the pledges they made when they agreed the Sustainable Development Goals in 2015, and commit to concrete steps to advance the health of all people.

Countries that invest in UHC make a sound investment in their human capital. In recent decades, UHC has emerged as a key strategy to make progress towards other health-related and broader development goals. Access to essential quality care and financial protection not only enhances people's health and life expectancy, it also protects countries from epidemics, reduces poverty and the risk of hunger, creates jobs, drives economic growth and enhances gender equality. Some countries have already made significant progress towards universal

health coverage. But half the world's population is still unable to obtain the health services they need. If countries are to achieve the SDG target, one billion more people need to benefit from UHC by 2023.

World Health Day will shine a spotlight on the need for UHC - and the advantages it can bring. WHO and its partners will share examples of steps to take to get there through a series of events

highlighting policy-makers' power to transform the health of their nation, framing the challenge as exciting and ambitious, and inviting them to be part of the change; secondly, motivating by sharing examples of how countries are already progressing towards UHC and encourage others to find their own path; thirdly, guiding by providing tools for structured policy dialogue on how to advance UHC domestically or supporting



PHOTO: BDNEWS24.COM

and conversations held at multiple levels. To this end, WHO will maintain a high-profile focus on UHC via a series of events through 2018, starting on World Health Day on 7 April with global and local conversations about ways to achieve health for all.

Throughout 2018, WHO aims to inspire, motivate and guide UHC stakeholders to make commitments towards UHC. Firstly, inspiring by

such efforts in other countries (e.g. expanding service coverage, improving quality of services, reducing out-of-pocket payments).

The theme of World Health Day is: 'Universal health coverage: everyone, everywhere' and the slogan for this year "Health for All".

COMPILED BY LAW DESK (SOURCE: WHO.ORG)