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LAW LETTER

Is the 1972 scheme of parliamentary system dead?

M JASHIM ALI CHOWDHURY

HISTORY of our parliaments is full of frequent ups and downs. We started with a war time presidential system (Proclamation of Independence, 1971), swiftly opted for parliamentary system (Provisional Constitution, 1972) and then again turned back to a one-party presidential system (Fourth Amendment, 1975). The one-party system soon was replaced by dictatorial martial law system which later turned into a French presidential system with a controlled legislature (Fifth Amendment, 1979). The system moved back and forth again in 1986 (Seventh Amendment). Passing through lots of confusions and controversies, the original scheme of parliamentary system was revived in 1991. With the military dictatorship re-appearing again for a two years' span (2007-2008), the parliamentary system since 1991 remained highly illiberal and led to an elected one-party rule in parliament.

The first parliament (1972-75) did not have substantial representation from the opposition. Yet, marred by subversive political opposition outside the parliament and economic depression, the president decided to discontinue the Westminster system and introduce a one party presidential one. The second (1979-81), third (1986-1988) and fourth (1988-90) parliaments worked under military dictators declaredly hostile to the principles of 1972 Constitution. Those therefore had very little to offer in terms of law making and accountability except being used as rubber stump bodies for the presidential actions, Ordinances and Orders. The presidential prerogative of Ordinance making as articulated in Article 93 of the Constitution of 1972 was used so extensively as to challenge the parliament's primacy as law making body.

In 1991, Bangladesh completed its 'full constitutional cycle' when the fifth parliament (1991-1995) restored the parliamentary system as devised in the original Constitution of 1972. Fifth Parliament attracted a serious, principled and vigilant opposition in the House. It also witnessed some significant show of back bench autonomy and cross-party polarisation on some issues. Yet the parliament was dominated by political forces more or less faithful to the previous military rulers' presidential tendencies. Articles 70 and 93 therefore took a lead role in parliamentary affairs. Later on, facing continuous boycott and en masse resignation of the opposition parties in demand of a non-party election time government, the promising Fifth Parliament had to die before its tenure. A one-sided election was held and the ruling party of the short lived sixth parliament (1996) was forced to pass the Thirteenth Amendment introducing an election time non-party caretaker government.

The seventh parliament (1996-2001) was led by the political force more or less loyal to the 1972 scheme of parliamentary system. It also comprised the largest opposition party in the history of Bangladesh. It became the first parliament in Bangladesh's history to live its full tenure. Use of Article 93 Ordinance power decreased substantially during this parliament. It also contributed in stabilising the committee system and oversight function of parliamentary committees got some foothold. However, like its predecessors, this parliament also was hit by irresponsible opposition and ruling party members' literal adherence to Article 70.

The eighth parliament (2001-2006) was dominated by forces hostile to the 1972 ideals. It was affected by insignificant strength of opposition and ruling party's reluctance to allow the committee system work as a meaningful accountability tool. The problems with non-party caretaker government also returned as the ruling party attempted to temper with who becomes the head of the election time government. Faced with violent street agitation, a military backed so called caretaker government took over for next two years.

The ninth parliament (2009-2014) constituted at the end of military backed caretaker government again was successful in institutionalising the committee system. This time again the parliament was dominated by the forces loyal to 1972 scheme. Yet, the marginalised and consistently boycotting opposition remained a problem as before. As a reaction to the previous government's tempering with the system, the ninth parliament abolished the caretaker system. The leading opposition party boycotted the next election and an effectively domesticated opposition party took its place.

The tenth (2014-2018) and also the incumbent eleventh (2019) parliaments therefore mark the opposition less parliament subservient to the invincible leadership of the Prime Minister. Interestingly, the tenth parliament was moderately successful in invigorating the committee system and the current parliament has made a significant leap in this direction by allocating the committee chairs to the influential and experienced senior leaders from the ruling party and also by allocating a good number of committee chairs including the public accounts committee to the opposition party members.

Though the committee system is gradually taking its root and the promulgation of Article 93 Ordinances has dried up by now, parliament's stature as a meaningful law making and accountability body remain distant. Absent the non-party election time caretaker government, there is a big question mark over the way the parliamentary electoral process would work in the days ahead. Yet, it may be argued that the 1972 scheme of parliamentary government is far from being obsolete. There are at least three areas to look in.

First, weaknesses in the parliament vis a vis the executive should be seen more as weaknesses within the party system and addressed accordingly. Secondly, increased attention to parliament's representation and public mobilisation role could redeem some of the frustrations over its failure in law making and accountability area. Thirdly, exploring the scopes of greater public access to parliamentary debates and committees would help challenging the elite domination within the institution and ensuring its greater democratisation.

Constitutional principles need long, patient and consistent adherence before they yield in practice. Unlike other established bi-partisan parliamentary systems, Bangladesh's post-independence political polarisation marks the lack of minimum consensus over key national issues including the 1972 system itself. The current but decisive edge in favour of the pro- 1972 scheme forces, therefore, mark a great opportunity for the original scheme to bloom in its full potential. It is paradoxical but very probable.

THE WRITER IS A DOCTORAL RESEARCHER (PARLIAMENT STUDIES), KING'S COLLEGE LONDON.

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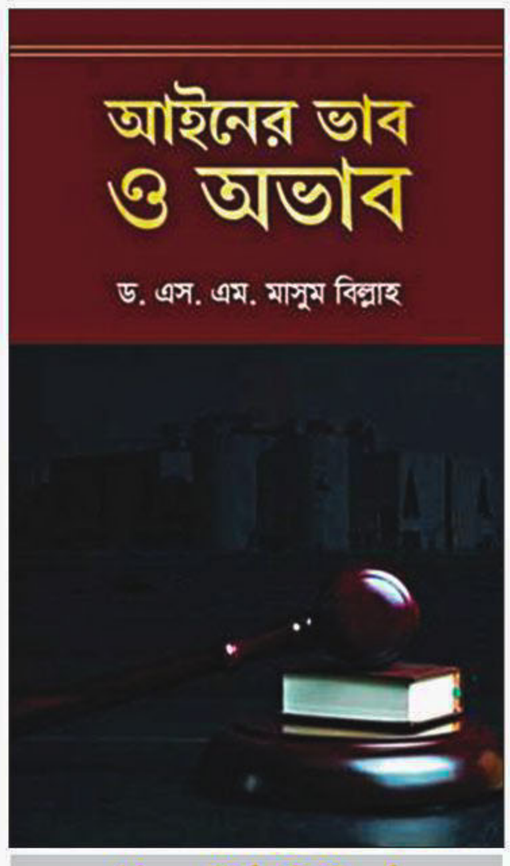
BOOK REVIEW

Ainer Vab O Ovab

Portraying the art and inert of laws

RAIHAN RAHMAN RAFID



Ainer Vab O Ovab
by
Dr. S M Masum Billah
Dhaka: Palal Prokashani, 2019, 208 pp, Price BDT 350.

AINER Vab O Ovab (the art and inert of laws), authored by Dr. S M Masum Billah, is one of those books that you should not judge by its cover. The gloomy looking, gravel pictured book holds inside it an opposite realm of unparalleled "legal literature" that tickets the ride of a journey into the philosophy of law ("ainbiggyan: maather parer durer desh").

The book mainly carries the author's view on diverse legal issues in catchy non-legal headings – "shudhi brindo", "rohingya shoronarthi: biye o ainmontrir portia syndrome", "erotic justice", "tobo oncholo chhaya", "odvut chhatim" to name a few. The topics span from the definition of law ("law like love") to the characterisation of our legal system ("raag o ninder rajniti kingba naya bichar"- anger, politics of blame and justice).

Dr. Billah writes the book rather in an unconventional language with the inclusion of transliteration words. It will be apt to hold the opinion that the author attempts to build a bridge between his enamour for literature and love for the law with his writings.

Perhaps, the name art and inert of law is derived from two different viewpoints: one takes the common opinion of law being unpleasing, the other views law as an art of words and a means of communication.

The law is there everywhere is our life, and it can be viewed from a simpler approach – if looked at differently; is what the book preaches. Dr. Billah raises issues, questions them and casually leaves them to the readers for their judgments. He takes refuge to jurists to make his point in a literary gesture. That is enticing to any reader.

One may agree or not, he adds twists to concepts, and from that I assume the writer want to make the law sing for the "un-people" or the socially downtrodden. One theme is very clear from Dr. Billah's lines - he sees law through the lens of the disadvantaged and while viewing so, he argues for a native jurisprudence which will read the value of sweat, tears and blood of the people.

Dr. Billah favours a dialogical constitutionalism capable of harmonising the contradictions of our society. Several other offerings in the book look intellectually compelling. Dr Billah attributes, for example, the contemporary problems to the gap between "word" and "world" (zobaner justice), argues for a lucid law drafting culture (digital security law) and situates law into history ("Cornwallis O Ripon: Nam O Bhumikar owponibeshik dai").

In a letter written in the memory of Chief Justice Mustafa Kamal, Dr. Billah wonders that whether law should value emotion; while in the letter written to Professor Dr. Mizanur Rahman, he raises the need of charismatic law teaching to fashion a human rights culture in Bangladesh and finally, he relates prime minister Shekih Hasina's economic democracy ("hasinomics") to the idea of our social justice. Thus, *Ainer Vab O Ovab* is a serving of legal matter onto a non-legal platter.

The book suffers from some anomaly, and one may allege spelling frailty. Nonetheless, it is undoubtedly a trend breaker in the story of our law publications. We wish wider readership of this book.

THE WRITER IS A STUDENT OF LAW, UNIVERSITY OF DHAKA.

HUMAN RIGHTS RIGHTS ADVOCACY

Three dimensions of access to justice for achieving SDGs

SEKANDER ZULKER NAYEEN

GOAL sixteen of Sustainable Development Goals (SDGs) pledges 'ensuring access to justice for all' as a target to be achieved. The principle of rule of law requires that any person with a bona fide reasonable legal claim must have an effective means of having that claim considered. To have any claim considered people must have an easy access to justice services. Whether any country is providing access to justice is determined through the procedures of reaching the justice mechanisms by the common people. In our country, justice-seekers tussle with some economic, social and institutional barriers in accessing formal judicial system. Widening access to justice depends upon extending some facilities to the litigants and empowering them to overcome those barriers.

However, simply providing easy access to justice mechanism does not effectively define the notion of 'access to justice'. The terms 'justice mechanism' and 'justice' clearly convey distinctive senses. The first one denotes 'judicial mechanism of a country' whereas the later one indicates 'getting remedy from that judicial mechanism'. Accessing to justice system does not automatically ensure getting the remedy from judicial mechanism. Some scholars e.g. Professor Dame Hazel Genn and Mauro Cappelletti added providing individually and socially justified decision or just outcomes by the judicial mechanisms as another ingredient of access to justice. Though it is difficult to define what outcomes of judicial decision would be considered just outcomes, nowadays justice demand requires that the outcomes must be socially and individually just. The word 'socially and individually just' indicates that the judicial decision would be the desired and expected one which would materialise the maxim 'justice should not only be done, but should manifestly and undoubtedly be seen to be done.' The people of the society and the individual litigant would realise that justice has been done. Such realisation denotes the people's prediction of judicial outcome which is popularly known as predictability of court's decision. It means the possibility to predict *ex ante* how the law will be applied by the court *ex post*. The predictability of court decisions is influenced by the uniformity in the application of the law i.e. the equal treatment of similar disputes, and the ease with which court decisions can be accessed and known. Predictability of judicial decision has some positive impact. For example, when the parties are able to predict with sufficient precision what will be the decision of the higher court, it will be in their interest to accept the lower court's decision or to find an out-of-court settlement. Therefore, access to justice forwards two-folds meaning, one, access to justice mechanism; two, getting just outcome or predictable outcome from that mechanism.

Whether any country is providing access to justice is determined through the procedures of reaching the justice mechanisms by the common people.

But I think this does not suffice the definition of access to justice. A timely disposal of cases is also another dimension of access to justice. Accessing to justice system does not automatically ensure the litigants' cherished justice. If they get just outcome in just time, it would be the effective access to justice because it is a settled principle that 'justice delayed is justice denied'. As a judge, I have personal experience of disposing some civil suits after 30-40 years of their institution. The parties who had got access to justice mechanisms through instituting those suits died long ago without getting their desired justice. They got access to justice system but not to justice in true sense because of delayed disposal of cases. A reasonable length of trial is an important characteristic of good judicial performance and it is related to other crucial measures of performance such as confidence in the justice system. A reasonable trial length is important to achieve good performance in other dimensions, including access to the justice service and predictability of decisions. That is why, timely disposal of cases has been considered as the third dimension of access to justice.

However, as SDGs are not legally binding, the governments are expected to take ownership and establish national frameworks for its plan of actions, follow-up, and review of the progress made in implementing the Goals within 2030. Thus, implementation and success will rely on countries' own assessment of deficiencies and their sustainable development policies to address those. In Bangladesh, National Legal Aid Services Organisation is working on the typical dimension of access to justice targeting to increase the recipients of legal aid to 33000 and 37000 in 2019 and 2020 respectively. It is unfortunate that neither the UN nor Bangladesh has yet determined clear strategies to develop any indicators to monitor the progress of the target- Access to Justice. But for achieving SDGs, a holistic policy approach is desirable to address all of the aforementioned three dimensions of Access to Justice.

THE WRITER IS A JOINT DISTRICT JUDGE, TANGAIL JUDE COURT.