"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH ● dslawdesk@yahoo.co.uk

LAW OPINION

Dealing with deadlock in mediation

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Meditation is one of the fair modes of settlement of disputes pending among the contesting parties. It is a voluntary, party-controlled and structured negotiation mechanism where a 'neutral third party' assists the disputant parties in resolving their conflicts amicably. It has many advantages. Unlike formalistic court procedure, confidentiality of process, party autonomy, flexibility of procedure, creative solution and finality of compromise are core essence of mediation. A mediator's basic role is to assist the parties with a view to solving the enigma. It is the duty of the mediator to explain clearly that he/she will not make any judgment and parties themselves will find a solution.

It is quite natural that a mediation process often meets an apparent deadlock. A mediator may often encounter irrational attitudes of the parties. There are several reasons why a mediator faces difficulties while facilitating the negotiation process. For instance, such informal process may not work well in the context of an extreme power imbalance between the contesting parties since the weaker gender, poor and disenfranchised sections may generally be sidelined in the process. Further, a party often asserts that this is the furthest it can go.

Furthermore, emotional blockage of either parties may encumber the mediation. On the one hand, a cunning party may create 'tactical deadlock' while a weaker party, for example a rural woman, talks too long without specifying her real claims. Another common challenge for a mediator is that either party or both may be reluctant to communicate or poor in term of communication skills. Unrealistic and impractical expectations or assessment of other party's case, ego, pride, desire for revenge often lead the process into an impasse.

When faced with such deadlock in mediation process, a mediator needs to bring pro-active leadership, energy, patience and imagination in helping the parties make progress. This is why it is better for a mediator to prepare well ahead about the facts and circumstances of claims and defence of the parties. A skillful mediator prepares for everything he/she can imagine and be flexible while dealing with unexpected situation. The golden rule for breaking an impasse in mediation is to bringing the parties on the same platform to acknowledge the situation and talk it through openly.

A mediator should not promptly analyse, criticise or judge the option or attitude shown by the parties. Empathetic attitude and attentive listening create an environment of trust and comfort. In case of poor negotiation skills in either or both parties, it is duty of the mediator to assist parties with framing offers while acting as a conduit for clear and safe communication. Using the skills of 'paraphrasing' and using 'open-ended question' may help the parties to express the grievance and solution clearly.

In most cases, a human being cannot take decision in isolation of family and society; rather she may be dictated by her in-laws, friends and colleagues. Where strong feelings seem to be blocking full participation of the parties in the process, allowing the emotion to come out can work as a psychological healing to the apparently disgruntled party. Taking a break, so as to allow tempers to cool and give time for reassessment may be effective in most cases to resume the mediation process.

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An intelligent touch of humour by the mediator can also ease tension. If required, let them take deep breath and sit back to the present instead ruminating on bitter past. Altering the rhythm of the process by doing something different, changing the surroundings, even sitting arrangements, taking the parties to a short walk may be helpful.

Apart from managing the surroundings and emotion in mediation, a plausible approach is to 'attack the problem, not the person'. Asking both the parties to make full assessment of future risks - time, money, reputation, if the dispute is not resolved, may set the tune of negotiable settlement. Summarising and reiterating the progress made, rather than allowing parties to focus on the problem and the gap may help. Further, shifting the parties from 'positional' to 'principle' negotiation will melt the stalemate. Breaking the problem down, dealing with smaller points one by one, can effectively set the momentum in mediation process. A mediator can also try to shift the focus from monetary aspects to see if there are non-monetary elements available to improve the proposed deal. Alternately, reframing issues may lead to different perspective. Reviewing an offer with a party and questioning how it is likely to be received by the other side may be another option to engage the adversary to the process.

Mediation can be profitably used as an alternative tool to contain 'litigation explosion' in Bangladesh. Though legal regime in Bangladesh offers a modest framework for alternative dispute resolution (ADR) including mediation, it has been less explored. Apart from creating ADR-friendly legal culture, equipping the mediators with better skills is a must. Finally, sensitising the members of the bar as well as the bench and ensuring active participation of litigant people may streamline the ADR movement in Bangladesh.

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LAW LETTER

Our right to easy access to information

Information is prerequisite for humans to perform several activities. It is recognised that knowing and circulating information is very vital for ensuring transparency and accountability of government organs, which now accepted as an indispensable part of any welfare state. It provides public participation in decision making that affect their fundamental human rights. There is no denying the fact that the idea of the rule of law, freedom of expression and good governance are becoming meaningless without access to information. Properly instigated and working access to information system provides as many assistants to government organs as it ensures to the individuals they administer over.

In Bangladesh, the Right to Information (RTI) Act has been enacted in 2009, which is the significant development in the field of promoting human rights and good governance. Although in the Constitution of Bangladesh there is no direct mention about right to information, the preamble of the RTI Act stipulates that the right to information is an essential part of freedom of speech, conscience, and thought which is guaranteed as a fundamental right in Article 39 of the Constitution. As article 7(1) of the Constitution promotes supremacy of the Constitution declaring "all powers of the Republic belong to the people", right to information is thus necessary to empower people.

The purposes of the RTI Act are to increase transparency and accountability, to decrease corruption and established good governance. Such objects cannot be fulfilled without an easy access to information by ordinary people. Section 6 of the RTI Act ensures that every authority should publish and publicise all information related to any executed or proposed activities and decisions in such a manner which can easily be accessible to the citizens. The section also ensures that authorities can not cancel any information and limit the easy access. The Act has delegated the power to make the regulation to the information commission under section 6(8) regarding the publishing, publicising and obtaining information. On 30 December 2010, the Commission adopted the Right to Information (Publication and Publicisation of Information) Regulation and fixed the time frame and ways of publishing information. According to Schedule 1 and 2 of the Regulation, the authorities should publish information on their website and internet along with the printed copy, but eight long years have been passed away and the Regulation is barely implemented.

In 2017, the Information Commission started Online RTI Application and Tracking System which received much appreciation from different stakeholders. However, the initiative is yet to see huge success due to the lack of expected promotion and public awareness. Every government authority should start to take the online application to change the overburden situation and to facilitate easy access to information. The government authorities should also publish all information on their official website subject to the RTI Act and the RTI Regulation. Without facilitating easy access to information to the common people, the purposes of RTI Act cannot be fulfilled.

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LAW ANALYSIS

THE IMPORTANCE OF FORENSIC EVIDENCE IN OUR JUSTICE SYSTEM

SAKHAWAT SAJJAT SEJAN

With the advent of time, the commission of crimes is becoming more sophisticated, critical, digital and organised. The pattern of committing crimes is changing with the changes of science and technology. But the pattern of procuring forensic evidence remains the age old one. Bangladesh is yet to have unified and codified rules of taking forensic evidence in its justice system. Till now, the taking of forensic evidence into cognizance in the criminal and civil trial is wholly a normative practice, where the Judges send cases for forensic examinations according to their discretion. No well-founded rule has been enumerated either in the Code of Criminal Procedure 1898 or the Evidence Act 1872.

With remoter interpretation of section 45 of the Evidence Act, Judges may take expert opinion regarding hand writing, finger impressions or on foreign law, science, art, etc. The circumference is too narrow from the perspective of today's instances of forensic evidence. As now it deals with DNA, saliva, skin, hair, thumb impressions, blood, semen and footsteps, ballistics, drug samples, paints, explosives, toxins, chemicals and what not. More importantly, it requires a different method or procedure to be procured and adduced before the court. This void of a procedure makes the procurement and adducing of forensic evidence more questionable and implausible in our country. Apart from that Judges are being given absolute discretion whether to receive the adduced evidence or not. This strongly proves the shaky existence of the practice in our legal system.

The development of forensic evidence has tucked to the enactment of DNA Act 2014. This Act has devised to collect DNA from the citizens of Bangladesh for making a database by setting forensic laboratories in the country. This would help in maintaining the DNA data, recognising the decomposed dead-bodies and identify criminals. Unfortunately, neither the DNA data was collected nor were the laboratories established. If this would have been done, the autopsy reports of *Holey Artisan Attack Case* would not take one year to be filed or the murderers of *Tonu Murder Case* would have been found after the second autopsy. As the second autopsy report of *Tonu Murder Case* found out three different kinds of semen in her body, it would have been very much easier to find out the murderers and rapists. This proves DNA as a mean of evidence is so strong that it can make every rape and murder unveiled along with the misdemeanors if executed appropriately.

Apart from that, the High Court Division has banned 'Two Finger Test' in pursuance of a writ petition recently. Undoubtedly, the judgement was a milestone but Court did not include the use of rape-kits to examine the rape victims. This kit includes sexual assault kit, sexual assault forensic evidence kit, sexual assault evidence collection kit, sexual offense evidence collection kit and a physical evidence recovery kit for examining a rape victim. In the absence of rape-kits, *Banani Raintree Hotel Rape Case* remains unsolved as the experts are unable to procure physical evidence. So how a rape victim would ensure justice for herself if the examining credentials are not yet fixed. This crippled stance also comes under the purview of forensic evidence. There are a lot of cases unsolved only because the practice of forensic evidence is inappropriate and nearly less-existent in Bangladesh.

The first thing required to solve these complications regarding forensic evidence is enacting a separate legislation for adducing them in the court and their procedures. The Evidence Act may also be amended complying with the practice of forensic evidence nowadays. The adoption of expert opinion may be made mandatory in the required cases under section 45 of the Evidence Act. The credentials may be set for those cases, like which cases 'must', 'may' and 'doesn't' require an expert opinion. The government may start taking DNA samples for making DNA database under the DNA Act 2014. This would definitely accelerate the investigation process. Sufficient numbers of forensic labs and DNA centres may be established along with the appointment of qualified forensic experts for making the task of forensic examination faster. The Judges, Advocates and Police officers may be especially trained to deal with forensic evidence and collaterals to it as they are less accustomed and less known to it. Also, because they are the significant stakeholders to deliver justice in matters relating to forensic evidence. Lastly, the forensic examinations and reports may be made in front of the Judicial Magistrates to avoid false and forged examinations. Nonetheless to make the practice prompter, good intent of all the related stakeholders and absence of bureaucratic intricacy is very much exigent.

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GLOBAL LAW UPDATES

Children shouldn't work in fields, but on dreams

The International Labour Organization (ILO) launched the World Day Against Child Labour in 2002 to focus attention on the global extent of child labour and the action and efforts needed to eliminate it. Each year on 12 June, the World Day brings together governments, employers and workers organisations, civil society, as well as millions of people from around the world to highlight the plight of child labourers and what can be done to help them.

This year, the World Day Against Child Labour theme entitles: Children shouldn't work in fields, but on dreams! Yet today, 152 million children are still in child labour. They do not go to school and have little or no time to play. Many do not receive proper nutrition or care. They are denied the chance to be children. More than half of them are exposed to the worst forms of child labour such as work in hazardous environments, slavery, or other forms of forced labour, illicit activities including drug trafficking and prostitution, as well as involvement in armed conflict.

Child labour is work carried out to the detriment and endangerment of a child, in violation of international law and national legislation. It either deprives children of schooling or requires them to assume the dual burden of schooling and work. Child labour to be eliminated is a subset of children in employment. It includes: (a) all "unconditional" worst forms of child labour, such as slavery or practices similar to slavery, the use of a child for prostitution or for illicit activities; (b) work done by children under the minimum legal age for that type of work, as defined by national legislation in accordance with international standards.

The Sustainable Development Goals (SDGs), adopted by world leaders in 2015, include a renewed global commitment to ending child labour. Specifically, target 8.7 of the Sustainable Development Goals calls on the global community to: "Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms."

In 2019, the ILO celebrates 100 years of advancing social justice and promoting decent work. The World Day Against Child Labour looks back on progress achieved over a 100 years of ILO support to countries on tackling child labour. Since its founding in 1919, the protection of children has been embedded in the

ILO's Constitution (Preamble). One of the first Conventions adopted by the ILO was on Minimum Age in Industry (No. 5, 1919).

2019 also marks 20 years since the adoption of the ILO's Worst Forms of Child Labour Convention, 1999 (No. 182). With only a few countries still to ratify, this Convention is close to universal ratification. On this World Day we call for full ratification and implementation of Convention No. 182 and of the ILO's Minimum Age Convention, 1973 (No. 138). We also encourage ratification of the Protocol of 2014 to the Forced Labour Convention, which protects both adults and children.

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