

LAW INTERVIEW

The outcome of any UPR or treaty body review should be placed before the parliament for deliberation and policy guidance

Kawser Ahmed is qualified to practise before the High Court Division of the Supreme Court of Bangladesh. In addition, he has served the Ministry of Foreign Affairs as consultant on matters relating to human rights on and off since 2012. In this course, he has drafted the state party reports of Bangladesh for 2nd and 3rd Universal Periodic Review (UPR). Besides, he has drafted three initial state party reports of Bangladesh respectively on ICCPR, ICESCR and the UN Convention against Torture. Mr. Ahmed studied human rights during his LLM at New York University. Mohammad Golam Sarwar, In-Charge of Law Desk, talks to him on the following issues.

LAW DESK (LD): Last year Bangladesh went through the 3rd Cycle Universal Periodic Review. What is actually Universal Periodic Review (UPR)?

KAWSER AHMED (KA): UPR may be described as an interactive dialogue about human rights situation between the state under review and other UN Member States. It entails immense importance in the present context. For instance, although it is said that human rights are universal, in practice states have a tendency to view their respective human rights situations as domestic matters. Rightly or wrongly, sometimes states feel reluctant to comment on other states' human rights situations. Now, UPR provides an opportunity to the states to discuss each other's human rights situations in an institutional setting. From that angle, UPR constitutes an institutional mechanism for actualising the notion of universality of human rights.

LD: How does UPR differ from treaty body review in regard to assessing human rights situation in a country? Given the presence of reporting mechanism under all the treaty bodies, do you think UPR indeed is adding more value to it?

KA: While UPR looks like a peer review process, the treaty body review may be called an 'expert assessment'. States are sovereign political entities, therefore, their way of looking at human rights situation has its own characteristics. On the other hand, review by experts has its own uniqueness in terms of technicality, method and approach. To me, UPR appears to have entailed a wider perspective. Its mandate is not confined to any particular issue or area of human rights. On the contrary, treaty body review mostly focuses on implementation of any given treaty to which the state under review is a party. The difference between these two types reviews could be

somewhat inferred from their respective style of recommendations. One might notice that the UPR recommendations are generally broad and policy-oriented, whereas treaty body recommendations tend to be pinpoint and action-oriented. I would say that UPR and treaty body reviews are complimentary to each other.

LD: How could a state benefit from UPR or treaty body review? What steps will you suggest that our government should take in this regard?

KA: The outcome of UPR or treaty body review basically comprises recommendations to the state under review. In the case of UPR, the recommendations come from the fellow states, whereas in the case of treaty body review, the recommendations come from the human rights experts. In any case, the recommendations are useful and the state under review should include them in their policy objectives.

Now, the crux of the matter is how a state might actualise those recommendations. In my opinion, it will vary from country to country depending on their system of government. As far as Bangladesh is concerned, I think the first step in this regard should come from the parliament. To be precise, the outcome of any UPR or treaty body review should be placed before the parliament for deliberation and policy guidance. Such deliberation in the parliament about human rights will be immensely beneficial in many ways. Not only will it manifest the political commitment to promote and protect human rights but also will channelise this message to other machineries and agencies in the government. With the help of media, it will help create human rights consciousness at the mass level.

LD: What would be your comment regarding the recommendation of the UN Committee against Torture (CAT) to establish independent



bodies to investigate the allegations of torture committed by law enforcement agencies in Bangladesh?

KA: No one should be a judge in his own cause. For the sake of fairness, investigation of allegation of torture against any member of the law enforcement agencies should be conducted by a separate independent body. However, I don't think that we need to establish any such independent body afresh. I believe most will agree that the National Human Rights Commission could be suitably utilised for this purpose. The government should take immediate steps in this regard.

LD: Is there anything you have personally learnt from the UPRs and treaty body reviews?

KA: Yes, I have gained a few insights from my participation in the review processes. For example, I have come to the realisation that a state under review will be able to benefit most if it takes such review rather as sharing of

experience, and not as a test. Another important lesson I have learnt for these reviews is that the fundamental rights in our constitution satisfies the country's obligation to 'respect' the civil and political rights, however it is not enough. Bangladesh should now pay more attention to realise its obligations to 'protect' and 'fulfil' the enjoyment of civil and political rights. Perhaps this observation will apply to other branches of human rights as well. And lastly, a state party should review its reservations and declarations to human rights treatise at regular intervals.

LD: Who motivated you to work in the area of human rights?

KA: I am deeply grateful to two persons for inducting me into the practice of international human rights law. They are Professor Dr. Mizanur Rahman and Dr. Lyal S Sunga. Professor Rahman served as the Chairman of National Human Rights Commission for two consecutive terms. He was my course teacher in Public International Law at the University of Dhaka.

Dr. Lyal S Sunga is an Affiliated Professor at the famous Raoul Wallenberg Institute (RWI). Among others, he was responsible for supporting the UN Security Council's genocide investigation in Rwanda. I worked with him as a national consultant in a project funded by IDLO in which he was serving as the international consultant. The most notable outcome of the project was a study on the reform of laws relating to sexual offences in Bangladesh. It was later published in book format under the title, 'A Critical Appraisal of Laws Relating to Sexual Offences in Bangladesh'.

LD: Thank you so much.

KA: You are welcome.

(Opinions expressed in this interview are of Mr. Ahmed alone and do not reflect either the views of the Government or The Daily Star).

HUMAN RIGHTS ADVOCACY

Is there a human right to water?



ARAFAT IBNUUL BASHAR

ALTHOUGH water is an essential element for human survival, access to water was not recognised as a human right when most fundamental rights were adopted under the International Bill of Human Rights. The reason behind this might be that none had predicted that a time would come when water would become insufficient for the masses. Right to water may be defined as the right of every person, regardless of his economic situation, to be provided with a minimum quantity of quality water which is sufficient for life and health. At the international level, the United Nations Water Conference, which took place in 1977 in Mar Del Plata, Argentina, was the first to recognise the right to have access to drinking water in their Action Plan. Although it was argued that Article 11(1) of International Covenant on Economic, Social and Cultural Rights has implicitly provided for right to water, the argument was weekend due to no mention of water. Later on, in 2002, UN Committee on Economic, Social and Cultural Rights in their General Comment No. 15 interpreted that right to adequate standard of living was not intended to be exhaustive and thus includes right to water as well. But the first formal recognition of right to water along with right to sanitation was acknowledged by United Nations General Assembly in their resolution A/RES/64/292. Following this, UN Human Rights Council affirmed the right to water as part of the existing international law and legally binding upon states in yet another resolution. Explicit mention of right to drinking water or water supply can be traced in Article 14(2) of Convention on the Elimination of All Forms of Discrimination against Women, Article 24 of Convention on the Rights of the Child and Article 28(2) of Convention on the Rights of Persons with Disabilities. Right to water is protected indirectly in the Constitutions of India and Bangladesh in the guise of right to life, right to basic necessities or food and the right to health. The strongest hint may come

from the Indian case of *Francis Coralie Mullin v The Administrator, Union Territory of Delhi* (1981), where it was argued that "right to life includes right to live with human dignity along with the basic necessities of life." Explicit mention of right to water can be found in the case of *Subhash Kumar v State of Bihar* (1991), where the court found that the right to life, as protected by Article 21 of the Constitution of India, included the right to enjoy pollution-free water. Even in Bangladesh, in the case of *Rabia Bhuiyan v Ministry of LGRD and others* (1999), the Appellate Division stated that it was the responsibility of the Government to ensure the supply of clean and safe water to communities under a number of laws, including the Environmental Conservation Act 1995 and the Environmental Conservation Rules 1997. The court furthermore added that the non-compliance with the statutory duties to ensure access to safe and drinkable water constitutes a violation of the right to life as guaranteed in Articles 31, 32, 15 and 18 of the Constitution. The Bangladesh Water Act 2013 which was enacted for management, protection and conservation of water resources, in Section 3, provides for right to drinkable water and water for hygiene and sanitation to be treated as the highest priority right.

Apart from the fact that without access to water, right to life is rendered non-existent, the need to have right to water established as a separate and distinct right arises due to the miserable situation regarding the current state of water in the world, which hints to the impending doom of the human race. World Economic Forum, this year listed scarcity of water as one of the largest global risks over the next decade. Globally, more than one out of six people lacks access to safe drinking water, with 4 billion people living under severe water scarcity at least 1 month of the year and another half billion facing such scarcity throughout the year. With the continuation of the current trend, the demand for water will encompass the supply by 40% in 2030.

THE WRITER IS STUDENT OF LAW, UNIVERSITY OF CHITTAGONG, CHITTAGONG.

LAW VISION

Institutional barriers in accessing civil justice system

SEKANDER ZULKER NAYEEN

GOAL 16 of the SDGs pledges 'ensuring access to justice for all' as a target to be achieved. The term 'all' signifies everyone irrespective of their race, sex, color, language, religion, wealth, etc. In this article, I will not take a holistic approach to access to justice, but attempt to explore the likely institutional barriers that cause obstacles for the poverty ridden people in starting judicial proceedings before any civil court. However, before entering into formal judicial proceeding, justice-seekers tussle in some institutions, e.g., local land office, registration office, DC office and Judge Court, for collecting copies of required documents which carry forward some paradigm of institutional obstacles.

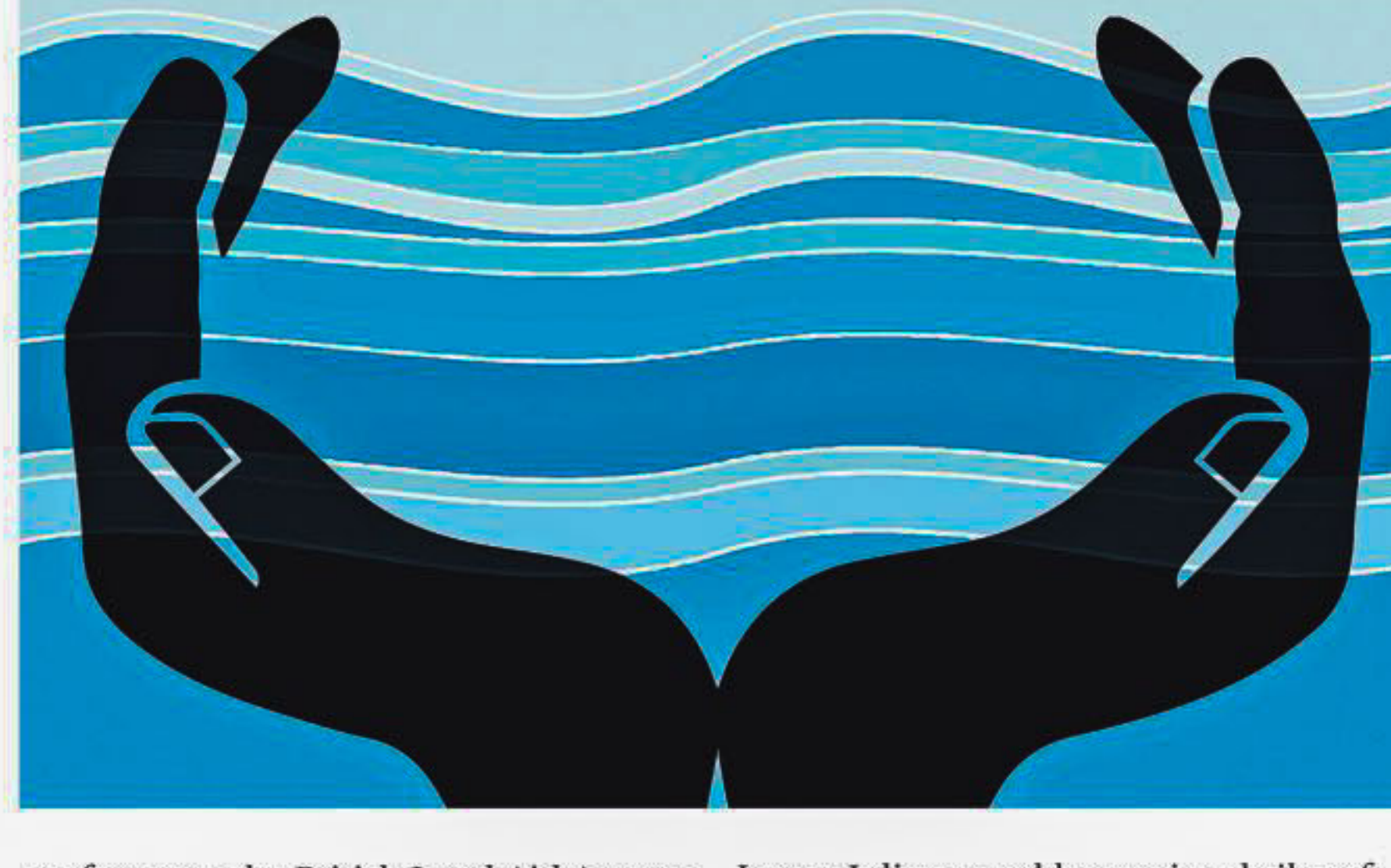
The first obstacle is the location of judicial and administrative offices. As 75% of the country's population lives outside of urban centers, with many of the most marginalised living in remote, hard-to-reach areas, the centralisation of government offices constitute serious obstacles to their accessing justice. Such centralisation compels them to travel to District town for having the copies of any deed, record-of-rights (there is a mechanism of getting it through Union Digital Centre), judgments and orders of courts. Sometimes they even need to travel the capital for collecting copy of record-of-rights because of its non-availability in the District. For example, I witnessed several occasions when the litigants had to travel to Dhaka because the Deputy Commissioner's Record Room denied issuing certified copy of record-of-rights disclosing the fact that the original one in the volume is either obscure or torn out.

The second obstacle is inadequate capacity and resources of those institutions. People often meander for couple of days and even months to get certified copies of required documents because the institutions are understaffed, below-standard-staffed and inadequately equipped. The Copying Department of District Judge Court is a classic example of such phenomena. People would hardly find sufficient computers, photocopiers and efficient staffs in this department. Such insufficiency and inefficiency delay access to justice. The third barrier is the psychological one which includes attitudes of

staffs. Often, the service-recipients get discriminatory, bias and sometimes abusive attitudes from the government personnel when they start collecting necessary documents for instituting any suit. Such attitudes at the outset of instituting a suit, discourage them to move forward for seeking justice any further.

The fourth one is the costs. It is universally admitted that continuing with civil litigation is so expensive that poor people cannot manage it without having a third party funding the litigation. In our country, the National Legal Aid Services Organisation (NLASO) is extending incredibly good funding supports to poor litigants covering all expenses starting from the institution of a suit to obtaining copy of final judgments. If I compare, I must

touts. An example could be mentioned here with a view to clarifying the intensity of such corruption. In a District Court when I was in charge of the Copying Department, I discovered hundreds of applications for certified copies of judgments and orders in the queue of disposal. According to the Civil Rules and Orders (CRO), any party requires to submit either a general or an urgent petition for obtaining a certified copy. Ridiculously, there was a trend of submitting a special petition paying 10 taka court fee for getting a certified copy promptly and that petition was subject to the approval of concerned judge-in-charge. Every afternoon when the Head clerk of the Department used to come for my endorsement on the petition, the other staffs whispered that the Head clerk is going to have his cheque signed.



confess even the British Legal Aid Agency does not bestow such a non-refundable litigation funding upon incapable people as Bangladesh does. However, the NLASO does not support for any expenditure necessary for collecting required documents before institution of the suit which is the main concern of this article. Therefore, poor people have to manage those documents at their own costs. Moreover, there are some collateral costs (e.g., transportation, accommodation, loss of income) concomitant with moving forward for justice. The cumulative impact of those costs is a crucial factor preventing the poor from accessing the justice system. The fifth and most important one is the corruption of staffs and non-staff

latter, I discovered he receives bribe of at least ten thousand Taka for disposing the special petition and delivering the certified copy in one day. However, this particular problem was addressed properly and the Department was regularised with the active support of District Judge. Such exacerbated condition of every such government office supposes that persons who cannot afford bribes for services that should be free or low-cost-service, have their service egregiously delayed, denied or discontinued which eventually restrain them from entering into the judicial mechanism and thereby deprives them from access to justice.

THE WRITER IS JOINT DISTRICT JUDGE AND VOLUNTEER OF SDG LAW.