LAW OPINION

Concerns over the problem of backlog of cases

Constructing or deconstructing legal texts put by the legislature is a huge responsibility of the courts which could potentially lead the way to contribute to the reduction of backlog of cases in Bangladesh.

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Instituting a lawsuit in Bangladesh can often mean planting a magic tree that keeps growing years after years, but never comes along with flowers and fruits. This is probably very true in case of criminal litigation. With no change to the almost two centuries of British legacy in the judicial system, Bangladesh started its journey at the end of a bloody war in 1971 by declaring an array of human rights, including the right to a speedy and fair trial and the right to complete justice, as provided in articles 35 and 104 of the 1972's Constitution, respectively. As the time went by, these two rights started to fade away with an elephantine appearance of the backlog of cases. A large number of court records show the complainant died before his/her decade-long lawsuit was presented for hearing, the suspect was locked up for several years without even being tried, the eye-witnesses died or migrated beyond the reach, and the material evidences were damaged or perished due to the delay in holding trial. When the case backlog turned from bad to worse, the justice system began to be frustrated.

In 2003, the political actors, after encountering a huge backlash, modified the country's Code of Civil Procedure, 1908, by adding a mandatory window of Alternative Dispute Resolution (ADR): aiming to reduce the problem of case backlog. By contrast, it increased exponentially, with around four million cases pending as of today. It may take half a century to dispose of this mountain of cases, along with other case backlogs in the years to come.

Nearly every procedural piece of law, either conventional or special, is enacted with a specific period for disposing of the cases filed under it. For example, section 10 of the Speedy Trial Tribunal Act, 2002 mandates the court to dispose of its every case within 135 working days in total; otherwise, it shall transfer the case back where it was sent from, after writing a note of reasons for the failure to the Supreme Court of Bangladesh.

Moreover, section 17 of the Money Loan Court Act, 2003 binds the presiding judge to dispose of every suit in not more than 120 working days, but the actual picture is alarming as more than a decade-long suits are now pending in the same courts. Additionally, this Act allows the litigants to have their disputes resolved through the mandatory ADR procedure, which starts with filing a written statement. The court records suggest that every one out of ten cases – and most often no case at all – are mediated on this ADR stage, which, in turn, gives the defendants an extra 90 days for delaying the payment of the government money.

In comparison, the Income Tax Ordinance, 1984, which is a major governmental tool to recover its revenues, functions quite differently, having an imperative provision, i.e., section 156. This provision puts the commissioners of appeals under a strict obligation to dispose of each appeal within 150 days from the end of the month the appeal was filed. The failure to do so would mean that the appeal shall be deemed to be allowed and the appellant shall be exempted from the government revenue. This culminates in serious and dire consequences for every commissioner of appeals who deals such cases. With this compliance clause, no income-tax appeals are found to be unheard or undisposed of by the time they have to be. The income-tax adjudicators fearing the million-dollar liability consequences, dispose of the appeals within the strict time limit.

In *Aminul Islam* v *James Finlay & Co.* 26 DLR AD 33, their lordships decided that 'if a command in a legal text is followed by an extreme consequence for non-compliance, the text is mandatory to obey'. On the other hand, the *Kohinoor Chemical Co. Limited* v *Eastern Shippers & Traders* 41 DLR 387 case declared that legal texts are directory if they are not provided with provided with consequence for non-obeying them. The reference to these cases shows that the art of crafting legal texts could play a crucial role in the effective disposal of cases. Constructing or deconstructing legal texts put by the legislature is a huge responsibility of the courts which could potentially lead the way to contribute to the reduction of backlog of cases in Bangladesh.

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LAW EVENT

DHLR Public Lecture on Constituent Assembly Debates held at Dhaka University

Last December, Prothoma published *Songbidhan Bitorko 1972: Gonoporishoder Rastrobhabna*, authored by Professor Dr. Nazrul Islam (also known as Asif Nazrul). On the same title, Dhaka Law Review (DHLR) organised a public lecture on 7 February 2023 at the Faculty of Law, University of Dhaka, where the author himself spoke on different aspects of the book.

The lecture was inaugurated by Professor Dr. Sumaiya Khair who described the said book as not a journalistic work rather a work containing serious research. Author Asif Nazrul began his speech by expressing his despair at the unavailability of online materials on Constituent Assembly debates of Bangladesh whereas the Indian and even the 1956 Pakistani Constituent Assembly debates are available online. To him, the 1972 Constituent Assembly was the most authoritative body consisting of cabinet members from the Mujibnagar government, freedom fighters and those who were directly involved in the struggle for liberation. As he described, most of the members of the Assembly were from ruling Awami League, former leaders of the 1971 liberation movement, and only two were from the opposition 'and the independent constituency – Suranjit Sengupta and Manabendra Narayan Larma. Other major political parties outside the Assembly were – Mawlana Bhasani led National Awami Party (NAP) and Communist Party. He pointed out the lack of representation from other political parties in the Constituent Assembly debates.

Consultation for drafting a constitution was even inadequate. There was also absence of any scope for informed opinion of the public and there is serious insufficiency of public opinion in the formation of our Constitution. A debate came upon whether the Assembly had the mandate to draft the Constitution as it was elected under the Legal framework Order (LFO) of 1970, which was enacted by the then Pakistan government. Mawlana Bhashani was a critique of this Assembly and suggested a fresh election by which an Assembly with people's mandate will be the legitimate authority to draft a constitution. According to the author, a mitigation plan by consulting with other major political parties while drafting the Constitution could have been adopted by the then major political party in the Assembly.

He also discussed the functionality of the Assembly as a parliament. In the absence of a Parliament during the making of the Constitution, almost 203 laws were enacted via the Presidential Order and without effective participation of the people's representatives. This resulted in several problems, i.e., aggressive nationalisation of corporations while certain institutions started to weaken due to corruption. There has also been an absence of enough manpower and incentives to run those institutions in a newly born state.

On the questions of "secularism" and "non-communalism", Asif Nazrul opined that as the freedom of religion is categorically mentioned in the Constitution, adopting secularism as one of the fundamental principles sparks unnecessary debates which was in fact absent during the debates.

To some extents, Constituent Assembly members were foresighted and visionary that they had debated about the excessive executive power of the Prime Minister, balance of power between the Prime Minister, President and Cabinet members, a form of caretaker government during election time, proportional representation in the legislature, the two-house parliamentary system, etc., which, according to Asif Nazrul, are still relevant in the country to discuss and decide on.

Around 90% of the changes brought by the assembly were regarding language and other technical matters. One of the remarkable changes was allowing individual ownership in production and manufacturing. Tajuddin Ahmed wonderfully debated that mere flowery words in the Constitution will not be sufficient, rather free and fair elections must be held and only the "true representatives of the people" can uphold the spirit of this Constitution.

At the end, there was an interactive question answer session between the author and the students, followed by the delivery of concluding remarks by Professor Dr. Shahnaz Huda.

Event covered by Tasmim Jahan Neeha and Julian Rafah, both being the law students at the University of Dhaka.

REVIEWING THE VIEWS

A closer look at Bangladesh's film censorship laws

NOOR AFROSE

After being held up at the Bangladesh Film Censor Board since 2019, *Shonibar Bikel* has recently received positive response from the Board, although its theatrical release has once again been put into an uncertainty as the Appeal Committee of the Board has decided to review the movie (Prothom Alo, 7 February 2023). *Shonibar Bikel* is not the only case and many other movies in Bangladesh have been subject to censorship. Last year, famous Bangladeshi artists held protests to express their discontent over censorship regulations, claiming that such broad restriction by censorship undermined artists' ability to perform and speak out. These instances shed light on the need to appraise the laws surrounding censorship in Bangladesh.

Some specific laws in Bangladesh govern censorship of movies. These laws outline the role of the Board to scrutinise films and provide approval for release in alignment with standards of public morality. Notable legislation in this area includes the Cinematograph Act of 1918 which controls the regulation of cinematic exhibitions and the Censorship of Films Act of 1963 (as amended in 2006) which regulates the censorship of cinematograph films.

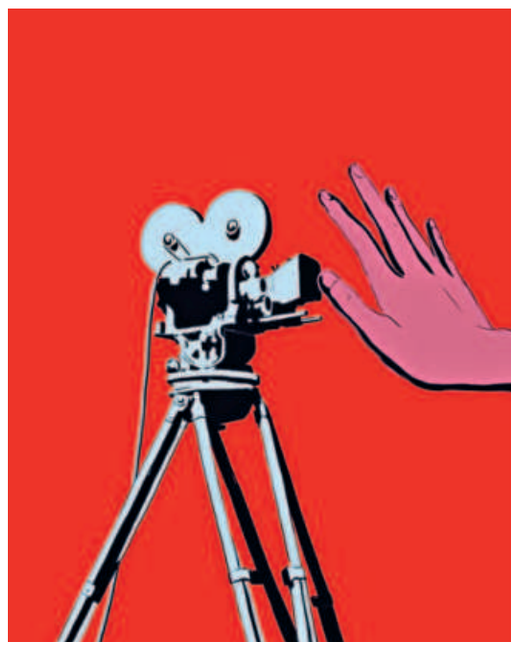

ILLUSTRATION BY DEREK ZHENG

The Board determines whether or not a movie is appropriate for the general audience. The Board is comprised of members designated by the government to examine/review and certify films for public screening in Bangladesh (section 3 of the Censorship of Films Act of 1963). The members of the Board come from all areas of life and include social-workers, government officials, educators, journalists, and filmmakers. The Board is broadly guided by rule 13 of the Censorship of Films Rules (1977) and the Code for Censorship of Films (1985) in its function of certifying films. The Board may refuse to provide their clearance to a public exhibition for several grounds, including security, law and order, international relations, religious sensitivities, immorality or obscenity, bestiality, crime, and plagiarism. The aggrieved person has the option to file an appeal against such decision.

Now proceeding to the crux of the issue, what are the shortfalls in these censorship laws or the censorship Board? Firstly, the rules need to provide clear criteria or qualifications for the Board members. Many of them need to gain more technical knowledge of film. Moreover, the grounds for possible censorship could be more specific as the present formulation provides the Board wide discretionary powers. For example, the censorship legislation from 1985 uses vague terms like "vulgarity" as a ground for rejecting an application. The legal grey area surrounding what constitutes an adult scene remains unresolved. Consequently, the provision is subject to interpretation by the Board and may result in the misuse of powers.

In addition, it has been argued by academics and activists that the censorship laws do not reflect the society's evolving norms and values, resulting in censorship decisions that are out of step with modern sentiments. The most prominent example of the outdated nature of these laws is that they still follow the categorisation system. Moreover, the certification process needs more transparency and the public needs to be informed of the certifications given to films and reasons for refusal.

In contrast to censorship, a rating system like in the USA and the UK, which reflects a form of self-regulation by the film industry, is seen as a better alternative. A film rating system indicates a film's suitability for different age groups and serves as a guideline for parents. This rating system is voluntary and not legally binding, allowing filmmakers to create their chosen content.

In short, censorship limits cinema's ability to depict society accurately. Hence, there is a need to revise the film certification laws by introducing a more comprehensive system that categorises films based on age suitability and allows inclusion of other appropriate labels to highlight religious and/or political content. This would provide a more inclusive certification framework and allow the audience to make informed decisions about the films they choose to watch without curtailing artistic freedom.

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