LAW VISION

Bangladesh and the quest for a digitised judiciary

There are some risks in incorporation of legal tech into the judiciary too, i.e. data privacy and security concerns, discrimination, bias etc. But certain risks associated with legal tech tools can be effectively avoided through prudent design, procurement, and regulation, but other risks necessitate continuous watchful oversight and ethical application along with robust regulation.

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The judiciary of Bangladesh is heavily loaded with negative tags including of high backlogs, severe delays, huge costs, corruptions, inconsistency, absence of transparency, less conviction of perpetrators and so forth. The insufficient and unplanned use of technologies in the justice system makes the scenario even worse. As a result, the present justice system needs a major transformation from age-old colonial fashioned delivery of justice to adoption of cutting-edge technologies to make its services more people oriented.

The utility of legal tech has already been proved in many jurisdictions, and it has become an integral part of modern judiciary. In 2020, for instance, when the court systems became paralysed due to the COVID19 lockdowns worldwide, technologies were extensively applied as a means to combat the pandemic restrictions, opening new doors for access to justice. Bangladesh also similarly witnessed the blessing of legal tech at that moment. The promulgation of the *Adalat Kartrik Totthо-Projukti Bebohar Ain, 2020* was one step forward towards the integration of legal tech in the courts. However, little progress has been seen after that.

Presently, there are some usages of legal tech in the judiciary, i.e., the Supreme Court (SC) website providing cause list, judgments and orders (https://www.supremecourt.gov.bd), a Government web portal disseminating e-cause list for all subordinate courts (https://causelist.judiciary.gov.bd), a Government website circulating subordinate court's decisions (https://decision.bdcourts.gov.bd), an online monitoring tool to collect and analysis data from subordinate courts (mcsc.supremecourt.gov.bd). Similarly, bail orders can be accessed and verified through the 'Bail Confirmation Online Manual', an online knowledge base platform for the judges (faq.bdcourts.gov.bd). The Government's a2i project has created supporting app such as Judicial Monitoring Dashboard (My Court App), while introducing a platform (www.judiciary.gov.bd) to provide information relating to judicial services including inheritance calculator, judipay, e-filing, e-certified copy etc.

Nonetheless, the abovementioned efforts to digitise the justice sector, although praiseworthy, are not sufficient to overcome the present barriers because of certain limitations within the system. Some of the above initiatives were merely ad hoc project-based, that lost their functionality after the end of the project. Besides, the century-old colonial procedural laws, such as the Codes of Civil and Criminal Procedure, Civil and Criminal Rules and Orders etc. do not directly call for digital intervention in the court proceedings.

However, the digitisation process comes with several impediments. Allocation of low budget and inadequate investment is one of the main challenges to the digitisation of judiciary. Furthermore, lack of properly trained court staff to operate the legal tech tools, absence of adequate supervision and monitoring by the Supreme Court, unfamiliarity with the new systems of the judges, lawyers and staff, necessary training and technical knowledge gap among the lawyers, judges and staff, habitual preference of handling court procedures manually etc contribute to linger the proper digitisation of the judiciary.

Similarly, there are some risks in incorporation of legal tech into the judiciary too, i.e. data privacy and security concerns, discrimination, bias etc. But certain risks associated with legal tech tools can be effectively avoided through prudent design, procurement, and regulation, but other risks necessitate continuous watchful oversight and ethical application along with robust regulation.

As specific recommendations, it is submitted that mandatory e-filing system, video/virtual courtroom, video/remote appearance of accused from prison, arrangement of distance hearing, advanced systems for digital record of evidence of witnesses, application of AI in specific court functions, collaboration and exchange of document electronically with other agencies on digital data sharing and exchange projects can accelerate the process of digitisation of judiciary.

Notably, in 2025, a High Court Division (HCD) bench launched a WhatsApp based slip receiving system. Under the new system, motion, extension of time, and application slips will have to be scanned and sent to a designated WhatsApp number within stipulated time. Earlier this year another HCD bench introduced paper free filing of cases.

To conclude, it can be said that the integration of legal tech in all stages of proceedings and across all courts will promote transparency and accountability, make the complex process of litigation easy, effective, fast, affordable and thereby facilitate the overall court services to the people, and make the judiciary truly a people's institution.

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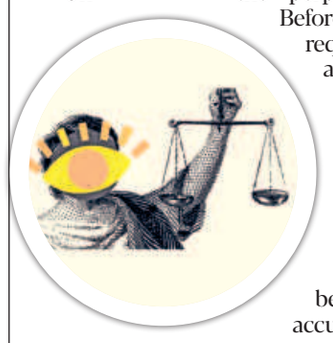
LAW AND SOCIETY

Meaningful reforms and popular sentiments

KANAK KANTI KARMAKAR AND PRITOM KANTI KARMAKAR

Recently, after numerous reports of horrifying rape incidents had gone viral, few fundamental thought-provoking issues became the discussion points of the country. However, it is unfortunate that populism has once again taken the front seat in these discussions. The government authorities have suggested that law enforcement agencies have to complete investigation of rape cases within 15 days and trial in 90 days. Moreover, it is also being said that the accused cannot be granted bail on the pretext of not completing the trial within 90 days. If there is any negligence on the part of the administration, specific provisions for punishment will be added to the law. Currently, according to the section 20(3) of the Women and Children Repression Prevention Act 2000 (WCRPA), the trial of rape cases has to be completed by 180 days.

Firstly, let us analyse the proposal regarding finishing the investigation within 15 days. DNA test, among others, often plays a pivotal to prove rape. However, there is a very limited number of labs in our country where such DNA tests can be done effectively. Consequently, it takes several months to collect the test reports and lay specific charges on the perpetrator accordingly. Before establishing the required number of labs and other technical supports, it would be counter-productive to mandate that investigations have to be finished within 15 days and trial in 90 days.



Furthermore, it is being argued that the accused in these cases cannot be granted bail. As a non-bailable offence, bail is not to be claimed as of right in rape cases; however, the scope of granting bail should not be closed off as there may also be situations where the wrong person is accused due to faulty police investigations or personal vengeance.

Another populist idea that has recently emerged is that a rape accused cannot be represented by a lawyer. But the Constitution of Bangladesh, in general, clearly mentions the right of an accused to consult and be defended by a legal practitioner of his/her own choice under Article 33(1). Therefore, the right to legal representation is the fundamental right of a person that cannot be taken away by an Act of parliament.

Additionally, demands for the death penalty have to be critically analysed too, because indeed, only severe penalty such as death is not the solution. We need to channel our efforts to improve the criminal justice system as a whole, starting from filing of complaints, through trials, and finally with sentencing. Furthermore, we need to channel our efforts to supporting the victims too. Focus on only punishments deflect our attention away from the victims. We need to build in a system where the victims' vulnerabilities are attended upon.

Finally, it is a significant political moment for us to materialise meaningful reforms within our legal system. To this end, a major challenge is to navigate the popular sentiments. On many occasions, it is in fact the popular uprise that make us pay attention to where reforms are required. However, curating reforms requires commitment to sustainability, meaning, and rights-oriented goals.

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LAW REFORM

Emergency provisions in Bangladesh constitution

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A common feature of almost every democratic Constitution in the world is the inclusion of detailed provisions concerning proclamation of emergency to overcome an imminent threat to the life of nation by war, external aggression, armed rebellion, internal disturbances, natural catastrophes, and economic breakdown. The concept of emergency, from the viewpoint of constitutional law, means the suspension of and restriction over certain fundamental rights of citizens in order to deal with an extraordinary situation when the security of the State is threatened or the national interest is in peril.

The Constitution of Bangladesh did not originally contain any provision for the declaration of an emergency. As such there was no provision in the Constitution concerning the suspension of the enforcement of fundamental rights under any circumstances. Perhaps the repeated misuse of the powers of emergency by Pakistan, during the days when Bangladesh was part of Pakistan, discouraged the framers of the 1972 Constitution from including in it such powers. Later, a new Part IXA titled 'Emergency Provisions' was inserted by the Constitution (Second Amendment) Act, 1973. This Part contains only three Articles: Articles 141A, 141B and 141C.

The President may, with the prior counter signature of the Prime Minister, declare emergency in his satisfaction, if there exists a grave emergency that threatens the security or economic life of Bangladesh or any part of it, whether by war, external aggression, or internal disturbance. A proclamation of emergency may be made even before the actual occurrence of war, external aggression or internal disturbance if the President is satisfied that there is imminent danger thereof.

According to the provisions of Article 141B, if the President declares a state of emergency, certain fundamental rights shall automatically be suspended including those guaranteeing freedom of movement, freedom of assembly, freedom of association, freedom of thought and speech, freedom of profession or occupation, and rights to property. This means that the enjoyment of those fundamental rights remains restricted during the emergency period, and no citizen can demand the benefit of those rights until the proclamation of emergency is revoked by a subsequent proclamation.

A declaration by the President under Article 141C suspends enforcement of such fundamental rights as are mentioned in the declaration. Thus, this Article violates the Article 44 of the Constitution which deals with the enforcement of fundamental rights. Furthermore, under Article 102 of the Constitution, an aggrieved person cannot approach the court even when their fundamental rights are violated.

Since Article 141B empowers the executive to take any action, it can utilise this power even to violate fundamental rights contained in the Constitution. The rules made and actions taken cannot be challenged on the ground that they are inconsistent with fundamental rights. This power of executive goes against the balance of power among the judiciary, executive and legislature.

During the period of emergency, the Parliament can make any law which is inconsistent with the fundamental right as contained in part III of the Constitution. Thus, the Article 26 which limits the State's power to make any law inconsistent with fundamental rights is violated. The law made cannot be questioned in any court. Thus, the Parliament exercises an unfettered power in making laws at the time of emergency without any fear of judicial interference.

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Emergency provisions were inserted in the Constitution of Bangladesh to protect the State in time of war or external aggression or internal disturbance or to protect the security or economic life of Bangladesh. Later, these provisions were misused.

To prevent the abuse of emergency powers, a specific definition of 'internal disturbance' should be inserted into our Constitution. The detainee should be given all reasonable legal opportunities to immediate and regular access to a lawyer, family members and an unbiased medical board. The Supreme Court can order the payment of compensation to the person arrested illegally or intentionally at the time of emergency as in the case of *Bilkis Akhter Hossain* v *Bangladesh and others*, (1997) .

In times of emergency, the Judiciary has played some crucial roles in protecting citizen's liberty and property rights. In the case of *Nurunnahar Begum* v *Government of Bangladesh*, (1977) it was observed that the satisfaction required by the Emergency Powers Rules of 1975 was an onerous responsibility, which was to be viewed with scrutinising eye so that the liberty was not put into jeopardy even at the time of emergency.

In the case of *Pirjada Syed Shariatullah* v *Bangladesh*, (2009), the High Court Division held that the President's Ordinance making power during state of emergency must closely conform to the Constitution and his satisfaction as to the existence of circumstances necessitating the proclamation of Ordinance is subject to judicial review.

There is no provision in our Constitution for summoning a special or emergency session of the Parliament to monitor and control the emergency situation. This should be introduced in the Constitution. During a state of emergency, a high-powered 'judicial review board' can be established by the government to justify its functions relating to law and order. During a state of emergency, the writ of *habeas corpus* remains suspended. This writ should not be suspended in any situation. The Constitution does not specify how long an emergency will remain in force once Parliament approves it. Thus, provisions should be made in the Constitution to fix a certain maximum period of emergency.

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