



LAW campaign



LAW opinion



LAW week



Is torture ever justified? Citizen's realisation of the Joint Drive Indemnity Ordinance

BASIL FERNANDO

For people of most countries in Asia, the prospective use of torture by state agents long ceased to be a matter for conjecture. It is no theoretical idea at all, but a widely practised one.

When torture is no longer absolutely prohibited, law enforcement attitudes change. Over time, the mentality that torture is acceptable comes to infect the entire system, and even persons accused of normal crimes get the same treatment as suspected terrorists.



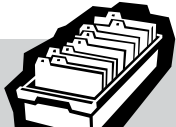
spent in training effective law enforcement officers are undermined. Habits of transparency diminish; falsification increases. Terrorists do not suffer in such an environment; rather, they thrive in it.

Some twenty years ago in my country, Sri Lanka, the use of torture by law enforcement agencies became accepted. Terrorists expected to be tortured if captured, and each carried a cyanide capsule to take as a last resort.

The absolute prohibition of torture is the very core of all rational forms of criminal investigation. Today, many countries are trying hard to improve their law enforcement systems accordingly.

Basil Fernando is Executive Director, Asian Human Rights Commission (AHRIC). Source: Internet.

FACT file



India: Uncovering sexual abuse of children

NITIN JUGRAN BAHUGUNA

The repeated arrest of a male teacher of a reputed South Delhi school for sexual abuse of a four-and-a-half-year-old boy within the school premises has forced Delhi to face up to an issue it has evaded time and again.

Sadly, both the family and the school, the two institutions responsible for the safe upbringing of children react to child sexual abuse with disbelief. What compounds this chilling social malaise is that abusers are more often than not members of the child's family or a person the child knows and trusts.

The accused trainee teacher at the prestigious school run by the Aurobindo Ashram in Malviya Nagar has been charged with sodomy (unnatural act) under sections 377 and 511 of the Indian Penal Code.

A survey conducted by the Delhi Commission for Women has found that over 50 per cent of rape victims in the capital are below 15 years of age.

The problem is the apparent unwillingness of the Delhi administration to include gender sensitisation programmes for teachers in Delhi government schools. In order to dispel misconceptions associated with gender, CSR started a Gender Training Institute (GTI) in 1997.

Activists, however, agree that there is more awareness today about issues of sexuality and sexual abuse and that parents, especially the younger ones, want to talk to their children about these issues but don't know how to go about it.

Significantly, Justice Mallimath, former Chief Justice of the Kerala High Court and former member of the National Human Rights Commission, has been appointed by the government to review the Juvenile Justice Act.

WFS.

ZAHID BISWAS

As a peace loving, law abiding common citizen, I want to present some realisations of the Joint Drive Indemnity Ordinance, 2003 as follows:

Equity and the Ordinance

Every indemnity is in the primary sense opposed to equity and justice, as equity does not suffer a wrong to be without remedy and justice always demands that transgressors will not go unpunished.

Rule of law and the Ordinance

Of course, the Ordinance does not offer complete indemnification for the activities of joint force during the joint drive. It provides for an option to go to the military court or tribunal.

A necessary element of rule of law is that the law must not be arbitrary or irrational or capricious. It should be fair and reasonable. This Ordinance, which deprives the victims of the right to get justice through transparent and public friendly way, can never be fair or rational.



Constitution and the Ordinance

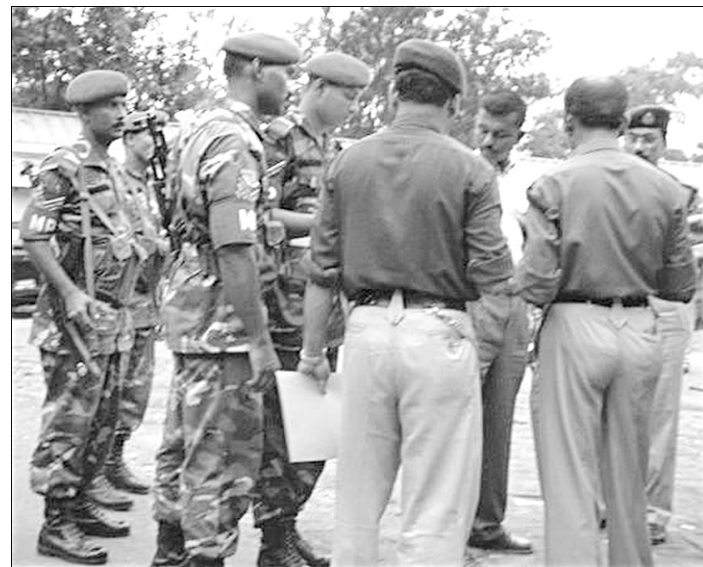
The govt was and is trying to render a constitutional coverage to the ordinance claiming that it has been passed under Article 46. From the through reading of the Article one can guess that there remains no scope in the current context to pass such ordinance.

Here fore, the immediate abrogation of this unconstitutional, inequitable and undemocratic ordinance is being urged.

Zahid Biswas is LL.B (4th year) student of Dhaka university.

LAW letter

Army commits no wrong?



With amidst criticism from different national and international forum the parliament has passed the Joint Drive Indemnity Bill 2003. Earlier the president had issued the ordinance to indemnify all the acts committed by the joint force during the operation clean heart.

Mehar Nigar, Dhaka University.

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What's about the case?

Thanks to the Honourable High Court Division of Supreme Court for declaring the detention of Mr. Saleem Samad 'illegal'. The day, when the two main 'accused' Ms. Zaiba Naz Malik and Mr. Leopoldo Druno Sorrentino were deported from Bangladesh, it was a moral obligation of the government to release the 'accomplices'.

Saleem Samad to get justice. Indeed, those were the best news for Pricilla and Saleem to come out from the jail but I am afraid that this may not be the end of their 'sensational' cases.

Tanbir ul Islam Siddiqui, Shantinagar, Dhaka.

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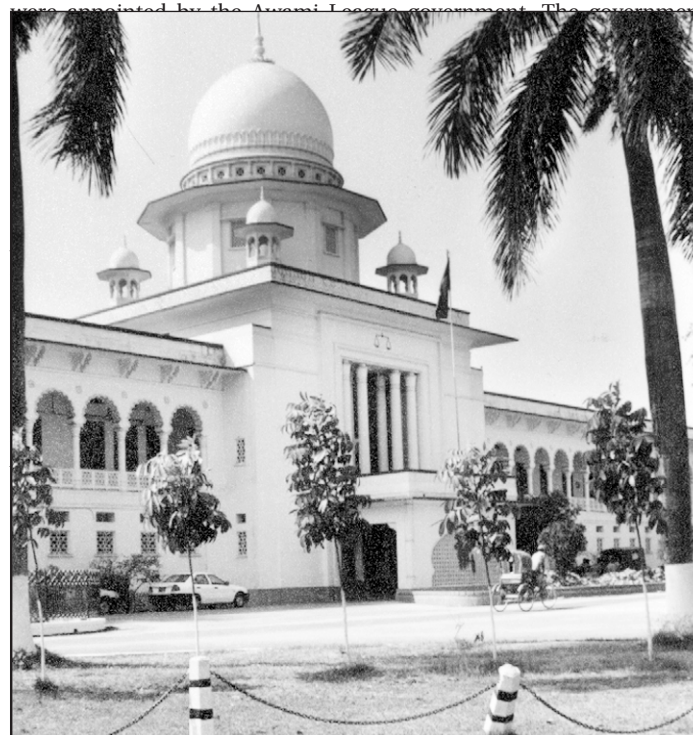
The recommendation of Chief Justice must be respected

The government has decided not to confirm appointment of six additional judges of the High Court Division of Supreme Court of Bangladesh. These six additional judges were appointed for two years by the previous Awami League government.

Sahib, Mirpur, Dhaka.

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The four party alliance government is continuing its endeavour to create unnecessary controversies. This time it is about the confirmation of 8 additional judges in the High Court division of the Supreme Court who



CPC amended, Travel Tax Act passed

The Jatiya Sangsad passed two bills- Civil Procedure (Amendment) Act 2003 and Travel Tax Act 2003. The Civil Procedure (Amendment) Act will introduce Alternative Dispute Resolution (ADR) to quicken disposal of cases through mediation if contesting parties agrees to it.

3 army men face court-martial

A captain and two soldiers will be face court martial on extortion charge. A three-member Field General Court-martial has been formed to try the military personnel. Initially, five were accused of extorting money from an Indian 'hundi' trader on January 29, but two were later found innocent.

Indemnity bill passed

The Jatiya Sangsad passed the controversial 'Joint Drive Indemnity Bill 2003' with effect from January 9, 2003. The bill will give the joint forces immunity to legal proceedings in civil courts for their deeds during the countrywide 'Operation Clean Heart' anti crime drive between October 16 2002 and January 9, 2003.

Six additional judges not confirmed in HC

The government has declined to confirm appointment of 6 additional judges of the High Court Division of the Supreme Court. The Chief Justice had reportedly recommended confirmation of services of eight judges who were appointed earlier for two years at the end of the past Awami League rule.

Money laundering laws amended

Parliament has passed two bills amending the penalty provisions of the Foreign Exchange Regulation and the Money Laundering Prevention laws. The Foreign Exchange Regulation (Amendment) Bill 2003 provides for increasing two year's penalty to four year's for offences related to foreign exchange dealings, including involvement in illegal Hundi transaction.

Law to discourage smoking

The government is going to enact a law to discourage smoking. In the proposed law, cigarettes advertising through print and electronic media or billboard would be banned. This was said by Health and Family Welfare Minister Dr. Khandaker Mosharraf Hussain in a meeting with the leaders of Anti-Tobacco Alliance at Dhaka.

EU team for probe into custodial deaths

Visiting seven-member delegation of European Parliament called upon the government to probe the custodial deaths during the Operation Clean Heart. The team raised different issues relating to violation of human rights in Bangladesh in a meeting with the Law Minister Mr. Maudud Ahmed.

Proper implementation of WCRP Act demanded

Bangladesh Mohila Parishad demanded proper enforcement of Women and Children Repression Prevention (WCRP) Act 2000 and blamed the administrative failure for the release of the accused claiming that the Act is not being properly enforced.

Corresponding Law Desk

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