

LAW opinion



RIGHTS monitor



Without Independent Anti-corruption Commission corruption cannot be stopped

SHEIKH HAFIZUR RAHMAN KARZON

CORRUPTION has become an inextricable global problem creating difficulties for development and good governance. Keeping administrative functions of the governments and activities of political parties at the centre corruption has taken strong hold in all the countries, both developed and developing. Not only the third world countries are encountering this problem, even the developed countries like Japan, France, Italy, U.S.A. etc. are experiencing the vice of corruption. All the countries have been taking various measures to combat corruption, some measures have been proven very effective.

Bangladesh has again been listed as the most corrupt country in the world, a rare success (?) that has been achieved by this delta land for the consecutive third time. It may furnish some sort of complacency (!) for those people who contain agony for continuous poor performance of Bangladesh in all the sectors. The publication of the ranking of the most corrupt countries by the Transparency International brought corruption and its multifarious implications on the table of discussion. Here I try to focus anti-corruption measures of some foreign countries and to make a critical analysis of the Anti-Corruption Commission Bill, 2003 (of Bangladesh) awaiting approval of Parliament and President.

Anti-Corruption Measures of U.S.A., U.K., and Hong Kong
The United States of America is fighting corruption for long time. Nearly 15,000 people have been convicted under the federal corruption statutes in the last two decades. In Illinois it was Operation Gambit, in Tennessee it was Rocky Top, in South Carolina Operation Lost Trust and in Chicago Operation Silver Shovel. Under these operations corruption of hundreds of federal, state and local officials were investigated. Huge amount of money is required to secure an elected office, that's why politicians take money from different interest groups. This is the main cause of political corruption. Federal Bureau of Investigation (FBI) and other investigators are now experiencing new offences like extortion, mail fraud and racketeering.

In all the civilised and democratic countries the public servants form a class by themselves and require special protection of law and subject to rigorous penalties if they deviate from the corresponding duties and obligations. They are the main actors by whom law and administrative policies are being executed, so usually they are accorded with many privileges and immunities. Moreover, they are not directly responsible to Parliament. The administrative officers develop corrupt practices by taking advantage of these privileges and lack of proper accountability to any other body of the state. Mal-administration, abuse of power and corrupt practices of bureaucrats cause unbearable suffering to the citizens of different strata. Neither court nor any tribunal can offer any remedy. Many of them remain unredressed due to the malfunctioning or nonfunctioning of the existing remedy giving mechanism.

Good governance and rule of law administered by a responsible government can ensure a corruption free administration. This type of government can protect rights of the citizens effectively on the one hand, and ensure overall development of the country by keeping corruption unpenetrated into the administration on the other. The responsibility and accountability of government, in the United Kingdom, for long has been ensured by parliamentary questions, vote of censure, cut motion, adjournment motion, no-confidence motion and by committee system. All these modes of scrutinising the activities of administration had become ineffective which paved the way for passing the Parliamentary Commissioner Act, 1967. By this law a Parliamentary Commissioner with independent status was appointed in the United Kingdom whose functions would be to similar to those of the Ombudsman known to the Scandinavian countries. Later on three offices of Health Service Commissioners for England, Wales and Scotland were established in 1972 and 1973. Two Commissioners for Local Administration, one for England and one for Wales were appointed under the Local Government Act, 1974. The Commissioners were appointed for minimizing mal-administration and corrupt practices of governmental departments and authorities.

In the context of unprecedented corruption an Independent Commission Against Corruption (ICAC) was formed in Hong Kong in 1973. Since its inception the ICAC have been directing its 'war' against corruption very efficiently. In course of time this organisation has been recognised as the best anti-corruption unit in the world. It continues its functions with the aid of three departments. With a purpose (1) to investigate the allegations of corruption ICAC does its activities through the Operations Department; (2) to prevent corruption through the efforts of the Corruption Prevention Department; and (3) to educate through the Community Relations Department.

The reason of the high reputation achieved by the Hong Kong Independent



Commission Against Corruption lies in the fact that every allegation of corruption which is pursuable, no matter how small, will be investigated and worked out. Within the system of ICAC the confidentiality of sources from which reports of corruption come have been protected. In fact ICAC has been given draconian powers to achieve its goal. Following the model of Hong Kong, ICAC of New South Wales of Australia and Directorate on Corruption and Economic Crime of Botswana were set up. On the basis of its good record "the ICAC (of Hong Kong) has been described as the Rolls Royce of anti-corruption agencies."

Critical Analysis of the Anti-Corruption Bill, 2003
Corruption has penetrated its teeth into different level of society. Corruption has grown to such an extent that it has become an unofficial truth in the every day life of Bangladesh. From top executive to the lowest staff are coming within the extensive jurisdiction of corruption. Corrupt practice is frequent in business world, political arena, media and even in judiciary. Corruption is a major obstacle in the way of achieving true development of Bangladesh. It constitutes the largest cause for which reputation of Bangladesh is severely suffering in foreign countries. In this context present government has introduced the Anti-Corruption Commission Bill, 2003.

In accordance with the provisions of the Bill, Commissioners of the Anti-Corruption Commission shall be appointed by the President from among persons nominated by the Select Committee. Here Select Committee has been assigned a heavy responsibility of finalising a list of six persons from whom the President shall appoint three persons as Commissioners. There shall be six members of the Select Committee among whom four shall be government functionaries. They are Finance Minister, Minister for Law, Justice and Parliamentary Affairs, Comptroller and Auditor-General of Bangladesh and Chairman of the Public Service Commission [Sections 5, 6 and 7 of the Anti-Corruption Commission Bill]. Here people associated with government constitute clear majority. They can easily execute the will of the government. This, in my

view, is the major weakness of the proposed Bill. Because the selection of the Commissioners should be neutral and fair. Otherwise the people in the good book of the government shall be appointed as Commissioners who will let the government tension free and ensure that government will not be disturbed. In all the countries corruption takes strong hold encompassing the governmental functions and administrative activities. So, the Commission as an institution and the Commissioners as individuals should keep vigilant eye on the governmental activities. So, the selection of the Commissioners should be independent of government. Representative of government may be member of the Select Committee, but they must not constitute the majority.

The provisions providing for the tenure, qualification and disqualification and procedure concerning the removal of the Commissioners are good. Regarding qualification of the Commissioners only experience has been emphasized. The matter of integrity, honesty, sincerity and high reputation should be taken into account and included in the concerned provision.

Section 18 of the proposed Anti-Corruption Commission Bill enumerates the functions of the Commission. The list has been presented in a generalised form without specifying the responsibility what functions shall be disposed of by whom and by which department. The Bill should have provided that the Commission would have three departments/sections for the investigation of the offences of corruption, one for the prevention of corruption, one for making the people conscious about the bad consequences of the corruption.

Section 31 of the Bill provides that, previous sanction of the Commission shall be required to file a suit of corruption. This provision should be more elaborate in providing the rationale and guideline of granting sanction. Previous approval of the Commission in filing a suit shall be required to protect the honest public servants from harassment, at the same time no public servant shall take advantage of the provision that should be ensured.

In accordance with the provision of section 33 the Bureau of anti-Corruption shall be abolished, but its infrastructure, officers and staffs will be attached with the Commission. In this context an apprehension is mounting will the legacy of the Bureau cloud the starting of the Commission?

Concluding remarks
We, the people of Bangladesh, are experiencing social instability and total anarchy. Social transition, titanic inequality, criminalisation of politics and economics, lack of good governance all the factors give rise to this total anarchy. Moreover, private profit economy and satellite culture has developed a consumerist ethos, which causes high rate of criminality and corruption. We require some strong institutions (like Anti-Corruption Commission, Ombudsman etc.) to fight corruption. Simultaneously lesson of honesty and ethics should be given to every child from their home and other institutions of the society. Otherwise the eradication of corruption will remain a distant dream as it remains now.

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An unjust eviction

KAZI ASIF AHMED

Government had deployed joint forces in late 2002 to improve severely deteriorating law and order situation in the country. The drive was named "Operation Clean Heart". It was arranged only for arresting terrorists and putting them behind bars through the process of law. But a macabre event was staged by Army in Comilla. About thirteen hundred houses, three hundred shops were bulldozed and thousands of people were uprooted from their ancestral homes and lands. Army claimed their property by dint of acquisition by British Colonial Government.

At the advent of World War-II British imperial power started war preparation all across its dominions and colonies. As part of war preparation British Govt. sat up a cantonment and an aerodrome in Comilla considering its strategic location. A Cantonment was set up 8 kilometers to the west of Comilla town at Mainamati hills areas. To set up the Aerodrom and Army base the colonial government had acquired 210 and 164 acres of land respectively in eleven villages namely Tomsom bridge, Unaisnar, Asrafpur, Ram Nagar, Noagaon, Kazi Para, Dishavandi, Lakkhinar, Naeura, Dhulipara and Haluapara at the southern end of Comilla town. Accordingly the Aerodrom was set up on two hundred and ten acres of acquired land. Aircrafts used to land and Take-off until 1974. But the 164 acres of land acquired for army base was never used and no base was set up.

A huge Army fort was set up on vast track of hilly lands at Mainamati not far from Comilla airport as cited earlier. So the question arises what necessity now there is to set up army base on this land after about sixty years in the present geographical context? To the best of my knowledge in countries populated areas such as towns, cities are not chosen to set up military bases to keep those away from warfare. Barren lands or thinly populated areas are the suitable place for military installations.

The people of these eleven villages were first uprooted from their lands after acquisition by British in 1939-40 without proper compensation. They took shelter and settled in adjacent areas. After the war, the then Tripura District Magistrate on June 1946 issued a notice asking the uprooted villagers to return to their lands. Accordingly villagers returned to their homes. In 1947 the then Pakistan Govt. started to pay part of compensation of the acquired land, but it was stopped unfinished. People of eleven villages had been living erecting buildings, markets, and business establishments on their ancestor lands, eight kilometers away from Mainamati cantonment.

On 26 December 2002 during the country wide anti-terrorist drive "Oper-



ation Clean Heart" Comilla Mainamati Cantonment Authority ordered people of eleven villages adjacent to airport to remove their houses and shops. The people of eleven villages had not experienced the horror of World War-II, for which their land were taken away. But from the foggy morning of 28 December 2002 they have experienced the furry of demolition by their own Army who were supposed to protect them. Within short notice and without taking any measure for rehabilitation Army bulldozed eleven villages. When people in favour of their ownership showed papers, in some cases containing verdicts and decrees of highest courts of the land, they were snubbed. Where is the remedy of this unjust, unlawful eviction of innocent people from their ancestor's property?

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RIGHTS investigation



When the protector becomes perpetrator

ODHIKAR

IT was the most tragic day in her life. She passed bad times before, but this was the most horrific of all. She came to the house of a police officer with the hope of getting a good job. But she lost the most valuable asset of her life, her chastity, there.

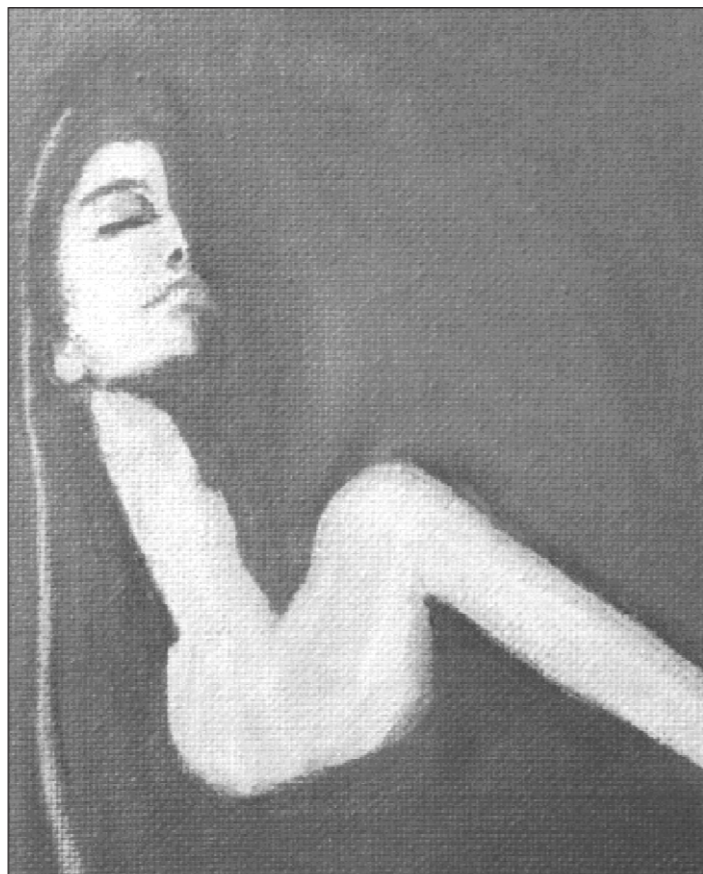
She is Rubina Khatun (20) of Khulna. After her first husband died, she got married for the second time with a laborer of Rupsha river port, Faruk Hosain. Faruk Hosain had already another wife and Rubina became his second wife. With Faruk Hosain and his first wife, Rubina had to pass a very difficult life because she had a two and a half years old daughter, Ruma, from her first husband.

In September last, Rubina became acquainted with Choti Begum in Khulna. Choti Begum proposed her to provide a very good job at the residence of the Officer-in-charge (OC) of Jiban Nagar police station, Shah Alam, in Chuadanga. Rubina agreed and they left for Chuadanga on 11 September. They arrived at the residence of OC in the evening of the same day. The OC came back home at 11 in the evening. He told Choti Begum to keep the daughter of Rubina with her. He took Rubina to her bedroom, gave her a saree and soap and told her to have bath. He had taken a peel then and after half an hour, he forcefully started to have sex with Rubina. The torment on Rubina continued for two hours. She tried to save her modesty from the perpetrator OC for several times, but failed. The 55-year-old OC, whose son-in-law is also a police officer, with all his masculine vigor, molested a weak, destitute woman whom he was supposed to protect. The ravage was unbelievable for Rubina.

After satisfying his perverted thirst, the OC gave Tk. 300 to Rubina and Tk. 700 to Choti Begum and told them to leave his place soon. He also threatened them not to disclose this incident.

Coming out of OC's residence, Rubina and Choti were walking for a while in search of a rickshaw. Finding nothing, they walked for one and a half km. and reached at Jiban Nagar Bazaar. Walking was difficult for Rubina because of the ravage she had just faced. It was early morning and Rubina requested Choti Begum to have something for breakfast of her daughter Ruma. Choti refused to do that and they started quarrelling each other. People in the bazaar area gathered to know the reason. Then Rubina broke into tears and started to tell the people about the misfortune and the terrible experience that she had had last night.

Coincidentally the convener of local unit of Bangladesh Nationalist Women Party, Farhana Akter Rini went to the spot. She took them to Jiban Nagar Thana Health Complex for medical examination of Rubina. The on-duty physicians, observing the condition of Rubina, suggested to take her to Chuadanga General Hospital. Then Rini took them to Thana Nirbahi Officer. He kept Rubina in his care and contacted high police officials of the district. The OC was closed immediately by the district police administration. The Additional Police Superintendent



Mizanur Rahman made a quick intervention in visiting the victims and closing the OC at District police line.

On 13 September, at the intervention of some local human rights organization and District Human Rights Monitoring Cell, Rubina filed a case against the OC

and Choti Begum under section 9(1)/30 of Prevention of Repression against Women and Children Act 2000 (PS case no. 10, date 13/09/2003). Choti Begum was sent to thana custody after filing of the case.

On 13 September, Rubina's statement was recorded under section 164 of the Cr.P.C. in the court of First Class Magistrate. On 15 September, a four-member medical board did the medical examination of Rubina. They found several spots of injuries on victim's body. Blood clot and dead sperm were also found in the private organ of the victim. The medical board has given their report on 16 September. After considering the above findings, the medical board opined that there is definite positive sign of forceful sexual intercourse.

Between 11 and 15 September, several behind-the-curtain initiatives were taken to suppress the incident. Local level BNP leaders and workers of its wings took side of the OC and threatened victim Rubina not to proceed with the case. On behalf of the OC, some people threatened Rubina directly of dire consequences. There were attempts not to do the medical examination of the victim.

Local people informed that even after the incident, several women were found coming to the OC's residence during evening. When asked, one of them told that she came twice to OC's residence and spent night there in exchange of money. The perpetrator OC was arrested subsequently and sent to Chuadanga prison from where he was sent to Kushiha Prison. The matter is now being investigated by Assistant Superintendent of Police Mostafa Abdul Halim. Police Superintendent of Chuadanga Aminul Islam informed that the charge-sheet of the case would be filed very soon.

Odhikar came to learn from field investigation that Choti Begum became acquainted with Shah Alam when he was posted in Rupsha police station in Khulna. Choti's brother was accused in an acid throwing case and Choti was lobbying with Shah Alam to get her brother exempted from the case. Before the incident, Choti received a request from OC Shah Alam to supply him a girl to satisfy his lust. From reliable sources, Odhikar also came to know that OC Shah Alam once received President's award for his good performance and achievement in service life.

On 17 September, the District and Sessions Judge of Chudanga ordered to give Rubina and her daughter in the custody of Bangladesh Society for Enforcement of Human Rights (BSEHR) a human rights organisation. Rubina and her daughter are now staying at the shelter home of the organisation in Dhaka.

Odhikar, a human right organisation carried out this investigation on the basis of a news report titled "OC arrested on charge of rape in Chuadanga" published in The Daily Star on 16 September 2003, with the support of Academy for Educational Development (AED).

LAW news



Violent students to be made liable for loss

In an important ruling, Kerala High Court has ruled that striking students, who resorted to violence in college campuses, were to be dealt with like "any other offender" and should be made liable for any loss to the college property during the strike.

"If the situation warranted, police could enter campuses without request or permission to prevent criminal activities. No special treatment could be meted to the striking students, who indulged in violence, solely on the ground that they were students or the incidents took place inside the campus," a Division Bench comprising Justice Cynric Joseph and Justice K K Denesan on Friday observed.

But since the college was a 'temple of learning', any action on the campus should, as far as possible, be taken with the knowledge of the college authorities, the Bench said.

Making it clear that students on strike had no right to cause obstruction or disturbance to the conduct of classes or prevent others from attending classes, the Bench said students, not participating in the strike, had a right to attend the classes.

Demonstrations, processions and strikes on the campus should be held outside the campus so that no disturbance would be caused to the smooth functioning of the college, the court said.

Courtesy: Press Trust of India