



LAW letter



Death in Custody: Will it continue?

Rule of law is an essential precondition for any civilized and democratic country. We the Bangladeshi people claim our selves to be citizen of a civilized nation. Is it true? I don't think so. Because, to me, there cannot be any offense worst than death in custody in any country in any time. Over the last few days we have witnessed at least three allegation of custodial death. Whenever a person dies in custody, police tries portative the person as drug addicted ( as if the drug addicted persons has no right to justice). I don't know whether any police official has been punished for custodial death or not. After every death in custody, the concern than authority claimed themselves to be innocent and strangely, the high police authority also support them. And for this reason we are developing an environment of impunity. I cannot understand why the high police authority help the offenders? I think, we have to workout some mechanism to stop the custodial deaths. If any custodial death occurs in any thana, the officer in charge should be held liable for that Departmental punishment (which is transfer from one thana to another) is not enough. There should be some punitive action against the offenders to deter the other form doing the wrong.

Jahangir Alam,  
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Let us be more attentive to juveniles

Juveniles are the elite-vein of the society. They are the pillars of progressive nation and the 'crystallised energy stored reservoirs' of the country. They are the builders of future nation and the symbolic representatives of the nation's behavioural system, social values, societal cohesienness so on and so forth. But what is the condition of our juvenile justice system and how the juveniles are (who unfortunately come in contact with the law) treated can be seen, when such reports like 'From fun ride to confines' is published in the news paper [The Daily star-Octo-24].

On August 13 last year, Monia along with a friend boarded a Dhaka-bound train on a fun ride. At the end of the trip, she was sitting at Kamalapur railway station, undecided about her next course. But the officials of the narcotics department detained her for alleged drug trafficking. They were produced before the court of Chief Metropolitan Magistrate, Dhaka, showing aged about 22 years. The court sent her to jail custody. When it was found that she was a juvenile, the jail authorities sent her to juvenile correction centre at Tongi.

Let's take a glance what should be done according to the Children Act, 1974. According to sub-section-2 of sec-13 where a child under the age of 16 years is arrested, the officer in charge of the police station to which he is brought shall forth with inform the parents or guardian of such arrest and shall also cause him to be directed to attend the court before which the child will appear. Sec-50 provides that immediately after the arrest of a child, it shall be the duty of the police officer or any other person effecting the arrest to inform the probation officer of such arrest in order to enable him to proceed forth with in obtaining information relating material circumstances likely to affect the case.

The ends of juvenile justice system in not penalise the juveniles and give them a label of delinquents. Any confinement in a place of safety or correction centre creates guilty feelings among the juveniles and stigmatises themselves before the society, which place a hindrance for their rectification. So no following the stereotype tradition of sending them to any corrective centre, we have to set free them in society on the condition of good behaviour.

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Awaiting investigation

Supreme Court (comprising the Appellate division and the High Court Division) is the highest court of Bangladesh. According to Art 94(4) of our Constitution the Chief Justice and other judges shall be independent in the exercising their judicial functions. They are the real protectors of the rights of thecitizens. But when allegation arises that a judge has taken bribe of 50,000 taka from a client where the dignity of the highest court will go? It is not only the shame for the Supreme Court but also for the nation. We appreciate our President and Prime Minister's action. If the guilt of Syed Shahidur Rahman (the accused judge) is proved, we wish that court will give him severe punishment. People are waiting for that day when he will have to face the court. On that day it will be proved that no people are above law.

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LAW update

Death penalty

Cases and developments in 2003

Thousands of men and women are on death rows around the world, waiting to be executed by the state. Amnesty International members are constantly writing to governments raising their concerns, calling for the prisoners death sentences to be commuted. Here follows a few of these cases.

Iran

Amnesty International has recently learned that Afsaneh Nouroozi is at imminent risk of execution after the death sentence against her was upheld by the Supreme Court. The Supreme Leader of Iran, Ayatollah Sayed Ali Khamenei, is the only authority able to grant clemency at this stage. Afsaneh Nouroozi was reportedly arrested in 1997 after killing the Head of Police Intelligence in Kish, Southern Iran. She allegedly acted in self-defence in order to protect herself from being raped. Afsaneh Nouroozi is being held in Bandar Abbas prison in southern Iran, which is notorious for its poor conditions. Amnesty International has recorded 83 executions so far this year in Iran, although the true figure may be much higher.

Japan

Hakamada Iwao, aged 67, has been in prison for nearly 37 years and Under sentence of death for over 34 years. He is detained in Tokyo Detention Centre. He is said to be in poor mental and physical health as a result of his long imprisonment. Hakamada Iwao was accused of the murder on 30 June 1966 of the managing director of Kogane Miso plant at Yokosuna, Shimuzu City and his (the managing directors) wife and two children. He was again arrested in August 1966; he was reportedly interrogated for periods lasting on average some 12 hours a day, with one period alleged to have lasted over 16 hours, for a period of 23 days. Hakamada Iwao has consistently claimed that he was forced to confess to the charges of which he was convicted. At least 118 people are under sentence of death in Japan, some 50 of whom have had their sentences finalised and can be executed at any time. Prisoners are told less than two hours before execution that they are going to be killed; families and lawyers are never informed of the decision. Most condemned prisoners are held on death row for many years, and endure considerable mental distress.

Nigeria

Ahmadu Ibrahim and Fatima Usman were originally convicted for extra-marital relationship by a Sharia court in Niger State and sentenced, in absentia, to death by stoning in May 2002. They did not have legal representation during their first trial. They now have a defence lawyer working on their case. The lawyer is supported by Baobab for women's human rights, a Nigerian NGO. Their appeal is now pending.

Last year five people were sentenced to death under new Sharia penal legislation. One of them was Amina Lawal whose sentence to death by stoning was overturned by a Sharia Court of Appeal in Katsina State on 25 September this year. Since 1999 new Sharia penal legislation have been introduced in 12 northern states in Nigeria. These new laws provide for mandatory death sentences for consensual sexual relations outside marriage and murder cases.

Saudi Arabia

Saudi Arabian national, Mas'ud bin Ali bin Muhammad bin Gimeshan al-Gahtani may be executed at any time. He was arrested in 1991 in connection with the murder of Musfir bin Ogaym al-Dawsari. He faced an unfair trial and was only informed of his conviction for murder after eight years in prison. Saudi Arabia applies the death penalty for a wide range of offences, which, in addition to violent crimes, include some with no lethal consequences, such as sorcery, certain sexual offences, drug-related offences and apostasy (converting from Islam to another religion). Sentencing occurs after trials which fall short of internationally agreed standards - trials are held behind closed doors and defendants do not have the right to formal representation by a lawyer. At least 40 people have been executed since the beginning of 2003.

USA

John Clayton Smith is scheduled to be executed in Missouri on 29 October 2003. He was sentenced to death in 1999 for the murder of his former girlfriend Brandie Kearnes and her stepfather, Wayne Hoewing, in 1997. John Smith has chosen to drop any further appeals against his conviction and death sentence. He has been diagnosed with mental illness, specifically bipolar disorder with psychotic features, and is on medication in prison. On death row in August 1999 he was treated for an apparent suicide attempt and placed on suicide watch. The USA is approaching its 900th execution since resuming judicial killing in 1977. More than 700 men and women have been executed since 1990, and almost 60 already this year. Those executed since 1977 include child offenders, the mentally impaired, the inadequately represented, people whose guilt remained in doubt, and foreign nationals denied their consular rights after arrest. The US death penalty remains arbitrary, discriminatory and error-prone. More than 100 people have been released from death rows since 1977 after evidence of their innocence emerged. Eighty per cent of those executed since 1977 were put to death for killing whites, even though whites and blacks are the victims of murder in the USA in approximately equal numbers.

Uzbekistan

Amnesty International received information in May that Abror Isaev and Nodirbek Karimov had been sentenced to death for murder. Amnesty International fear that they may face imminent execution. Amnesty International received reports that Abror Isaev was ill-treated in the death chambers of Tashkent prison. Following this he reportedly tried to commit suicide. There were strong indications that Abror became mentally disturbed while on death row; the

authorities have reportedly ignored these signs, in violation of international standards and domestic law. Scores of people are executed every year after unfair trials in Uzbekistan. Many of them were tortured. 'Confessions' extracted under torture are routinely used as evidence in trials. Amnesty International have no exact figures about death sentences and the number of executions in Uzbekistan since there are no official figures. In all cases that came to Amnesty International's attention, prisoners were executed in secret. Their families were often only informed months later; they were not informed about the place of the execution and were not told where their relative was buried. Therefore they do not even have a location over which to grieve. Many search for years in the hope of finding the grave.

Yemen



Spanish national, Nabil al-Mankali, is at risk of imminent execution. According to press reports, President Ali Abdullah Saleh ratified the death Penalty against Nabil al-Mankali on 11 September. Nabil al-Mankali was convicted on charges of planning acts of sabotage and assassination, in connection with a bombing incident in Aden in July 1997. Nabil al-Mankali and 27 others were reportedly tortured in order to force them to confess to the charges. The "confessions" were then admitted as evidence in court and the 27 co-accused given prison sentences. Amnesty International has long-standing concerns about the use of the death penalty in Yemen, particularly as death sentences are often passed after proceedings which fall short of international standards for fair trial.

Developments during 2003

Tajikistan - scope of death penalty reduced

The Tajikistan parliament approved in July draft amendments to the Criminal code proposed by President Imomali Rahmonov. Among the amendments were the abolition of the death penalty for women, for boys aged under 18 at the time of the crime and for men over 60, and a reduction of the articles in the criminal code carrying a possible death sentence from 10 to five. The present amendments will enter into legal force once they have been signed by President Rahmonov.

Europe closer to a death penalty-free zone

On 1 July, Protocol No. 13 to the European Convention on Human Rights And Fundamental Freedoms (European Convention on Human Rights, ECHR), which bans the death penalty in all circumstances, entered into force. Protocol No 13 closes the gap under Protocol No. 6 to the ECHR, which prohibits the death penalty except for acts committed in times of war or imminent threat of war in those countries that have agreed to be bound to it. Only four Council of Europe member states have neither signed nor ratified Protocol No. 13: Armenia, Azerbaijan, the Russian Federation and Turkey. To date, Protocol 13 has been ratified by 18 countries and signed by 23. Paraguay ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on 18 August 2003 and Timor-Leste ratified it on 18 September 2003 bringing the total number of ratification to 51. San Marino signed the Second Optional Protocol on 26 September 2003 bringing the total number of signatories to 8.

Courtesy : Amnesty International.

LAW week



Five died in police custody in October

Five people died in police custody while two women and two children were violated by the law enforcers last month. Of them, three people died in two police stations in the capital and two others were shot dead by police and ansar. This was revealed by a survey report of Odhikar, a coalition for human rights. The report was prepared on the basis of reports published in different national dailies in October. Eight others also died in jail custody. Of them, six died following sickness, another from torture and the other committed suicide. According to the report 34 people were killed, 459 injured and 131 arrested in political violence during the period. Besides, 24 women were killed, six others tortured and another suffered acid-burns. Two also committed suicide on dowry-related incident. The report said 106 rape incidents occurred in October while 11 were killed after the rape, and 52 children were killed, 21 injured, 40 raped, 18 abducted, four suffered acid burns and five committed suicide across the country. At least 30 women also suffered acid burns across the country during the period. Two journalists were injured, one arrested, six harassed, nine threatened and 14 others implicated in cases - Law Desk.

Four cops arrested on mugging charge

Four police personnel of Khilgaon Police Station has been arrested on charge of mugging Tk 2 lakh from a businessmen at Goran. The arrestees are police sub-inspector (SI) Shamsul Kabir, constables Helal and Azhar and Ansar Azad. The businessman Mr. Mahbubur Rahman Sentu said he along with co-traders Montu Mridha and Mohammad Harun of east Aganagar in Keraniganj went to Goran to meet Delwar Hossain to buy garments. At that timem a police team led by SIs Sahmsul Kabir and Shajahan Sabuj barged into the house and challenged them. He said the policemen shouted and frisked their bodies and took away Tk 2 lakh form them. He said SI Kabir ordered his men to arrest them and the policemen dragged them onto the pickup van. Locals rushed to the scene on hearing exchange of the 'angry shouts' between the policemen and the victims. Understanding the cause of the trouble, they caught the policemen, recovered Tk 1.46 lakh from them and handed them over to Arman Ali, officer-in-charge of Khilgaon Police Station and a case has been filed in this connection. -Aker Kagoj, 01 November.

Body formed to frame anti-land grab laws

The government has formed a high-powered 11-member secretarial committee to prepare recommendations for formulation of tougher laws to check land grabbing. Cabinet Secretary Sa'adat Husain has been maid its chairman. The committee will recommend how to protect government and private land from grabbers, recover the occupied land and take legal and administrative action against offenders. Ten other members of the committee are secretaries of communications, home, land, local government, fisheries and livestock, environment and forest, housing and public works, expatriates welfare and overseas employment, shipping and law. The land ministry will give secretarial support to the committee that has been asked to submit its report to the government by January 31, 2004 along with its recommendations. The committee will also suggest streamlining the process of recovering land, identifying characteristics and working patterns of land grabbers and stern legal action against them. A national committee is likely to be formed on the basis of the recommendations of the secretarial committee to deal with public and private land grabbers -- if need be -- by amending the existing or enacting tougher laws. - Jugantor, 03 November.

Defamation suit against top AL leaders

Chief Whip Khandaker Delwar Hossain has filed a defamation suit against 13 central Awami League (AL) leaders of 100 crore Tk for including his and his son's name on a list of "101 BNP godfathers". He filed the case in a court at Dhaka against AL General Secretary Abdul Jalil, presidium members Abdur Samad Azad, Abdur Razzak, Syeda Sajeda Chowdhury, Amir Hossain Amu, Tofail Ahmed, Suranjit Sengupta, Mota Chowdhury and Sheikh Fazlul Karim Selim, advisory committee members ASHK Sadique, SAMS Kibria and leaders Abdul Shahid and Obaidul Kader with the Chief Metropolitan Magistrate's Court, Dhaka. In the case 53 people including 14 lawyers have been made prosecution witnesses. Mr. Delwar alleged that the AL at a press conference at its Dhanmondi office on 16 October published a list of what they termed 101 godfathers run by newspapers the next day. The list damaged his and his son Paban's personal, social and political image, Metropolitan Magistrate Emdadul Haq took the case into cognizance and issued summons upon the accused asking them to appear before the court on 2 December. - Bhorer Kagoj, 03 November.

Charge framing of Frigate case adjourned

A court in Dhaka has adjourned till November 20 the hearing on charge framing against former prime minister Sheikh Hasina in the frigate purchase graft case. Judge Rezaul Karim of the Special Court for Dhaka Division granted the adjournment in light of the fact that a criminal revision already filed with the High Court seeking quashment of the charges against Hasina might be up for hearing shortly. Five others accused in the case were present at the court yesterday. The Bureau of Anti-Corruption (Bac) filed the case against the accused with Tejgaon Police Station on August 7 last year for buying the frigate from South Korean company Daewoo at a price higher than offered by the lowest bidder. Daewoo, the fourth lowest bidder quoting \$99.97 million, was awarded the contract that resulted in a loss of Tk 511.17 crore of public money, the case alleged. After a yearlong investigation, Bac pressed charges against the accused on August 3. - Daily Star, 6 November.

Sweden Aslam gets life term

A Dhaka court sentenced a top criminal, Sweden Aslam, to rigorous life imprisonment in a verdict that convicted him for the first time in the latest in a raft of criminal cases. Judge Mohammad Rezaul Islam of the Metropolitan Special Tribunal-6 said in his verdict that a state-declared criminal like Aslam should be punished to set an example. He observed that people usually feel discouraged to give statements against a state-declared criminal, but the prosecution witnesses in the May 1997 case against Aslam gave statements before court without hesitation. Both the prosecution and the defence completed their arguments on November 1 after the court recorded statements of 11 of 13 prosecution witnesses. Aslam was arrested at his DOHS home on May 20, 1997 after a case was filed with the Cantonment Police Station. A team of detectives led by AC Akram Hussain, now serving his jail term in the Rubel murder case, seized a pistol, a shotgun, a shooter gun, a revolver and six bullets from him. The investigation officer pressed charges against Aslam on July 10, 1997 and the court framed charges against him on January 14, 1998 before the trial began on September 14 the same year. It may be mentioned that another court cleared Aslam of charges in an arms case on 9 October. - Law Desk.

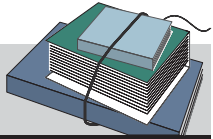
9 policemen sued in Chittagong

A case has been filed in connection with the reported custodial death of sawmill guard Md. Kanchon at Chittagong. Victim's wife Gulzar Begum filed the case with a metropolitan magistrate's court after a Bangladesh Society for the Enforcement of Human Rights (BSEHR) probe report revealed that Kanchon died following torture in police custody. Md. Kanchon, died on Friday (October 31) morning within 24 hours of his arrest by police from his house at Maddhyam Shahid Nagar under Bayezid thana. After hearing the case, the court of Metropolitan Magistrate Monwarul Islam directed the Deputy Commissioner (north) of Chittagong Metropolitan Police (CMP) to investigate the incident and inform the court about the probe report. The case was filed accusing nine persons including Sub-Inspector Tozammel Haq of Bayezid police station, his four colleagues and police source Giasuddin. Police arrested Md. Kanchon, son of Shamsul Haq, from his house at 3.00 am on Thursday and produced him before the court at around noon. He was admitted to jail hospital the same day. Later, Kanchon was rushed to Chittagong Medical College Hospital where the on-duty doctors declared him dead in the early hours of Friday. - Ittefaq, 6 November.

Corresponding Law Desk

Please send your mails, queries, and opinions to: post - Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, 8124966; fax 8125155, 8126154; email dslawdesk@yahoo.co.uk

Star LAW book review



A useful handbook for every conscious citizen

SUBRATA KUMAR DAS

Parliament Kibhabe Kaj Kore  
New Age Publication, Dhaka,  
July 2003, Page: 272 Price: Tk. 200

Parliament Kibhabe Kaj Kore (How Parliament Works) by noted researcher Jalal Firoj has been published recently and thus fulfilled a great need of the politicians and parliamentarians as well as the common literati. The author has dived into every aspect related to parliament and compiled them in two covers which has been published by New Age Publication, Dhaka.

The book is divided into eleven main chapters. The chapters are: i) Parliament: History, Dignity, Problem and Creativity; ii) Parliament and Government; (iii) Leader of the Parliament; (iv) Speaker: Why Impartiality is Essential; (v) Leader of the Opposition; (vi) How Bills turn into Law, (vii) Committee System, (viii) Rules of Procedure of Parliament; (ix) Back benchers: Role and Efficiency, (x) Whip :What and How does, (xi) Parliament and Women. All the chapters are enriched with historical perspective along with comparative analysis. Along with the above main chapters there are tables and 10 appendices.

Let us have a deep look into the first chapter 'Parliament: History, Dignity, Problem and Creativity'. Under the main heading there are: Mother of the Parliaments; Parliament and Democratic Government in the Sub Continent and Bengal; Bangladesh Parliament 1862-2003: From Embryo to

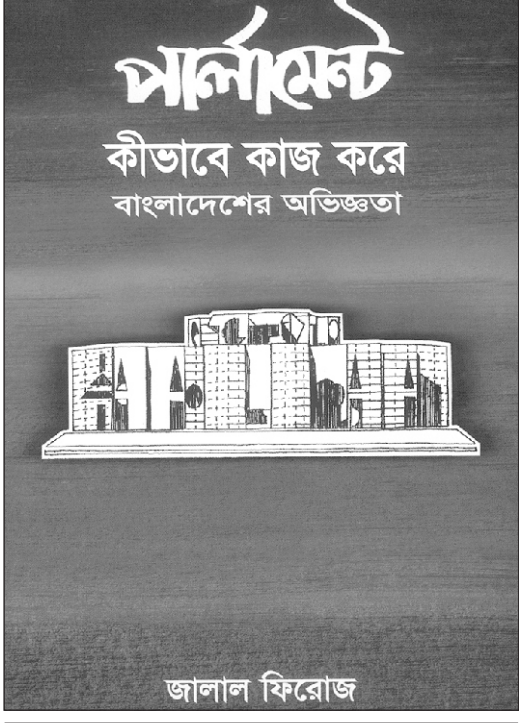
the Full size; Functions of Parliament; Power of Parliament: Its Limitations; Dignity of the Parliament; Dignity of Parliament in Bangladesh; Modern Parliament: Its Challenges; Bangladesh Parliament: Problems and Deficiencies; Bangladesh Parliament: Creativity and Possibility.

The author has not simply collected the information that is commonly available in the government gazettes. Rather all these knowledge are presented in depth and scholarly. No chapters of the books can miss the attention of an eager reader. What more answers can this book on parliament supply with? To this question it is better to translate the flap of the book where the questions have been printed: When did the history of Bangladesh Parliament begin? Did it begin in 1862 or earlier? Were there instances of Parliamentary practices in the ancient and Middle Ages? Where lies the success of Post-Liberation Bangladesh Parliament? Has the Parliament been able to show any creativity by now and in what fields? How do the Leader, Speaker, Leader of the Opposition or Whips work in Bangladesh Parliament? What do the people of country expect from the Opposition Party? Why is the impartiality of the speaker essential? How can the Speaker's impartiality be ensured? Why is the committee system of Bangladesh considered next to that of the USA? What are the responsibilities of the backbencher MPs? How do the women parliamentarians play their role? Where lies the failure of the women parliamentarians? Answers of more questions related to Parliament, Politics, Democracy, Governance, Women Empowerment can be found in this

book.

Now let us browse the tables that have made the book more informative in this way or that. The tables are: The tradition of Parliament in Bengal 1862-2003; Functions of the Leader of the Parliament; Standing Committees, Select Committees, Special committees; Speakers of Bangladesh Parliament; Amendment of the Rules of Procedure of Parliament 1974-1997; Number of Women Parliamentarians in different countries: Women Members of Bangladesh Parliament 1973-2003. Certainly these tables are stores of basic information, which are generally unavailable. The printing error on the content page of the tables may mislead a reader. Pages of the last three tables will be 116, 154, 158. Like the tables the appendices also provide vital information. Citing the titles of the appendices may satiate an enthusiastic bookworm of this review. They are: Speakers of Bangladesh Parliament; Deputy Speakers of Bangladesh Parliament; Leaders of Bangladesh Parliament; Opposition Leaders of Bangladesh Parliament; Women Members of Bangladesh Parliament: Reserved; Session and efficient days of Parliament; State of Political Parties in Parliament Elections; 13 Amendment of the constitution of Bangladesh; and Bangladesh Parliament: Profile.

Regarding appendices, I must appreciate the author for attaching such core information especially regarding the full detail of the amendments of our constitution. But it would have been better if the areas were specified instead of Women seat 1, 2, 3 ... in the appendix on Women Members



of our Parliament: Reserved Seat.  
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