"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH ● dslawdesk@yahoo.co.uk

JUDGEMENT REVIEW

Jonny's custodial death case: Lessons learned from the verdict

ALI MASHRAF

ON September 9, the Dhaka Metropolitan Sessions Judge's Court passed the first-ever verdict under the Torture and Custodial Death (Prevention) Act, 2013 for the custodial death of one Ishtiaque Hossain Jonny. The incident took place on February 8, 2014, after Jonny, along with his brother, was picked up by the police from a wedding ceremony following a vexatious complaint by two police informants. The police tortured Jonny and his brother in custody; the torture led to Jonny's death the next day. The court sentenced the three police officers of Pallabi police station to life imprisonment and the two police informants to seven years' imprisonment for the offence. The court fined each of the policemen BDT 1 lac and ordered a further six months' jail term for failure to pay the fine. It also fined the two informants (BDT 20,000 each) and ordered a further three months' jail term for failure to pay the fine. Lastly, the court ordered each of the policemen to pay compensation worth BDT 2 lac to the petitioners within 14 days, failure of which would bar them from appealing to the High Court Division (HCD) against their conviction.

This is a landmark verdict for several reasons. Firstly, ever since the passing of the 2013 Act, only 17 cases have been filed whereas Ain o Salish Kendra (ASK), a human rights organisation reports that 53 people have died only in the last 8 months in police custody. Hence, this long struggle has finally led to Jonny's family to get justice – making this the first verdict under the 2013 Act. However, this was a difficult battle as his family was pressurised and threatened by influential people and were even proposed a lump sum of BDT 20 lac to compromise and withdraw the case. At one point, the accused even filed a petition to the HCD to get the proceedings quashed. Although the HCD initially stayed proceedings for 6 months, it finally rejected the petition and ordered the trial court to complete the proceedings within 180 days of the filing of the case. Sadly, the trial court took years to dispose of the case.

Secondly, of late, there has been a tendency for justice seekers to directly approach the HCD for violations of fundamental rights. While this itself is a fundamental right, this has a negative bearing upon the existing statutory provisions in place to give relief to the victims. Many similar incidents of police brutality and custodial deaths have been referred to the HCD to be dealt with under its writ jurisdiction, rather than filing a case to the Metropolitan Sessions Judge's Court under the existing law. There is also a trend of seeking compensation under the HCD's writ jurisdiction, not under the statutory provisions already in place. It also tends to show a general mistrust among the citizens in the subordinate judiciary. Hence, this verdict is a welcoming sign as it establishes the notion that it is possible to seek redress under the existing laws and to get the same from the subordinate courts too.

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Thirdly, the life imprisonment verdict also gives a warning to the delinquent policemen of Bangladesh to be wary of their actions. Very often, it is found that these delinquent officers show little, if any, respect to due process under the Code of Criminal Procedure (CrPC), 1898 while arresting and taking the accused to custody. This verdict will give a strong message to them that no one is above the law and that the illegal actions committed by the law enforcing officials will have consequences. Moreover, courts should be determined to order for judicial investigation under section 5(2) of the 2013 Act, similar to what was done in Jonny's case, if such applications are filed by the victims. Besides, enabling third parties to file complaints under sections 6 and 7(1) of the 2013 Act will also help in ensuring the continuation of the trend initiated by the Jonny verdict, of punishing policemen for custodial torture as well as death.

Lastly, a forgotten aspect of this verdict, due to it being the first one under the 2013 Act as well as laying down the maximum punishment of life imprisonment, is that the court also ordered the policemen to pay compensation to the victim's family under section 15(2). Moreover, as per section 15(4), they cannot file any appeal without first paying this compensation within 14 days. This is quite welcoming to see our laws recognise compensation expressly in their provisions. However, the quantum of compensation is significantly low (BDT 2 lac only). The provision needs to be amended to keep up with the needs of time and to ensure complete justice for the victims.

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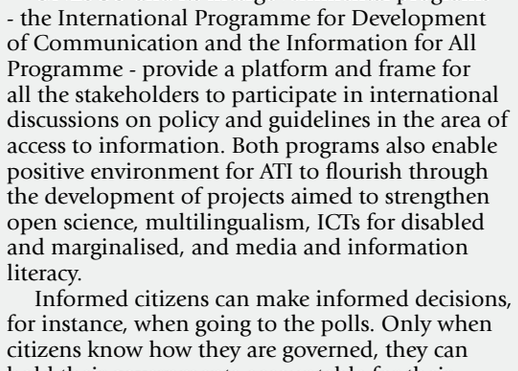
LAW NEWS

SAVING LIVES AND BUILDING TRUST THROUGH ACCESS TO INFORMATION



UNIVERSAL access to information means that everyone has the right to seek, receive and impart information. This right is an integral part of the right to freedom of expression. The media plays a crucial role in informing the public about issues of interest, but it relies on the ability to seek and receive information, too. Hence, the right to universal access to information is also bound up with the right to freedom of the press.

On 17 November 2015, the United Nations Educational, Scientific and Cultural Organisation (UNESCO) declared 28 September as International Day for Universal Access to Information. Considering that several civil society organisations and government bodies in the world have adopted and currently celebrate this observance, the UN General Assembly also adopted 28 September 2019 as the International Day for Universal Access to Information.

The International Day for Universal Access to Information 2020 focuses on the right to information in times of crisis. It also highlights the advantages of having constitutional, statutory and/or policy guarantees for public access to information to save lives, build trust and help the formulation of sustainable policies through and beyond the COVID-19 crisis.

UNESCO and its intergovernmental programs - the International Programme for Development of Communication and the Information for All Programme - provide a platform and frame for all the stakeholders to participate in international discussions on policy and guidelines in the area of access to information. Both programs also enable positive environment for ATI to flourish through the development of projects aimed to strengthen open science, multilingualism, ICTs for disabled and marginalised, and media and information literacy.

Informed citizens can make informed decisions, for instance, when going to the polls. Only when citizens know how they are governed, they can hold their governments accountable for their decisions and actions. Information is power. Therefore, universal access to information is a cornerstone of healthy and inclusive knowledge societies.

COMPILED BY LAW DESK (SOURCE: UN.ORG).

LAW WATCH

Contradiction in Law and Rule facilitates illegal sale of wood

M S SIDDIQUI

THE degradation of forest resources in Chattogram Hill Tracts (CHT) started since British rule due to settlement of plain land people there and nationalisation of CHT forests to protect the same from overexploitation by indigenous people. The management of these resources was vested with the two central government organizations Forest Department (FD) and Deputy Commissioner (DC) with full property rights. The British also formulated some Rules and regulations and codified the Chittagong Hill Tracts Regulation, 1900 and Forest Act, 1927. Now the settlers from plain land and smugglers along with indigenous people are active in the region. The ever-increasing demand for wood is causing deforestations there.

At present, there are a good number of Acts and Rules that deal with the protection of forest and conservation forest resources of Bangladesh. The most widely known forest related law is the Forest Act 1927. The Act was enacted to preserve and safeguard forest in general, both public and private. It has been amended in 1930. Since the partition in 1947, it was amended in 1949 and 1962. After the independence of Bangladesh, the Act was further amended in 1974; however, major changes took place in 1989. In 1989, the Act was amended to strengthen forest protection by providing for stiffer penalties for offenders and restricting the discretionary powers of the forest officials and local magistrates. The authority also issued two rules: The Chittagong Hill Tracts Transit Rules, 1973 and The Forest Transit Rules, 2011. The Brick Burning (Control) Act enacted in July 1989 was intended to ban firewood for brick burning that has been substituted by the Brick Manufacturing and Kiln Construction (Control) Act, 2013 with effect from July 1, 2014 to protect forest resources.

It is mentionable that the Chittagong Hill Tract Transit Rules 1973 was promulgated to regulate the transit of timber and other forest resources through land or water within, into or from the districts of CHT and to control saw pit and timber depot in its areas. There should be no removal of timber without permission and payment of scheduled rate of fees (s 3). Any person importing, exporting or removing woods from within or out of the area should obtain certificate of origin or permit, transit pass from Forest officer or Police Officer.

It is noted that the Forest Act, 1927 has imposed imprisonment for a term which may extend to three years and shall not be less than two months and shall also be liable to fine which may extend to ten thousand Taka and shall not be less than two thousand Taka. However, the Rule of 1973 issued under the Forest Act 1927 has imposed lesser punishment than the Forest Act. The Rule reduced the jail term to 6 months and penalty to BDT 500 for illegal cutting and smuggling of wood. The smugglers, tribal people, local administration and law enforcers are happy with the contradiction of the law and the rule, which facilitates illegal sale of wood and illegal earnings.

In a land mark judgment by Chief Judicial Magistrate Mr Muhammad Shamsuddin Khalid of Rangamati Hill Tract District on March 1, 2016 in case no: Forest 09/2009, questions the difference in the law and Rule and recommended changes in the Rule. The judgment should be considered as historical since the subordinate court hardly gives observation on anomaly of law or rule in our country. The relevant regulating Ministry should amend the Rule to maintain uniformity between the law and the rule.

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LAW OPINION

Some thoughts on the draft Parking Policy

DEBRA EFROYMSON

IT is now quite well-accepted that the demand for vehicle parking in Dhaka City exceeds the existing capacity. Common sense suggests that the solution is to increase the supply, and the government's new draft parking policy seeks to do so. The policy mandates that various businesses, recreational areas, cultural sites, and other places set aside car parking. It also requires that car parking be allocated on various streets.

But how likely is the draft parking policy to resolve the problem it addresses? Might it simply aggravate the problem by allocating ever more urban space to motorised vehicles, thereby increasing their use and further aggravating existing traffic congestion and parking demand?

In city after city around the world, local officials have responded to the demand for more car parking by designating more areas of it. In no city has demand ever been satisfied by the increase in capacity. Car owners continue to complain of insufficient (or, in their minds, overly expensive) car parking, no matter how much is allocated to them; after all, everyone wants to park private transports as close as possible to their destinations, as quickly and conveniently as possible. Local officials race to keep up, demand continues to increase, and nobody is satisfied. Meanwhile, enormous sums of money are spent building parking structures, vast swathes of urban space are given over to motorized vehicles, and quality of life declines for everyone.

What has worked universally to address the insatiable demand for car parking is to address the situation from the opposite angle. Rather than increasing supply to try, quixotically, to meet demand, planners seek to shrink demand to meet existing supply. The most successful cities take a further step by gradually reducing the number of parking spaces available and this has led to cities such as Copenhagen consistently being rated as among the most livable cities in the world.

How does one decrease demand for parking? There are two main approaches.

One is to charge sufficiently high fees, per time and space used, to provide a disincentive to those who would otherwise store their private vehicles in public space for hours at a time. If they are forced to pay something approaching market rates for the space, by increments of time (per hour in less busy areas; per fifteen minutes in crowded places), car owners will think twice before using the streets as their personal vehicle storage areas. If people switch from leaving their car for eight hours to leaving it for just one, then that single parking space can satisfy eight times the number of cars as it did previously. One can exponentially increase parking supply without adding a single space.

The other important approach is to reduce travel by private motorised vehicle through a number of measures that both creates disincentives for their use and creates incentives for the use of more space efficient means that do not have such a high demand for terminal (parking) space. Such policies could include congestion charging, where drivers must pay to enter congested areas. They could include limits or bans on new licenses for cars and motorbikes until the problems they cause – crashes, air pollution, noise pollution, and waste of space, to name a few – decline. It is important to choose measures that have proven effective in other cities, not useless measures such as banning some cars some days depending on the license number.

Incentives for walking, cycling, taking rickshaws, and using public transport would include rewarding rather than punishing those who use such means of transport: providing zebra crossings rather than forcing people to use bridges to cross streets; designating some streets as exclusively pedestrian, and others exclusively for non-motorised transport; giving buses priority on different streets; and providing civic amenities such as trees, water fountains, benches, public toilets and so on that would be easier to provide both in terms of space and budgeting when no longer seeking to prioritise the use of the space-wasting, money-burning private car.

According to a recent study done by *Work for a Better Bangladesh Trust*, at the moment there are 3,30,968 registered private cars in Dhaka. Each car requires 120 square feet for parking (including access lanes). The study assumes a bare minimum of two parking spaces per car (one at home, the other at work/ businesses, etc.). The number of cars times 120 square feet per car times two parking spaces yields 8 crore square feet of parking space. This does not include road space for driving. The study states that with 8 crore square feet of space, we could provide 26 lakh people with workspace; 53 lakh people with a modest home; 91 lakh people with access to a community center; or 5 crore people with access to a playing field or other public space. In other words, in order to accommodate the roughly 5% of the population that owns a car, we are depriving 95% of the population of access to more space in the city. The solution to the space demands of cars, according to the study, is not to continue giving them more and more space, but rather to institute car control measures and incentivise more efficient (and safe) modes of transport.

The draft parking policy should be completely reworked in order to aim at reducing demand for car parking, rather than seeking to increase supply. Only then do we have a hope of beginning the long and direly needed process of helping Dhaka become a livable city.

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