

Homicidal Trend

In an unprecedented tragic incident, a young magistrate Shahida Chudhury met her life's end on Saturday at a city hospital. Unprecedented, not because she is a victim of homicide — for killing has become too regular a matter to qualify so — but because of the alleged killer's occupation. A magistrate himself, Liaquat Ali Khan is reported to be responsible for fatally stabbing the deceased magistrate. It is the involvement of a peer in the murder that lends newness to the poignant story. But then the sense of horror mixed with revulsion in the whole episode confounds us.

What is indeed amiss in our society? The question inexorably continues to trouble our minds. Magistrates as the ultimate symbol of law and order cannot perhaps stoop so low in any society unless it has lost self-confidence and self-respect. The fact that two persons, who have come through extensive tests and training after completion of their respective disciplines, are incapable of restraining the evils in them bodes ill for society. To dismiss the incident as a case of human frailty and fallibility will divert our attention from the real problem. More so if we try to consider it an exception.

There is a perverse tendency to blame poverty and illiteracy for the growing social malaise we are witnessing now. What we actually lose sight of amidst the brouhaha over law and order is the monumental collapse of our moral character and value system. The poor are just paying for the acquisitiveness of the elite few who tend to sacrifice honesty, fairness and the integrity of character for a quick metamorphosis into the so-called and pretentious gentry. The disease has eaten into the very vital of our social fabrics. When bribery and malpractices of all descriptions become the means to rising up the social ladder, magistrate or no magistrate, chances are that the crimes will be committed by anyone notwithstanding his position.

In fact, the moral shock and the sense of mortification that once used to be associated with the ghastly murders have diminished in intensity. This is because of those tragic incidents becoming so commonplace. But this is also because the values that hold a society together have started crumbling all around. Where values and moral judgement are absent, empathy becomes the biggest casualty. Then the trauma of the liberation war in 1971 and the subsequent disappointment have combined together to reinforce the lack of empathy and turn it into an apathy.

In a society short in substances — both material and moral — brutal bullies, monstrous murderers and unrepentant criminals are bound to raise their ugly heads. A magistrate under the circumstances can be as well violent and vindictive. Whatever may be the relationship between the two magistrates — their relations as spouses have been contradicted — in this case, the fact remains that the social arbitrators have failed to settle their personal disputes peacefully and in a nice way — an indication of their professional competence, better say incompetence. The implications of the incident cannot but be grievous because if their education and training, what have gone into the making of what they are, have failed to act as a deterrent in precipitating the tragedy — there is no reason to believe things could be so worse suddenly — then we find few things to rely on.

This will certainly call for a review of our whole social system based on education, administration, religious and ethical teachings, cultural and traditional mores and beliefs. But this is too ambiguous to find a starting point. Better we started with our character, the integrity of which can have immense beneficial influence on society.

The Grim Water Picture

What is the scarest stuff in our national capital? Many would like to answer: decency. That could be so, but only debatably. There cannot, however, be any debate about the shortage of water in the city. Wastage, because of lack of maintenance of public water facilities in the poorer areas and owing to apathy in the pampered rich sections of the city where supply literally drowns the few consumers there — only aggravates the problem and is not by itself the root cause of the shortage.

The WASA position is: Dhaka's 7 million people require 1.27 billion litres of water every day round the year. And the total that WASA produces for Dhaka — and this is capacity production — is 680 million litres a day. Some 54 per cent of the need. The above mentioned problems reduce this to about 40 per cent of the requirement. This built-in shortfall cannot be made good overnight. Some on-going WASA projects, when completed in December, may happily save or add about 150 million litres of water. That can hardly improve the situation in any significant manner.

This picture is not half as grim as the reality of Dhaka indeed is. First, there are a lot more people in the city at this moment. One can add one or two million to the WASA assumption which requires the WASA demand figure to be upped by anything between 1.45 and 1.63 billion litres. That the water supply situation is still in one piece and is working at all is largely due to the fact that many millions in the city do not have a proper homestead and most people in it do not live in what can be reasonably called a house — with running water and power. There is no question of these millions enjoying a fabulous 40 gallon water per person per day — the basis of the WASA computations of requirement.

The situation becomes far grimmer as soon as it is realised that all the WASA water — 68 million litres of it daily — is lifted from underground and not drawn from surface natural reservoirs such as rivers and lakes etc. That is pushing the society inexorably to a disaster the like of which hasn't been witnessed by mankind so far. Fall in the underground water table of the city beyond a certain measure will lead to land subsidence that would cause collapse of all rigid standing structures on the soil of Dhaka.

Who doesn't know if Dhaka has now a 8-million-plus population, ten years from now it would rise at least to 12 million? Where will the extra water come from and how?

We have been regularly cautioning the government, as well as the society, to prepare for eventualities such as this. We do not want to sound like the proverbial alarmists, Noah or Jeremiah. Only a fool can covet vindication of such warnings. We want the warnings to be heeded. Please stop this rush to the capital by improving life elsewhere. Please hurry about reducing the birth rate to 1.5 in a decade. Please make at least half of the population literate in a decade's time. Please stop large-scale power lifting of underground water, if possible from tomorrow, positively in Dhaka and gradually everywhere else in the country.

THE Bangladesh Puja Celebration Committee has decided that this year the Hindu community will not celebrate Durga Puja in the customary way. I am told they will offer puja privately at home without the pomp and ceremony of public celebrations. Obviously this is their way of making a protest. The Puja Committee believes that the government has failed to provide the Hindu citizens of this country a sense of security. After the Babri mosque episode in India, a large number of Hindu temples were destroyed and it is alleged that many Hindu citizens including women were subjected to organized assault by communal forces. It is a matter of profound regret that the government failed to ensure the security of a section of our citizens despite the advance warning about the possible repercussions of the Ayodhya incident in Bangladesh. The decision of the Puja Committee should be seen against the background of these developments. The community has many grievances, big and small and they have failed to get a fair response to their representations. They have therefore taken a very serious and I believe, unprecedented decision, to publicize and perhaps also dramatize their protest.

The right to make peaceful protests is a basic right which everybody must have in a democratic society. I know of some liberal individuals who feel disturbed by the implications of this decision. They would not like the long-standing tradition

The Puja Controversy

A Matter of the Basic Rights of Citizens

of Durga puja to be broken. They wish to urge the Hindu community to go ahead with the Puja in the usual way. They would like to stand by their Hindu compatriots to give them the needed sense of security. While this is a commendable sentiment, one wonders if such offers of assistance by groups of well-meaning individuals can be taken as a substitute for official protection to be provided by the government. Do they not have a right to such protection? In the prevailing mood the right environment for a joyous celebration is not there. The Home Minister reportedly met with some groups of the Hindu community to ask them to celebrate the Puja with as much pomp as befits the occasion. But he did not reportedly meet the Puja committee which would have been the proper body to deal with the issue. What is more important, he has not taken the actions necessary to restore the confidence of the Hindu community.

Is it simply a case of failure on the part of the present government to protect the Hindus and their legitimate interests? I think it would be a mistake to view this issue in such a narrow context. The Puja committee has not, in my view, taken the decision simply because the government failed to protect the procession taken out in Dhaka

on the occasion of Janmastami. It is probably the proximate cause but the underlying dissatisfaction and a sense of insecurity among the Hindu community can be traced to the changes made in the Constitution of Bangladesh since 1975. The assumption of state power by those who never fully accepted the concept of a secular state is the beginning of the problem. The most sacred legal document of the nation,

law? Where was the long arm of law when their temples were subjected to attack by organized groups of communal forces? Why should the Hindu citizens of this country be held responsible for what the Hindu fanatics are doing in India? The fact of the matter is that after the passage of the constitutional amendment changing the secular character of the state the government has followed such policies which have caused the

fraternal relations among Muslim countries based on Islamic solidarity. In any case, it is necessary to put such a provision in the Constitution? When we sent troops to fight against Iraqi Muslims on the side of the United States and Saudi Arabia, where was Islamic solidarity?

When the unarmed Muslims of Bangladesh were being butchered by the thousand by the occupation forces in 1971, where was Islamic solidarity? Did other Muslim countries raise their voice in favour of the oppressed Muslims of this country? Take, for example, the case of Bosnia. Muslim solidarity has proved to be too feeble a bond against the national interests of the Muslim countries. That is why most of them confined their support to the level of rhetoric.

Let me hasten to add that I do not support communal politics. The paper circulated by the Bangladesh Puja Celebration Committee has caused considerable misgivings because of the impression that it creates about the communal nature of some of the demands. Indeed the Committee seems to have taken up the issues listed in the paper as communal demands of the 'minority' community.

In my view, any instance of unfair, unequal or discriminatory treatment of any member of

the society must be regarded as an infringement of the constitutional rights of the citizens. I was under the impression that the politics of 'majority and minority' communities was buried by us in 1971 during the Liberation War when members of every community fought and shed blood for the motherland and side by side. Indeed Bangladesh was born as a protest against the use of religion for political purposes by splitting the society along communal lines.

We recall the horror caused by the politics of 'majority and minority' in the forties. We must therefore resist any tendency to slide back to the politics of even the mental attitude of those unhappy days. The Puja Committee, should not fall into that trap. The rights of the citizens who profess the Hindu religion are fundamental rights and cannot be less than that of others in any way. Any discrimination against them is a matter of concern for the entire nation. We must therefore deal with the problem as a nation and not as communities.

The government has a duty to ensure that the Hindu community must not suffer from a sense of insecurity either in their daily life or in the matter of practicing their religion. The government should also reflect on how the communalist elements may make use of the problem to fan the fire of fundamentalism, extremism and communal hatred. Unless the government takes prompt and effective measures to address this issue, it must be held to account for its failure and the possible consequences.

ON THE RECORD

by Shah AMS Kibria

our Constitution, was tempered with in order to restore the religious orientation of the state. Gen. Ziaur Rahman started the process and Ershad completed it. Curiously enough, when Zia and Ershad made the changes in the constitution there was no public demand for it. We observe with growing concern that the BNP government is adhering to the same blue print which the two previous rulers followed.

Article 28 of the Constitution says, 'All citizens are equal before law and are entitled to equal protection of law.' Are the Hindu citizens of this country getting equal protection of the

current sense of dissatisfaction and insecurity. They no longer feel that they are truly 'equal before law.'

The basic problem in my view, is the inescapable feeling on the part of the Hindu community that while on paper all citizens are equal, some citizens are less equal than others and unfortunately they — the Hindu citizens — are the ones who fall in this category. Even on paper, there are some provisions in the constitution which clearly discriminate against citizens who follow religions other than Islam. Article 25(1) directs the state to 'endeavour to consolidate, preserve and strengthen

The Law Relating to Fatal Accident Cases Needs to be Updated

by M Saleem Ullah

THE law relating to realization of damages for victims of fatal accidents was first enacted in England in 1846, also known as Lord Campbell's Act. But in India it was enacted in 1855 giving right to the legal representatives of the deceased victims of accident to bring law suits for damages within one year from the date of the fatal accident on payment of ad-valorem court fees.

Before the enactment of the Fatal Accidents Act, 1855, there was no legal remedy for fatal accident. The legal Representatives' Suits Act, 1855 was enacted to enable executors, administrators or representatives of the deceased person to sue a wrong-doer for pecuniary loss to the estate of the deceased. This was followed by the Fatal Accident Act, 1855 to enable the legal representatives to sue for damages or compensations. Both Acts came into force on 27th March, 1855, and are in force in Bangladesh as amended.

Of all the laws, the Court Fees Act is the greatest hurdle for the poor victims to realise damages from the wrong-doers. Protracted litigation is another factor. In most of the accident cases the wrong-doers have little at stake.

In the cases where the wrong-doers have no assets or money to compensate, the insurance company escapes the liability beyond Tk 20,000 under the Motor Vehicles Act, 1939. This sum was fixed as far back as in 1939. This was then a considerable amount for the victim's rehabilitation. The position up to 1983 in Bangladesh was that in case of accidental death the legal representatives of the victim were entitled for a sum of only Taka twenty thousand from the insurance company under the Motor Vehicles Act.

In 1983, by Ordinance No 55 of 1983, The Motor Vehicles Ordinance, 1983 was promulgated on 21.9.1983. The Ordinance repealed the Motor Vehicles Act, 1939, and by Section 110 (1) C (iii) the amount of compensation was kept open in order to cover any contractual liability that may be

created under the contract of insurance between the insurer and the owner of motor vehicle.

The present law was enacted with a view to giving benefit to the victims or their heirs, as the case may be, to compel the wrong-doer and the insurance company to pay more. But since there remains scope to fix any amount, the insurance companies find it convenient to cover the third party risk only up to Tk 20,000. Nobody is there to raise voice for the victim's legal representatives.

As the road accidents increased in the cities, the law makers amended the Penal Code and inserted a new Section 304B by Ordinance No 10 of 1982. The law prescribed punishment of either description for a term which may extend to fourteen years, or with fine, or both. But the then government succumbed to the pressure of the truck drivers and reduced the punishment from 'fourteen years' to 'seven years' by Ordinance No 21 of 1984. And the law-makers again reduced the punishment from 'seven years' to 'three years' by Ordinance No 48 of 1985.

Although the legislature made provisions for corporal punishment of the drivers but no law was enacted to enhance the liability of the insurance companies. Since most of the vehicle owners in Bangladesh are from middle class the insurance companies must be made liable to pay reasonable compensation to the victims. There was scope for the insurance companies to offer more than Tk 20,000, but they are not competing with each other to woo the clients. They are operating their business in a calculated way, limiting the contractual liability of third party risk to Tk 20,000, the amount fixed in 1855.

It is, therefore, necessary that amount for compensation for third party risk should be statutory-fixed. The insurance companies may raise the premium. I would suggest that compensation for the third party must not be less than Tk 5,00,000.

In Bangladesh there is no social security scheme under

any law at the Government level to provide succour to the distressed persons. Road accidents are increasing day by day. A family is ruined if the bread earner of that family is lost. The amount of compensation must be raised, and realization of court fees under the Court Fees Act should be relaxed. The court fees may be realised from the amount of the decree that may be passed against the wrong-doer and the insurance company.

In case of an accident, the owner, in addition to the driver of vehicle, is liable in person in the loss for any sum that may be assessed in a law suit as damages by a civil court. A survey in the Dhaka District Civil Court gives a dismal picture about the suits for damages. For instance, Kazi Golam Mahboob, Advocate of the Supreme Court of Bangladesh now President of Supreme Court Bar Association filed a damage suit against a private person but his suit is pending for more than two years as partly heard matter.

In another case a day labourer's son died of road accident in 1978 who filed a case against BRTC in 1979. The suit was decreed for Tk 50,000 but on appeal it was reduced to Tk 20,000. BRTC paid the sum in 1991 but it took almost 13 years to get the damages. In yet another case, a daily labourer was killed by a Bikaipa minibus. His widow, Halima Khatoun, filed a suit for damages on September 19, 1986 for Tk 5,00,000 against the bus driver, Sonali Bank and Dhaka University. The suit is pending in the Second Court of Subordinate Judge, Dhaka.

Fewer Cases
The number of accidents have alarmingly increased in Dhaka and elsewhere in Bangladesh but the cases for recovery of damages are few in number. I have tried to point out the reasons for such state of things.

The Fatal Accident Act, 1855, the Court Fees Act 1870, the Contract Act 1872, the Code of Civil Procedure 1908, Limi-

tation Act 1908, Motor Vehicles Ordinance 1983 and Insurance Act should be suitably amended 304 (B) of the Penal Code be amended fixing a minimum amount of Tk 50,000 as fine. For these types of suits, the Court Fees Act be amended by abolishing payment of court fees by the plaintiff or in the alternative, by making provision to realise court fees from the defendant in case of a decree in Contract Act the provision relating to champerty be deleted. In Limitation Act, present limitation of one year be enhanced to six years.

The suits under Fatal Accident Act should be disposed of under summary procedure, under order 37 of the C.P. Code. The amount mentioned in Motor Vehicles Act be enhanced to Tk five lakhs. Insurance Act be amended making the company liable for the amount that may be passed in a decree in favour of the plaintiff, also making provision for interim payment of damages to the plaintiff.

Relief to Victim
Much has been said and written about road accidents but little has been said about the financial reliefs to the victims through court of law. A new concept named 'structured damages' has been developed in England which is very much beneficial to victims. 'Structured damages' to a victim of a road accident would mitigate not only the sufferings of the victim but also be a deterrent to the insurance company and owners of the vehicles. The owners are viciously liable for the drivers' rash and negligent driving.

In England the High Court in Sheffield in 1991 awarded £ 2.1 million damages to a boy who was severely handicapped as a result of a car crash. The settlement was awarded on January 29, 1991 by Mr Justice McCullough. The award was £ 500,000 higher than the previous highest award for a road accident victim in England. The boy Garylee Grimley, aged 15, had sued his father who was driving the car and the driver of the car. The insurance company ultimately paid the assessed

damages. The action was brought by Garylee's mother, Laura Grimley and supported by his father, Gray, aged 33. It also included a claim against the driver of the other car which was involved in the head-on collision in 1985.

The accident left the boy with several head injuries. After being on a life support machine for three weeks, he was confined to a wheel chair. He has great difficulty in speaking but is mentally aware.

The judgement brought to an end a six year old legal campaign by the family. The award was in the form of 'structured damages' a new mechanism for awarding compensation to the plaintiff. It will provide guaranteed minimum period of 30 years.

On May 2, 1993, upon an application, a Division Bench of the High Court Division comprising Mr Justice Anwarul Hossain Chowdhury and Mr Justice M M Hasan issued a Rule Nisi under the Government and the Drug Administration directing them to show cause as to why all the paracetamol syrups which have been found to be unsafe, causing deaths to children, should not be seized and removed from the market and banned for sale and manufacturing until they are guaranteed as safe for human consumption. Syed Borhan Kabir, a journalist brought the writ petition.

But parents who lost their children would not bring any lawsuit for realisation of damages/compensations for reasons, among others, of the complicity in the existing legal system including the payment of huge court fees. In a welfare state, the law should be for the good of the citizens. The fiscal law for realisation of court fees is the legacy of the British Raj in the Sub-continent. The court

fees for damages must be abolished to afford opportunities to enable the entitled person to bring action to realise the damages through court.

The Bhopal incident compelled India to enact 'Public Liability Insurance Act' which came into effect on January 1, 1993, to make the insurance company liable. We need similar law in Bangladesh. In India the Consumer's Protection Act has provided relief against any misfeasance, nonfeasance and malfeasance which is equally applicable against the doctors. It is a beneficial law for the victim patients.

The procedural laws of our country need drastic changes to make the disposal of the cases easy and the insurance company liable for the damages that may be awarded by the court in a suit under Fatal Accident Act, 1855. There should be a provision of interim damages. No appeal, review, revision, or stay proceeding to set aside or reverse the decree or reduce the decretal amount should be valid unless the judgement debtor pays 50% of the decretal amount to the decree holder. This may give some relief to the victims or the heirs.

It is true that no amount of money can compensate the loss of near and dear ones. But we must be realistic and practical. If damages are awarded to the benefit of the plaintiff of the suit for damages, the family members of the victim will be saved from ruination. The lawyers may help in filing suit for damages. Lawyers should also organise group or association to help the victims of accident or their family members. We must keep pace with the laws of the civilised countries. We must update our laws as such.

(The writer is an Advocate, Supreme Court of Bangladesh.)

OPINION

'Quality Matters'

Shahabuddin Mahtab

This has referenced to your main editorial (D S, dated October 3rd '93), and we thank you for bringing out in the open a critical issue which concerns the whole nation, and urgent attention of the government. We rather feel that the editorial could have been headlined 'Dangerous Drugs, Killer Medicines etc. Here the cases of the

Ayurvedic/Unani/Homeopathic medicines have been discussed in the light of the seventysix cases, filed by the Drug Administration which is praiseworthy. But equally important is the large scale production of substandard and spurious allopathic medicines throughout the country. These brands are referred to as 'Zinjira' brand.

A third world country like ours cannot expect anything like the Food and Drug Administration of the USA, but a lot can be done with the existing manpower of the Bangladesh Drug Administration. We are always complaining of shortage of hands in all organisations, but have we ever thought whether we have been able to make hundred per cent utilisation of our existing manpower? The drug peddlers are given the capital punishment, in many countries of the world; but are not the producers of substandard and spurious drugs in a captive market, a greater threat to the people's lives? But what action has so far been taken against those persons who are

gully? The government policy for producing most of the medicines within the country is a laudable one, only if the medicines produced in the country are effective and meets the minimum international standards. The producers and sellers are entitled to reasonable margins of profit, and not to a hundred per cent one, for the services they are rendering.

Since the editorial discussed here is titled 'Quality Matters', we may move to a wider spectrum, with little deviation. We often come across the adage, 'Buy the products of your own country and be blessed'. How are we going to be blessed, when we are producing shoddy goods? Our markets are thus, full of foreign goods. On the one hand we are being told to buy local products (and most often be cheated), and on the other hand we are being made to pay taxes for the huge losses suffered by the public sector corporations.

In the present world situation the shoddy goods do not sell. It is the excellence of the produced article that wins. The ingredients of reaching excellence depend on a literate population who can follow and understand the instructions given to them; a technical manpower who can supervise; the high level scientists and technologists who can provide the ideas to lead; and the public representatives who can provide the needed trust and political commitment.

Letters for publication in these columns should be addressed to the Editor and legibly written or typed with double space. For reasons of space, short letters are preferred, and all are subject to editing and cuts. Pseudonyms are accepted. However, all communications must bear the writer's real name, signature and address.

Literacy Day

Sir, In Bangladesh, we observed International Literacy Day on September 8, 1993 with the rest of the world. Our President and Prime Minister in their message gave importance on literacy for building developed, prosperous and educated Bangladesh and renewed pledge to work for the eradication of illiteracy. There message is very significant in the light of our present condition. I think the main purpose of this day is to aware the public to send their children to educational institutions. I am sure 80% of the total population have no idea about Literacy Day. But every body has the idea of terrorism in the educational institutions. One day I asked a rickshaw-puller, 'Do you know university?' He replied that he knew that place where supporters of different political organizations fight against each other with modern weapons. I thought his idea was correct.

In our independent country, fighting with arms do occur in universities and colleges. And if such fighting occurs in educational institutions, how the students can acquire knowledge? Eighty per cent of our people live in villages and they obviously think that if they send their children to school, college and university they will learn terrorism. If such idea exists in the minds of guardians, how they will get inspiration to send their children to educational institutions?

In observance of Literacy Day and other day many a speaker delivers speech 'education is the back bone of a nation' and emphasizes on education in various ways. But our back bones are breaking day by day sans treatment and academic atmosphere is going from bad to worse. To acquire knowledge proper academic atmosphere is a must. Government and respective authorities know this. But I do not know why they are not taking stern action to restore proper academic atmosphere in our

educational institutions. There are many universities in the world, but we do not hear any news of armed fighting there, as is happening in our universities. No speech and observance of Literacy Day will be effective unless proper academic atmosphere returned to our educational institutions.

Lastly, I fervently request our government, specially the authorities concerned, to take appropriate action, at any cost, to restore academic atmosphere in our universities. If necessary, please stop all types of political activities for the betterment of our nation. Otherwise, we may become a foolish and illiterate nation in the world by the year 2000 instead of being literate.

Nirmal Choudhury, Dhaka

Polygamy in Islam

Sir, This refers to an article by Farida Huq, 'Woman is born free but everywhere is in chains', published on 9.9.93 in your paper. While appreciating the aim of the writer of the above article, may I point out that the ayat of Sura Nisaa, as quoted there, is incomplete, as it omitted the first sentence of the verse, which is: 'If ye fear that ye shall not be able to deal justly with the orphans'...

(vide 'The Holy Quran', by A Yusuf Ali)

In his foot-note commentary, the renowned author says, 'Notice the conditional clause about orphans, introducing the rules of marriage. This reminds us of the immediate occasion of the promulgation of this verse. It was after Khud, when the Muslim community was left with many orphans and widows, and some captives of war. Their treatment was to be governed by the greatest humanity and equity. The occasion is past but the principles remain. Marry the orphans if you are quite sure that you will in that way protect their interests and their property, with perfect justice to them and to your own dependents if you have any. It not make other arrangements for the orphans.'

Omission of this all-important first pre-condition for taking more than one wife, from among the orphans only [that term includes widows as done by the Prophet (SM)] by our preachers, may be in the interest of male people, circumventing Quranic injunction. The writer of above article appears to have fallen in their trap! I suggest the writer may explore in this light, as banning polygamy here, unlike Turkey, may not succeed.

M S Haider, Lalmatia, Dhaka