

Law and Our Rights

BARRED AND FETTERED

The Use of Fetters in Bangladesh Prisons

by N. Rahim

IMAGINE this, you have been arrested and accused of a crime. One day, for alleged reasons of security, iron rings are placed on each of your ankles. To each ring is attached a vertical iron rod. The rods, meant to meet mid-thigh, although you may be taller or shorter than average, are held in place by another iron ring connected to a rope around your waist. You live in this thing 24-hours a day. You are unable to walk without difficulty and attempts to sleep bring pain and discomfort. The iron rings around your ankles tear at the skin and over time make the skin rough, ridged and discoloured. Your trial date never seems to come. You remain in the thing, and begin to think that you will surely die in it.

The above scenario is more reminiscent of English prisons in the 19th century, not post-colonial. Post-liberation in Bangladesh, unfortunately, the use of the 'thing' is commonplace. The English reference is not out of line, however, as the use of fetters (dandaberi) is governed by 19th century British laws which have not been reviewed since their promulgation.

Use of Fetters in Theory
The Prisons Act 1894 (Act) and the Jail Code (Code) govern the use of fetters. They provide for the use of three types of fetters in Bangladesh prisons: chain fetters, bar fetters, and cross bar fetters. Chain fetters consist of two iron rings placed on the ankles connected by a chain a maximum of 3 feet in length. The 'thing' described above are bar fetters. Cross fetters are a combination of chain and bar fetters. Two iron rings are placed around the ankles connected by a chain. Two iron rods are attached to the rings and are connected to a iron bar placed between the legs to keep them apart at all times.

The Act allows use of fetters for two purposes — punishment and safe custody/transport. Their use is to be regulated by the Inspector General's rules and regulations. The Act explicitly denies lower ranking jail staff the authority to place prisoners in fetters, except in cases of 'urgent necessity' in which case a superintendent must be notified.

Pursuant to the Act, the

Code allows the use of fetters for three purposes: 1) means of restraint when a prisoner is dangerous or violent; 2) to prevent escape; 3) as punishment. Under the Code, resort to fetters is considered a major punishment to be very carefully monitored and documented in all cases. Even when their use is justified under the Code, the maximum period of use is 3 months (240 hours in the case of cross bar fetters), after which 10 days must elapse before reuse. The use of cross bar fetters, the Code repeatedly emphasizes, is to be restricted to 'exceptional' cases of 'extreme violence.' Fetters are also to be properly maintained and changed when worn.

Use of Fetters in Practice
Given that the use of fetters is severely restricted to special circumstances, one must ask if prison officials — those charged with custody of law breakers — are themselves following the law. This is not the case. Rather, accused persons and convicted criminals alike are placed in fetters in an arbitrary manner. Prisoners may be placed in fetters to extract money from them, as a method

of torture, or merely at the idiosyncratic whim of prison officials. Fetters may be kept on beyond the prescribed time or their out of malice or more sardonically, sheer negligence and inertia.

Raju's Case
On 28 November 1992, Raju Ahmed Pannu was arrested and charged for various crimes. In March, 1993, while awaiting trial, he was placed in bar fetters while being transported from Dhaka Central Jail (DCJ) to Madaripur Jail. His letters were not removed at Madaripur Jail. On 22 August, 1993, he was convicted and transferred back to DCJ. The fetters remained, as 'there were too many cases against Raju.' In 1995, a staff person detained with Raju in DCJ informed a human rights organization about Raju's plight. A writ petition was filed with the High Court seeking a Rule Nisi to show cause as to why Raju had been kept in fetters continuously for nearly three years. On 23 January, 1996, the Court issued an interim order releasing Raju, at least temporarily, from his fetters. In a letter to his attorney, Raju wrote that

with his release from fetters, he felt as if he had been reborn. Raju's case will go before the High Court sometime early this year.

Raju's case is truly ironic — how can those who have broken the law develop a respect for the law when it is broken daily before their eyes?

A Fetter by Any Other Name
Raju's case is a clear violation of the Act and Code. But what if tomorrow, prison officials began following those laws? Many questions arise: Would the use of instruments which conjure up images of slaves and chained animals be any less degrading if imposed for three months instead of three years? Is the 'reasonably regulated' use of fetters humane?

International instruments addressing the issue answer no: the use of fetters is unequivocally inhuman. Rule 33 of the Standard Minimum Rules for Treatment of Prisoners, approved by the United Nations Economic and Social Council, prohibit the use of chains and irons as punishment or even as a means of restraint. Regionally, in neighbouring Pakistan, the Sindh High Court recently held that the use of fetters violates human dignity and is unconstitutional (its ruling is being appealed). Courts in India have also restricted the use of fetters (Prem Shukla's case), while an All India Committee on Jail Reform recommended revision of laws relating to their use. Fetter laws in India and Pakistan are nearly identical to those in Bangladesh.

The use of fetters may also be prohibited under the supreme law of this nation, the Constitution of the People's Republic of Bangladesh. Article 35, clause 5 of the Constitution states 'no person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment.' Given the graphic reality of the use of fetters along with internationally recognized interpretations of 'torture' and 'cruel, inhuman or degrading,' it appears that the use of fetters violates Article 35.

But the law, as always is the case, is more complicated than this. Article 35, clause 6, further states that nothing in ...

clause (5) shall affect the operation of any existing law which prescribes any punishment or procedure for trial. If clause 6 is valid, the question then becomes, are the Act and Code immune from clause 5? Not necessarily. Clause 6 only means that the Act and Code are not per se void, but must be interpreted in a manner harmonious with the provisions of the Constitution. In addition, under the rules of statutory construction, clause 6 itself may be invalid, as it may render a preceding provision of the Constitution virtually meaningless.

But does one need to venture into the above constitutional quagmire? For even if the constitutionality of fetters is debatable, one must first ask if they are necessary. If fetters are not necessary, the question of their use becomes moot.

Granted, prisons are dangerous places and security must be maintained. But the rate of escape from Bangladesh prisons and jails is minimal. Furthermore, more civilized methods to control problem prisoners exist, such as curtailing privileges. And it must be remembered that total deprivation of liberty is in itself extraordinary punishment; prisoners, by their very presence in prison, are being punished for their crimes against society. No justification for using fetters exists when less degrading and equally effective methods of control are available.

Fetters continue to be used, perhaps because we are too lazy to review archaic laws or too indifferent to the plight of the most ostracized and invisible among us. Some say the treatment of prisoners reflects the state's treatment of all its citizens. Accordingly, the continued use of fetters in prisons in the name of security goes quite hand in hand with attacks on university students and razing of villages, again in the unassailable name of security. When laws are broken inside of prison walls, we have no right to be surprised when they are ignored outside of them. After all, fascism does not discriminate; at least not for long.

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Prisoner under Bar Fetter — Source ASK

Censorship of Nationalism

by Saira Rahman



Liberation struggle: ultimate target of the Film Censor Board

IN 1994, a well-known film-maker and writer completed a five-year project called 'Nadir Naam Madhumati,' based on the war of liberation. However, to his shock and dismay, the Film Censor Board rejected his application for a censor certificate on the grounds that he refused to excise certain relevant and factually true scenes from his film. In 1995, the Senior Assistant Secretary of the Ministry of Information directed the Film Censor Board to grant a censor certificate in favour of the film, but only on the condition that those specific scenes be removed.

The Film

Tanvir Mokammel's 'Nadir Naam Madhumati' depicts the fictional account of the lives of a family in a small village on the banks of the river Madhumati following the onset of the war. The film shows the Pakistani Army's occupation of the village. Motalleb Member, an influential villager, joins the local Peace Committee and becomes an active collaborator. His stepson, Bachchu, however, flees the village and joins the Mukti Bahini.

Amulya Chakravorty, the village school teacher, opts to remain in his home, despite increasing military repression and the exodus of refugees across the border. Amulya has a young widowed daughter, Shanti, whom Motalleb Member forcibly marries after her father is killed by local razzakars. Motalleb Member's first wife, Bachchu's mother, leaves the home.

In the meantime the Mukti Bahini surround the village as atrocities continue to be perpetrated by the Motalleb Member. The freedom fighters are reluctant to do away with Motalleb because of his relation to Bachchu. Ultimately it is his stepson who shoots Motalleb dead in the middle of the night.

The scenes that the Film Censor Board asked Tanvir Mokammel to do away with if he wanted a censor certificate are recognizable facts, ideas and actions which went through the mind or were performed by some in 1971. The scenes are as follows:

1. While Motalleb Member's first wife serves him food, she tells him of the local razzakars who are killing people. She asks her husband if they have anything to fear. Motalleb Member allays her fears by commenting, 'Are we Hindus or Awami Leaguers, that we have anything to fear?'
2. During a meeting of the local collaborators, talk turns to how the Mukti Bahini are trying to turn the country into 'Hindustan.' The village chairman comments that the whole notion of independence was rubbish and that the Hindus would again become the ruling class. He also commented that the Mukti Bahini wanted the Hindus to return and reclaim the land, estates and homes they had left behind.

3. As Bachchu and another Mukti Joddha walk along the banks of the river, they light cigarettes as the Azan begins in the background.
4. At the end of the meeting of the collaborators, one by one they take turns to swear an oath on the Holy Koran.
5. After being shot by Bachchu, blood seeping from the fallen Motalleb's wounds trails across the floor and touches the feet of Bachchu standing in front of him.
6. Two Mukti Joddhas, including Bachchu, make a foray into the village in search for Amulya and his daughter. On entering a dilapidated building, they question a man standing there. When pressed, he tells them that Amulya and Shanti has been taken away and Shanti is hanging on the wall comes into focus which reads 'Place reserved for building a mosque.'
7. The freedom fighters are taking a rest. One of them recites the story of Hazrat Ibrahim's attempted sacrifice of his son Ismail. As he tells the story, the camera pans to a truncated shot of the torso of a man holding an upraised sword. The camera then shows three men bound and gagged and herded together by a man in Khaki. One of the men is led towards the river bank where the man holding the sword (now recognizable as one of the collaborators) cuts his throat.
8. The scenes of Shanti's marriage and widowhood.

Rules Regarding Censorship

The relevant laws regarding censorship of films are contained in the Censorship of Films Act 1963 (as amended to date), the Bangladesh Censorship of Film Rules 1977 and in Gazette Notification No SRO 478-L/85 of November 1985.

One of the Rules deal with the principles to be followed while examining a film. The Rule states that the authority must consider the following:

1. That the film is not likely to impair the moral standards of the audience by 'extenuating vice or crime or by depreciating social values'
2. The story, incident or dialogue in the film shall not offend the sentiments of any section of the public.
3. The story, incident or dialogue of the film will not have any harmful effect on children under 12.
4. The film does not impair in any way the national ideology, namely, absolute trust and faith in the Almighty Allah, nationalism, democracy and socialism meaning economic and social justice.
5. The film is not a plagiarized one.
6. Observe the third country rule so as to avoid impairing good relations between Bangladesh.

However, the film by Tanvir Mokammel, depicting the personal trauma and tragedy of the war of liberation neither impairs moral standards nor offends public sentiment — and how can a film showing the struggle for liberation offend the national ideology? The Censor authorities forget that history cannot be changed, nor can it be hidden. The scenes they ask to be excised reflect the thoughts and sentiments of razzakars and collaborators who are today roaming around freely with blood on their hands.

The Awami League was the political party of the day in 1971, and Hindus and Muslim lived, for the most part, in communal harmony at the time till the Pakistani Army and local collaborators chalked up a nightmare for them. As for the 'offending' scene of Bachchu and a colleague smoking while the Azan can be heard — even if you walk along the streets today, you find people smoking, eating, talking and laughing when the Azan is being called. They eventually answer the call to prayers by going to pray.

Article 32 of the Constitution of the People's Republic of Bangladesh guarantees the right to freedom of speech and expression. The Article provides that the right of every citizen to freedom of speech and expression are guaranteed, subject to reasonable restrictions imposed by law in the interests of the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incite.

'Nadir Naam Madhumati' has nothing to do with threatening the security of the state nor with destroying friendly relations between states. It does not defame nor is it immoral or offending. It simply depicts facts. There were collaborators and razzakars, an exodus of Hindu refugees did occur, the Awami League was the only 'Bengali' party and we did, eventually, win independence from Pakistan despite genocide, murder and rape by the Pakistan Army helped by local collaborators.

Therefore, the behaviour of the Censor Board towards the film also bars Tanvir Mokammel's freedom of expression as his film does not fall within any of the restrictions permitted by the Constitution.

The Film Censor Act of 1972 gave plenty of space for the freedom of expression but after the Film Censor Code was passed in 1985 during the former President Ershad's martial law regime, a lot of unnecessary restrictions were placed to curtail film-makers. Unfortunately, the Film Censor Board still follows the rules laid down in the Code of 1985. The Film Societies Act of 1978 has put fetters on film societies, and as a result, many such societies have all but disappeared. These are 'anti-culture laws' which were formed by different regimes in the fear that people would be able to voice their dissent against the junta through a cultural movement — like, for instance, some of the movements which led to the war of 1971.

Coming back to his film, 'Nadir Naam Madhumati,' this film and other films on our struggle were necessary to combat the anti-state forces which are trying to take over the country. There is an urgent need to bring back the Bengali ideologies of 1971 to fight against these anti-liberation forces.

According to Mr Mahmudul Islam, Senior Advocate of the Supreme Court of Bangladesh, and Tanvir Mokammel's senior counsel, the right to freedom of speech and expression includes the right to exhibit and see cinematographic films and dramatic performances as being a very important media expression. A reasonable restriction may be imposed by law in the interest of public order. However, for the restriction to be valid, the exercise of the right must have a nexus with the possible breach of a public order.

Lawscape

UN Concern Over Child Prostitution

According to a Special Report on Child Prostitution published by the UN, at least one million children in Asia are working in sex-trade and that has been increased in other part of the world because of the new market for child sex. The report was compiled by an UN special rapporteur looking into the several sexual abuses of children presented to UN Human Rights Commission. This report warns that a number of factors are involved to increase child prostitution.

Firstly, new market for child sex opened in the formal communist countries, particularly Russia and Czech Republic.

Secondly, assembly of child prostitute is safer because of less carried Aids Virus.

Report says in USA at least three hundred thousand children are involved in child prostitution. Throughout Asia, report says, one million children are believed to be working in the sex industries in slaves-like conditions. Sri Lanka, as to the report, is known as a paradise as a good number of young boys are working in slave industries. Report warns that inter country adoption of children may be used in trafficking for prostitution and pornography.

The special investigator also finds that children are sold for the purpose organ transplant. — Law Review Media Cell

Reader's Column

Now We Need A Renaissance

by Jabelul Haque

Let me start with the retrospection of a former student of the University of Dhaka on his 'university life' who is at present a reliable managing director of a state-run bank. While talking about the past, the present bureaucrat (ex DU student) availed himself of the opportunity of comparing today's campus vis-a-vis the campus of that day. As the ex student deplored, 'Dhaka University of the '60s now seems to have got old after running a long race, today he hardly visits to his 'once favourite heaven' (fearing bullets or bombs, may be) but desires to have at least one 'exceptional' visit even at the eleventh hour of his life, when the once called 'Oxford of the East' would really get back its lost form.

To tell the truth, our Dhaka University of today is out of form and very jaded one. It has lost its rhythm, it has forgotten once how it would lighten the nation like the sun. My issue is however, not only to state the glorious past or turbulent present of the apex centre for learning of the country, but beyond academic curriculum I want to state something on its recent moral downfall and social degradation in general and the 'police

attack' on the unoffending students of the Jagannath Hall in particular. I would like here to concentrate on the facts that took place in the Dhaka University dormitory where students of minor community stay.

From the February 5 Focus page of the 'Daily Star' we have got a partial estimation of some innocent student's sufferings as well as the boundless power imposed upon our law enforcing bodies with what they could make the meritorious students of the country vulnerable. The Daily Star's Focus page of February 5 also made us able to conceptualize how the government-inspired and assisted 'police boot' to violate law and human rights and how these universal laws could protect the unoffending students from such 'police aggression'. As an eye witness, I have also something to add in regard to that middle age style brutal acts.

At the closing moment of twentieth century we claim ourselves to be civilized by the dint of our rationality and experience as human beings. As citizens we reasonably hope to have a peaceful life governed by objective laws irrespective of different trends and communities. Besides, as an inde-

pendent country, from the very outset of its emergence, Bangladesh has the principle of a 'peoples republic' which is obviously secularized one. No government as well as its powerful force possess the right to turn it 'theocratic' or any particular religion based entity. Torturing of followers belonging to any minor community out of poor motivation is thus clear violation of Bangladesh's principle as a secularized state and it is not less than violation of constitution (as present the government is determined to save it). From this angle of vision, have not our law enforcing agencies showed the thumb against objective laws of our country?

Dhaka University has perhaps the brightest example of communal harmony on the whole subcontinent since its outset until 1947. To this regard, we may put up its glorious past until the political and communal unrest of 1947 when the Indian sub-continent was divided into Islamic Pakistan and mostly Hindu India. Before this break of our Dhaka University was going on in the field of knowledge with enviable reputation like a family despite the British colonial role. In fact Dhaka University had its golden age in the field of science when it had world-known scientist prof S N Bose as a teacher. Prof Bose along with his scientist colleagues (most of them belonging to Hindu community viz, K S Mitra, K Banerjee, S M Krishna

and so on) dedicated for the students of this university in studying science. For instance, the discovery of 'Bose-Statistics' is paralleled to none for which Dhaka University can feel glory even today. According to today's scientists, Prof Bose should become 'Nobel prize' rewarded for his priceless contribution to Physics and Statistics.

But due to the clash between Hindu and Muslim community in the subcontinent lasting over a decade in the late 40's, the university had to face an unprecedented set-back. It had to face an irreparable loss when a large number of dedicated teachers including Prof Bose resigned from Dhaka University and mi-

grated to India. Unexpected political unrest hindered its way to become one of the greatest learning centres in this region. Even today, it is difficult to find a replacement for Prof Bose but we lost him when we failed to provide security for the minorities. Has not there any conformity between communal clash of 1947 and 'police attack' on the unoffending students of Jagannath Hall in 1996?

Today, a great uncertainty is hanging over our national life. But Dhaka University took the leadership every when our nation needed in the past.

Jabelul Haque, Department of International Relations University of Dhaka.

Hawala Scandal: A Chance to Fight Corruption

A scandal has incriminated India's three top political parties for the first time, leaving some wondering if their nation will overhaul campaign finance laws that have long allowed corruption, reports AP.

Since January, the Central Bureau of Investigation has charged 24 politicians with taking kickbacks or illegal contributions from a business family between 1988 and 1991.

More indictments are expected as the CBI examines

two confiscated Jain family diaries that contain the initials of 115 politicians and bureaucrats who allegedly accepted bribes.

Seven Cabinet ministers from the centrist Congress Party have resigned. And the two opposition groups, the Bharatiya Janata and Janata Dal, have both seen top officials forced out of office.

Coming two months before a general election expected in April, the 18 million dollars scandal could leave the three parties tainted and unable to win a majority in Parliament.

The scam also has further blackened the reputations of politicians, even ones who haven't been charged.

Last week, for instance, during a lavish wedding ceremony in New Delhi, two top Congress Party politicians showed up to bless the bride and groom, in keeping with an ancient tradition.

So many people in the crowd glowered at them and kept their distance that the Cabinet minister and the Parliament speaker soon has to leave, according to one of the guests.

But that doesn't mean the scandal has left everyone pessimistic.

Many people hope that the scandal will clean up politics. 'People have long heard about corruption at the highest levels, but they had no evidence,' said S Ganbhir, 82, a retired business executive.

'There must be 1,000 Jain families out there paying off politicians,' Mathur said. 'We all know that.'

In a separate interview, E. Sridharan, a political analyst at the respected Centre for Policy Research, agreed.

'The scandal could prompt serious moves to real electoral reform, better campaign finance laws. It is now in the interests of all the major political parties to do this,' he said.

'It may even be in the interest of the political parties to institute a system of state funding for elections.'



Garfield®

by Jim Davis

