

## Law and Our Rights

The Proposed Nari O Shishu Nirjatan Domon Ain, 1998

### Do We Need Yet Another Meaningless Act?

by Fazlul Huq and Shahdeen Malik

**In the backdrop of these reactions, our comments go a step further to argue that such a bill, if enacted into law, will only compound the situation and detrimentally affect the children and women as victims of the crimes. Instead of affording greater protection to children and women and imposing sterner punishment of criminals as deterrent, this bill will make it almost impossible to convict and punish criminals for their crimes committed against women and children.**

and provisions. Instead, we shall register our thematic opposition to the bill in the following paragraphs, ending with suggestions for an alternative approach.

First, sterner punishments hardly ever lead to more deterrence and lesser crimes. Over the last two decades, a number of special laws have been enacted against particular crimes, but the end result has not validated the perverse rationale that stricter punishment will reduce crimes. Those who assert otherwise are perhaps not very familiar with the history of crime and its prevention, nor the rationale of the criminal justice system.

Furthermore, there is hardly any empirical evidence from any legal system anywhere in the world in recent decades to indicate that harsher punishment have demonstrably reduced crimes. If the number of crimes have actually fallen, it was mostly due to other factors. However, we recognise that

harsher punishment is a populist demand to which all sorts of governments are prone to succumb to.

We are sure that after almost three years of the operation of the Repression Against Women and Children (Special Provision) Act, 1995, the Cabinet and the concerned Ministry is well aware of the fact that not only a very few criminals have actually been convicted under this special law but also that abuse of the law has resulted in incarceration of hundreds of innocent persons and unabated malpractice.

In other words, the Cabinet and the concerned Ministry, having looked into the relevant numbers, must be aware of the futility of persevering with another similar law. The fact that they are, nevertheless, doing so is indication enough of the lure of quick fix in such matters and, perhaps, demonstrates a reluctance to undertake any fundamental reform of the law enforcement and judicial system.

Thirdly, whenever harsher punishment has been prescribed, it has inevitably led to more misuse of law, abuse of the legal process and increased opportunity for malpractice by the law enforcement agencies and other related bodies.

Fourthly, we are also agast at the deployment of the death sentence by the bill. Our Penal Code, drafted almost a century and three quarters ago, and enacted in 1860, contained only

seven 'death sentence crimes', i.e., restricted death sentence to only seven crimes (sections 121, 132, 302, 303, 307, 364A and 396) amongst its 511 sections.

In contrast, the 1995 Act had nine and the current bill has eleven death sentence crimes amongst its 36 sections. If progress is measured by the number of crimes for which we impose death penalty, we have certainly come a long, long way. However, we must not forget that harsher and more severe punishment only brutalises the society, such punishments do not reduce crime or deter would-be criminals.

Fifthly, special penal laws such as this one will inevitably lead to the creation of confusion and contradictory norms and principles in the legal and judicial systems, ultimately jeopardising enforcement of not only the special laws but of general laws as well. Special laws create division, subject the law enforcement and judicial system to pressures of further malpractice and erode the already low level of confidence of the populace in the legal system.

Now moving on to alternative approaches for reducing crimes committed against children and women, we would like to point out that almost all the crimes brought within the purview of the bill have already been dealt with sufficient clarity in the Penal Code (for example, sections 326, 364A, 372, etc.) with provisions for adequate punishment (for example, up to 10 years imprisonment, death sentence, and again, up to 10 years imprisonment, respectively, in the sections cited above). Hence, given the will to enforce the Penal Code we do not see why the criminals can not be adequately punished under the existing law.

The problem lies not in the substantive law, i.e., laws defining crimes and prescribing punishment, but in the mechanism to enforce these laws, including the absence of accountability of the police and law enforcing agencies. Hence, the focus of reform should be in the relevant portions of the criminal procedure code. The reform should also include provisions for accountability of those who are in charge of processing criminal acts and taking those to trial; availability of adequate resources, both human and technical, for investigation. In addition, organisational and structural changes such as creation of separate (from police) investigating agency and a permanent public prosecution service, instead of ad hoc appointments of Public Prosecutors and Assistant Prosecutors as political rewards for supporting the ruling party needs serious re-consideration.

As far as we are aware, the Law Commission was not consulted about this bill. This is very unfortunate. The government has deservedly claimed a lot of credit for establishing the Law Commission. We are fortunate to have a former Chief Justice and two retired judges of the Supreme Court as its members. However, the government, in its haste to enact yet another law, may have forgotten to look into section 6 (d) of the Act establishing the Law Commission. Section 6(d) of the Law Commission Act lists laws regarding children and women as one of the Commission's specific area of responsibility. Will it be too much to ask, particularly in the context of the Law Commission Act, if we humbly suggest that the body best suited to look into the matter, i.e., the Law Commission, be requested to do so.

Lastly, if we have excelled in anything in the last two decades, it must be in the arena of enacting horrendous laws. Also, in the past we hardly had a law minister worthy of the exalted post and that was one of the main reasons why the civil society did not engage in any dialogue in the law making process. Hopefully things will change and our present Law Minister will continue to demonstrate his sensitivity about good laws by not succumbing, like his predecessors, to the fantasy of populist legislation.

The writers, both advocates, are Secretary, Madaripur Legal Aid Association and Advisor, Bangladesh Legal Aid and Services Trust, respectively.

THE Cabinet approved the Nari O Shishu Nirjatan Domon Ain, 1998 on 30th March, 1998. Since then a number of women's organisations, including Bangladesh Mohila Parishad and Shommitto Nari Shamaj have voiced their opposition to the proposed law, as has Ain O Shalish Kendra and other human rights-legal aid NGOs and Legislative Advocacy and Participation of the Civil Society Project.

Maleka Begum and Nahid Sultana have commented adversely on the bill, in their respective newspaper articles. Recent editorials in the national dailies such as the *Bangla Bazar Patrika* (1st April), the *Ittefaq* (2nd April), *Bhorer Kagoj* (4th April) have also been quite critical while that of *Muktakantha* (1st April) seems to have reserved its judgement.

In the backdrop of these reactions, our comments go a step further to argue that such a bill, if enacted into law, will only compound the situation and detrimentally affect the children and women as victims of the crimes. Instead of affording greater protection to children and women and imposing sterner punishment of criminals as deterrent, this bill will make it almost impossible to convict and punish criminals for their crimes committed against women and children.

#### INVESTIGATION

### Mysterious Death of Arun Chakroborty in Police Custody

by Odhikar and ASK

ON The 23rd January 98, a young man named Arun Chakroborty met a pathetic end of his life in the custody of Detective Branch, Police. There have been two contradictory statements on the death of Arun, one by DB office and the other from Arun's bereaved family.

Odhikar and ASK (Ain O Salish Kendra), tried to unearth the actual cause of Arun's death in the police custody. As a part of investigation procedure, investigators inspected the place of occurrence, interviewed Arun's widow and neighbours. They also interviewed Mr Saleh, Sub Inspector of DB, the complainant and his family, the physician of Orthopedic Hospital, who operated Arun, in addition to that, they scrutinised registers of Orthopedic Hospital, Sher-e-Bangla Nagar.

After Arun's death, the DB Police published a press release that, Arun was suspected to be an accomplice of a dacoity, for that, they arrested him. Police further asserted as per Arun's confession, they recovered a VCR and when they went to recover some arms hidden on the top of the roof of Arun's house, Arun jumped from the top of the roof to escape and got fatally injured. Arun succumbed to this injury while undergoing treatment in the Orthopedic Hospital. When investigators from Odhikar and ASK went to interview Mr Saleh, who led the said Arm Recovery Operation he mentioned the same story as it was given earlier in the press release. When he was questioned about the vague possibility of handcuffed Arun's escape from the tight police custody, he could not provide a satisfactory answer to that.

It was Mr Saleh (SI-DB police), who filed a case against Arun on the said incident of his attempt to escape from police custody. The case was registered at Sutrapur Police Station, case No: 72 dated 23rd January 1998. After the fateful death of Arun, Shah Alam Bepari SI-DB Office Dhaka, filed an unnatural death case (UD) in Tejaon Police Station, and the case no is UD-4, dated 23.1.98.

While giving a statement to investigators, Arun's widow

Sabita Chakroborty narrated a different story. On the 21st January '98 at about 2 pm some people in civil dress arrested Arun, claiming themselves as officers of DB police. On the 23rd January '98 at about 1:30 am after about 36 hours from Arun's arrest, someone knocked her door and when challenged, Arun in a very faint voice asked her to open the door. On opening the door, she found 10/12 civil dressed police, of them two held Arun tightly in handcuffed state. As per Sabita, Arun gave a tortured, fragile look and the policemen did not allow Sabita to talk to him. Policemen then dragged Arun to the roof of the five-storied building, and few minutes later she heard a sound of heavy thing dropped from the roof. After a while she also heard people's shouts from the roof telling, 'He (accused) has escaped.' Sabita came down and discovered that, those police and some people carrying Arun to put him into the vehicle, in which, they came. Policemen did not allow her, to have a glimpse of Arun. On the 23rd of January '98 at about 7 am a person from Sutrapur Police Station informed her that Arun had become seriously ill and was under treatment in Orthopedic Hospital. He suggested Sabita to go to that hospital. At about 10 am Sabita went to the hospital and there she heard the news of Arun's death. Policemen were posted there and they did not allow her to see Arun's dead body. Only at about 1:30 pm, Sabita was allowed to see the dead body and they sent her back. Later on at about 5 pm, she received a telephone to go to hospital, accordingly she went there. A Magistrate came there at about 7 pm and told her to sign a blank sheet of paper and she did so. At about 9 pm they, at first, took the body to the Tejaon PS and then to the Dhaka Medical College Morgue. The following day (i.e. 24.1.98), at about 10 am Sabita went to the morgue, but, a doctor came at about 1:30 pm for post-mortem, which was held at about 2:00 pm. At about 2:30 pm Sabita set out for home with the body but 2 trucks of police followed her and the

deadbody. Before cremation policemen and few other insisted Sabita to complete cremation without any delay. Those two trucks of police followed Arun's deadbody till cremation was over.

Sabita further added that, Arun's body contained the marks of dark patches on his both legs, face and forehead. She also added that, there was no allegation nor cases against Arun before and that he was never arrested nor Police came to his house. Sabita said, while they (police) dragged Arun to the roof, he was feeble and fragile. He was handcuffed and also guarded by 10/12 police men. In fact there was no way for Arun to escape from such girdle.

Sabita asserted that, the police killed Arun for reasons best known to them.

In this case, where Arun was a suspect, while examining concerned files investigators found in the register of Sutrapur PS that one Mr Shahidur Rahman Khan of Padmanidhi Lane on 18.1.98 filed a FIR in the Sutrapur PS. The number was 61, dated 18.1.98. It was mentioned in that FIR that a dacoity took place by 3/4 unidentified youths. But the name 'Arun Chakroborty' or any other name had not been mentioned anywhere in that FIR. They interviewed, Shahidur Rahman Khan and Mrs S R Khan who claimed that, they had recognised Arun. But when they were asked why then, they did not mention Arun's name in the FIR, both of them could not answer anything.

Odhikar and ASK team went to Tejaon PS and examined their register, where they found the inquest report attached with the case (Tejaon PS case No. 61 dated 23.1.98). There it was mentioned, Arun's deadbody contained following marks: a two inches long black mark on the forehead over the right eye, in the side of left eye there was also a round black mark, while in the centre of the forehead a small sore mark was prominent. Besides these, the upper side of the right elbow showed marks and bruises. Similar marks appeared on the left knee and sore marks were also on the joint of victim's

both feet. On the 23rd January '98 at about 7:35 pm Metropolitan Magistrate Mr Md Anisuddin Manzur prepared this report in Orthopedic Hospital. They discovered that, Arun was admitted to the said hospital on the 23rd January '98 at about 7:35 pm. His admission registration number was 0311810. In the register, it was mentioned at the time of admission, Arun's left arm was broken. In another register (the one kept by the Ward Master) the reason of Arun's death has been explained as death due to head injury and shock. The most important thing which should be noted that the register contained overwriting. Dr Khaled Mosharrif (CA Red Unit) of Orthopedic Hospital who did the operation in Arun's body, in his interview disclosed that the injuries/marks on Arun's body were suspicious.

Questions and contradictory views those came up through the investigation are as follows:

1. As there was no previous cases or complaints against Arun, so, on what basis he was suspected as well as arrested?
2. The informant did not mention Arun's name in his FIR. But later claimed that he recognised Arun at the time of dacoity. Is there any role of police or anybody behind these contradictory statements?
3. Was the rule followed in the case of Arun that, the accused has to be produced before the court within 24 hours of arrest?
4. Can a sick and handcuffed person (i.e. Arun) venture an escape attempt from roof of five-storied building from the custody of 10/12 police men?
5. Why police in the case of Arun, did not allow anyone to witness the operation of recovery of arms although law requires that civil person should be present at the time of recovery and search?
6. What caused the marks of those injuries in Arun's body?
7. What interest police had behind cremating the body hurriedly?

Odhikar and ASK urge the Government and concerned authorities to take necessary steps in this regard urgently.

## Landscape

1-15 April, 1998

### Trends of Human Rights Violations

According to the news, published in The Daily Star, *Bhorer Kagoj*, *Ittefaq*, *Janakantha*, *Daily Inquilab*, *Banglabazar Patrika* and *Sangbad*, during 1-15 April, 1998, the highest cases of human rights violation were murder. Then comes, rape, injury, kidnapping, death & oppression under custody and death by mass beating respectively. The cases of death & oppression under custody included the incidents of oppression and death under police custody, as example, in thana *hajats* or elsewhere by police and other law enforcing agencies. Besides, there were incidents of murder after rape, child oppression and murder, acid throwing, *fatwa*, etc. In the cases of acid throwing and kidnapping, the female victims were considered only. The rest of the cases were identified according to the gender of the victims.

Against these incidents, 66% cases were filed and 23% of all the accused could be arrested by the law enforcing agencies. It, however, shows the instant picture, published in the newspapers. No cases were filed in the cases of oppression and death under custody, *fatwa* and political injury. None of the accused could be arrested instantly in the cases of murder after rape, acid throwing, child oppression and murder, oppression and death under custody, *fatwa*, death by mass beating, political murder and injury and murder by muggers/dacoits. The chart below shows the details:

Type of Human Rights Violation	Case filed	Case not filed	Accused arrested	Accused not arrested	Total cases recorded
Rape	36	15	20	31	51
Murder after rape	1	---	---	1	1
Kidnapping	4	---	1	4	4
Acid throwing	2	---	---	3	2
Women oppression & murder	14	6	7	2	20
Child oppression & murder	1	1	---	13	2
Oppression & death under custody	1	3	---	3	3
<i>Fatwa</i>	1	---	---	1	1
Death by mass beating	2	1	---	3	3
General murder	24	9	7	26	33
Murder by dacoits/muggers	5	5	---	10	10
Political murder	4	---	---	4	4
General injury	8	9	1	16	17
Injury by dacoits/muggers	4	---	---	4	5
Political injury	5	2	---	2	2
Others	5	4	2	7	9
Total	110	57	39	128	167

Courtesy: Information & Documentation Centre, GSS.

## LAW WATCH

### UAE's Response to Child Camel Jockeys

by Shafiqul Islam Chowdhury



Picture shows late Dr Mohiuddin Farooque, founder of Bangladesh Environmental Lawyers' Association (BELA) being interviewed by Channel Four for 'Innocent Lost'.

THE Ministry of Information and Culture of the United Arab Emirates (UAE) has confirmed the commitment of the UAE government to stop use of child camel jockeys by the camel racers of UAE. In a letter written to a British citizen Ms M Stringer dated March 21 '98, the Director, External Information Department of the Ministry further stated that although the culture of UAE permitted use of children as jockey in formal pastime, it is no longer allowed with the racing becoming part of organised sport. He mentioned the Rules of the Emirates Camel Racing Federation specifically forbidding the use of riders under the age of fourteen or weighing less than seven stone.

The response of the Ministry was to satisfy the wrath of Ms Stringer who wrote to Ms Ann Widdecombe, MP of the British House of Common after watching a television programme called 'Innocent Lost' prepared by Channel Four of Britain. The programme broadcasted the picture of use of trafficked Bangladeshi children as jockeys in UAE which created wide sensation world-wide and an interview of late Dr Mohiuddin Farooque, founder of BELA severely condemning such practice of exploiting children in the name of culture demanding immediate action.

In response to Ms Stringer's letter the Hon'ble MP of Britain asked for information from their Foreign and Commonwealth Office. A letter of the said Office shows that the UAE ambassador in London informed the Office that immediate steps had been taken to stop using children as camel jockeys and that the UAE has a federal law in place to prevent such practices which would be applied rigorously. The same letter from the Office also stated that British Embassy in Abu Dhabi reported a series of arrest in UAE after the day the Ambassador spoke to the Foreign Office.

However, the letter of the UAE Ministry also noted that the President of UAE Sheikh Zayed Bin Sultan al Nahyan has instructed that any camel owners found to be in breach of the rules regarding camel racing should be severely punished. It is worth mentioning here that a Writ Petition filed by BELA demanding stoppage of such heinous trade in realisation of international conventions and relevant municipal laws on child rights is pending before the High Court Division.

The writer is a staff journalist of Bangladesh Environmental Lawyers' Association (BELA).

## Metropolitan

### Judges urged to expedite justice

Speaker Humayun Rashid Chowdhury has urged the judges to expedite justice with a view to bringing an end to the sufferings of the people, reports UNB.

He was talking to a group of judges at the Cabinet room of the Sangsad Bhavan in the city yesterday.

The group include 28 Additional and Sessions Judges, who took part in a training programme at the Judicial Administration Training Institute.

The Speaker said restoration of democracy was one of the major causes for which we fought the Liberation War in 1971.

He said after independence, we had established a truly democratic system of government, but unfortunately it was interrupted by the extra-constitutional forces more than once.

He emphasised the need of a healthy judicial system for restoration of social values and establishment of an exploitation-free democratic society.

### Country reduced import tariff at minimum level: Tofael

Commerce and Industries Minister Tofael Ahmed yesterday said though a member of the Least Developed Country, Bangladesh has reduced the import tariff at a minimum level, reports UNB.

It has also withdrawn non-tariff barriers and quantitative restrictions on import but the bigger SAARC economies like India and Pakistan are not reciprocating the liberalisation process.

He was talking to the visiting SAARC Secretary General Naem U Hasan at his office here.

The Minister said India informed us that it reduced import tariff on more than 200 items and withdrawn restrictions on many items.

But Bangladesh has a very little scope to export those items, he said adding that our exporters are also facing problems at the implementation of the pledges of the importing countries, said an official handout.

With the implementation of the SAPTA, the SAARC countries should concentrate on the joint-venture investment like ASEAN, NAFTA and EU countries, he said.

Naem U Hasan said SAARC countries have bright prospect to prosper though joint venture investment projects. He requested the Minister to discuss the issues in the coming SAARC Commerce Ministers' meeting in Islamabad on April 29-30.

Additional Secretary GM Mondal and other officials were present.

### SAARC secy gen calls on Abul Hasan Chy

Visiting SAARC Secretary General Naem U Hassan called on State Minister for Foreign Affairs Abul Hasan Chowdhury at his office in the city yesterday, reports UNB.

The Secretary General informed the State Minister of SAARC activities particularly measures taken to expand more businesses among the member countries.

Abul Hasan requested him to take steps for rapid implementation of the programmes approved by SAARC.

He said intellectuals and talented people of the member countries can play effective role in solving the existing problems of SAARC member countries through mutual meetings and visits.

### Obaidul Quader meets Indian minister

State Minister for Youth, Sports and Cultural Affairs Obaidul Quader called on Indian Information Minister. Sushma Swaraj at her hotel suite in the city yesterday, reports UNB.

During the meeting, they exchanged views on matters of mutual interests, especially the development and cooperations in cultural affairs between the two countries.

Cultural Affairs Secretary Dr S Zaman Mozumder, Indian Secretary for Information and Broadcasting PG Munkand and Indian High Commissioner to Bangladesh were present.

### BCU reunion held

Bangladesh Chhatra Union (BCU) Central Committee yesterday organised a reunion of its former and present workers in celebration of the 48th founding anniversary of the organisation, reports BSS.

A large number of BCU former leaders and workers along with their family members attended the reunion in a festive mood held at the TSC auditorium of Dhaka University.

Former BCU president and DUCSU vice-president (VP) Mujahidul Islam Selim, former DUCSU VP Mahfuj Khanam, general secretary (GS) Mursheed Ali, Mahubb Zaman, former BCU leader and news editor of the daily *Bhorer Kagoj*, M. Jammal Hussain Manju, former BCU leaders Khaleda Edib Chowdhury, Rina Farhad, and former presidents Kaji Akram Hussain, Anwarul Haq, Kazi Sajjad Jahir Chandon, Sardar Ruhin Hussain Prince, Aslam Khan and BCU general secretary addressed the reunion.

BCU president Hasan Hafizur Rahman Shohel presided over the function. The reunion was followed by a cultural programme.

### Teachers deplore violence on DU campus

Fifty-three teachers of Dhaka University have expressed deep concern at the repeated, deplorable and unfortunate happenings on DU campus during the last few days', says a press release.

Apprehending further deterioration of the situation, the teachers said, the law-enforcing agencies and the administration covertly contributed to the dirty politics of 'Hall capturing' which began around two years ago as they did not take any prior measure to contain the eroding situation, the press release said.

In a joint statement, the teachers opined that police and administration should maintain neutrality to ensure peaceful coexistence of all the opinions in the university.

### Former personal secy of Bangabandhu dead

S M Alaul Haque, former Personal Secretary of Bangabandhu Sheikh Mujibur Rahman from 1956 to till his assassination on April 20, at the time of his death, left wife, two sons, one daughter and numbers of well-wishers. He was the founder convener and first president of Executive Committee of Metropolitan Degree College, Dhaka.

### Repression on Opposition exceeds all records: Jamaat

Jamaat-e-Islami yesterday (Sunday) said the political repression on opposition has now exceeded all previous records of the autocratic regimes, reports UNB.

A resolution, taken by an emergency meeting of Dhaka city unit of Jamaat, also said the present government has shown 'failure in every sector due to its endless corruption and politicisation of everything'.

The meeting, presided over by city Jamaat Ameer ATM Azharul Islam, said despite a female head of the government, repression on women reached a stage where family and social lives are under constant threat.

It said the press photographs showed that terrorist acts were unleashed by the ruling party goons as well as the government forces on Dhaka University campus last week. This proved the Prime Minister's rhetoric against terrorism as false.

The meeting observed that no conscious person can remain silent when an evil design is on to organise obscene display of female bodies in the name of beauty contest following the West.

The meeting urged the people to attend the Jamaat rally at Paltan Maidan today afternoon.

### Obituary

Alhaj Belayet Ullah Khaddar, son of late Abdul Jabbar Khaddar, died of a heart attack at a hospital in New York on Friday. He was 62, says a press release.

His body will arrive in the city today.

A former official of Bangladesh Biman and president of Bangabandhu Parishad Dhanmondi Unit, Belayet Ullah left behind his wife, four daughters and a son.

His *namaz-e-Janaza* will be held at Dhanmondi Eidgah Masjid after Jhor prayers today. He will be buried at Banani graveyard.

His *qukhawni* will be held at his Dhanmondi residence on April 30.