

Law and Our Rights

"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

Accountability of Judiciary and Political Interference

By Aabed Rahman

Doubtless, this is the era of transparency and accountability. Every body loves to talk about these issues whenever they get the opportunity. Even the international organizations and financial institutions nowadays precondition their aid and assistance to good governance, transparency and accountability at every level. Judiciary is one of the organs of the state. It should not be seen in isolation. And thus, its functioning cannot remain unquestionable and un-audited. Judiciary cannot and should not be exempted from all this. It should be very much under the purview of constructive scrutiny. It should therefore be also taken under effective scrutiny in order to ensure their transparency and accountability.

THE Prime Minister has again voiced concerns over the state of affair of the judiciary of the country. She argued that "if the executive and the legislative branches are to be accountable and to function transparently, it is to be expected that the judiciary as one of the three organs of the state, should also be doing so."

First time, when she commented over a decision of a High Court Bench in granting so-called mass bail to alleged anti-social elements and criminals, she was accused of contempt of court. She had to provide an explanation to the court for her comment.

Prime Minister's comments assumes significance when her view was echoed by two judges - a senior sitting judge of the Supreme Court and a former judge, at a recently held seminar in the city. They acknowledged the erosion of values has gripped the country's judicial system giving rise to the question of transparency and accountability. When these judges themselves confess that the value of judiciary has been eroded and the image of the judiciary has been tarnished giving rise to the question of transparency and accountability, the Prime Minister's raising this issue again reflects the deteriorating state of the whole judicial system. This is however, in consonance with the overall situation of the country.

Doubtless, this is the era of transparency and accountability. Every body loves to talk about these issues whenever they get the opportunity. Even the international organizations and financial institutions now a days precondition their aid and assistance to good governance, transparency and accountability at every level. Judiciary is one of the organs of the state. It should not be seen in isolation. And thus, its functioning cannot remain unquestionable and un-audited. Judiciary cannot and should not be exempted from all this. It should be very much under the

purview of constructive scrutiny. Like other organs of the state, it is also fed from the tax payers' money. It should therefore be also taken under effective scrutiny in order to ensure their transparency and accountability.

We all know, "justice delayed, justice denied". It is now a common knowledge that because of courts' keeping the cases pending for a long time, criminals get bail using all their clouts and influences. Once they are out on bail by any means, they start intimidating the witnesses and victims to withdraw cases. That is how justice is denied to the general people. It is as simple as anything.

Now the situation has worsened to such an extent that people cannot have a sigh of relief at the news of arrest of any notorious criminal. Because, they know that within a few days time, he will come out on bail and resume their anti-social criminal activities and would take on those who filed cases against them. This has happened to many infamous criminals. This is now a "national shame". Our politicians claim themselves as saviours of the nation. Unfortunately, they are the people who are mainly responsible for patronising the anti-social elements and criminals. This is shame on them.

All these criminals operate under their shelter. And unfortunately, not only the courts as being alleged, these politicians - self-claimed saviours of the nation, are equally responsible for the granting of bail to these anti-social criminals.

"Information is knowledge, knowledge is power". But in our society, perhaps money and muscle power prevails over all sorts of power. This reminds me the comment made by a former Cabinet Minister in the Parliament back in 1994. This outspoken politician paid high prices on many occasions for his frank and honest comments on many issues including the issue of the Care-Taker Form of Government. In the same vein he commented on the functioning of the courts. That time, many suggested that charge of contempt of court might be brought against him. He survived unlike the present Prime Minister for his comment on the functioning of courts.

Why there should be Special Dispensation for the Judges?

Now the present government has set up an Administrative Reform Committee. It is widely believed that this committee would recommend to raise the retirement age of the government servants. There are many

arguments for and against it. The fact is that in all neighbouring countries the retirement age is between 59 and 60. We all eat same food, we all live in the same environment. The only difference is that compared to other high officials, judges are a bit better paid. Is this the only consideration and justification to make the retirement age of judges 65? This is, of course, a discrimination.

Where the Real Problem Lies?

One of the basic problems, perhaps lies in the alleged politicisation of the appointment of High Court and Supreme Court judges. Unfortunately, subsequent governments appointed judges mainly from their political considerations.

However, another aspect of granting so-called mass bail or releasing anti-social elements and criminals is that our political leadership has been promoting the criminals right through the inception of the country. Even after these criminals are convicted by the courts for life term, parties in power released them after some time. This happened to many convicted who are now so-called national politicians. Not only they were released from prison, they were politically

rehabilitated too. Shame for their political bosses who misused the solemn power they were entrusted with, to get these convicted free only for their petty party and political interest.

It is now time for the judiciary for introspection. This introspection is essential to regain people's faith in the judicial system. The whole judiciary cannot be held hostage to a few alleged questionable members of the judiciary. Judiciary needs to look into the reason as to why questions are now being raised about its functioning and about the partial judgement as being alleged against some judges. This is for the first time in the recent time that the judiciary is under public criticism.

The erosion of value as commented by even some serving judge is a very unfortunate development in our society and is reflective of presence of a malignancy in the judicial system. This malignant tumour should be removed entirely without delay before it gets metastatic. For a very few alleged controversial members of the judiciary, we should not let down the whole judicial system that made many historic judgements in the past in the greater interest of the country.

Prime Minister's assertion of making judiciary transpar-

ent and accountable like executives and elected representatives thus deserves serious consideration and seems to be justified for the best interest of the country.

History repeats itself. Unfortunately, human being takes little lesson from it. Our country needs a lot of judges to be recruited soon in order for quick disposal of thousands of long pending cases. What could be the expectation of the nation from the present government is that at least this government should not resort to means of politicisation of recruitment of judges that was unfortunately practiced by many previous governments for only party and political interest. The judiciary is now paying the price of alleged misuse of power and malpractice exercised by those governments, for no fault of it. As expected, those who resorted to this malpractice are now benefiting from their misdeeds at the cost of the reputation of the judiciary and people's sufferings. As understood now, the easy granting of bail to the criminals is one of the reasons of the worst deteriorating law and order situation in the country.

Putting aside the alleged dubious role judiciary is now playing, let us first agree to the following:

a. Judges should be appointed only on the basis of their professional expertise, qualification and moral integrity.

b. Criminals should always be considered criminals;

c. No body should make any "tadbir" to free any criminal;

d. No criminals should be accepted to any party and be given any political shelter and

e. Boycott criminals socially.

Can our politicians-saviours of our nation, please agree on these before

talking about transparency and accountability of judiciary?

The writer is a Delhi based researcher.

Law Watch

Prison Administration, and Prisoners Rights in Bangladesh

Md. Asaduzzaman

UNLAWFULNESS and criminal behaviour are obstacles to the development of a society and a country; hamper the rule of law and democracy; and adversely affect the movement for peace. To prevent and restrain offenders, the concept of a prison system was introduced by the British colonisers in this sub-continent in the 8th century. At that time, the prison system was used as a means of punishment. Later, the Congress Party demanded a change in the concept of prisons from an 'Institute of punishment' to an 'Institute of correction'. As a result, the 'Prison Reform Committee' was established in 1920 which recommended that prisons should be used as 'correctional institutes' rather 'punishment institute'. Since then the concept of prisons in this Subcontinent has been realised as 'Correctional Institutes', on paper. However, the practical experience is that the prisons in Bangladesh are no more than punishment institutes, where mental and physical torture of inmates occur. However, before discussing the prison administration in Bangladesh, Prisoners and Human Rights, we have to know the laws under which the Prison System is governed. Basically, the Prison Act, 1894; the Prisoners Act, 1898; the Jail Code of 1837 are the main laws and regulations which govern the Prison System in Bangladesh to date. The Criminal Procedure Code, The Penal Code, The Police Act, The Civil Procedure Code, The Special Powers Act are broadly exercised in the Prison System in Bangladesh as well.

The Prison Administration:

The Prison Administration is controlled by several government organs. It is housed under the Ministry of Home Affairs but is also controlled by the Ministry of Establishment in respect of the promotion, posting and appointment of the officials. It is operated by the Directorate of Prisons, which includes the Inspector General of Prisons (IG Prisons), Additional and Deputy Inspector Generals of Prisons, Superintendent of Prisons, Jailers, Deputy Jailers etc.

Since November 1977 to this day, the Prison Administration in Bangladesh has been handled by members of the Armed Forces - except the period of 1981, during President Sattar's regime. The Bangladesh Prison Administration is an absolutely Civil Administration and the Officers and Staff (Department of Prisons) Recruitment Rules, 1984 provides that the provision of recruitment of the Inspector General of Prisons should be "By Promotion on the basis of merit-cum-seniority from amongst the D.G.s of prisons and, if none is found suitable for promotion, by transfer on deputation of a suitable officer holding a post equivalent to the post of Joint Secretary". The qualifications have been laid down in the rules that the Person to be Promoted should be 18 years of service in the Department including 3 years of Service as D.G. of Prisons.

The Parliamentary Standing Committee on Ministry of Home Affairs recommended, at a meeting of 16 September 1999, that in Clause 3(d) of the said Recruitment Rules of 1984, there should be steps to appoint the Senior Posts of Jail Administration, including the top position, by promoting the departmental officers as per the Recruitment rules. Following the rules one Senior Assistant Secretary of Ministry of Home Affairs vide letter No. 1 E-2/85-Jail-1/164 dated 13.3.97 requested the Secretary of Establishment to withdraw the Present IG Prisons Brig. M. Wallur Rahman Chowdhury within six months. In 1982 the single-member Marshal Law Committee comprising of Brig. M. Abdul Halim also recommended to recruit the IG Prisons by Promoting the Departmental officers. In spite of all these clear rules and recommendations, the civil administration of prisons is still occupied by Military Personnel in the regime of an elected government.

Prisoners inside the Prison:

A preliminary investigation report by Odhikar, a coalition for human rights, found that the condition of the prisons and their inmates in Bangladesh are deplorable. In all the prisons, specially in the old, ill-equipped ones, over-crowding, poor hygiene, almost non-existent sanitation facilities, lack of proper health care combined with corruption to create a nightmare scenario. Furthermore, inmates are sometimes denied visiting rights or their family is turned away at the jail gate if they are unable to pay bribes. They suffer further humiliation in the fact that within 24 hours their numbers are counted several times.

The problem of overcrowding is mainly due to the delay of holding trial, as the number of under-trial prisoners is very high. Just how bad the situation is in the 80 jails in Bangladesh today, can be seen from the table Odhikar prepared below:

Total No. of Jails	Actual Capacity of Each Jail	No. of Inmates in Each at Present
09 Central Jails	12,909	29,805
55 District Jails	10,553	31,227
16 Thana Jails	480	none
Total : 80 Jails	23,942	61,032

Different classes of prisoners are kept in separate cells and wards divided into the convicted, the under-trial, the detenu and male and female. This is in accordance to the rules and regulations. However, in spite of all these rules, Odhikar found that some prison officials were abusing the inmates, torturing them by ordering to pay money. Those prisoners who have money and influence are living in comparatively better conditions. In prison parlance 'division' is translated into 'social standing and esteem'. A person's social standing would determine which 'division' he or she would be placed in. Sometimes, the divisions are determined by a court order. Political, administrative and financial factors also play a role in the determination of division. There are mainly two Divisions in the prison - namely I and II. The elite and financially affluent and high ranking persons are kept in the first division while the rest are kept in the second. It is therefore obvious that from jail gate to prison kitchen, those who can afford bribes can have a comfortable life in the prison.

The total annual budget of our prisons is only Tk. 90 crores. Out of this amount, the salaries of the numerous prison staff, the food, clothing and other expenses of over 61 thousand inmates for 365 days are covered. Given the disparity between the budget and the expenses it has to cover, anybody can easily presume the real situation of our prison system and the quality and quantity of food, medication and clothing the prisoners actually receive. For example, if we calculate only the cost of food for an average 61 thousand inmates for 365 days, at the rate of Tk. 50 per head per day, then the amount comes to Taka 11,132,50,000.

Given the above circumstances, it is to be noted that we should develop our prison system to ensure the human rights and fundamental rights of the inmates in the prisons in Bangladesh. They too are citizens of the country and protected by the constitution. In 1980 the Justice Munim Commission Report suggested a total of 180 recommendations necessary to improve prison conditions. Out of this number, only 64 recommendations have been fully executed, 28 partly executed and 88 still to be implemented. According to Odhikar, in addition to these recommendations, the following measures should be taken immediately to improve the prison system and ensure the rights of prisoners:

1. To issue sufficient and substantial annual Budget for the prisons.
2. To construct the Prisons with sufficient accommodation capacity.
3. To ensure immediate sufficient and standard medical, food, clothing and recreation facilities.
4. To improve sanitation and ventilation facilities.
5. To make ensure speedy trials to decrease the number of under trial prisoners.
6. To ensure education, legal awareness and right to work of the inmates.
7. To ensure free visiting rights of relatives.
8. To make the prisons correctional/reformative institutions.
9. To implement parole, probation and after care services.
10. To give proper wages to persons under rigorous imprisonment, for their labour.
11. To ensure the recruitment of the Inspector General of Prisons from a departmental candidate.
12. To try the corrupt officials in the prisons and ensure prisoners remain corruption-free.
13. To give proper human rights training to the prison administrators and others concerned and to the prisons as well.

The writer is a Member of the Executive Committee of Odhikar.

The Judiciary and the Controversies

by Faruque Hasan

Corruption has well spread in every nook and corner of our society. Has our judiciary been able till now to keep itself clean of corruption? If the answer is yes, then we may still nurture hope at the bottom of our heart for a bright future of our country.

ON 28th November in the late evening a brave police sergeant was killed by a gang of muggers at Motijheel, the commercial hub of Dhaka City. He was unarmed and chasing the culprits who were riding a tempo, the three wheeler.

The muggers mercilessly beat the sergeant to death. This killer gang of muggers is known as 'Kangali Jakir Bahini' means the army of beggar Jakir. The leader of the gang, Jakir, was a street urchin in his early life hence earned the nickname Kangali means beggar. This gang and its leader are well known to the newspaper readers of this country, as his name along with the mention of the gang often appeared in different national dailies. Jakir is a very well known face to the city police force as well. Because the police had arrested and sent him to the court several times. As far as I remember, a few months back a national daily had reported that whenever Kangali Jakir was arrested by the police, his mother-in-law became very active and got her son-in-law released on bail from the court. According to the report, the mother-in-law herself is involved in drug traffic in selling Phensedol - an illegal trade in Bangladesh.

How many times Kangali Jakir had been arrested by the police and released by the court on bail? Seven or eight times or more. Besides Jakir, often we see report in newspaper that a top terror of this or that areas has been arrested. A few days or weeks after we again read in the newspaper that the same top terror has obtained bail from the court and set at large.

A few days back the Prime Minister has expressed her despair about the court of justice saying criminals are arrested and sent to the court but the court set them free on bail, sometimes even with an order that the accused should not be arrested within, say, 20 days from the date of his release.

When such an observation is made by the head of the government regarding the court of justice it cannot but be taken very seriously.

Not only the head of the government but a senior minister of her cabinet had earlier expressed the same sort of despair about the court of justice. These days, it seems, this kind of observation against the judiciary has got an extra momentum.

The court of justice does not have the scope to refute or defend itself from such accusatory remarks against it. So the general public do not get the picture of the other side of the coin.

There is no denying that the news of granting bails by the court to the notorious top terrorists/culprits, along with the despairing remarks about the court of justice by the top people in the government are making people lose their faith in and respect for the judiciary, to a certain extent.

One of the few cardinal responsibilities and duties of a state is to dispense justice in society through its judiciary. If the people of the society lose faith in and respect for the judiciary then the very need of the state itself becomes questionable.

If the head of the government of a state accuses the judiciary of inefficiency or any wrongdoing, the state itself loses respect in the international arena and earns the image of a pariah state. But a head of government must not refrain from making such an accusation, if there is any strong ground for making that sort of accusation, for fear of losing respect for her/his country in the world society. Turning the blind eye towards the problem will only aggravate the situation.

Bangladesh, according to law it is the prosecution which is to prove that the accused has committed the offence. On the contrary, in China it is the accused who is to prove that he/she is innocent. In former socialist countries the burden of proof of innocence also used to lie with the accused him/herself.

In our country, from the viewpoint of obtaining bail there are two sorts of offence. Some offences are bailable, others are non-bailable. In bailable offences, which fall in the purview of some categorically defined sections of Bangladesh Penal Code (BPC), if the accused prays for bail, the adjudicating judge is bound to grant it to him/her.

In non-bailable offences, which fall under some other sections of BPC, it is the discretionary power of the judge to grant or not to grant the bail. The judge reaches his decision as to granting or denying bail to the accused by posing the arguments submitted by the defense lawyer before the court against the arguments submitted by the prosecution opposing the bail. To persuade the court not to grant bail, the prosecution needs to establish the plausibility of the accusation(s) brought against the accused. In a Magistrate Court the prosecution is represented by a sub-inspector of police known as 'Court Daroga'. In a Session Court and in the Supreme Court the prosecution is represented by the Public Prosecutor and the Attorney General respectively.

We are to find out the causes why the notorious criminals and top terrorists manage to get bails repeatedly from the court.

In a hearing of a bail petition submitted by an accused charged with a non-bailable offence, if the prosecution does not strongly oppose the bail prayer, and if suppresses - deliberately or non-deliberately - any substantial fact or facts detrimental to the stand taken by the accused to get bail, then the court naturally feels inclined to grant bail to the accused. Because according to the Criminal Procedure Code (CrPC) of Bangladesh, the court assumes an accused innocent, and it is the prosecution who is to prove beyond doubt that the accused has committed the crime.

To illustrate the matter let's take up the case of Kangali Jakir. It is said that he had been granted bail for seven or eight times by the court. Did the prosecution intimate the court during the hearing of the 4th, 5th, 6th or 7th bail petition submitted on behalf of Jakir that he was released on bail for 3/4/5/6 or 7 times in the past for the same or other accusation(s) brought against him? Or the court was kept ignorant of that very important fact? If the court was kept ignorant of the fact while granting Jakir the bail who will be held liable? The court or the prosecution? The court does not have a secret service through which it may get information about an accused. It is the prosecution who is to provide the court with all information about an accused during hearing of bail petition or trial.

It's not possible for a magistrate or a judge to recognize by face Kangali Jakir or any top criminal standing in the dock during the hearing of a bail petition or trial. Every day a magistrate or a judge adjudicates so many causes it's impos-

sible for him/her to keep the faces of top terrorists/criminals imprinted on their mind. Moreover, a magistrate or a judge is transferred from court to court. May be the same court has granted bail to Kangali Jakir many times but not the same magistrate or judge. It is the duty of the prosecution to reveal the real identity and criminal history of the top accused/offender to the court.

In Bangladesh citizens do not possess the ID card. So a criminal may mislead a court through wrong personification of him/herself.

At police stations photographs of notorious criminals/top terrorists are kept hanging on the wall. The court may be provided with an up-to-date file containing photographs, fingerprints and other important information of criminals/terrorists, that adjudicating judge may go through it before granting bail to an accused. We are to find out some way to stop top criminals/terrorists getting bails again and again.

In a hearing of a bail petition the judge writes down the submission presented by the defense lawyer in favour of his client's prayer. He also writes down the arguments submitted by the prosecution opposing the bail. At the end, he records the logic behind his decision for granting or not granting the bail to the accused.

As far as we know the Supreme Court of Bangladesh has supervisory power over the lower courts of the country. Under this power the Supreme Court may call the files regarding Kangali Jakir's bail hearings from the lower court and scrutinize those to find out actually what were the causes behind granting Jakir bail so

many times. The Supreme Court may also call the files of other 'top terrorists' who have been granted bails again and again from the lower courts. After scrutinizing those files the Supreme Court may make its findings known to the public through the newspaper. The people of the country have the right to know actually what is happening.

We often see reports in newspapers that seasoned offenders, who have political connections, get bails from the courts time and again without any hindrance. This is as true during the present government as it was true during the previous governments. Lots of example can be cited here in connection of this assertion. What is strange is that the people in power never raise any fuss when offenders politically related to them are released on bail. They express their dissatisfaction as to judiciary only when accused or an offender not in their good books gets bail.

There is no doubt that if the judiciary is not separated from the liberated of the control of administrative branch of the government, the judicial officers cannot work freely. When the appointment, promotion and transfer of judicial officers remain in the hands of administrative branch of the government the situation bounds to get even worse.

Will we ever understand the need of separating the judiciary from the administrative organ of the government?

A few days back it was reported in the news media that 22 judges were fired from their jobs on charge of corruption in Peru.

Corruption has well spread in every nook and corner of our society. Has our judiciary been able till now to keep itself clean of corruption? If the answer is yes, then we may still nurture hope at the bottom of our heart for a bright future of our country.

Curse of Fatwa and Plight of Rural Women

by Mansoor Mamoon

IN a disadvantaged and backward society or family the male members play the role of rulers and oppressors while women remain ruled, dominated and repressed. Through religious injunctions and social prejudices arrangements have been made in a calculated manner to continue this repression, subjugation and exploitation of women. - Abdul Gaffar Chowdhury.

Fatwa, an Arabic word, etymologically denotes decree or judgement according to Islamic Shariah. In Bangladesh it had its origin since the advent of Muslim Rule in the then Bengal in early thirteenth century. But with the passage of time it has become a misnomer and a dreaded word for the rural women in Bangladesh professing the religion of Islam. The half-educated rustic Mullahs with virtually no knowledge of Islamic jurisprudence, interpret the Quranic injunctions

and Sunnah in their own free-wheeling way to repress and subjugate the women taking advantage of their illiteracy, lack of awareness and socially backward position in a predominantly male-dominated society as well as taking advantage of the religious sentiment of the simple rural-folk.

Village based Mullahs, who are mostly Imams of local mosques and clerics teaching in rural Makhtabs and Madrasahs (Islamic religious institutions) are the zealous advocates of Fatwas. Their cohorts are rural influential groups, the landed peasantry known as Jotdars and the local musclemen. In the Fatwa based Shalish (arbitration) women have no representation and it is usually an all-male affair.

Fatwas are pronounced on adultery, rape, divorce etc and the verdict invariably goes against women. The punishment meted out is lashing,

whipping, stoning and or fine. There are instances of a number of women succumbing to lashing and stoning. Apart from social boycott, those who survive the ordeal had to live with the social stigma for the rest of their lives. Many women commit suicide out of shame and discriminatory treatment.

The case of Nurjahan of Chhattakchara in Moulavibazar district, whose marriage was arbitrarily declared annulled and awarded 101 lashes by a local Mullah for what was described as illicit relations with her husband after the pronouncement of the world talak (divorce) created a stir all over the country. Nurjahan subsequently committed suicide.

In 1998 in Manikganj, a couple also committed suicide when their marriage was declared illegal by a Fatwa court and both the wife and husband

were awarded lashing and fine in public.

Similar cases of whipping and stoning including burning by Fatwa were also reported from Madhukhal in Faridpur District, at Kalliganj in Sakthira, Jakiganj in Sylhet District in 1999. In the month of September 1999 there were reports of at least four Fatwa related deaths. The argument put forward by the half-educated Mullahs behind stoning and lashing is that the women in question are to be purified by this method. Islam, however, does not allow that women should be treated unfairly. Quranic injunction is that they should be treated at par with the male members of the society.

Interestingly enough, the eviction of prostitutes of Kandupatti in Dhaka city on May 12, 1997 and the demolition of the brothels of Nimtali

and Taanbazar in Narayanganj district in 1999 were allegedly carried out with the direct complicity of the so-called local religious personalities, political leaders and the vested interest groups of greedy land-grabbers. According to justice K M Sobhan, a former judge of the Supreme Court of Bangladesh, the eviction of the prostitutes without their proper rehabilitation was a flagrant violation of basic human rights and misinterpretation of the constitutional provision regarding prostitution.

Bangladesh is not governed by Sharia Law. Fatwa has been strictly prohibited. The National Women's Policy enunciated by the present government on March 8, 1997 clearly stipulates that any attempt or step which is contrary to the fundamental rights of women and the law prevalent in the country through the misinterpretation of injunctions of any religion at

local or national level will be strictly dealt with. But despite the avowed holistic approaches of the government and prohibition by law of the land, the practice of Fatwa still continues unabated and cold not be done away with.

The vice of Fatwa and the arrogance of the fundamentalist religious zealot remains a stumbling block to the emancipation and empowerment of rural women. The Fatwa practicing Mullahs even prevent the women from going out to eke out their existence or working for the NGOs. The Mullahs take advantage of the religious sentiments of the mass people as they invoke the injunctions of the Quran and the Sunnah albeit in a distorted way to satiate their gender-biased evil design.

(The Writer, is a SAARC Gold Medalist.)