

# 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 that 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 once 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 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.

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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 consideration.

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 our 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 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.

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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 be 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 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 institutions' 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. Namely, the Prison Act, 1898; 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 DIGs 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.I.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-2/86-Jail-1/164 dated 13.3.97 requested the Secretary of Establishment to withdraw the Present IG Prisons Brig. M. Wallur Rahaman Chowdhury within six month. In 1982 the single-member Marshal Law Committee Comprising of Brig. M. Abdul Hafiz 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 i.e. 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 combine 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
<b>Total : 80 Jails</b>	<b>23,942</b>	<b>61,032</b>

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, inspite of all these rules, Odhikar found that some prison officials were abusing the inmates, torturing them in order to extort 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 1132,50,000.

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 Mumun 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 prisons 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.**

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 bail by the court to the notorious top terrors/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.

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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 Maktabs and Madrasahs (Islamic religious institutions) are the zealous advocates of Fatwas. Their cohorts are rural influential groups, the landed peasantry known as Jottars 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.

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 his 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 accusations(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 terror/criminal standing in the dock during the hearing of a bail petition or trial. Every day a magistrate