

## RIGHTS *investigation*

## RIGHTS *column*



# State of policing in Bangladesh Vulnerable thana situation demands attention

JIKKE BASTIAANSEN

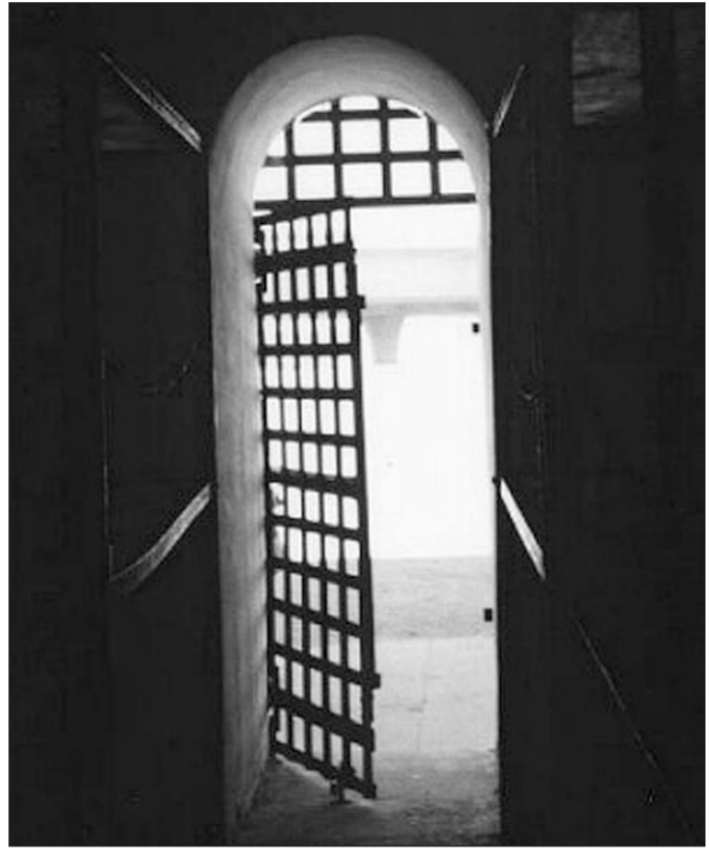
HERE are several problems with regard to the police station that need our attention. To start with, the living conditions in police custodies are very poor. Often custodies are overcrowded, especially at night. This means that arrestees cannot lie down and sleep, since there are too many people in custody. So they need to sit, or stand, waiting for the morning to come. The sanitation in police custodies is also very poor. There is only one toilet, which is located in the custody. Since these custodies are already overcrowded, there are many to share the toilet with and because of the location there exists no privacy. Proper ventilation and light are often lacking and the quality of food is substandard. Sometimes the same water is used for consumption and for flushing the toilet. All together this constitutes a very poor situation.

Apart from the poor living conditions there are other problems too. Most of the police stations do not have appropriate facilities for children. There is only one police station, the cantonment thana, that has a separate custody for children. Female police officers, are hardly recruited; Even more serious is the fact that innocent people get arrested under section 54 of the Code of Criminal Procedure (1898) on the ground of 'reasonable suspicion' and are tortured or harassed in the police stations. Recently there have been various publications in newspapers of arrests and unnatural death cases under section 54 in regard to operation 'clean heart'. But the malpractices are nothing new. One might recall the cases of Jamaluddin and Badal.

An unnatural death case was filed for Jamaluddin Fakir (22) from Torgaon village under Kapashia thana in Gazipur district. He was arrested under suspicion related to dacoity on April 17. Police claimed he escaped from the police station and drowned. But field research revealed that it was very unlikely that Jamaluddin was able to pass all the guards and run 30 yards towards the river and escape. Moreover statements of relatives and medical examination showed that Jamaluddin had been tortured. On 19 May newspapers reported the death of Badal, a butcher from Narayanganj. He was arrested for a rape case. Examination of the police file showed that Badal's name was not mentioned at all. His mother told that the police had been demanding 50,000 taka and was torturing her son. Medical reports and other arrestees confirmed the torture; Badal had even been given electric shocks!

These cases illustrate that torture, although strictly forbidden by the Constitution, still happen at the police stations, and it illustrates the corruption of the police, asking huge amounts of bribes. We know of these problems because we might have been victims ourselves, or we might have heard stories of relatives that have been in custody. But still, this subject is not receiving enough attention. Background information on the situation in police stations is hardly available. We do not know all the causes or reasons behind the problems in police stations. Why are the living conditions so poor? Why are people dying and suffering in custody? When these causes are not known, it is very difficult to tackle the problem.

This view can be obtained by consulting all the stakeholders that are involved in the problems regarding the police stations. Arrested persons need to be interviewed, family and eyewitnesses need to be contacted, the respective policemen need to be asked for their opinion and if there are victims, they need to be involved as well. All of them should present their



point of view of the situation and ventilate their opinion freely. On the basis of this information a reconstruction of the situation or incident will be possible; bottlenecks and problems can be defined.

The problems regarding the police stations form part of a very complex matter. People might want to blame all the problems on the police since they are the ones they get to see at the police stations. However, we need to know more about all aspects of the problem before we can start blaming someone.

Background information regarding the working conditions of policemen revealed for example the following: The salary of policemen is very low, varying from approximately 2500 taka for constables to 6000 taka a month for inspectors. Imagine that the monthly rent of a small flat in Dhaka will be 3000 taka, there will not be a lot of money left for food, clothes, etc. Overtime at office is unpaid as well. Given the fact that policemen do not have a lot of money, it is not that strange that they start looking for other ways of getting money and end up taking bribes.

Comprehensive information regarding the living conditions in the thanas is needed as well. We should consider the amounts of money that are needed to upgrade the conditions of the police stations. Most of these buildings are built during the British Raj and are approximately 150 years old. A lot of money will be involved in their restoration, whereas money is scarce in our country. As a consequence a lot of projects are in need for money, but these are not enough. This also applies to the substandard quality of food. Only 5 taka a day is granted for food to every person. This is insufficient for good meals.

Regarding torture in police stations we need more background information as well. Article 35 (5) of the Constitution regarding the protection in respect of trial and punishment, states that "no person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment". How on earth is it possible that torture is still happening? Torture is an act of individuals, and therefore these individuals need to be punished for their misbehavior. Colleagues, superiors and other eyewitnesses have the duty to report these kinds of offences. It is necessary to know why this is not happening and also why individuals can be so cruel and torture other human beings.

To provide solutions to the problems in the police stations is not easy, because of the complexity. But it does not mean that solutions are impossible. Background information helps revealing some of the underlying causes of the problem. Depending on the causes of the problems in police stations, different solutions are needed. This may vary from government action to individual responsibility. Government action is needed for money related problems, like the restoration of the police buildings and good salaries for policemen. Also law and order should be maintained, and the government should take action to prevent torture. Individual responsibility is a solution as well. Everyone has a sense about right and wrong. This means that criminals should not violate other people's rights, police like everyone else, needs to treat persons with respect and we too should take our individual responsibility and stand up and speak when we are eyewitnesses of violations.

In order to find and work on the solutions, an all-embracing picture of the situation in the police stations is necessary first. Individuals and human rights organizations need to get access to all kinds of information. Cooperation of and authorization to interview all stakeholders is necessary in obtaining reliable information about the situation in police stations.

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## COURT *corridor*

# Introducing ADR in Bangladesh-III Pilot court model under Family Courts Ordinance, 1985

JUSTICE MUSTAFA KAMAL

WHEN I retired as the Chief Justice of Bangladesh on the 1st January 2001 I was contacted by the American Center at Dhaka to meet Mr Steve Mayo, an attorney from San Francisco. He told me that he represented a San Francisco based voluntary organization of judges and attorneys called Institute for the Study and Development of Legal Systems, shortly ISDLS, which was then operating in a dozen countries outside USA to help implement the ADR (Alternative Dispute Resolution) in harmony with the legal systems prevalent in each country. If Bangladesh is interested, ISDLS can help. As a first step, he suggested, we should form a small Legal Study Group (LSG). I took no time in jumping to the idea and formed an LSG. The LSG comprised of myself, Mr Justice K M Hasan (then the senior most Judge of the High Court Division, later a Judge of the Appellate Division), Professor Dr Shah Alam (then a member of the Law Commission, now the Chairman of the Faculty of Law, University of Chittagong), Mr Anwar-ul-Huq (then Joint Secretary, Ministry of Law, Justice and Parliamentary Affairs, later elevated as a Judge, High Court Division) and Barrister Shafiq Ahmed (then President of the Supreme Court Bar Association), with myself as the Chairman. At the invitation of ISDLS we all four visited San Francisco in February, 2000 and obtained a firsthand insight into the working of ADR methods and techniques in all types of courts in that city and also in San Jose. A strong team of judges and attorneys of San Francisco visited Bangladesh in April 2000. The Ministry of Law arranged an assortment of Assistant Judges from all over Bangladesh to meet them and to talk to them. The then Chief Justice and the then Law Minister extended all help and the meeting was held in their presence and in the presence of other senior Judges of the Supreme Court at the Judges' Lounge of the Supreme Court. The American Center provided all the logistics. The ISDLS team explained in great details the mechanism and working of ADR and convinced the participants that Bangladesh should give it a try without shaking up the civil justice delivery system and without amending any law or involving any extra expenditure to the public exchequer. It was found that of all the nearly 2000 statutes prevalent in Bangladesh, it was only the Family Courts Ordinance, 1985 which gave the trial court judge the jurisdiction and authority to "conciliate" between the parties both before and after trial. This statute was therefore considered to be the ideal starting point of ADR in Bangladesh, because it would not involve any change in legislation or any extra public expenditure. Some of the Assistant Judges informed that they had mediated between the parties successfully in many cases following their own individual methods, but others pointed out that they did not feel encouraged to try conciliation between the parties under this statute, because they were entitled to one credit for holding one trial and did not get any credit at all for effecting a compromise decree. Their labour for 3 or 4 days was thereby wasted.

### Training and Commencement of First Pilot Courts

ISDLS and the Legal Study Group then took a joint decision to start two or three pilot family courts at Dhaka Judgeship from June 2000. A Project Implementation Committee was formed with Justice K M Hasan as Chairman. It was at his instance that the Chief Justice and the Minister of Law were persuaded to make an amendment to the performance measurement of Assistant Judges. They would be given two credits, i. e. credit of holding two trials for performing one successful mediation and one credit, i. e., credit of holding one trial for two unsuccessful mediations. I may mention here in passing that all Assistant Judges are ex-officio judges of Family Courts. The credit would be enjoyed by all of them, whether they would preside over a pilot court or not.

ISDLS then arranged an experienced Mediator of the Ninth Federal Circuit Court of the USA, Mr William C Rack, to visit Dhaka and impart training on mediation, both theoretical and practical, to 30 Assistant Judges assembled from all over Bangladesh, some lawyers and NGOs. The American Center, Dhaka and the Ministry of Law provided all cooperation. During the training for 3 days some of the members of the Legal Study Group, including myself, watched from the beginning to the end, what the subject matter of the training was, how it was imparted, what impact it made

and how effective the training program was. We selected three Assistant Judges to operate three pilot courts at Dhaka Judgeship. Accordingly 2 pilot court started functioning from 1 June 2000 and the other from 1 January 2001 at Dhaka Judgeship. Cases had to be transferred to those courts exclusively for mediation, parties were to be notified and during these preparatory days, the pilot courts, without wasting time, conducted trials of cases till sufficient number of cases were ready for mediation with the consent of both parties. It need not be emphasized that nothing would have been possible without the active support of the Chief Justice, Minister of Law and the District Judge of Dhaka and without the outside help of ISDLS and the inside logistic assistance of the American Center.

### Continuous Training and Expansion of Pilot Courts

After a gap of two or three months we three, myself, Mr. Justice Anwar-ul-Huq and Mr. AK Roy (then Deputy Secretary of the Ministry of Law and now Judge, Women and Children Repression Prevention Court, Sylhet) started touring the divisional headquarters, namely, Chittagong, Rajshahi, Khulna, Barisal and Sylhet imparting training both to Assistant Judges coming from each Division and to the local lawyers on mediation techniques for two or three days on each visit. We also spread out to district headquarters, namely, Comilla and Mymensingh, and imparted the same training to other batches of Assistant Judges and lawyers. Sometimes the training sessions were inaugurated by the Chief Justice of Bangladesh and sometimes by the Minister of Law. Mr. Justice KM Hasan made himself available on most of the occasions to apprise the audience of the progress of mediation in the family courts of Bangladesh. Mrs. Mary Ann Peters, Ambassador of the USA to Bangladesh, made an invaluable speech at the opening of the training session at Comilla. After a year or so we started taking one of the Dhaka family pilot court judges to narrate their mediation experiences and achievements and to interact with the trainee participants. Everywhere the trainee participants volunteered immediate participation. Needless to say the Ministry of Law and the American Center were cooperative on each occasion and rendered all administrative and logistic assistance required.

After completion of a training session at a certain place, a Pilot Court was set up in that town or elsewhere within the jurisdiction of the judgeship where the training was held. The District Judges followed the matter through. Now there are 3 pilot courts at Dhaka, 2 at Chittagong and 1 each at Sylhet, Rajshahi, Khulna (not exclusive though), Bogra, Jessore, Rangpur, Kushtia, Comilla, Faridpur, Barisal and Mymensingh. Out of 65 districts, only 14 have pilot courts, but it is our information that not all districts need an exclusively mediation pilot court, because the number of family cases does not justify it. It is also our belief that many districts, where there is a genuine need for an exclusively mediation pilot court, can well be served initially by transferring to those districts some Assistant Judges who have already received training from us. It is however necessary to keep the training process ongoing so that all the districts of Bangladesh are covered by pilot courts. In due course, all districts will have at least one exclusively mediation court and they will no longer be called pilot courts.

### Lawyers' resistance -- an unfounded apprehension

I have talked to a number of lawyers of all ages all over the country. Contrary to what anti-lawyers believe, lawyers do not like their piled-up cases to rot in their sheresta (chamber) for years and decades together. They admire and desire a quick resolution of disputes and they dispute the proposition that the quicker a case goes out of their sheresta the lesser is their income. On the contrary, the earlier a case goes out of their sheresta by way of final disposal, the more it is replenished by new cases. The more the litigant public comes to know that the legal and judicial system delivers justice speedily and with less expense, the more the public knowledge inspires confidence in the system itself and the more the potential litigant who would not have come near the court premises would flock to the courts for results of a similar nature.

A year after the first family pilot court was started at Dhaka Judgeship I attended a joint meeting of the pilot court judges, lawyers of all courts including pilot family courts, with Mr. Justice Anwar-ul-Huq, the District Judge, Dhaka and the representatives of the American Center. Those lawyers who

had engagements in courts besides the family court told me that they had lost their income from the family courts because of early disposal by mediation, but their other earnings from other courts amply made up the loss. By then a group of lawyers had grown up, both male and female, who had built up exclusive practice in family courts, leaving their position as juniors in some senior lawyers' chamber. They told me that hapless women, having received speedy and inexpensive justice through mediation, had brought in other clients for them, similarly situated, and this way they themselves, not being so senior in the profession, had been obliged to engage fresh entrants to the profession to help cope up with new work.

This reminded me of the training programme conducted by Mr. William C. Rack who said in course of his training that it is the lawyers who become the best admirers of ADR after practicing ADR. The story is uniform in all the pilot family courts all over Bangladesh. The lawyers practicing in the family courts are our best pillars of strength in spreading mediation in family courts.

One Senior Assistant Judge who is a family pilot court judge at Dhaka told me that after he received training from Mr. William C. Rack and listened to my words of encouragement, he was unconvinced and pessimistic. He thought those were loud sermons from a high pulpit unsuitable for this country. After his selection as a pilot judge he was further depressed. He thought he was being wasted by placement on a job that had no future and no safe stepping-stone to the next hierarchy. He knew about the adamant nature and uncompromising attitude of the litigants of Bangladesh. Now he keeps on telling me whenever we meet that his apprehensions did not come true. He is so successful with mediation that there is a beeline in his court for mediation after mediation. He derives immense joy satisfaction from out of his successful mediations. Whatever be his future career he will go down in the legal history of Bangladesh as one of the pioneer ADR judges. Other pilot judges have told me of their many and varied experiences of innovative mediation exercises, combination of direct and facilitative mediation, novel way of realizing settlement money by instalments if not paid on due date etc. Their experiences made me wonder if I knew all about mediation.

### Concluding Suggestions

The key to success of ADR (Alternative Dispute Resolution) in Bangladesh lies in the manner of its introduction. ADR is no longer an unheard of concept of dispute resolution among judges, litigants and lawyers of Bangladesh. The Family Courts all over Bangladesh are actively engaged in ADR. The pilot family courts are only exclusively engaged in mediation, but other Assistant Judges, who received training in mediation, are also mediating apart from trying cases. The mediation output of all the Assistant Judges, taken together, is something to be proud of. The Ministry of Law only needs to collect, maintain and update all relevant statistics in this regard.

Before we extend the frontiers of ADR to other types of litigation, I would suggest the following:

1. Amend the Code of Civil Procedure giving the trial court an enabling and discretionary power to refer a case or part of a case for only mediation or non-binding arbitration at any stage of the suit. Although the proper stage to do so is after receiving the written statement, I would suggest 'at any stage of the suit' to cover backlogs. When the amendment comes into force, the judges will be trained to refer a case for mediation or non-binding arbitration after receiving the written statement in all suitable cases, but they will be further trained to refer pending cases for mediation or non-binding arbitration when both parties agree or according to the judge's own discretion, the stage of the suit not being very important. It is necessary to define mediation and non-binding arbitration correctly and precisely in the amendment to avoid unnecessary dispute about their nature and character.

2. Make the presiding judge, a judge of co-equal jurisdiction, lawyers of the local court or a court of adjacent jurisdiction of more than 10 years' standing, and Private Mediation Funds, adequately staffed by either experienced ex-judges of not less than 10 years' standing or retired judges and/or non-practicing lawyers of not less than 15 years' standing, recommended by the District Judge and approved by the Chief Justice of Bangladesh, as qualified for appointment as mediator or arbitrator. As a matter of practice the presiding judge may not assume that function, but the enabling provision should

While global attention remained focussed on the World Summit on Sustainable Development (WSSD) in Johannesburg during August and September this year, another landmark initiative was quietly launched in another part of the city. The infamous women's jail on Constitutional Hill - which housed female prisoners during the apartheid years - was converted into a teeming resource centre for women. This resource centre has an archival section, tapes and pictorial records that are as valuable as they are moving. No visitor can come away from this prison-turned-healing centre without feeling touched to the core - in terms of compassion, anger, and also admiration and hope. The solitary confinement cells, complete with their menacing, steel-lined doors reinforced with thick metal bars, have been preserved as a reminder of what women protesters against racial discrimination went through, till as recently as 1983 - when prisoners were shifted to Sun City and the jail was closed down.

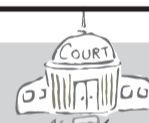
Each cell is barely larger than the size of a bed, with a bare floor, and a small ventilator slit high up on the wall - the only source of light and air. Here, women were held, declared 'guilty' of a range of crimes under the apartheid laws - from refusing to carry identification passes that were mandatory for blacks, to participating in peaceful marches against discrimination and ill treatment. During those years of struggle, women's contribution was pivotal for the economy, but they were at the bottom of the heap of oppressed natives. When their land was appropriated, black men were forced to migrate in search of work, and the women were left behind to carry the burden of survival. To add to their meagre family income, many women sold their craft on the pavements, but the white regime forbade them to carry on even petty economic activities. Under a law passed in 1952, women were required to carry an identification pass, primarily to control the entry of blacks into the urban areas. Only those who were needed to serve the needs of the white population qualified for a pass. So, thousands of women protested and organised signature campaigns. And for this "subversive, unlawful and treasonable" behaviour, for questioning inhuman laws, many were jailed. Sheila Weinberg for one was sentenced to hard labour; she had to cut grass with surgical scissors. Next to the entrance hall of the prison, in a circular enclosure, women arriving for incarceration were strip-searched; to humiliate them, their underwear was taken away. The prisoners' infants were housed in a room nearby. The jail received about 200 prisoners a day, many of them with babies, and they were held for months without charges. Though poor, oppressed and unlettered, the women had an indomitable spirit that could not be fazed by threats of imprisonment. And forty years later, Nelson Mandela was installed as president on the same Constitutional Hill where the women's prison was housed.

Then, in July 2002, the prison building was "cleansed" symbolically in what is described as a "moving ceremony", considering the memories and ghosts the site was heir to. A women's centre was set up to coincide with preparations for the world summit. Over 400 unemployed women were brought together to produce craft items, to display and sell to the summit delegates, or join the 5,000-strong volunteer corps needed to conduct the summit. During the cleansing ceremony of the prison, women participants were holding flowers. Perceived as too good to throw away, these bunches of flowers were planted into the earth around the jail premises. Within days, these grew into beautiful bushes laden with purple blooms. Nothing could be more appropriately symbolic, in a place that has been transformed from a jail where the human spirit was crushed, to one where hope now springs alive.

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Justice Mustafa Kamal was the former Chief Justice of Bangladesh Supreme Court. The article was based on a keynote paper presented on 31 October 2002 in a National Workshop on 'Introducing ADR in Bangladesh' organised by Legal & Judicial Capacity Building Project of the Ministry of Law, Justice & Parliamentary Affairs' Government of Bangladesh.