HUMAN RIGHTS *monitor*

Treatment of prisoners: How modern are our laws?

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THE simple fact that prisoners are human beings is often lost sight of. The oblivion of their human identity is not unusual, rather a primitive legacy, which a society like ours can hardly overcome. State incumbents are not sufficiently judicious and cordial to formulate a civilized policy to treat the prisoners a bit humanely. The attitude of the commoners, at the same time, is not humanitarian enough to furnish them with all basic necessities and civic amenities, so that they enjoy a human life. This type of common perception constitutes an attitudinal paradigm of the whole society. In most of the developed countries there is shift from deterrent, retributive, and preventive to reformative approach. Their penal policy and prison system have been structured on the reformative attitude, to give the offenders an opportunity to rectify themselves. In this context our penal policy and prison system lag behind not only civilized standard, but also UN standard.

International standard

A number of international instruments have provided for standards for treatment of prisoners. Among these the most important is the Standard Minimum Rules for the Treatment of Prisoners. This Standard Minimum Rules was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Geneva. It was approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

This Standard Minimum Rules enjoins the authority of every prison to keep a bound Register where the detail particulars of the prisoners will be recorded. It imposes an obligation to keep different types of prisoners in different parts of the prison taking account of their sex, age and criminal record. It requires the prison authority to keep untried prisoners separately from convicted prisoners, women from men, and young prisoners from adults. All sleeping accommodation, as per the provision of the Standard Minimum Rules, shall meet all the requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating, and ventilation. The windows shall be large enough to enable the prisoners to read or work by natural light. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner. Prisoners shall be provided with water and with such toilet articles as are necessary for health and cleanliness. Every prisoner shall be provided with an outfit of clothing suitable for the climate and adequate to keep him/her in good health, and shall be provided with a separate bed. Every prisoner shall be provided at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. (Sections 7, 8,10,11, 12, 15, 17,19,and 20 of the Standard Minimum Rules)

Standard minimum rules further provides that prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits. The Rules enjoins the prison authority to establish a library for the use of all categories of prisoners and ensure arrangements so that the prisoners can perform their religious prayers. (Sections 37, 40, and 41 of the Standard Minimum Rules.)

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History and accommodation of prisons in Bangladesh

The zamindars and sultans of Bengal used to detain their enemies in forts and dungeons. The Afghan rulers built a fort at Chawk Bazar, which was later on used as central jail of Dhaka. The English rebuilt the fort in the mid-nineteenth century to accommodate prisoners and they started to use it as a jail from 1798. Initially it had one criminal ward. Today, there are 81 jails, among which 9 are central jails, 56 District jails, and 16 are thana jails across the country. According to a statistics of the first week of September, 2001, there was a total of 68,405 prisoners in the jails of Bangladesh. Among the prisoners 15,865 were convicts, 47,430 were awaiting trial and 1,203 were detained under the Special Powers Act, 1974. Unfortunately some prisoners' (awaiting trial) term of punishment was less than the period they had spent in jail.

Central jails accommodate convicted prisoners whereas other jails house under-trial prisoners. Overcrowding is the most acute problem encountered by the inmates, and it goes, usually, to such an extent the total number of inmates is almost three times the total accommodation of the jails. Another statistics of 2001 revealed that all the jails of Bangladesh can accommodate a maximum number of 24,152 inmates in total. But the jails have to house 68,408 inmates, almost three times the total capacity.

Prisoners have to sleep in shifts at night because of the overcrowded situation of the jails. Jail Code allocates a space of 36 square feet for every prisoner, but prisoners hardly get the space mentioned. The daily Janakantha (April 26, 2000) revealed that each inmate had only one square ft. of standing space in Naogoan Jail, let alone space for sleeping. Condition of Chittagong Central Jail is most deplorable as 200 inmates were made to use a single toilet and water was rationed to one mug per inmate per day.

Food, health and hygiene

Prisoners are served with so low quality of food that they fall sick after consuming those foods. Chronic blooddysentery has been a common disease of the prisoners in all the Jails of Bangladesh. Almost all of them suffer from malnutrition, obviously the inadequate quantity of food being the reason. The overall condition has negative impact on the health and hygiene of the prisoners. Most of the jail authorities in Bangladesh failed to fulfill Minimum Standard set by the UN. They failed to ensure minimum floor space, lighting, heating, and ventilation inside the prisons. Because of the low quality food, inadequate water supply, unhygienic toilet, and damp environment inmates suffer from various diseases like indigestion, diarrhea, dysentery, and skin disease. The attached hospitals of the jails do not have sufficient medical facilities, sometimes seriously ill patients have died due to lack of transport facilities when they are brought from Jail to the hospital.

Corruption of jail authority

Corruption has become a common phenomenon of all the Jails of Bangladesh. The food, clothing etc. allocated to every prisoner do not reach in their hands due to the misappropriation of the prison authority. They create artificial scarcity and turn prisoners' right and basic needs into rare commodities, which one can buy with cash payment. If anyone visits prison, s/he will find inadequacy of food, and other necessary elements, but financially capable prisoners enjoy all types of facilities remaining incarcerated within the boundary of the prison. All types of narcotics and deadly weapons are available within the prison and rich and influential prisoners can buy them in exchange for cash payment.

Death in the prison

Every year more than hundred people die because of various diseases, and lack of proper treatment. 30 convicted prisoners and 87 detainees died in 2002, and 73 convicted prisoners and 37 detainees died in 2003. A human life cannot be compensated in exchange of anything, whereas every year more than hundred lives are falling into the jaws of death, posing a question mark against our growing democracy. Their death puts us at the dock, guilty feelings started to devour us.

Because of this unfortunate and avoidable death and terrible sufferings, the prisoners often revolt against the prison authority. After the establishment of Bangladesh, from 1976 to till now the prisoners revolted 25 times against the prison authority. Prisoners want to be purged of abnormal death and sufferings. They want the Minimum Standard Rules should be implemented and the civic amenities required to sustain as a human being should be ensured for every prisoner.

A brief appraisal of the prison condition in Bangladesh

The simple fact that a prisoner is a human being is often forgotten. The penal policy of Bangladesh is a combination of retributive and deterrent theories, which the English colonial ruler formulated to serve the purpose of a colony. We, unfortunately, did not revise the policy to square it with the situation of an independent country. Developed countries adopted reformative theory to fortify human values into their democratic polity, whereas we kept the colonial penal policy intact, throwing basic human rights of the prisoners in the wilderness. The typical mindset of the commoners of this country, unfortunately, favours the existing penal policy, indicating our attitude lagging far behind the civilised standard.

When any individual is put within the bars of the prison, it does not mean that s/he lost his/her identity. They have been deprived of their valuable right, freedom of movement. So long s/he possesses human identity s/he has the right to have all the basic necessities and civic amenities ensured by the Constitution and also by the Standard Minimum Rules of UN. The under-trial prisoners and prisoners awaiting trial in no way should be subjected to deprivation of basic citizen's rights. Even the convicted prisoners cannot be deprived of their right to food, clothing, health, hygiene, and medication. Incarcerating convicts within the four boundaries of the prison is rigorous punishment for them. If their basic necessities are not sufficiently fulfilled, that becomes brutal embodiment of hell on this earth.

Concluding remark

Sir Winston Churchill once said that, "the mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country". I want to invoke another two criterion, together with Churchill's touchstone, to measure the civilised standard of any country. Those are, first, how women and children are treated in a society and second, whether minorities are well-protected in that society. If we ask ourselves these questions, the answers will not be very satisfactory.

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LAW *opinion*

Law is no trade and briefs of the litigants not merchandise

HASSAN M. S. AZIM

IT has been a frequent spectacle in the recent past for the nation to witness calls for boycotting the apex court of the land by the Supreme Court Bar Association. The last call was for boycotting the Court of the Hon'ble Chief Justice through a resolution taken on 29.08.2004.

In the resolution, grave concerns was expressed for the need to maintain and uphold the dignity and respect for the Supreme Court, the highest judicial authority of the country, among the members of public and to ensure that the appointments of Judges of the Supreme Court are made only with utmost care and there is not allowed any political consideration or nepotism.

It was also resolved that the members of the Supreme Court Bar Association in protest against the latest appointment of 19 Additional Judges which the Supreme Court Bar Association felt could have been avoided if the Chief Justice had refused to sign necessary consent/approval for such appointments should indefinitely boycott the Court of the Hon'ble Chief Justice starting from 30.8.2004. In the event any member of the Supreme Court Bar Association including Attorney General, Additional Attorneys General, Deputy Attorneys General and Assistant Attorneys General attend the court in violation of the resolution, such member should be expelled immediately without further notice from the Supreme Court Bar Association.

It is true that there is serious resentment among the lawyers over the appointment of 19 Additional Judges in the High Court Division of the Supreme Court. It was argued that at least 9 of them should have been found incompetent to be judges of the highest judiciary. Politicisation of the process of appointment of judges in the High Court Division of the Supreme Court is high-handed and unjustified. Any conscientious citizen would vehemently oppose and condemn such repulsive attitude of the government. Serious protest from amongst the lawyers against such appointments is inevitable.

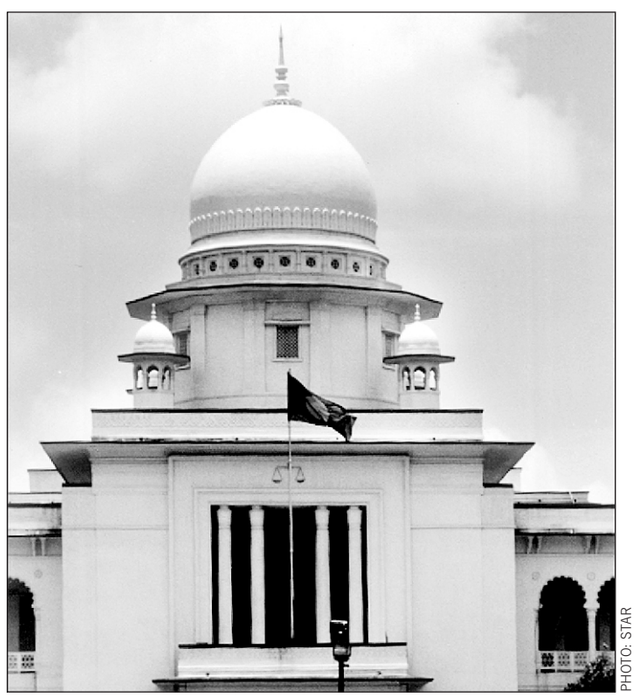
PHOTO: STAR

It is submitted that boycotting court is illegal. An advocate is an officer of the court and enjoys as special status in the society. The legal profession is different from other professions in that, what the lawyers do affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. It is, thus, unbecoming of the status of an advocate to strike work and boycott the courts at the slightest provocation overlooking the harm caused to the judicial system in general and the litigant public in particular and to themselves in the estimate of the general public.

In *Ramon Services Pvt. Ltd. Vs Subash Kapoor and others*, reported in (2001) 1 SCC 118, the Indian Supreme Court held as follows:

"Generally strikes are antithesis of progress, prosperity and development. Strikes by the professionals including the advocates cannot be equated with strikes undertaken by the industrial workers in accordance with the statutory provisions. The services rendered by the advocates to their clients are regulated by a contract between the two besides statutory limitations, restrictions and guidelines incorporated in the Advocates Act the rules made thereunder and rules of procedure adopted by the Supreme Court and the High Courts. Abstaining from the courts by the advocates, by and large, does not only affect the persons belonging to the legal profession but also hampers the process of justice sometimes urgently needed by the consumers of justice, the litigants. Legal profession is essentially a service-oriented profession. The relationship between the lawyer and his client is one of trust and confidence.

With the strike by the lawyers, the process of court intended to secure justice is obstructed which is unwarranted under the provisions of the Advocates Act. Law is no trade and briefs of the litigants not merchandise…"

In *Mahabir Prasad Singh v. Jacks Aviation (P) Ltd*., reported in (1999) the Indian Supreme Court also observed as follows:

"Judicial function cannot and should not be permitted to be stonewalled by browbeating or bullying methodology, whether it is by litigants or by counsel. Judicial process must run its even course unbridled by any boycott call of the Bar, or tactics of filibuster adopted by any member thereof. High Courts are duty-bound to insulate judicial functionaries within their territory from being demoralised due to such onslaughts by giving full protection to them to discharge their duties without fear. But unfortunately this case reflects apathy on the part of the High Court is affording such protection to a judicial functionary who resisted, through legal means, a pressure strategy slammed on him in open court.

If any counsel does not want to appear in a particular court, that too for justifiable reasons, professional decorum and etiquette require him to give up his engagement in that court so that the party can engage another counsel. But retaining the brief of his client and at the same time abstaining from appearing in that court, that too not on any particular day on account of some personal inconvenience of the counsel but as a permanent feature, is unprofessional as also unbecoming of the status of an advocate. No court is obliged to adjourn a cause because of the strike call given by any association of advocates or a decision to boycott the courts either in general or any particular court. It is the solemn duty of every court to proceed with the judicial business during court hours. No court should yield to pressure tactics or boycott calls or any kind of browbeating.

It was categorically held by the Indian Supreme Court in *Ramon Services Pvt. Ltd. Vs Subash Kapoor and others* (Supra) that it would be against professional etiquette of a lawyer to deprive his client of his service in the court on account of strike. No advocate can take it for granted that he will appear in the court according to his whim or convenience. It would be against professional ethics for a lawyer to abstain from the court when the cause of his client is called for hearing or further proceedings.

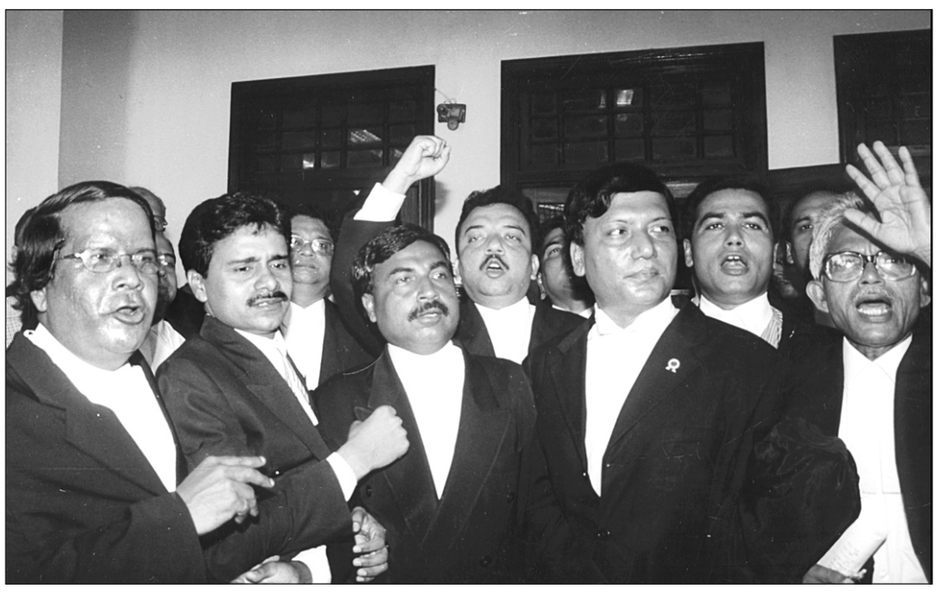
PHOTO: STAR

The full bench of the Calcutta High Court held that pleaders deliberately abstaining from attending the court and taking part in a concerted movement to boycott the court, was a course of conduct held not justified. The pleaders had duties and obligations to their clients in respect of matters entrusted to them, which were pending in the courts. They had duty and obligation to co-operate with the court in the orderly administration of justice. boycotting the court was held to be high-handed and unjustified.

In *Tahil Ram Issardas Sadarangani Vs Ramchand Issardas Sadarangani*, reported in (1993) Supp (3) SCC 256, the Indian Supreme Court, while deprecating the decreasing trend of service element and increasing trend of commercialisation of legal profession, pointed out that it was for the members of the Bar to act and take positive steps to remove such an impression before it is too late. By striking work, the lawyers fail in their contractual and professional duty to conduct the cases for which they are engaged and paid.

The legal position in Bangladesh is also similar with that of India. But legal authorities on this point of law are lacking in Bangladesh. The principles of Indian authorities, however, can shed light on the interpretation of the duties and responsibilities imposed upon lawyers by the Bangladesh Legal Practitioners and Bar Council Order, 1972 (in short 'Order of 1972') and Rules made thereunder.

Bangladesh Bar Council is established under Article 3 of the Order of 1972. Under Article 10 (C) of the Order of 1972, one of the functions of Bangladesh Bar Council is to lay down standard of professional conduct and etiquette for advocates.

Bangladesh Bar Council, accordingly, adopted the "Cannons Of Professional Conduct And Etiquette" framed in exercise of the power conferred on the Bangladesh Bar Council by Section 48 (q) of the Legal Practitioners & Bar Council Act, 1965 (now repealed) vide Article 44 (g) of the Order of 1972. As such, this has the force of law in Bangladesh and are, therefore, laws within the meaning of Article 152 of the Constitution. Hence, any act violating this would be illegal and unlawful.

Chapter III of the "Cannons of Professional Conduct and Etiquette" adumbrates the duties and responsibilities of advocates to the court. Clauses 7 and 8 of Chapter III of this are as follows:

" It is the duty of advocates to endeavour to prevent political considerations from outweighing judicial fitness in the appointment and selection of Judges. They should protest earnestly and actively against the appointment or selection of persons who are unsuitable for the bench and thus should strive to have elevated thereto only those willing to forgo other employment whether of a business, political or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of advocates for judicial position should be governed by an impartial estimate of their ability to add honour to the office and not by a desire for the distinction the position may bring to themselves. It is the duty of advocates to appear in court when a matter is called and if it is not so possible, to make satisfactory alternative arrangements."

Thus, it is clear that although it is incumbent upon the advocates to strive to have elevated to the bench only those who are suitable for the bench and willing to forgo other employment whether of a business, political or other character, which may embarrass their free and fair consideration of questions before them for decision, yet boycotting court is illegal be it for whatever reasons. An advocate has no right to stall the court proceedings on the ground that advocates have decided to strike or boycott the courts or even boycott any particular court. He is under a duty cast on him by law to appear in court when a matter is called for hearing and if it is not so possible, to make satisfactory alternative arrangements. Hence, any decision to strike work or boycott court by the advocates is illegal.

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