



FACTfile

Honduras: Killing of children continues with impunity

Child-killers in Honduras continue to get away with murder, with nearly 700 murdered or extra-judicially executed in the last 18 months. The killings continue with impunity, exactly two years since the creation of the Special Unit for the Investigation of Violent Deaths of Children. In response, Amnesty International relaunched its worldwide campaign calling on the Honduran government to stop impunity.

Sara Saucedo Flores' son, 16-year-old Darwin, was arrested and beaten by a police officer in February 2002, held for two days and released. One day later his body was found with signs that he had been summarily executed. She has been intimidated and threatened after filing complaints against the two officers she believes murdered her son. No one has been brought to justice for his killing.

Since the creation of the Special Unit for the Investigation of Violent Deaths of Children, it has only looked at 400 of over 2,300 cases of assassinations of children and young people since January 1998. Only 88 cases were forwarded to the Attorney General's Office, and only three have resulted in a conviction. Although the government has admitted that police officers have been involved in many of the killings, just two policemen have so far been convicted.

Promises made by the government have also failed to be honoured. Despite the announcement last year of the establishment of a National Witness Protection Plan for judicial proceedings, to date no adequate mechanism has been established. Protection of witnesses is of paramount importance as they can be intimidated to prevent them from providing testimony against perpetrators.

Amnesty International UK Director Kate Allen said: "Thousands of children in Honduras face a similar fate to Darwin. The Honduran authorities must prevent and punish killings of children and young people in the country, and protect witnesses. It is critical that both the Special Unit and the Attorney General's Office are given sufficient resources and independence to do this. The government should appoint ad-hoc judges to work specifically on these cases. The future of the country depends on it."

Source: Amnesty International.



LAW letter

Article 70 needs an amend-



গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধান

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়
[১৯৯৮ সালের ৩১শে ডিসেম্বর পর্যন্ত সংশোধিত]

ment

Article 70 of our constitution can be considered as one of the main obstacle of our democracy. According to art 70 no member of the ruling party can exercise his democratic right to dissent even when the government passes an undemocratic law. Due to this barrier of the constitution the members of the ruling party fails to express their own opinion and they have to act according to the choice of their leader. This process undermines the whole spirit of responsible government and leads to elected dictatorship in Bangladesh. In the developed country like Britain the member of the ruling party enjoy enormous power to criticise their government which leads their parliament to come to a fruitful ending with the free opinion of all the members. But unfortunately we do not have this tradition. However, it is true that anti hopping law is salutary from one point of view since it strengthens the fabric of parliamentary democracy by curbing unethical and unprincipled political defection. But it would be more advantageous if this law is only imposed during the time when the cabinet faces a no confidence or confidence motion. Therefore, article 70 of the constitution needs amendment from this aspect and all political party should be united to remove this drawback of our constitution for the sake of authentic parliamentary democracy.

Putul

Department of Law, Dhaka University.

Appreciation to BRAC

Article 77 of the constitution of Bangladesh provides that parliament may by law establish the office of ombudsman. In 1980, at the initiative taken by the then Govt., the Jatiya Sangsads passed the necessary act providing for the establishment of the office of Ombudsman. But the then Govt. did not put the act into effect. Successive Govt. followed the same trend. The office of ombudsman has not been establishing through more than 24 years have been passed since the passing of the Ombudsman Act. There is no denial of the fact that it is absolutely necessary to continue to do whatever is possible to control the overt and covert powers of traditional bureaucracy and to make it accountable to the people. The Governing Board of BRAC has taken this significant innovative step in order to enhance its overall governance

performance. They appointed Mr. Manzoorul Karim, former Secretary to the Government of Bangladesh, as their own Ombudsman. And he has become the first Ombudsman in Bangladesh. No impartial (!) judicial inquiry commission, rather the govt. of Bangladesh has to assign an Ombudsman and to delegate him a comprehensive mandate to investigate any incidence of maladministration and misuse of power, which will include grievances, such as, corruption, abuse of power or discretion, negligence, oppression, nepotism, rudeness, arbitrariness, unfairness and discrimination specially in the context of gender.

Aftab Ahmed
LL.B.(Hons), final Year
University of Chittagong

Becoming a lawyer

Setting a lucrative goal of becoming a lawyer is not possible for all. A lawyer is jurist forever and it is a continuous process. Lawyer called learned in the society but surprisingly a lot of lawyers, specially who are practising in the subordinate court like me, are not competent enough to become the gladiator of establishing law in the society. Being social engineer a major portion of the lawyers is misguiding the clients as well as the courts in raw hands that is one of the causes of delaying of speedy disposal of justice. There are more than five thousands lawyers are practising in Dhaka Court but you will get only few competent and efficient trial lawyers. Among the all shorts of practising law, trial advocacy is tough job and it must be accepted by the lawyer community. "Lawyering is an art and it can not be avoided within short span of time" this is a wise saying of the learned senior lawyer of our community. But in present context the witty lawyers of the modern world say that lawyering is an art and it must be taught by adequate training and I do believe that young lawyers should get proper opportunity through training to competent for transnational practice of law. Bangladesh need some smoothie and articulate lawyers for the shake of democracy, rule of law and above all establishing law in the society. It is true that Bangladesh Bar Council has taken pioneer and vital steps to produce vision and competent lawyers for the next generation providing few courses like Bar Vocational Course (BVC) and Intensive Trial Advocacy course, organise by Legal Education Training Institute, the course duration of the first one is only for six weeks and second one is only one week that are not sufficient at all and there is no Appellate Advocacy Training in Bangladesh. To learn about appellate advocacy young lawyers are to depend on the learned senior lawyers. I fact the competent, eminent and witty lawyers are too busy that they have not adequate time to teach the young lawyers. But they should bear in mind that it is there implied obligation to this profession is to make astute lawyers and adroit justices for the this century. Completing the BVC-Batch-8, I should be grateful to LETI but I have few suggestions to Bangladesh Bar Council and our learned senior lawyers to fit the young lawyers to uphold the dignity of the lawyering profession that are given below:

1. An Appellate Advocacy Training Program should be started as soon as possible.

2. Third class in any public examination should be treated as a disqualification of becoming a lawyer.

3. Bar Vocational Course may be started after passing advocacy written examination and advocacy viva voce may be held after completion of BVC.

Mohammed Mamun Al Feruji
Advocate Dhaka Judge Court.



RIGHTS corner



International Day of the Disappeared

MUHAMMAD AMIRUL HAQ TUHIN

30 August is commemorated as International Day of the Disappeared. 'Disappeared' are people who have been taken into custody by agents of the state, yet whose whereabouts and fate are concealed and whose custody is denied. The Latin American non-governmental organisation FEDEFAM, Federation Latin-Americana de Asociaciones de Familieres de Detenidos-Desaparecidos, started the custom of commemorating the Day and it is now marked all around the world. FEDEFAM was formed by associations of relatives of the disappeared in countries of Latin America and the Caribbean, which have or are currently practising forced disappearance.

A forced disappearance consists of a kidnapping, carried out by agents of the state or organised groups of private individuals who act with state support or tolerance in which the victim disappears. Authorities neither accept responsibility for the deed, nor account for the whereabouts of the victim. Forced disappearance was first used as a form of political repression in Latin America during the 1960s. During World War II, the Nazis practised a similar form of repression, which, however, recognised the detention of the victim. The first Latin American countries to practice forced disappearance were Haiti and Guatemala. It is estimated that between 1966 to 1986 some 90,000 people disappeared in countries including Guatemala, El Salvador, Honduras, Mexico, Colombia, Peru, Bolivia, Brazil, Chile, Argentina, Uruguay and Haiti. This figure includes young children and babies born during their mothers' detention. Forced disappearance with refined technique was applied in other parts of the world, including Africa and Asia later.

According to the Declaration on the Protection of All Persons from Forced Disappearance, proclaimed by the General Assembly in its resolution 47/133 of 18 December 1992, a forced disappearance occurs when "persons are arrested, detained or abducted against their will or otherwise deprived at their liberty by officials of different branches or levels of Government, or by organised groups or private individuals acting on behalf of or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law". A disappearance is a doubly paralysing form of suffering: for the victims, frequently tortured and in constant fear for their lives, and for their family members, ignorant of the fate of their loved ones, their emotions alternating between hope and despair, wondering and waiting, sometimes for years, for news that may never come. The practice of forced disappearance of persons infringes upon an entire range of human rights embodied in the Universal Declaration of Human Rights and set out in both international Covenants on Human Rights as well as in other major

international human rights instruments. A forced disappearance violates a series of fundamental and human rights including the right to liberty and security, the right to be recognised everywhere as a person before the law, the right to legal defence and the right not to be subjected to torture. In addition, forced disappearance constitutes a grave threat to the right to life.

Although disappearances are associated, in the public perception, with the authoritarian military governments of previous decades, sadly they are not exclusive of them and continue to occur to this day. The United Nations Working Group on Enforced or Involuntary Disappearances observes that now a days forced disappearances occur in the context of much more complex situations of internal conflict generating violence, humanitarian crisis, and human rights violations. This Working Group was established by the United Nations Commission on Human Rights in 1980 to assist the relatives of disappeared persons in ascertaining their fate and whereabouts and to act as a channel for communication between the families and governments concerned. The Working Group received reports from reputable non-governmental organisations of rising number of disappearances occurring in countries like Nepal, Colombia and the Russian Federation. While in 2003, the Working Group transmitted 18 cases of alleged enforced disappearances to the government of Nepal; in the first half of 2004 this number had risen to 130. New cases are reported from the Russian Federation, where the working group is aware of more than 270 cases in which the fate and whereabouts of the victims are still unknown. The fate of more than 890 disappeared people is still to be clarified in Colombia.

On the occasion of the International Day of the Disappeared the United Nations Working Group on Enforced or Involuntary Disappearances expressed concern over the occurrences of disappearance reaffirming it as a crime with severe consequences not only for victims and for relatives and friends of the victim, but also for entire societies and for the credibility of States. It called upon all governments to take appropriate actions to bring an end to the practice of secret detentions. Our Subcontinent is also familiar with the offence of disappearance. In India an alarming number of forced disappearances by state agencies have occurred. Especially we have to mention the name of the states of Kashmir, Assam and others where movement for independence prevails. Bangladesh is not totally inexperienced of forced disappearance. There are number of reported and unreported cases of mass scale disappearance in the region of Chittagong Hill Tracts. The disappearance of Kalpana Chakma, the leader of the Hill Women's Federation is a shameful example of such offence. So the International Day of the Disappeared has also its significance in Bangladesh.

Muhammad Amirul Haq Tuhin working with Ain Shalish Kendro.

READER'S queries

Your Advocate

Q: I am junior lawyer practising at a local Bar. I read your column regularly. I think, similar columns should be introduced in Bengali newspapers also. Because Bengali newspapers are available everywhere and understandable by all. Sir, my question as lawyer is: clients often come to us with papers for suggestion whether anticipatory bail can be obtained from the High Court Division. Now-a-days many people are getting anticipatory bail from the High Court Division and there has been a tendency in the general people to avoid local courts and risk of surrender. And many are trying to take chance before the Higher Court. But a case in High Court Division involves huge expenses. There was a case in which I advised the clients not to go to High Court, as there was no chance of anticipatory bail in that case. But after some weeks the clients came to me and said they obtained anticipatory bail from the High Court. I felt embarrassed. My impression was that only political VIP's are entitled to get anticipatory bail. Sir, I want to be clear what are the real grounds on which anticipatory bail is granted? Under what section of law? Is the Sessions Judge Competent to grant anticipatory bail? I am looking forward to your answer. Thanking you.

Yours Sincerely,
Md. Zakir Hossain Dewan
Advocate

Your Advocate: It is really embarrassing for a lawyer if the clients whom he gave negative opinion get the relief through another lawyer. The embarrassment, however, may be minimised if the advice given was legally sound and not perverse. We as lawyers give our opinions not guarantees. It is, therefore, not unlikely that court might hold a different view and grant relief. It is nonetheless a bit embarrassing as against the client but not so as against the legal community and the conscience of the advising lawyer. What is imperative for a lawyer is to take care that the advice given is well-grounded in law.

Now let us turn to the specific questions you have asked. Anticipatory bail is now well known to the general people. This is a special privilege granted to an accused or potential accused in connection with a specific case before being arrested or put into custody. Therefore, there is nothing wrong for any accused still at large to expect bail with a view to avoiding arrest and humiliation in custody. But unfortunately each and every case is not fit for anticipatory bail as it is an extraordinary relief granted in exceptional circumstances. There are basic principles enunciated by the superior courts for granting anticipatory bail. We must go by the legal principles while advising the clients or receiving briefs for such bail.

The jurisprudence of anticipatory bail is relatively of recent origin. In our country there is no express provision of law at the moment providing for anticipatory bail. It has developed through judicial expositions particularly

of Section 498 in relation to Section 497 of the Cr.P.C. In India a new section (Sec. 438) is introduced in the Cr.P.C. under heading, "Direction for grant of bail to persons apprehended arrest".

In our country in absence of any express law the High Court Division in exercise of its power under Section 498 of the Cr.P.C. grants anticipatory bail in fit circumstances. Since you are a lawyer your knowledge must not be confined to what is written in the columns of the newspapers. You have to be exposed to the development by careful reading through the important decisions of our Supreme Court. The jurisprudence of anticipatory bail developed over the decades is already replete with huge literature not admitting of even a brief discussion intended for a junior lawyer in the limited space of this column. It will best serve your purpose if I give you the references on anticipatory bail for reading at home and tell you about the basic principles laid down by the Appellate Division in a recent landmark decision given in the case of Abdul Wahab Shah Chowdhury reported in 4 BLC(AD)195.

The basic grounds of anticipatory bail as are provided in that decision are:

a) that the proceeding is being or has been launched against the petitioner is being or has been taken with an ulterior motive, political or otherwise, for harassing the accused and not for securing justice

b) that on account of some local public commotion or other circumstances it is not possible for the petitioner to appear before the lower court.

In the 'other circumstances' there may be serious bodily infirmities not permitting a long travel to court. Taking cue from this decision and many other cases of anticipatory bail already decided we usually take another ground that there is no prospect of bail before the lower court for extraneous circumstances. But in all cases the basic principles of bail laid down in Section 497 shall be the guiding principle. That means, in view of the facts and materials on records, court should have reason to believe that the petitioner is not guilty of the offence.

For your immediate reading I suggest the following cases: Crown vs. Khushi Muhammad, 5 DLR(FC)143; Sadeq Ali Vs. State 18 DLR (SC) 393; Mohd. Ayub Vs. Yakub, 19 DLR(SC) 38; Zahoor Ahmed Vs. State, PLD 1974 Lahore 256; Md. Atiquzzaman Masud Vs. The State & another 15 BLD (AD) 14; State Vs. MA Malik 47 DLR(AD) 33.

As to the jurisdiction of the Sessions Judge there is no clear view of our Supreme Court ousting his power to grant anticipatory bail. Therefore, Sessions Judge enjoys concurrent jurisdiction with the High Court Division in matters of granting anticipatory bail.

Your advocate M. Moazzam Husain is a lawyer of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law.

LAWweek



Land law to be simplified: Moudud

All the laws on land and property will be reformed and simplified to facilitate national development, said Law Minister Moudud Ahmed. The process for the reform is going on and four bills will be put forward for discussion in the parliament. He was addressing as chief guest the inaugural session of a day-long workshop of the district registrars held at the auditorium of the Judicial Administration Training Institute.

Presided over by law secretary Alauddin Sarder, the session was also addressed by state minister for law Shahjahan Omar and inspector general of registration Mizanur Rahman. Moudud said the administration and management of land and ownership and transfer of land and properties must be reformed to ensure national development.

The cabinet committee on land reforms has already proposed a 25-point recommendation to the government and the cabinet has approved the report. As a part of the process, four bills to amend the Bangladesh Registration Act 1908, the Specific Relief Act 1877, the Transfer of Property Act 1882 and the Limitation Act 1908 will be placed in the parliament. -New Age, September 13.

Separate land body for ethnic minorities

Samata, an NGO working with the landless people, on Sunday stressed formation of a separate land commission for the ethnic minorities and amendment to the River Erosion and Sedimentation Act.

"The elites and influential quarters mostly occupy the chars violating rights of the landless and the ethnic minorities who are marginalised in the society," Shahrier Amin of Samata told women reporters at a meeting.

Samata organised the meeting to highlight the necessity of forming a different land commission for the indigenous people and to amend the River Erosion and Sedimentation Act. They said the Bengali settlers "grab" lands of the ethnic minorities as they belong to a different culture and "are not familiar with the existing land related laws of the country". The landless and the ethnic minorities are suppressed group and mostly illiterate what the settlers use as a chance to grab their lands. -New Age, September 13.

Judicial body gets three more weeks

The tenure of one-member Judicial Commission on bomb attack on an Awami League rally in Dhaka has been extended for another three weeks. Sources close to the commission, headed by Justice Joyin Abedin of the High Court, told the news agency that they had received the official order relating to its first extension for three weeks. The commission was constituted on August 22 just one day after the attack. -BSS, September 13.

Speedy Trial Tribunal

Transparency International said 67.6 percent speedy trial court cases involved underhand dealings.

The Bangladesh chapter of the Berlin-based international corruption-watch body disclosed the information during the publication of its report on "court watch" in Dhaka.

According to the report, some of the people including magistrates, lawyers and court officials working in the speedy trial courts are involved in the underhand dealings and accept illegal money from accused parties in the cases under the much-talked-about the Law and Order Disturbance Crime (Speedy Trial) Act 2002. The report also said 25.3 percent of the speedy trial court cases were politically motivated and the government influenced more than a third of the cases. -Prothom Alo, September 13.

Women's reserved seats bill placed in JS

A bill was introduced in the Parliament outlining a complex procedure of electing women members to 45 reserved seats on the basis of proportional representation of a party or alliance in parliament.

The 14th amendment to the Constitution has introduced 45 reserved seats of women raising the strength of the 300-seat parliament to 345.

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