



HUMAN RIGHTS advocacy

Creativity needed to address torture in Bangladesh

A Statement of Asian Human Rights Commission

THE obstacles to eliminating torture in Bangladesh were foremost in the discussion at a recent meeting in Dhaka organised by Odhikar, a well-known national human rights organisation.

Torture is not a crime under national law
Although the government of Bangladesh ratified the UN Convention against Torture in November 1998, no enabling legislation has been passed to make torture a crime under national law.

No means exist to compensate and rehabilitate torture victims
No legal provisions exist to enable victims of torture to make claims for compensation or rehabilitation.

Criminal justice remains very primitive
The criminal justice system has hardly changed since from British colonial times. Many laws go back over a hundred years.

No specialised police officers exist for criminal investigations
Police officers have a range of day-to-day duties on top of criminal investigations. For every 13,000 citizens there is one badly paid and poorly trained police officer.

Public prosecutors are politically controlled
All public prosecutors are changed every time when a new government comes to power. As a result, they do not accumulate experience, nor build an institutional legacy to pass from generation to generation.

No link exists between the prosecuting and investigating branches
The prosecuting and investigating branches are completely detached. If the police do not investigate a crime, the prosecutor has no responsibility.



No independent branch exists to investigate police officers over gross violations of human rights
At the moment, police investigate all crimes. Naturally, when police officers investigate their colleagues over alleged torture, extra-judicial killings and other grave violations, there is undue influence on the outcome.

No witness protection programme exists
People do not want to complain or give evidence—especially in the growing number of serious crimes as they fear serious repercussions and lack any form of protection from the perpetrators.

Torture is politically motivated
Often torture results from deliberate attempts to harm political opponents. The party in power typically harasses the opposition in this manner.

Torture victims are disregarded because most of them are poor
The poor are badly treated in all areas of life, and this does not attract interest. Bad treatment of the poor at police stations is therefore no exception.

No human rights institution exists to monitor law-enforcement agencies
Despite years of discussion and some drafting of legislation towards establishing a national human rights commission, no practical steps have been taken to this end.

Violence is prevalent across the society but the state remains inert
Throughout Bangladesh, violence is daily committed in a wide range of social, political and religious institutions, particularly against women. It is often defended on ideological grounds, and a general ethos of intolerance permits daily acts of brutality to continue unabated.

All these obstacles are commonly acknowledged, including by all the major political parties; nonetheless, no strong lobby exists to call for action. There is agreement that something is wrong, but no sense of the need to do anything about it.

LAW letter

Constitutionalism in Bangladesh: Is it on the right path!

It is open said that the constitution of Bangladesh is one of the best constitution of the world. However all the jurists and political scientists do not express the same opinion, the critics always emphasize on the amendments which are brought in our constitution, have destroyed its greatness.

After the enforcement of the constitution of Bangladesh on 16th December 1972, 14th amendments are brought during 33 years. It is very unfortunate that while adopting our constitution it contained every kind of fundamental rights, but subsequently different Govt. brought brutal changes in it.

Moreover the Fifth Amendment curtailed the parliament's power over the financial matter which deceived the concept of democracy. In the preamble the words "historic struggle for national liberation" were replaced by words "historic war for national independence".

Another new article 2(A), announcing Islam as the state religion was added to the constitution. Also article 100 and 107 amended and inserted provisions for setting up six permanent benches of High Court Division outside Dhaka.

At last by the Thirteenth amendment non party caretaker government were introduced which does not go with our constitution and which is a very undemocratic and a confusing one.

Is Article 49 Unconstitutional?

Article 49 (Prerogative of mercy) of the Constitution of Bangladesh gives the President the power to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.

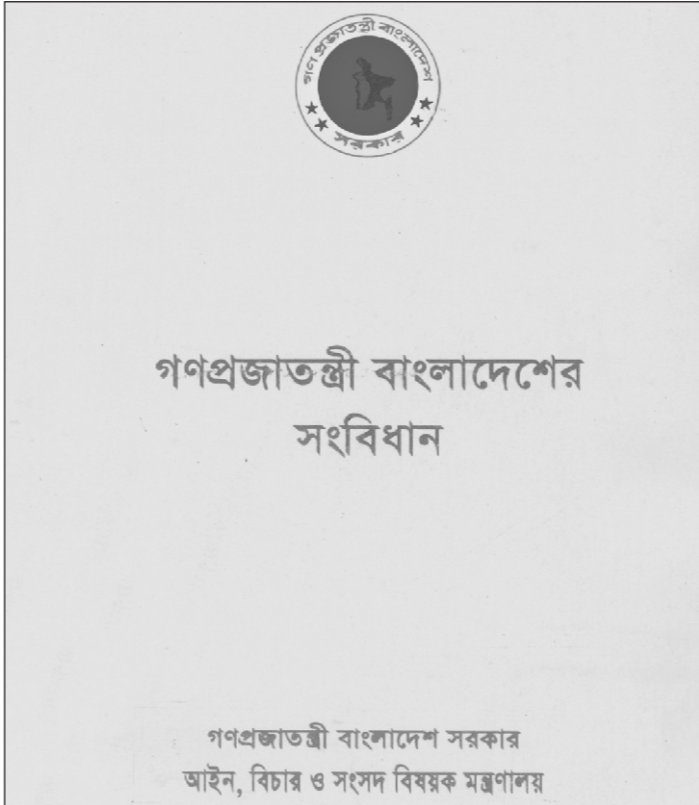
Article 22 states that the State shall ensure the separation of the judiciary from the executive organs. But allowing the President to pardon, suspend or commute any sentence passed by any court we are not only going against the core value of the independence of the judiciary but also we are questioning the integrity of our judicial system.

Article 35 (3) of the Constitution ensures that every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law.

We have seen before many known criminals have asked pardon from the President after being sentenced to death from the High Court under article 49. If the President did or does grant pardon to these known criminals they will be walking on the roads as a free person.

Article-67 needs amendment

In 1991 we have regained parliamentary democracy after a long battle with the then autocratic government. It is very unfortunate that even after fourteen years of resuming parliamentary democracy, it appears from the activities of our political parties that they could not yet adapt with this system.



court whether it is contradictory to the concept of basic structure of the constitution. Concept of caretaker government is the sequel to the mistrust among the political parties of the country.

About the objective of amendment Churchill uttered a marvelous comment "To change is to improve, to change often is to improve often and to change continuously is human endeavor for perfection".

Maruf Ahmed, 3rd year LLB
Dhaka University.

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is another addition to the list of torments that a citizen has to go through every day in their lives. Also there is no clause for appealing against the order passed by the President. In a democratic society vesting such arbitrary power on the President alone is against the fundamental principles of a democratic society.

Even if we look at India's Constitution article 72 gives power to the President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases. Article 45 of the Pakistan constitution also gives the power to the President to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.

The judiciary is a major means for the protection of rights. It has the power to receive complaints of the violation of rights, to hear evidence, and to provide redress for violations, including punishment for violators.

Advocate Farzana Chowdhury
Toronto, Canada

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because the constitution of Bangladesh has provided, in article-67.1(b), that any member of parliament remaining absent from parliament, without the leave of the parliament for 90 (ninety) consecutive sitting days, shall be ceased to be a member of parliament.

Aminul Hoque
LL.M, Dhaka University

LAW week

SC Bar joins CJ's court boycotts get together programme

The Supreme Court Bar Association (SCBA) started joining the Chief Justice's (CJ) court but boycotted a post-vacation get together of judges and lawyers in protest against the presence of 19 newly appointed judges at the function.

The SCBA earlier postponed its court boycott programme until Eid vacation following the CJ's assurance of settling the debated issue of the judges' appointment but decided to abstain from joining the get together if the new judges were present there.

Barisal ward commissioner killed by RAB

A city corporation ward commissioner named Mehedi, also an alleged criminal, was killed in a gunfight with the Rapid Action Battalion in the Barisal city. Two Rab members were also injured in the encounter with the group led by Mehedi.

Sources in Rab said the gunfight took place when they raided the Alekanda house of Mehedi, ringleader of Mehedi Bahini. Mehedi and his associates opened fire from inside. The death of Mehedi was the 38th in the custody of Rab or in encounter since the force began its formal operation in June.

Writ petition challenging RAB activities

A writ petition was filed in the High Court challenging the formation of the elite anti-crime Rapid Action Battalion (Rab) and seeking an injunction against the activities of the force.

The writ petition was filed in the wake of criticism against the activities of RAB. Different human rights groups have accused the force of violations of the constitution, laws to deal with crimes and human rights through extra-judicial killings in custody and 'crossfire'.

HC orders govt to give list on mass arrest

The High Court has asked the government to submit a report by November 23 detailing names and particulars of the people arrested between September 22 and October 3 this year under section 86 of the Dhaka Metropolitan Police Ordinance.

A court sentenced former Awami League (AL) lawmaker Joyнал Abedin Hazari of Feni to seven years jail for illegally possessing a foreign-made pistol. Judge of the Speedy Trial Tribunal Hasan Imam handed down the verdict in a crowded courtroom amid tight security.

False LLB certificate of HC Justice

A High Court Justice's LLB certificate has been discovered as false sources said. The mentioned justice is one of the 19 controversial justices of the High Court Division who were appointed on 23rd August by the Government.

According to an investigation it is found that Justice Faisal Mahmud Fayejee took part in the preliminary and final exam of LLB from Chittagong Law College that was held in 1989 under Chittagong University.

The then Chancellor of Chittagong University Professor Abdul Mannan said that all result had been cancelled based on the investigation report who were related on counterfeiting the mark sheet.

FACTfile

In spite of appropriate laws domestic violence continues.

Domestic violence, most of it related to dowry, rape, acid attacks for rejection of marriage proposals from men, teasing and extra-marital affairs, is common in Bangladesh. The country has witnessed the deaths of many promising women such as Selina, Simi, Rumi, Fahima and Indrani.

Laws relating to prevention of violence against women and children have been made more stringent, a new law has been enacted and then amended in the context of the rising attacks on women. The steps have resulted in some good results.



rape or attacks on women and children. Yet violence against women continues. Says Dr. A.S.M. Atiqur Rahman, Director at Institute of Social Welfare and Research, Dhaka University: "Women and children in Bangladesh face various types of violence. The main actors are inequality, social unrest and deprivation.

He continues: amendments or changes in the law do not make much difference. Because the vested interests groups are often protected. "It is true the government makes laws, but there are always questions about the implementation of the laws."

The sad tale of Asia Begum, 34, in Tangail district is an example of how many victims do not get justice. Asia started working as maid in the houses of her in-laws because her poor husband was unable to run the family. She was subjected to torture, including lashings on her naked body by her uncle-in-law as she refused his sexual advances.

Many believe that women must be able to stand on their own feet and become economically self-reliant as a bulwark against violence if appropriate law enacted and support them to fight against all odds.

READER'S queries

Your Advocate

Q. Dear lawyer, I want to know about the stand of Bangladesh's law and order system on "Homosexuality". It is important to know if Bangladesh still has laws that go against homosexuals. I hope you would give me a detailed answer to this question. I mean can homosexuals be prosecuted in Bangladesh solely on grounds of their sexuality?

Your Advocate: The stand of Bangladesh on homosexuality is very clear. This is considered to be a serious offence affecting private morality of persons and is strictly prohibited by law. Section 377 of the Penal Code says- "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine."

It follows, therefore, that in Bangladesh there is law that goes heavily against homosexuals and that homosexuals are liable to prosecution on ground of their sexuality alone. The answers to the queries patent in your words are sought to be so far given. But in view of the overtone of your query, which is suggestive of oddly curious position of Bangladesh in this regard, I feel like adding a few more words.

ground of their sexuality alone. The answers to the queries patent in your words are sought to be so far given. But in view of the overtone of your query, which is suggestive of oddly curious position of Bangladesh in this regard, I feel like adding a few more words. As I understand, you have indicated the legal position touching upon the question of private morality of consenting adults. You are not unaware of the nature and kind of our society, which is, essentially tradition-bound, conservative and non-permissive.