



# Combating corruption: From good intention to good action

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**C**ORRUPTION is one of the most pressing social problems that Bangladesh is confronting today. Corruption is plaguing all development efforts and remains a major stumbling block to the realisation of basic human rights in Bangladesh. Corruption has two main impacts on the society irrespective of political and social system: firstly, it has distributional impact as it promotes social inequality by causing unjust enrichment of some of the people at the expense of well being of vast majority of people. In most cases, poor and most vulnerable people are the direct victims of corruption. Secondly, it undermines the credibility and legitimacy of the public institutions. Corruption affects quality of governance and public service, violates trust and confidence bestowed upon public bodies by the public. Corruption retards economic growth, reduces the effectiveness of foreign aid, and lowers the flow of foreign investment, and creates a climate of secrecy, which in turn, contributes to the inefficiency of the public administration.

Undeniably, any effort of combating corruption requires good intention and concerted actions of the government and other elements of society. Combating corruption also requires systemic change, which can be initiated by legal and policy instruments of the government. It is widely believed that corruption can be largely eliminated, if not completely, by undertaking following steps:

- Structural reform, which broadly includes economic policy of raising income level of government officials, equitable distribution of resources, building democratic institutions and ensuring transparency in existing institutions. Economic structural changes like privatisations of corrupt state owned corporations, and downsizing the bureaucracy, and reform of banking and financial regulations are also seen imperative for the prevention of corruption. However, privatisation process without adequate competition policy for controlling market excesses and restrictive trade practices can be counter productive and can breed corruption.
- Legal reform for criminalisation of corrupt activities in order to define corrupt behaviour and their consequences by law. In this regard, legal reform initiatives requires not only formulation of appropriate laws, and regulation aiming at criminalization of the activities of corruption to a greatest extent possible but also their neutral, impartial and effective application and avoidance of overlapping of anti-corruption laws. A major legal reform and initiative is urgently needed for facilitating freedom of information in order to provide public's access to information on government activities.
- Administrative and civil service reforms for preventing nepotism and cronyism in public appointments, imposing check and balances in governance system and reducing wide discretionary power of the public officials. In order to prevent corruption, merit based procedure in civil service recruitment, performance evaluation and qualification in promotion of public officials, establishment of equitable pay scale, adoption of disciplinary measures and remedial action for corruption, disclosure of assets of civil servants, strengthening ethical standards and public responsibility of public officials is pre-requisite and should be strictly enforced. The effective use of independent and external audit of government functions and of private sector can ensure best utilisation of public resources and reduce corruption. As bureaucratic 'red tapism' remains one of the major sources of corruption, automating and computerisation of government activities can modernise bureaucracy and can reduce source of corruption. Furthermore, government procurement process should be carried out under transparent and well-defined procedures for tendering and bidding system in order to prevent corruption. Similarly, transparency should be ensured in investment decisions, and undertaking of international contracts.
- Promotional activities including providing education, and training programmes on ethical standards on public service to enable public officials to meet the requirements for the proper performance of public functions should be highly emphasised. Training programmes on ethical standards can enhance their awareness of the risks of corruption inherent in the performance of their functions.
- Establishment of institutional mechanisms and institutional reform aiming at to ensure greater transparency and accountability at all the levels of decision making process in the governance system. Institutional mechanisms that envisage accessible and effective grievance

remedial devices for correcting errors of decision makers and rectifying abuses is essential component of strategies for combating corruption. Institutional mechanisms include a variety of institutions such as office of ombudsman, independent anti-corruption commission, auditor-general, public accounts committee, etc.

The establishment of independent anti-corruption commission by government of Bangladesh is salutary effort and must be welcome. Given the prevailing rampant corruption in Bangladesh and its pervasive negative impact on overall living standard on mass people, public expectation from the commission is very high. Therefore, the commission should assume to undertake real actions to yield tangible results in combating corruption. However, it should be acknowledged that elimination of corruption is a daunting task and commission can not alone perform this task. But commission can definitely make a breakthrough in combating corruption provided that it is supported by necessary financial and human resources, independence to carry out its functions at the operational level, and co-operation of other agencies of the governments. Success of commission depends upon how far it acts with integrity and independently without external or political influence and demonstrates motivation to prevent corruption. It is widely expected that commission should be really outcome oriented and contribute to the overall improvement of the situation.

It should be mentioned that the establishment of anti-corruption commission cannot diminish the importance of appointment of Ombudsman a well recognised institutional mechanism functioning in many parts of the world to prevent corruption. More importantly, appointment of Ombudsman can fill up a constitutional vacuum. The office of Ombudsman can provide for effective channels and avenues through which citizens can lodge complaints about corruption of public officials for holding them accountable. The appointment of ombudsman can greatly supplement the efforts of the anti-corruption commission against corruption. The main functions of ombudsmen include independent investigation of complaints from individuals regarding administrative malpractices, to make reports and to put forward recommendations in order to improve administrative processes and to provide remedial measures to the aggrieved individuals. Ombudsman can ensure both procedural and substantive fairness in public administration through its recommendations. Although reporting of the ombudsman is only recommendatory in nature, publishing of report, 'naming and shaming' of public officials and its wider circulation to public and legislature will definitely have persuasive effect on the prevention of corruption.

Other institutions like judiciary, public accounts committee and office of Auditor-General have an important role to play in combating corruption. For instance, higher judiciary can play an important role to play in combating corruption within itself through its supervisory powers. Judiciary can also prevent corruption prevailing in society at large through objective interpretation of law, upholding rule of law, proper review of executive actions and decisions and applying law fairly and equally.

The effectiveness of anti-corruption institutions depends on following criteria: their independent power to investigate, fairness in process, open procedure, absence of political interference with their activities and their accessibility to the public. The performance of national institutions in combating corruption depends upon their image as credible institutions and their capacity to act with neutrality and impartiality. This again depends on how fair selection process of members and personnel of these institutions are fair and impartial and to what extent the persons appointed have track record of personal integrity, honesty and neutrality. The credibility of these institutions also depends on the extent to which they are accountable to the public and legislature for their performance. The accountability of these institutions can be ensured through publication of annual public reports regarding their functions, financial audit requirements, existence of a right of appeal to a higher court from their decisions, where appropriate, and giving reasoned explanations of their decisions. Apart from these formal mechanisms, accountability of national institutions can be ensured through informal mechanisms such as their interaction with the civil society, media, and the professional groups.

It is axiomatic that every form of corrupt practice entails violation of human rights to some extent. Hence, corruption should not only be treated as criminal offence, but also as a violation of human rights obligations of the state in a broader policy context. A human rights approach can be a powerful resistance to fight against corruption at least in the conceptual level. Corruption violates the foundational principles of rule of law, which is basic



safeguard of human rights because corrupt activities are deviation of legal rules and are prompted by factors extraneous to the law. To the extent that corruption leads to diversion of public funds for the private gains, which could be otherwise used to benefit the poor and for the furtherance of social development, health care and infrastructure development constitutes violation of social and economic rights. Taking bribery by the public servants and law enforcing agencies jeopardises procedural neutrality in the administration of justice and in turn, violates civil and political rights. Moreover, an element of discrimination is inherent in the corruption because making undue favour through taking bribes creates preferential and undue treatment to the persons giving bribe on the basis of unlawful and irrational criteria. On other hand, corruption causes unfair treatment or discrimination against people who refuses to pay bribes or unable to pay bribe. In this way, corruption violates equality before law, which is starting point for human rights.

Accepting this bold statement that corruption involves violation of human rights, it can be proposed that corruption free services should be regarded as basic human right and a provision to this effect can be incorporated in the constitution. Treating corruption free services as a fundamental human right will pave the way for initiation of public interest litigation on behalf of the aggrieved public who are the victims of corruption. Such proposition can be further justified by the fact that most of the corruption takes place in secret transaction and it is highly unlikely that either party will disclose the corrupt act. Such secrecy in corrupt transaction prevents legal action against corrupt activities difficult in most cases. In this circumstance, public interest litigation by the aggrieved person or groups of persons on the ground that wider social or public interest has been jeopardised by corruption, can be powerful tool to resist corrupt practice. Such a proposition may seem to be unrealistic on the ground that allowing PIL for corruption can cause floodgate of litigations resulting in backlogging of cases. But its careful use can be an important strategy to mitigate adverse impact of corruption, particularly when anti-corruption commission or government agencies fail to act in the event of corruption.

Adoption of international standard for preventing corruption through the incorporation of national law can enhance government's efforts to reduce corruption. The most important international development regarding anti-corruption measures occurred when the UNO adopted Convention against Corruption in 2003, which is a comprehensive multilateral treaty so far

covering various anti-corruption strategies.

The preamble of the Convention recognises that corruption can pose instability and securities of societies, jeopardise sustainable development, the rule of law, damage to democratic institutions. The Convention urges the states to take anti-corruption measures for corruption in both public and private sector and in international transaction. It emphasises on preventive measures including anti-corruption policies and practices, establishment of preventive anti-corruption bodies, codes of conduct for public officials, management of public finances, public reporting, and participation of civil society in prevention of corruption. It requires the States to develop and implement effective and coordinated anti-corruption policies and practices to ensure transparency, competition and objective criteria in decision making relating to public procurement, to take measures to enhance transparency in public administration and to prevent opportunities for corruption among members of the judiciary and to prevent corruption in private sector through enhancing accounting and auditing standards and to institute a comprehensive domestic regulatory and supervisory regime for banks and non-banks financial institutions. The Convention also lays down provisions for criminalisation of corrupt activities as much as possible, and sets out the modalities of state's action in prevention of corruption at international level through the international co-operation.

Bangladesh has not yet signed the Convention. It is widely believed that signature and ratification of the Convention by the government of Bangladesh will not only bring the anti-corruption laws and measures in line with international standards, but also will increase its international image, which has been eroded as the most corrupt nation.

While presence of some degree of corruption can be found in all societies and all cultures, its pervasive presence in Bangladesh has made global champion of corruption for consecutively four years. It would make more sense if the government undertakes effective actions to prevent corruption rather than discrediting this truth. While the establishment of anti-corruption commission is an important step in this direction, still much should be done to combat corruption.

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## LAW alter views



## LAWweek



### REVIEWING ISLAMIC LAW TO SETTLE FAMILY DISPUTES

## Canada: Trampling on justice

V RADHIKA

Very recently, the Ontario government announced that it would review plans to use Islamic law to settle family disputes. While this was not exactly what Homa Arjomand, Coordinator of the International Campaign against Sharia in Canada, and other women activists wanted to hear, the fact that the government agreed for a review, marks a minor victory. Activists like Arjomand and Alia Hogben of the Canadian Council for Muslim Women (CCMW) would rather that the plan is disbanded altogether.

On June 10, 2004, Attorney-General Michael Bryant said, "We are looking at what the options are, aware of the fact that it (an institute that plans to apply the Sharia law) will not be up and running till later this year..."

The controversy arose after the Islamic Institute for Civil Justice asked for the setting up of Islamic or Sharia courts in Ontario. This demand implies that marriage, family and business disputes would be settled according to Sharia, a body of laws and rules "inspired" by the Quran.

In October 2003, the institute, headed by retired solicitor Mumtaz Ali, submitted a proposal to the government. And an approval was granted under the aegis of the Arbitration Act 1991 which allows religious groups in Ontario to settle family disputes. Hassidic Jews have been settling their own disputes in accordance with Jewish law for years, as have the Catholics and Ismaili Muslims. The only stipulation here is that the rulings (which are binding) should be consistent with Canadian laws and Canada's charter of rights.

Ali argues that this stipulation should quell any misgivings regarding the fate of women's rights. In fact, he claims that on issues such as divorce and inheritance, Islamic law gives more rights to women than the secular Canadian law. "Muslim women," he pontificates, "can get the best of both worlds."

Arjomand and Hogben however, disagree entirely. Such courts, they say, will be detrimental to women's interests; and there is no need for these when women have access to a progressive Canadian legal system that ensures women's equality. They also dismiss the contention of Sharia law proponents, that



participation of women in these proceedings will be purely voluntary. The activists argue that there is a high possibility of women being pressurised by the community and the family to participate in Islamic courts.

Most at risk are young immigrants, who come from the Middle East or North Africa, where Sharia has been used to subjugate them throughout their lives. If Sharia courts were to function here (in Canada), says Arjomand, many women will be socially and psychologically coerced into participating. To refuse would mean rejection by their families, the community, or worse.

Arjomand marshals her experience as a transitional counsellor with women - particularly immigrant women and refugees, many of whom come from countries that, enforce Sharia law - to buttress this claim. This one-time professor of medical physics in Iran was forced to flee her country; her family arrived in Canada in 1989 as refugees.

"Women are not equal under it (Sharia)," says Arjomand, "therefore it is opposed to Canada's laws and values." She and other campaign activists met with government

representatives to put their view across. In a May 7 letter to Arjomand, John Gregory, general counsel to the attorney general, acknowledged "the oppression that some Muslim women experience in Canada". But that was not reason to deny the Islamic Institute the right to use the Arbitration Act, he said.

India-born Alia Hogben, president of CCMW, got a similar response. While Hogben is a devout Muslim, Arjomand is a non-believer. But the movement against Islamic courts has been drawing women from across the spectrum. Hogben says there is enough documented research to show that wherever Sharia is enforced "it is not pro-women". When Canadian law has the same fundamentals as the basic principles of Islam like compassion, social justice, and equality for men and women, she says, why go looking for "another set of laws that are controversial"?

The two women go a step ahead and call for a re-examination of the Arbitration Act to remove family matters from its ambit. They are engaged in an exercise to highlight the shortcomings of this act, and argue that cases affecting women and children should be under

family law and not the arbitration act. Women do have the option of appeal on a ruling of an arbitration court. "But then," says Arjomand, "they have to do so within a short stipulated time. And most women, who are still in trauma, are neither physically, emotionally or financially in a position to appeal."

Arjomand goes so far as to say that the Ontario government may be agreeing to let the rights of Canadian Muslim women be trampled upon out of fear of offending the community's male leadership. She is also sceptical of the assumption that decisions contrary to Canadian law will show up before the courts.

Sharia-approved but illegal activities already occur in Toronto, she claims. Muslim women are battered but they don't dare report this; and bigamy exists. Besides, among her clients are two 14-year-old girls who were married in 2003 to older men, in defiance of Ontario law prohibiting marriage before age 16.

So, why have Sharia at all? Says Ali, "Living by religious law is our whole life." In facilitating Sharia, he says the Ontario government shows itself as the most enlightened in the world. "This is the multiculturalism of my friend Pierre Trudeau," he adds.

"A false argument," retorts Hogben. "Multiculturalism was never meant to take away the equality rights of a group, in this case Muslim women." And Arjomand goes a step further and argues that the bogy of multiculturalism often leads to communities becoming insular and prevents them from integrating into the mainstream.

The State and religion must be kept separate, says Arjomand. "Your beliefs should stay in your home, in your mosque, your church, your temple. We (Canada) should remain a secular country with no separate rules for some groups, not when they discriminate against women."

While the recent announcement of a review has injected optimism in the activists, it has not made them complacent. Both the Campaign and CCMW are currently engaged in planning activities to bring pressure to scrap this move. A web campaign calling for a halt to the Islamic courts has already got the support of 3,111 people.

News Network.

### CJ refused Thai visa

Chief Justice Syed JR Mudassar Husain was refused Thai visa for strict visa rules. Officials at the Thailand embassy in Dhaka declined to receive the red passport of the chief justice when it was submitted for a visa.

The chief justice had planned to go to Sydney via Bangkok to visit his relatives living in Australia. The embassy official declined to issue the visa in short notice, as the procedure is to submit the visa application at least 10 days before the visit, sources said. -*The Daily Star, March 20*

### HC convicts editors, publishers, reporters of contempt

The High Court convicted and fined the editors, publishers and three reporters of the Prothom Alo and Bhorer Kagoj for contempt of court for running a report that an additional judge 'tampered' with his law exams results. Prothom Alo Editor Matiuir Rahman and Publisher Mahfuz Anam and its two reporters Enamul Haq Bulbul and Masud Milad were fined Tk 1,000 each, failing which they are to serve out one month in prison.

The court also handed down similar punishment to Bhorer Kagoj's former editor Abed Khan and Publisher Saber Hossain Chowdhury. The court sentenced Bhorer Kagoj reporter Samaresh Baidya to two months of rigorous imprisonment and slapped a fine of Tk 2,000 on him for not only printing the news, but also the photograph of the additional judge in question. He will have to spend another month in jail should he not pay the fine. Counsels of the defendants said they will contest the verdict in the Supreme Court.

The two dailies carried reports on October 30 last year that Additional Judge of the High Court Faisal Mahmud Faizee had tampered with his LLB results that he obtained from the Chittagong University (CU) in 1989. Faizee's father Advocate Mohammad Faiz filed a contempt suit against the editors, publishers and reporters. Barrister Azmalul Hossain represented him, while Dr Kamal Hossain, Barrister Rakanuddin Mahmud and Advocate Mahbub-e-Alam represented the defendants along with barristers Sara Hossain, Mustafizur Rahman Khan and Tanjibul Alam. -*Prothom Alo, March 21.*

### Move to make first defence policy

The Armed Forces Division (AFD) has initiated steps to formulate for the first time a defence policy for the country to provide the armed forces with directions to strengthen themselves on a priority basis, sources said. AFD, an organisation under the Prime Minister's Office, has already

assigned a number of its senior officials to prepare a draft of the policy in line with the country's foreign policy. The defence ministry meanwhile has taken steps to formulate a policy on budgetary allocation for the armed forces. The armed forces have been running without a defence policy since the independence while the defence ministry does not have a policy on allocation of budget for the army, navy and air force though these forces enjoy the highest allocation from the national budget. Defence experts said the armed forces all too often get into difficulties while operating in absence of a defence policy. They have long been demanding a defence policy highlighting the needs of the forces.

The armed forces have already started preparing sets of written goals and objectives, which would include, among other considerations, their respective size, facilities and capacities. Top officials of the army, air force and navy have been tasked with preparing the first ever written goals of the defence services. AFD will co-ordinate the reports once they are completed, said sources. -*The Daily Star, March 23.*

### FBI to probe only grenade source, not Kibria murder

The Federal Bureau of Investigation (FBI) team will investigate only the January 27 grenade attack on Awami League rally at Baiddar Bazar. It will not delve into the murder of former finance minister Shah AMS Kibria, CID and government sources said.

According to the sources, FBI will investigate the source of grenade, its routes and destinations as well as the country of origin. However, the sources said FBI would analyse the documents and chargesheet submitted by Criminal Investigation Department (CID) in the Kibria killing case.

It would also talk to investigators and accused persons and use the obtained information in its investigation, the sources said. CID is now working on another case regarding the grenades used in the grisly attack under the explosive substances act. Trung Vu is in Dhaka to discuss the terms of reference with Bangladesh law enforcement officials for investigation into grenade attack, said embassy sources. The FBI agent is available to review new evidence associated with the investigation, and also the arrest of eight suspects, added the sources. -*The Daily Star, march 23.*

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