



LAW opinion



Why the police misbehaves?

JUSTICE MOHAMMAD GHOLAM RABBANI

Ahmed Siddique is a professor in the faculty of law of the University of Delhi. He has given answer to the question, in his book Criminology -- Problems & Perspectives, which I quote: "People get the government they deserve. Probably the same is true of the police force also. The police force of a country can not be very different from the rest of the society.... Some of the policemen may be rude but then politeness is not very common phenomenon in other areas of life either. Not very infrequently one experiences the same rude behaviour whether it is from the conductor of a public transport bus or an employee of a nationalised bank and like."

SK Ghosh is a retired inspector-general of police of Orissa in India. He has written a book 'Law and Order' wherein the answer we read: "The more original, honest and earnest the Inspector-general or for that matter any other police officer down to the rank of officer-in-charge for a police station is, the less likely he is to remain in office."

Nelson Mandela is a great moral and political leader of our time. The answer in his autobiography 'Long Walk to Freedom' is this. He was detained for years in the jail on Robben Island (South Africa). He wrote, "Badenhorst spoke to me directly. He told me that he would be leaving the island, and added, 'I just want to wish you people good luck.' I do not know if I looked dumb founded, but I was amazed.... I thought about this moment for a long time afterwards. Badenhorst had perhaps been the most callous and barbaric commanding officer we had on Robben Island. Ultimately, Badenhorst was not evil, his inhumanity had been foisted upon him by an inhuman system. He behaved like a brute because he was rewarded for brutish behaviour."

The author is a retired Judge, Appellate Division, Supreme Court.



LAW week



Jail for reckless driving on cards

Drivers are going to face imprisonment for reckless and drunk driving, illegal parking, using fake driving licences and other transport-related crimes. The provisions for such tough punishments are coming under a government move to amend the Motor Vehicles Ordinance, 1983.

Provisions for punishment have also been proposed for emitting black smoke, overloading vehicles with passengers or goods, installing extra seats in buses as well as plying vehicles without proper registration, fitness certificate or route permit. The move follows rampant violations of law in the transport sector leading to seven to 10 thousand deaths and a loss of national resources worth Tk 39 billion in road accidents every year. *The Daily Star, March 28.*

3 traffic cops apologise to High Court

Three traffic police men, charged with contempt of court tendered an unqualified apology to the High Court (HC) for stopping the car of a HC judge on March 6 to serve a traffic warrant. Traffic sergeants ATM Iqbal and Mozammel Haq and Traffic Constable Shahidul Islam appeared in court in line with the orders of the HC bench of Justice SK Sinha and Justice Shamim Hossain, which were issued on March 14. The HC asked them to submit an affidavit of their unconditional apologies to court by April 3. *The Daily Star, March 29.*

HC Injunction Against Audit to Unearth Graft

Bangladesh is on the verge of losing a German grant of 60 million euro earmarked for two power projects of the Rural Power Company Ltd (RPCL), as a High Court (HC) injunction has stopped a German audit to unearth corruption in the projects. The deadline for a decision on this grant, which is tagged with a condition of this audit, expires today. According to the Economic Relations Division (ERD) sources, the government expects Germany to extend the deadline till the six-month HC injunction expires in June. *The Daily Star, March 31.*

Registration (Amend) Act comes into effect July 1

The Registration (Amendment) Act-2004, which comes into effect on July 1, will greatly reduce complications in transferring land ownership and land-related disputes, said Law Minister Moudud Ahmed. "The new act will bring discipline to land management and simplify the process of transfer of land ownership," he said at a press conference at the Secretariat in the city.

Under the new act, registration has been made mandatory for transfer of all kinds of immovable property irrespective of its value, declaration of beba (bequeath), mortgage deed, distribution deed of the inherited property and the contract for sale (Bayna).

A salient feature of the law is that it provides for a simply formatted form for writing deeds, replacing the age-old and extremely complicated practice, said the minister. The form will have all essential information as to transfer and ownership of land in simple language. The deed from will be a precise one and the deadline for registration of any contract or declaration will be of three months under the new law in place of existing four months, the minister said. The new law also requires a sub-registrar to follow a set of guidelines ensuring fulfillment of a number of preconditions before registration of transfer or mortgage of a land. The registration fee for a beba deed has been fixed at Tk 100, which is very nominal, to uphold the spirit of the practice according to the Muslim personal law, the minister said. *The Daily Star, March 31.*

Death by law enforcing agencies

According to the monthly press release of Odhikar, a rights organisation, in the month of March, 23 people were killed by Law enforcing agencies and among them 22 were killed in cross fire. -*Odhikar, April, 01.*

Corresponding with the Law Desk

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LAW letter

Lawmakers study power sources

It is surprising but probably good news that lawmakers desire to enrich their knowledge base on the power and energy sector as reported in some local papers on March 17. Hopefully it will help us to come out of the perennial power shortfall in the country, if our lawmakers are determined to find a solution.

While on their visit abroad my humble suggestion to the law makers would be to carefully look at alternative energy options apart from conventional gas and coal based power plants from different sources to enhance power capabilities in Bangladesh. Some of these viable sources that can be studied and which are operating in US and Europe are:

- a) Using stand by GenSet as power system resource during peak demand.
- b) Producing power from municipal waste.
- c) Recovery of power (without need of fuel) from gas transmission line pressure drop stations.
- d) IT based transfer switchgear for taking LT power from small generating units to the distribution network.

Other sources like wind power, solar cells, micro turbines (river current) are not cost effective. As a matter of fact these sources of power are highly subsidized even in developed countries. In this connection as a citizen of Bangladesh, I will be glad to give a briefing to our honorable lawmakers prior to their visit overseas so they can have some ideas on what are the options to look at. All the above options are comparatively low capital cost based, which can easily enhance our power availability.

Eng. S.A. Mansoor
Gulshan, Dhaka

Waiting for a century!

RAB have been working in Bangladesh since last year. The work of this special force is to control the law and order of the country. While doing their duty, RAB already have killed 98 citizens (till April 1, 2005) in different parts of Bangladesh. Maybe those people were criminals, may be not. But the thing is this; all those citizens died without any justice. They were killed in so-called crossfire.

Though RAB breached the human rights of our country, I still really appreciate (!) their work. Courts of Bangladesh take a lot of time to conduct cases. Sometimes criminals die before the hearing of their cases! In this situation, RAB is making things easier for the court. Justice is not needed for these



criminals; they should better be killed quickly in this way, isn't it? Therefore as a citizen of Bangladesh, I am very much pleased (!) on RAB's work. To get

LAW alter views



Rule of law and independence of judiciary

NAJMUL HASAN

To ensure absolute independence of the Judiciary England had to fight a long and sustained battle and it was not until 1701 that she was able to achieve that object.

Sir Winston Churchill said of the judges, "There is nothing like them at all in our England. They are appointed for life. They cannot be dismissed by the Executive Government. They have to interpret the law according to their learning and conscience".

About the salary of judges it is recognised in England that it should be such that they would be able to maintain a way of life befitting the gravity of the duties they have to discharge. They are at present the highest paid officials in England except the Prime Minister and a few others.

Lord Denning said, "Such is the price which England readily pays so as to ensure that the Bench shall command the finest character and the best brains, that we can produce".

In the words of Sydney Smith, "Nation fall when the judges are unjust because there is nothing which the multitude think worth defending; but nation do not fall which are treated as we are treated".

If we cherish the independence, efficiency and impartiality of our judiciary as the people do in England, we should see to it that the judges are better paid, that they are able to work so long as they are fit, that their salary and pension are increased and that they have nothing to look forward to at the hand of the government either in the course of their service or after their retirement. The service promotion and appointment of the judges should be made immune from the action of the government and their service promotion, salary etc. should not be in the hand of the Executive and the Government, so that the government or any other quarters cannot exert any influence upon the judges.

All political parties, especially while in the opposition shouts, for rule of law and independence of the judiciary. In all political movements the demand for rule of law and independence of the judiciary was one of the main slogans in our country and yet the "Rule of Law and complete independence of the judiciary" could not be achieved. One of the main slogans of the political party now in power was "Rule of law and for the independence of judiciary" and still the same has not been fully achieved and established even after passing of the 33 years of independence.

The parties now in opposition with full throat are "shouting for rule of law and for independence of the judiciary" but while they were in power they did exactly the opposite. They did not make any efforts for establishing "Rule of law and independence of the judiciary" rather they tried to make judiciary subservient to the Executive and the Government and to that end they did not hesitate to amend the Constitution from time to time to suit their purpose. The first major encroachment upon the independence of the judiciary and to make it subservient to the executive was made by the 4th amendment of the constitution. The power of impeachment of the judges was taken away from Parliament, and the President was vested with the sole authority to remove, suspend and dismiss judge of the Supreme Court without any charge, notice or show cause.

That was the first blow upon the 'Rule of Law and the Independence of the Judiciary' immediately after independence.

Thereafter, during the last regime from 1982 to 1990, attempts were made to weaken the judiciary further and to make it subservient to the Executive by 8th amendment and bifurcation of the High Court Division of the Supreme Court of Bangladesh.

In 1982 during the last regime and the government perhaps the cruellest blow was inflicted upon the judiciary when four senior most eminent judges of the Supreme Court of Bangladesh were removed arbitrarily.

The aforesaid removal of the 4 senior most judges of the Supreme Court including the Chief Justice shall always remain as the most naked and barbaric act and encroachment upon the "Rule of Law and the Independence of the Judiciary."

Even under those unfavourable conditions judges of the Supreme Court of Bangladesh, made their utmost to uphold the dignity and independence of the judiciary. (And in doing so the as far noted 4 eminent judges lost their jobs.) Subsequently it was the Supreme Court of Bangladesh which restored back its power, authority, jurisdiction and independence to a great extent by its unparalleled historic judgement declaring the 8th Amendment to the Constitution in relation to the bifurcation of the High Court Division and curtailing of the overall jurisdiction of the High Court Division over all the territorial jurisdiction of Bangladesh as illegal, unconditional and void.

Till date, the reasons, for the removal of the aforementioned senior eminent judges of the Supreme Court from their office are not known. These eminent judges were not only removed from service most illegally and arbitrarily in flagrant violation of all norms, forms ethics and principles. They were as well restrained from practising law for their livelihood and as well they were refused any compensation or pension whatsoever. Except Chief Justice Kemaluddin Hossain who was given pension.

One of the 4 judges, Mr. Justice SM Hussain, could not absorb the shock of his illegal removal from service and died of cardiac failure. It is shocking that till today nothing worthwhile has been done by the present democratic government to compensate and redress the family of that eminent, dedicated judge and the other three judges of the Supreme Court of Bangladesh.

Mr Justice SM Hussain became a victim of the past regime along with other three eminent judges, for their uncompromising and unflinching judicial temperament and their relentless endeavour and efforts to establish rule of law and to safeguard independence of the judiciary. Many years have passed since Justice SM Hussain has died, with all his pain, agony and helplessness in his tormented mind but we the lawyers and officers of Court

will never forget him nor his name will ever be forgotten in the history of the judiciary of Bangladesh.

It is now quite evident that the political parties always shout for the "Rule of Law and for Independence of the Judiciary" not for the sake of the judiciary but rather to achieve their political objective and to give impetus and momentum to their criticism and movement against the party in power.

The major political parties including the party now in power and the parties who had been in power and are now in the opposition seem to have used their slogan for "Rule of Law and Independence of the Judiciary" for achieving their political aims and objective rather than for the sole interest of the judiciary and the nation. Activities in the past as referred to above show that they exactly did the opposite things and 4th and 8th amendments brought about by the past two political parties then in power, as quoted above, bear, testimony to the same.

Under the present circumstances it seems that no more reliance can be given upon the slogan for "Rule of Law and for Independence of the Judiciary" when it is being raised by any political party.

Now it is high time that the slogan needs to be raised by all lawyers irrespective of cast, creed and political affiliation unanimously to achieve "Rule of Law and Independence of the Judiciary" in the country.

As referred to in the historic 8th Amendment case Judgement that independence of judiciary is not an abstract conception. The reference given therein where Bhagwai, J said "If there is one principle which runs through the entire fabric of the constitution, it is the principle of the rule of law and under the constitution it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the Rule of Law meaningful and effective." He said that the judges must uphold the core principal of the Rule of Law, which says "be you ever so high, the law is above you." This is the principle of independence of the judiciary which is vital for the establishment of real participatory democracy and maintenance of the rule of law as dynamic concept and delivery of social justice of the vulnerable section of the community. It is this principle of independence of the judiciary which must be kept in mind while interpreting the relevant provisions of the constitution."

In the said historic 8th Amendment Judgement words of Justice Krishnaiyer was quoted "Independence of the Judiciary is not genuflection; nor is it opposition to every proposition of government, it is neither judiciary made to opposition measures nor government pleasure."

The author is an Advocate, Supreme Court.



justice in the court it takes a lot of time, so why we are not taking a short-cut way? Better let them do everything rapidly, as they are called Rapid Action Battalion.

RAB is only 2 lives short to knock a century. We are eagerly waiting for that.
Mashih-ul-Huq (Vashkar)
Uttara, Dhaka

Hartal - for whom you are?

The prosper of a nation is nothing but a vain dream if the might of a nation turns into its threat. In a democratic country like Bangladesh, opposition parties should prove themselves as pathfinder towards the betterment of the country by co-operating the government. If the government goes wrong, the opposition should protest to demonstrate the disapproval of certain action or to realise demands in respect of the political process. However, all of this should be done only for the welfare of the general people. Nevertheless, opposition parties most of the time call for hartal as a weapon to protest. When a fisherman use electric net to catch some specific fishes, lots of other fishes die uselessly. In the same way when oppositions call for continuous hartal to protest certain specific government action, it halts the momentum of the whole nation.

The result is loss of crores of takas everyday. The negative effect of such hartals is obvious. Educational institutions remain closed, which hampers the education at all levels, people cannot move anywhere, transportation of goods is stopped, shops and business firms remain closed, small income earners like daily labours and rickshaw-pullers are deprived of their incomes. Trade and industry remain closed leading to loss of production. The sick cannot have access to medical treatment on time. As a result, foreign investors are losing their interests, which leads the national economy to severe damage and at the same time, the life of the community seriously put at risk.

But the interesting thing is neither the government nor the oppositions support the hartal, it is a proven truth. History tells whenever any political party loss the election and become the opposition, they go for hartal, but when the same political party come into power, they talk against it. Now the question is why all the political parties support hartal when they are in opposition and why they discourage it when they were in the ruling party. Is hartal used for the betterment of general people or it is only used as stairs to come in power? Considering the severe harm, politicians can leave hartal, because they know better how to make the country economically sound and independent. To secure political demands, they can protest through public meetings, procession, demonstrations, media conference and so on. So it will be better for the nation if hartal is ignored legally with the agreement of both the oppositions and the government. People do not want political violence. So the representatives of the people should ensure this.

Muhammad Noorus Sabah
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RIGHTS investigation



Prohibition of child labour and minimum age for employment

Because of widespread poverty, many children began to work at a very young age. According to the Government's National Child Labour Survey published in November 2003, the Government estimated that approximately 3.2 million children between the ages of 5 and 14 years worked. Working children were found in 200 different types of activities, such as shrimp farming, of which 49 were regarded as harmful to children's physical and mental well-being. Sometimes children were seriously injured or killed in workplaces. For example, on January 17, a child age 13 died when he became stuck to a conveyer belt while he worked in a spinning mill at Savar.



Children often worked alongside family members in small-scale and subsistence agriculture. Hours usually were long, the pay low, and the conditions hazardous. Many children worked in the beedi (hand-rolled cigarette) industry, and children under 18 years sometimes worked in hazardous circumstances in the leather industry or the brick-breaking industry. An estimated 10,000 children worked long hours on fish farms on small islands in Southwestern Bagerhat district for 5 months a year in hazardous conditions. The farm owners paid and fed the children poorly. The Coast Guard periodically rescued and returned child workers to their home villages.

Children routinely performed domestic work. The Government sometimes brought criminal charges against employers who abused domestic servants. Under the law, every child must attend school through grade 5 or the age of 10 years. However, there was no effective mechanism to enforce this provision.

There was virtually no enforcement of child labor laws outside the export garment sector. Penalties for child labour violations were nominal fines ranging from an estimated \$4 to \$10 (taka 228 to taka 570). Most child workers were employed in agriculture and other informal sectors, where no government oversight occurred.

The Bangladesh Garment Manufacturers' and Exporters Association (BGMEA), the Department of Labour, and the ILO jointly inspected an estimated 4,000 BGMEA-member factories with the declared intention of eliminating child labour in the garment sector. The inspectors found 23 children working in 11 of those factories between January and August 25. Each factory having child labour was fined \$100 (taka 5,900). According to the ICFTU, there was a significant reduction of child labour in the garment industry; while 43 percent of exporting factories used child labour in 1995, by 2001 the figure had fallen 5 percent to 38 percent. Former child employees were also offered a small monthly stipend to help replace their lost income while attending UNICEF-sponsored schools.

The Non-Formal Education Directorate of the Government, international organisations, and some NGO partners sponsored programs to provide education to some working children in urban slum areas around the country. The Government has been a member of ILO-IPEC since 1994. ILO-IPEC programs include a \$6 million project to eliminate the worst forms of child labor in five targeted industries: beedi production, matchmaking, tanneries, construction, and child domestic workers. As of December 2003, 19,874 children had been removed from hazardous work, 19,508 were attending non-formal education training, 7,623 had been admitted to formal schooling, and 3,060 were receiving pre-vocational training. Employers from 51 beedi and brick-breaking industries have declared their sites child labour free.