

LAW *alter views*



Extra-judicial killings: Some issues

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THE right to life is the most important of all human rights. The Bangladesh Constitution of 1972 has emerged as an epitome in championing the cause of human rights and has been a watershed in the direction of protecting and promoting human rights in the country. Right to life is guaranteed in the Constitution as one of the fundamental rights (Part III of the Bangladesh Constitution).

Article 32 of the Constitution states: "No person shall be deprived of life or personal liberty save in accordance with law". Two



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elements are significant to note in the right to life in terms of the Constitution. First, the word "person" is employed. This includes not only a Bangladeshi citizen but also a foreigner living in Bangladesh. Second, there is no qualification or limitation to the right except that life or liberty can be taken away in accordance with laws of the country.

This implies that there must be set of laws by which right to life may be denied. This brings the question that the executive or government has to abide by the laws enacted by Parliament.

Extra-judicial killings are those that are

not committed by orders of a judiciary or court under laws of the land. They include executions or killings by law-enforcing agencies or deaths in custody. Any deaths that are not executed by the order of judiciary in accordance with laws are designated as extra-judicial killings. And they are constitutionally illegal as they violate the fundamental rights to life, guaranteed by the Constitution.

Alleged criminals of murders are human beings and unless they are found guilty and convicted by a court and sentenced to death, they are entitled to enjoy the fundamental rights to life and no governmental agency can take away that right.

accountability. Rule of law means that all citizens are to be treated equal in law and there is no fear or favour in executing laws in the country. Rule of law encompasses judicial transparency and means that justice must be open for public to see and be subject to rigorous and impartial review.

Another dimension of the rule of law is that there is no discrimination of persons on grounds of birth, wealth, or position in society. No person, how high a person may be within or outside the government is beyond accountability to his/ her actions or omissions. Rule of law is based on the principle of equality and accountability. In Western democracies, it is not unusual that even a Prime Minister of a country has been fined by an ordinary police constable for breaches of traffic offences. Such action is the practical demonstration of rule of law in a country.

In the light of democratic traditions, extra-judicial killings have no place in democracy because they are not only illegal but also unconstitutional and therefore alleged perpetrators must be accountable to their actions.

In Latin America, in the 70s, there were instances of numerous extra-judicial killings, in particular in Chile and Argentina. The former Chilean President General Pinochet (an octogenarian) is still being pursued in his country by the relatives of victims to put him to trial and the case is pending in the Supreme Court on the question whether Pinochet is entitled to legal immunity from criminal prosecution. In fact he was arrested in Britain in 1998 but was freed because of his poor mental condition.

Interventions by Courts

The High Court and the Supreme Court in India have been very vigilant on deaths at the legal custody and on crimes at the hands of the law-enforcing agencies. While deciding the cases of such deaths, the Supreme Court has not restricted itself to just punishing concerned personnel of the law-enforcing agencies but also has shown judicial activism by asking the government to pay compensation to the relatives of the victims

On 3rd February, 1995, the Supreme Court directed the Harayana government to pay an ad-hoc relief of Rs. Two lacs (200,000) to the relatives of a 22-year old youth of Delhi who died at the police custody in 1993.

In another case of Joginder Singh vs State of Uttar Pradesh (1994: SC: 3 JT), the Supreme Court held: "An arrested person being held in custody is entitled, if he so



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requested, to have one friend, relative or other person who is known to him or is likely to take an interest in his welfare and told as far as practicable, that he has been arrested and where he is being detained".

UN Declaration on the code of conduct for law enforcement officials

The 1979 UN Declaration on the Code of Conduct of Law Enforcement Officials sets out a code of conduct for law enforcement officials, consistent with the high degree of responsibility required by their profession.

In the commentary, the Declaration states that the use of firearms is considered "an extreme measure". Every effort should be made to exclude the use of firearms. In general firearms should not be used except when a suspected offender offers armed resistance. In every instance in which a firearm is discharged, a report should be promptly to the competent authorities.

Article 2 of the Declaration states: "In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons".

Article 5 of the Declaration states among others: "No law enforcement official may inflict, instigate, or tolerate any act of torture, or other cruel, inhuman, or degrading treatment or punishment". Article 6 provides: "Law enforcement officials shall ensure the full protection of the health of persons in their custody and in particular, shall take

immediate action to secure medical attention whenever required."

All the above Articles of the Declaration lay down the strict conduct of law enforcement officials in dealing with suspected offender and in no case death or killing is contemplated by the Declaration because the primary duty of the law enforcement officials is to serve the community by protecting their human rights and protecting them against any illegal acts. Extra-judicial killings go against the spirit and letter of the 1979 Declaration of the Code of Conduct for Law Enforcement Officials.

Bangladesh, in terms of Article 25 of the Constitution, is obliged to respect international law and the principles enunciated in the UN Charter. Therefore it may be argued that Bangladesh is required to abide by the 1979 UN Declaration on the Code of Conduct for Law Enforcement officials.

Concluding remark

The above paragraphs show that extra-judicial killings are against the norms of constitution, law-both domestic and international- and justice. Right to life can only be taken away in accordance with the law. In the Holy Qu'ran, Surah Anam (IV): Verse 151 proclaims:

"Take not life which Allah Has made sacred, except By way of justice and law."

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FACT *file*



THAILAND

Abuses and exploitation of migrant workers

Hundreds of thousands of Burmese migrant workers are employed in various sectors of Thai industry including fisheries, garment factories, domestic and construction work, hotels and restaurants, and agriculture. As Thailand has become more prosperous, fewer Thai people are willing to work in jobs commonly seen as "dirty, dangerous, and demeaning". Burmese workers have arrived to fill the gap.

For several years the Royal Thai Government has dealt with the labour shortage by establishing a series of registration processes for migrant workers. Although flawed in both policy and implementation terms, these registrations have been a good faith attempt to regularize and establish a legal framework addressing the flow of migrants.

Burmese migrant workers in Thailand are routinely paid well below the Thai minimum wage, work long hours in unhealthy conditions and are at risk of arbitrary arrest and deportation, it is published in a report of Amnesty International.

The report exposes a lack of basic labour rights and highlights the abuse and exploitation of migrant workers by smugglers, Thai employers and police. This includes frequent shakedowns by police in order to extract bribes.

A new registration process taking place from 1 30 June 2005 for migrant workers from Myanmar, Laos, and Cambodia, permitting them to remain in Thailand until June 2006, is an opportunity for the Thai government to ensure strong protection for migrant workers.

"The Royal Thai Government should ensure that the security forces do not arbitrarily arrest migrant workers, particularly in order to extract bribes," said Catherine Baber, Amnesty International's Deputy Director for Asia. "It should protect migrant workers from mistreatment, harassment and intimidation by employers, police and local officials, and ensure that they are not returned to countries where they risk torture and ill-treatment."

Amnesty International interviewed 115 Burmese migrants in seven locations in Thailand. The interviewees were working or looking for work in the fishing, manufacturing, agricultural, construction industries, or as day labourers or domestic workers.

One Burmese migrant worker told: "The Thai people regard us as garbage - they don't see the Burmese as helping the economy. We take jobs which they won't do. They see us as trouble-makers, never as friends."

Amnesty International called on the Thai government to ensure that all workers in Thailand enjoy basic labour rights, including adequate wages, reasonable working hours, and safe and healthy working conditions.

Source: Amnesty International.



LAW *opinion*



Police reforms in Bangladesh: Some issues

MD ZAHIDUL ISLAM

SOME months ago the ministry of Home Affairs launches the far-reaching police reform project titled 'Strengthening Bangladesh Police' to improve the law and order situation. The project is launched in an inauspicious moment when the police is going to loose almost all its public confidence, and when public have begun thinking that providing police force is just wastage of public money. It is, therefore, a piece of good news for both the police and the countrymen, and surely a very timely decision.

As per media revelation, this is a three-year project, which aims at improving performance and professionalism at all levels of the police force. It involves US 13 million and will run in cooperation with the United Nations Development programme (UNDP) and the UK department for international development (DFID). However, it could not be appropriately learnt that how these aims will be achieved. But it is almost certain that the project will focus as usual on crime prevention through better investigation, operation and prosecution, human resource management in our police department are not sufficient to curb the criminality in the country and maintain the law and order situation. Moreover, there are legal loopholes, as for example anticipatory bail, writ petition seeking injunction etc, helping the criminals to evade police net. But the true fact is that even if the police were with sophisticated trainings, strategies, arms and IT facilities, and laws were up-to-date, it would not be possible to curb the criminality to an extent greater than that is now done. Because the actual problems causing repeated failure of police and destroying all the positive efforts are

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elsewhere. Among those problems, at least three can be mentioned as root causes. Firstly, political interference; secondly, lack of human rights education; and finally, lack of moral education and patriotic feelings.

It is undisputed that major portion of criminals are involved with any of the political parties of the country. Though we may not be able to produce evidence in every case, but we have experienced that almost 100% cases, where party men are connected, are more or less influenced by political parties or leaders. This is the very political influence, not the lack of strategy or training in police, which hampers the proper investigation of crimes in most

cases.

When due to this political influence some criminals are getting immunity from trial by discarding their names from charge sheets, the opposite scenarios are also frequent. Unfortunately in some cases, the accused persons, not proved criminals, face illegal and inhuman treatments at the inquiry, investigation or remand stage. This is the place, where there is a thread of causes. Police many times forget that 'accused' and 'convict' do not possess the same meaning. A very very innocent person may be implicated in a crime or crimes. But, regrettably, experiences show that whenever police get an accused,



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they begin to treat him or her as criminal and start to use all possible measures including worst type of mental and physical torture to extract evidence or information.

But what is logical is that if police do not keep some clear and unambiguous evidence or authentic information of the accused's being involved in the crimes, the accused should not be put under any torture just for digging out information. Even if one is found evidently to be linked with any crime, police should not use excessive force or any tortuous way to pull out more information. Because, with the exception in certain cases, the information extracted forcefully by the police are not accepted in the court of law.

Police, therefore, should be well taught the extent of their power and procedures for investigation, enquiry or remand. The tendency of a fraction of enthusiastic police to prove by hook or by crook an accused a criminal must be put an end to. Most importantly, police should be educated that their duty is not only to explore criminal activities of the accused, but also to help the accused to get justice in the court of law. Hence, all out caution should be taken so that in no way police violate the human rights and specifically the right to get justice of the suspect or accused.

After the political influence and procedural pitfalls comes corruption in the police department. Shamefully, the police whose job is to make people obey the law and to prevent and solve crime is one of the topmost corrupt organisation in the country. Situation proves worse when we see the policemen become entangled with the criminal activities. However, corruption in the police department should not be treated separately. As a matter of

fact, corruption has become an overwhelming social problem. Every section of our society has been hit by corruption. Police department understandably was not able to resist it.

There may be differing opinions as to causes of corruption. But certainly the lack of morality in society is the central cause. Morality connotes the principle concerning right and wrong or good and bad behaviour. No doubt, morality develops in a society through religious education. In fact, every religion is based on some moralities practice of those keeps the society healthy. For example, if a Muslim strongly believes in the core lesson of Islam that one day every person will be accountable to God for his/her every action, or that patriotism is a part and parcel of one's belief (imaan) in Islam, he can never indulge in corruption.

Here comes a question that apparently the western society is not so much religious minded, rather they seem somewhat oblivious of religious activities; then what is the force that keeps them corruption-free? Yes, this is the Patriotism the feelings and love for one's own country and the willingness to defend it against anything bad. Unfortunately, there is scarcity of this patriotic feeling in our whole society, where the police are a dominant part.

It is finally suggested that whatever be the reform plan, the concerned authority must pay an earnest thought on the above-mentioned matters.

The author is a legal researcher who is currently working for Development through Access to Network Resources, Dhaka.

RIGHTS *column*



ILO gives call to eradicate child labour from mines

The International Labour Organisation (ILO) has given a call to eradicate child labour from mines and quarries in the next five to ten years. It has identified mining and quarrying as one of the most dangerous sectors for children to work in. Director-General of the ILO Juan Somavia said: "Children who work in mines and quarries are in such danger - risking their health and safety, and indeed their lives - that action must be taken now. One million children are carrying a burden far too heavy for their bodies and responsibilities too heavy for their years. It's up to us, together, to lift this weight from their shoulders, to get them out of the mines and quarries and into school." The new initiative by ILO calls on governments, workers' organisations and employers, particularly those in the mining sector, to work together to help remote mining and quarrying enterprises - often small, family-based operations in the informal sector - to become economically and environmentally sustainable without the use of children as workers.

Nearly 14 countries are expected to sign an accord under which they will



PHOTO:SAVE THE CHILDREN UK

try to eliminate child labour in all small-scale mining and quarrying in a time bound manner. These countries include Brazil, Burkina Faso, Colombia, Côte d'Ivoire, Ecuador, Ghana, Mali, Mongolia, Nicaragua, Pakistan, Philippines, Senegal, Tanzania, and Togo.

Source: One world South Asia.