

LAW

opinion

Low conviction rate in Bangladesh: Some relevant thoughts

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ANYWHERE in the world, the core concept of criminal justice administration system is that all the criminal acts as well as omissions go against the society and the state because the state and the society have their best interest in maintaining law and order, peace and tranquillity, co-operation and harmony among the people. This thing is apparent from the title of the criminal cases. If Mr. Abul Hossain (an imaginary name) commits an offence in Bangladesh, the criminal case against him will have the name State Vs Abul Hossain, in United Kingdom it will be R Vs Abul Hossain, in United States it will be Commonwealth Vs Abul Hossain. In every country a common practical test is applied to assess the efficacy of the criminal justice administration system and that is to look at the conviction rate in criminal cases. Of course this conviction rate indicates those conviction, which are arrived at beyond reasonable doubt, after adopting a due process and fair procedure of law.

In United States the District Attorneys' offices take pride in the fact that they could secure a high conviction rate. As it is not easy to prove one's guilt beyond all reasonable doubt, so the conviction rate shows the amount of trouble the state attorneys took in discharging their office. Sometimes the conviction rate is also the indication of the ability, sincerity and integrity of the public prosecutors. So it has become the custom in the developed countries to appoint very sincere lawyer as public prosecutor. It is worth mentioning here that high

conviction rate is the result of a sincere joint effort of the public prosecutors as well as the police investigators. Perhaps police has a greater role to play in securing conviction. This is police who conducts field level investigation and public prosecutors merely present in the courts all the evidences procured by police from crime scene. So here the police investigators are very vital role players.

In Bangladesh perspective, we will find that in our courts of law very few criminal cases end with conviction in trial courts. Then much of the convictions in trial court are reversed at appellate level. This is the general picture though some exceptions to this are now seen after introducing Speedy Trial Tribunals. These special tribunals are maintaining a high conviction rate. But this rate is not beyond controversy and there are many allegations against it, among those the vital one is that judges have become desperate to award sentences to overcome the bad impression about criminal justice administration system in Bangladesh overnight, which have been built over a long period.

A lot of reasons can be attributed to the low conviction rate in Bangladesh. But the most important ones are weak police investigation which is hardly sufficient to lead to a conviction, inefficiency of public prosecutors i.e state attorneys, lack of commitment to ensure justice on the part of the lawyers, the large scale corruption practised in the law courts and the last but not the least the attitude of the people. In this article one has dealt with the first two reasons.

Weak police investigation

In a criminal case the most vital part is the police investigation report. The initial prosecution is done by the police. After doing the investigation police gives a report u/s-173 of Cr.P.C. If police submits a chargesheet the trial in courts begins but if police reports that the allegation has not been found in the form of a Final Report, then the accused is/are discharged from the case. From my experience, though for a short period, I can say that most of the cases here end with acquittal of the accused because there are many loopholes in the police investigation report. In many sensational cases it was seen that the police reported they found nothing. Though it is claimed by the police that they are under a lot of constraints like insufficiency of manpower and sophisticated instruments, political pressure etc but the main reason is undoubtedly the existing corruption in the police department.

Police always takes a long time to conduct the investigation. But criminal justice system always prefers immediate findings because the major part of a criminal case has to be proved by the oral testimony of the witnesses and with the passage of time there increases the probability for the evidences to be fabricated by the influence of a lot of social, economic and political factors. In a number of cases the Supreme Court of Bangladesh has declared evidences unacceptable because of their being recorded after a considerable period in the absence of strong reasons for doing so. In the case of State Vs Babul Hossain (52 DLR 400) the High Court Division held that because of belated examination of the witness by the police officer no plausible reason,

possibility of embellishing the prosecution case by the witness can't be ruled out.

Again in the case of Moin Ullah Vs State (40 DLR 443) the High Court Division held that the examination of the prosecution witness u/s-161 of Cr.P.C after a considerable lapse of time casts a serious doubt on the prosecution story. Our problem is that the investigation report given by our police officer is hardly a neutral one. It either favours the defence or the prosecution side but in both cases the investigation report becomes weak and legally unreliable and unacceptable and the ultimate result is non-conviction in the case.

Role of public prosecutors

Unlike the US experience, we aren't fortunate enough, in most cases, to have our best lawyers in the Public Prosecution office. These has days allegedly it become a profitable portfolio to be awarded to the partymen. The broadside allegation against politicians turned PPs is that in many cases they are not honest, eligible and efficient up to the required level. It is the duty of PPs to conduct the whole case by producing the witnesses in the court, by taking steps to bring the perpetrator to justice. In criminal cases now it is very easy for a serious offender to obtain bail by managing the PP concerned and it is alleged that they remain silent when the criminals pray for bail. Besides, the sufferers know that it is a common scene in sessions court that no work is done in a case and a new date is fixed in some later months because the witnesses are absent. It is the duty of the PPs to produce witnesses before the court and in very rare cases they do it. Even

such cases can also be found where no witness was produced in the last 7-8 years though the proceeding is a continuing one.

Here we have to mention the cases of expert witnesses e.g the doctor conducting autopsy, post mortem or at least giving medication to the victims, fingerprint experts, firearms expert etc who usually take a lot of time to appear before court as witnesses. The worst case is that of a police officer conducting the investigation in the case, known as IO. In many cases there are more than one IO involved and a criminal case never becomes successful without examining the IO in the court. The problem arises when the IO is transferred after conducting the investigation but before being examined as a witness in that case. The court has to send a number of calls to make them appear in the court. Even after that a number of cases have to be concluded without the examination of the IO and the result of those cases are, mostly, acquittal of the offender as the IO confirms the statements recorded by him u/s -- 161 of the Cr.P.C and any deviation therefrom by the witnesses in their testimony given before the trial court.

In the case of Bhopal Singh Vs the State of Rajasthan [1989 (1) RLR, 492] the court has taken the view that the investigation officer is a very important witness and if he is not examined and doesn't prove the case, the entire story of the prosecution would fall flat on the ground. Again in the case of J. K Devariya Vs the State of Coog (1956 Cr L.J 904) Mysore High Court held that non-examination of the investigating officer is a serious omission on the part of the prosecution. The accused is entitled to know from the



investigating officer what story the witnesses gave to him during the investigation and whether the same is consistent with the evidence produced in the court. This is the typical view taken by the law courts in a criminal trial and consequently many criminals are escaping on this plea.

Other reasons

The above two are the main procedural defects which are, with other reasons, making our criminal justice system a worst one. Among the

other reasons the prevailing corruption in the lower courts, political subordination of the judiciary as well as filing of false cases as a result of political malpractice are worth mentioning. Besides we don't have any kind of witness protection system and as a result witnesses aren't tending to appear before court which vitiates the trial. I think these reasons can be the topics of a further research but we can validly make a comment that all the evils are joining together to make our criminal justice administration

system an ineffectual one and this situation should immediately be changed if we still care for any justice.

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HUMAN RIGHTS

advocacy

NEW ILO REPORT SHOWS MARKED DECLINE IN CHILD LABOUR WORLDWIDE

Its worst forms can be eliminated in 10 years

CHILD labour, especially in its worst forms, is in decline for the first time across the globe, the International Labour Organization (ILO) said, in a new, cautiously optimistic report entitled "The end of child labour: Within reach".

The ILO report also says that if the current pace of the decline were to be maintained and the global momentum to stop child labour continued, it believes child labour could feasibly be eliminated, in most of its worst forms, in 10 years. "The end of child labour is within our reach", says Juan Somavia, Director-General of the ILO. "Though the fight against child labour remains a daunting challenge, we are on the right track. We can end its worst forms in a decade, while not losing sight of the ultimate goal of ending all child labour."

The new report says the actual number of child labourers worldwide fell by 11 per cent between 2000 and 2004, from 246 million to 218 million. What's more, the number of children and youth aged 5-17 trapped in hazardous work decreased by 26 per cent, to reach 126 million in 2004 as opposed to 171 million in the previous estimate. Among younger child labourers aged 5-14, this drop was even more pronounced at 33 per cent, says the report.

Four years ago, the ILO issued the most comprehensive report to date on global child labour. Applying the same statistical methodology used in that report, the ILO finds a significant decline in child labour since then.

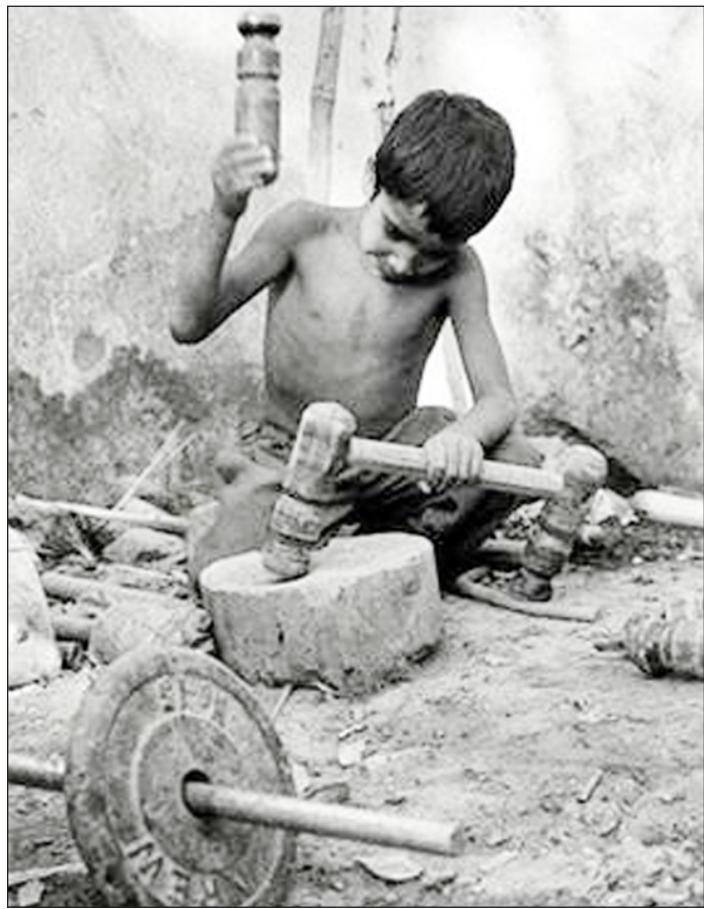
The report attributed the reduction in child labour to increased political will and awareness and concrete action, particularly in the field of poverty reduction and mass

education that has led to a "worldwide movement against child labour". Through its International Programme on the Elimination of Child Labour (IPEC), the ILO assists in building national capacity to deal with child labour and providing policy advice. In addition, through direct action, the Programme over the past decade has reached some 5 million children. These initiatives have played a significant catalytic role, both in mobilizing action and demonstrating how child labour can be eliminated.

Over the last five years, IPEC has helped several countries put in place appropriate time-bound measures to eliminate the worst forms of child labour. The report calls on all member States that haven't done so yet to adopt time-bound plans by 2008. According to the report, more than 30 member States of the ILO have already set time-bound targets with a similar or even earlier target date than 2016 to abolish the worst forms of child labour.

Despite considerable progress in the fight against child labour, the report also highlights important challenges, particularly in agriculture, where seven out of ten child labourers work. Other challenges include addressing the impact of HIV/AIDS on child labour, and building stronger links between child labour and youth employment concerns.

The report calls for greater national efforts, involving organizations representing employers and workers, as well as governments - the partners that make up the tripartite ILO. It also calls for the strengthening of the worldwide movement to make child labour history. Meeting the UN Millennium Development Goals by 2015 would further help to



eradicate child labour, the report says.

Regional trends

According to the report, Latin America and the Caribbean have seen the most rapid decline in child labour over the four-year period. The number of children at work in the region has fallen by two-thirds during that time, with just 5 per cent

of children now engaged in work.

The report presents Brazil as an example to illustrate how countries can move forward in tackling child labour. Activity rates among the 5-9 age group fell by 61 per cent from 1992 to 2004, and among the larger 10-17 age group by 36 per cent.

Another country with significant decline in child labour is Mexico. As half of the children in Latin America

live in either Mexico or Brazil, these reductions are very important and testify to the fact that the overall decline is a real trend.

Asia and the Pacific also registered a significant decline in the number of economically active children, according to the report. However, as the child population also declined, the percentage of working children was less reduced. The ILO estimates that the region still has the largest number of child workers in the 5-14 age group - some 122 million.

The report says Asia is a prime example of how political commitment to reducing poverty and expanding education has had an important bearing on child labour elimination. However, around the world, progress is uneven.

With 26 per cent of the child population, or almost 50 million working children, the sub-Saharan African region has the highest proportion of children engaged in economic activities of any region in the world.

According to the Global Report, the convergence of high population growth, grinding poverty and the epidemic of HIV/AIDS has hindered progress in the fight against child labour.

However, there are signs of progress. For example, primary school enrolments in the region increased by 38 per cent between 1990 and 2000.

The report also refers to the unprecedented international movement to put the plight of the continent front and centre of the world's attention that opens a window of opportunity for Africa's fight against child labour.

"In this 21st century, no child should be brutalized by exploitation or be placed in hazardous work",

said Mr. Somavia. "No child should be denied access to education. No child should have to slave for his or her survival. Let's keep up the momentum. Let's resolve to keep investing in the struggle for the right of all children to their childhood."

The International Programme on the Elimination of Child Labour (IPEC) is the world's largest programme dedicated to the eradication of child labour and the biggest single operational programme of the ILO. Since its establishment in 1992, IPEC has spent US\$350 million, with annual expenditure now running at US\$50-60 million. Beyond the ILO's tripartite structure of governments and employers' and workers' organizations, IPEC works with others, including: private businesses, community-based organizations, NGOs, the media, parliamentarians, the judiciary, universities, religious groups and, of course, children and their families. National and community action is crucial for the success of the

IPEC programme. Through local authorities and municipalities, IPEC can reach children in the informal economy and small and medium-sized businesses that provide the bulk of employment, and promote integrated approaches to get children out of work and into school.

Source: ILO.

UN

update

Bangladesh elected member of UN HR Council

Bangladesh was elected one of the 47 members of the newly formed Human Rights Council of the United Nations by a large margin of votes in the council's first election held at the UN General Assembly in New York. A total of 63 countries were nominated for 47 seats in the newly established council, whose resolution had been passed by the general assembly on March 15. President of the UN General Assembly Jan Eliasson coordinated the election. This was one of the most hotly contested elections in the world body in recent times.

Among the 13 elected Asian countries, Bangladesh bagged 160 votes, coming next to India with 173 and Indonesia with 165 votes. Bangladesh will serve on the council for a full three-year term. China, Jordan, Malaysia and Saudi Arabia were also voted to serve full three-year terms while India will serve on the body for a year. Bangladesh also received more votes than bigger countries like Japan and China who received 158 and 146 votes respectively.

"The victory of Bangladesh in the Human Rights Council elections signifies strong international endorsement for the government's commitment to upholding and promoting human rights in Bangladesh which is recognised by the global community as well as by the regional and other international communities," Foreign Minister M Morshed Khan told a hurriedly called press briefing. He said when a conspiratorial campaign is launched at home and abroad trying to brand Bangladesh as a country of human rights violations, Bangladesh's victory is an apt reply to the critics and campaigners. "The victory is also a milestone in the achievements of Bangladesh's foreign policy," the foreign minister added. He said the council will have much more power and weight to go into action against any violation of human rights.

Ghana topped the race for 13 African seats. The other 12 went to Algeria, Cameroon, Djibouti, Gabon, Mali, Mauritius, Morocco, Nigeria, Senegal, South Africa, Tunisia and Zambia. India received the highest number of votes in the race for 13 Asian seats. The other 12 went to Bahrain, Bangladesh, China, Indonesia, Japan, Jordan, Malaysia, Pakistan, the Philippines, Saudi Arabia, Republic of Korea and Sri Lanka. Brazil received the highest number of votes in the race for eight Latin American and Caribbean seats. Cuba, Ecuador, Guatemala, Mexico, Peru and Uruguay got the other seven. Germany received the highest number of votes in the race for seven seats allotted for Western European countries and other states. The other six seats went to Canada, Finland, France, the Netherlands, Switzerland and the United Kingdom. Azerbaijan, the Czech Republic, Poland, Romania, Russia and Ukraine obtained the six seats allotted for Eastern European states.

UN Secretary General Kofi Annan welcoming the result of the election said, "This will give its members the chance to show the depth of their commitment to promote human rights both at home and abroad."

Dr Iftekhar Ahmed Chowdhury, Ambassador and Permanent Representative of Bangladesh to the United Nations, described the results as 'a great victory for Bangladesh and Bangladeshis'. Speaking to the media, he said this is a fitting recognition of the country by the world community. "Today every Bangladeshis should have a reason to feel proud", he added. "We must now show the world that we are capable of discharging the heavy responsibility the international community has imposed on us", he said.

The creation of the 47-member Human Rights Council comes following the UN's plan to overhaul the organisation. The new council replaces the now defunct Human Rights Commission, which was criticised for inefficiency and for including countries with bad human rights records as its members. The new council will hold its first session on June 19.

Source: The Daily Star.