



LAW opinion

Prison reform is imperative

DR M ENAMUL HOQUE

THE overall objective of this article is to identify ways of Jail Code for improving the prison system in Bangladesh, and to suggest ways to curb human security and human rights violations inside prisons. Specific areas of focus include overcrowding, delays in judicial proceedings, living conditions in prison, the operational environment and management of prisons, and infrastructure and facilities. Interviewees and respondents include members of the general public and the elite, prisoners under trial, convicted prisoners, prison officers, police officers, judges and lawyers.

The administration and management of the prisons in Bangladesh is carried out according to the rules and acts as enumerated in volumes 1 and 2 of the Jail Code, formulated by colonial rulers during the 19th century. These colonial rules and acts include the Prisons Act IX of 1894, as amended, relating to the management and training of prisoners; the Civil Procedure Code relating to the management of civil prisoners; and Act XLV of 1860, as amended, of the Penal Code.

The 64 prisons in Bangladesh can be divided into two major types:-

Central Jails are for the confinement of prisoners under trial, administrative detainees and convicted prisoners sentenced to a term of imprisonment, including imprisonment for life, and the death sentence. There are eight such central jails, which could also be called maximum-security prisons.

District Jails, located at the headquarters of the district, are used for the confinement of all categories of prisoners, except those convicted prisoners whose sentence exceeds 5 years. District jails also hold long-term convicted prisoners if ordered by the Inspector General of Prisons/Deputy Inspector General of Prisons. There are 56 such district jails, which could be called "medium security prisons."

In addition to central and district jails, there are 16 thana jails, known as "detention houses," located at 16 thana headquarters. If thana jails are included, there are some 80 jails in Bangladesh.

The Ministry of Home Affairs, through the Directorate of Prisons, exercises overall responsibility for proper management of the prison system. Each prison is administered by sergeants, guards and other prison staff, under the supervision of the Superintendent of Jails. In the districts, the highest civilian official,



the Deputy Commissioner, oversees the working of the jails, and is expected, along with district judicial officers, to visit the jails to supervise their management and receive complaints, if any, from the prisoners. Health services to them are provided by the staff of the district hospital. The main medical conditions for which prisoners are treated include diarrhoea and dysentery (42% of cases), fever, including typhoid fever (25%), skin diseases (20%), malnutrition (8%), psychological problems (1.581), and heart problems (1%). The high frequency of diarrhoea and skin diseases is due to the poor sanitary conditions prevailing inside prisons.

In the recent past, overcrowding of prisons has worsened significantly. Although there are 80 jails in the country, 16 of these are not yet functioning. And whereas the official capacity in the remaining 64 jails is 21,581 prisoners, the actual prison population was about 46,444. Of these, 31,020 were under trial, i.e. detained prior to conviction, while only 13,178 (less than one third) were convicted prisoners. Hence, overcrowding of prisons is due mostly to the large number of prisoners awaiting trial. This is considered to be one of the main causes of human security violations in Bangladesh.

Delayed processing of criminal cases is mainly due to (a) a backlog

of cases in which bails are not granted; (b) non-attendance of witnesses on the date of the hearing; (c) unnecessary adjournment; (d) delays in completing investigations; (e) acute shortage of judges and magistrates; (f) tendency of lawyers and parties to delay trials; and (g) lack of vigilance on the part of judges and magistrates (as opined by learned judges, magistrates, and eminent lawyers).

Cell accommodation: This is for classified prisoners, execution of jail punishment, segregation of confessed prisoners, and prisoners condemned to death.

Association wards: There are for all types of prisoners, including hardened criminals, occasional offenders, and youth offenders. Prisoners are required to sleep together in single dormitories, accommodating 100 to 150 prisoners. Hardened criminals influence occasional and youth offenders who form gangs within the prisons, mostly with a view to committing serious crimes after they are released. Hence jails have become "store-houses" to train criminals, according to critics.

Moreover, floor space allocation bears witness to the poor conditions in which prisoners are kept. Under dormitory rules, each prisoner is entitled to 36 sq. ft. of floor space; however, overcrowding has reduced

the space available per prisoner to 15 sq. ft. In certain wards, prisoners have to sleep in shifts owing to lack of space. Finally, life in prisons is made worse by the smell of carbon dioxide, nicotine, sweat and urine emerging from uncovered urinals, which create an unsanitary atmosphere inside the congested wards. These are painful examples of denial of the legal rights of inmates.

There are two kinds of diets for inmates. Ordinary prisoners receive 2,800 to 3,000 calories per day, which is considered satisfactory by the Institute of Public Health Nutrition. However, so-called "classified prisoners" receive an additional amount of food. The existence of this privileged class of prisoner creates dissatisfaction among ordinary inmates. Furthermore, the manner in which the prisoners are required to eat their meals sitting on the ground under the open sky, rain or shine, is unacceptable.

The current striped, coarse uniform worn by ordinary prisoners is considered most demoralising. A bed consists of two blankets one to spread on the floor, and another to use as a pillow -- this is both inadequate and degrading. Such conditions are detrimental to prisoners' physical and mental health, and in violation of their human rights.

It is noted that prisons still follow the outdated statute books of the

British colonial rulers, which were framed in the 19th century. According to these old statutes, the main objective of the prison system was the confinement and safe custody of prisoners through suppressive and punitive measures. There has been no significant modification in the jail code, nor have the vital recommendations of the Jail Reform Commission been implemented. A full transformation of this punitive system is required in order to stop violation of the legal rights and human security of prisoners, as guaranteed by Article 44 of the Constitution.

The recruitment and training procedures of prison officers and staff under existing rules and procedures are insufficient for the needs of prisoners. Prison services in most developed countries are considered to be quite advanced as correction officers are educating offenders, as part of the effort to facilitate the reform and eventual reintegration of prisoners into society. This contrasts with the prison system in Bangladesh, which is geared towards containment and punishment of prisoners, and does not facilitate their reform. Hence, prison officers and staff are not recruited with appropriate skills nor trained adequately to encourage reform. Thus the main problems are as follows:

- Inadequate medical facilities inside prisons.
- Lack of monitoring of prisons.
- Lack of welfare measures and reform programmes.
- Corruption in tendering contracts and interviews.
- Inadequate attention to women and child prisoners.
- Inadequate vocational training facilities.

Recommendations

Outdated laws and procedures concerning prisons should be amended to institute a more humane and sophisticated approach. It is important to promote the concepts of prison reform and the protection of human rights and security of prisoners based on the evidence that such treatment is more effective than retributive treatment. This is particularly true for vulnerable groups such as children and women.

So speedy implementation of the recommendation of the Bangladesh Jails Reform Commission Report of 1980 in order to reform the current punitive emphasis of treatment in Bangladesh prisons is imperative.

It is recommended that there should be separate prisons for female prisoners, near the larger

central and district jails. The Prison Directorate should have its own medical services, with doctors who are interested in providing medical services in prisons as a career, to be recruited by the Ministry of Home Affairs through the Public Service Commission. Pathological, radiological and cardiological personnel and facilities should be made available in jail hospitals. There should be one part-time cardiologist with a technician for each central jail and complicated cases from the district jails could be transferred to the central jails for diagnostic tests and treatment; one well-equipped operation theatre for minor operations should be at every central jail.

Patients with complex cases should be sent to external hospital for specialised treatment. There should be separate segregated wards in prison hospitals to treat prisoners suffering from infectious diseases and drug addiction. The required number of modern appliances (X-ray, ECG, and reagents) should be procured from the central medical store or other sources. Facilities for the specialised treatment and major operations of ailing prisoners as existing in many developed countries, as well as in some developing countries, should be made easily available (such as postgraduate (PG) prison annex).

Better monitoring of the performance of prison staff should be undertaken in order to remove anomalies existing in prison administration. Formal complaint mechanisms for prisoners are recommended to reduce human security violations. The system of visits should be improved so that it provides checks and balances to the administration of prisons. There is a need to increase the capacity of the police to cope with improved techniques adopted by criminals and the alarming rise in crimes.

Reforms, particularly prison reforms to deal with human security in our prisons, are understandably difficult to achieve. However, they can be brought about if concerted efforts are made by both govt. agencies in charge of prison administration and NGOs and civil society to improve prison systems. The govt. has taken up some projects to promote welfare of the inmates and bring them back to be integrated in society. Hopefully all concerned will take it as a moral commitment for upgrading the human dignity.

The writer, a former IGP, Bangladesh and former EC member, INTERPOL is a Member, Law Commission Bangladesh and President, Asia Crime Prevention Foundation.

LAW news

UN council fails to agree on plea to end Somali war

A U.N. envoy urged the Security Council to call for an immediate halt in the fighting in Somalia or risk a broader conflict and greater instability in the chaotic Horn of Africa nation. Failure to reach a political settlement through a resumption of talks between Somali Islamists and interim government forces "would be disastrous for the long-suffering people of Somalia and could also have serious consequences for the entire region," said Francois Lonseny Fall of Guinea, Secretary-General Kofi Annan's special envoy for Somalia.

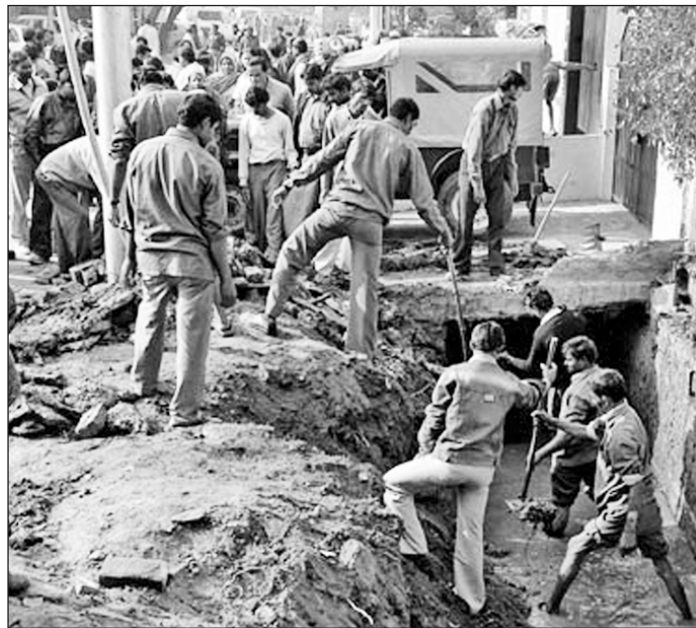
But the 15-nation council was unable to reach agreement on such an appeal after Qatar, its sole Arab member, insisted the statement also call for the immediate withdrawal of Ethiopian forces -- as well as all other foreign forces -- from Somalia. The other council members backed a statement calling instead only for "unauthorized" forces to pull out, a phrase they argued would not apply to Ethiopian troops which were there at the invitation of the interim government. After more than three hours of negotiations, diplomats said the council was split 14 to one on the matter and suspended their efforts until Wednesday afternoon.

In the meantime, the Arab League, the African Union and the regional Inter-Governmental Authority on Development, which brokered the installation of Somalia's shaky transitional government in 2004, were due to meet in Addis Ababa on Wednesday to discuss the situation, Fall said.

A British diplomat involved in the talks, speaking on condition he not be identified by name, said the Qatari approach was flawed as it "put the cart before the horse."

The approach favored by the other 14 council members would first call for a cease-fire, followed by a resumption of peace talks between the Islamists and the government, in hopes of ultimately reaching a deal creating the necessary conditions for a withdrawal of all foreign forces, this diplomat said.

Source: Reuters.



LAW events

SHADNAZ KHAN

ELECTION is a vital part of democracy, which aims at finding the true reflection of the people's choice. It is not limited to what happens on the day of voting only. It is a process which covers an array of activities of different entities of the state and beyond which influences the ultimate outcome of the election. The issues of political corruption, electoral fraudulence, election monitoring, the involvement of external organisations in the election process, women's position in the political arena and sometimes geo-politics prove to be relevant while discussing transparency in the election process of a country. Odhikar along with European Public Law Centre (EPLC), ODPUP and BCCP organised a three daylong conference on 'Transparency in the Election Process' where these views were expressed. The conference took place from 9th to 11th January at the Spectra Convention Centre in Dhaka.

On the first day, the conference was moderated by Farhad Mazhar, advisor to Odhikar and participated by Mr. Justice Sultan Hossain Khan, Chairman of Anti-Corruption Commission, Dr. Stefan Frowein, ambassador and head of delegation of European Commission to Bangladesh, Dr Asif Nazrul, professor of Department of Law of Dhaka University and others.

In his speech, Justice Sultan Hossain Khan said that the election scheduled for January 22 should be held on the due date to form a parliament to make necessary amendments to our Constitution in order to hold another election which will be

acceptable to all political parties. Dr. Stefan Frowein said the coming election must be participated by all political parties to be accepted nationally and internationally. Dr. Asif Nazrul discussed the legal elements for fraud prevention and made some recommendations in this regard. Major Gen (Rtd) Syed Md. Ibrahim said that there should be a strict provision for punishing the candidates accused of election fraud. Abed Khan said that the president can solve the present crisis in a day if he wants. Munira Khan said that an independent Election Commission, its authority over budget and proper voters' list are pre-conditions for an impartial election.

On the second day of the conference, two working sessions were held. The first session entitled "The Fight Against Political Corruption" was chaired by Mr. Nurul Kabir, editor of the New Age and advisor to Odhikar. Ms. Tamara Tawaei, an election expert (EPLC) and Mr. Farhad Mazhar, eminent columnist and an advisor to Odhikar presented two papers in this session. Ms. Tamara Tawaei said that while taking initiatives to encourage women to participate in electoral process, the government should consider their cultural and religious sensitivity as well. According to Farhad Mazhar, the term 'corruption' from the perspective of people's movement has a different meaning from what the World Bank and other international financial institutions are proposing in their fight against corruption. Farhad Mazhar said that when these international institutions show their concern over corruption they only focus on the public sector

corruption and ignore the corruption of private or big multinational corporations, donors and multilateral or bilateral projects completely. According to him, their silence in these issues is part of their agenda for preserving the interest of the imperialist states. He concludes that the modern definition of corruption is an illusion and acts as an impediment towards our fight to have a real democracy. However, from the viewpoint of people's movement, all forms of corruption is bad and should be addressed accordingly. Mujahedul Islam Selim, secretary general, Communist Party of Bangladesh talked about criminalization and commercialization of politics. He said that nowadays the businessmen became politicians and politicians turned out to be businessmen and they jointly made politics a business. He also said that the basis of the economy of Bangladesh is the plundering of the resources of the people. According to him it is now a national task to unite honest and pro-people politicians for a strong people's movement to change the situation.

The second session entitled 'External Forces Involved in Democratic Elections' was chaired by Mr. Farid Hossain, Bureau Chief of Associated Press. Mr. Mikel Ochoa, an Election Expert (EPLC) presented a paper entitled 'External forces involved in elections in Democratic countries'. Mr. Tanvir Chowdhury, editor of News from Bangladesh presented another paper on 'The role of the Bangladeshi Diaspora in national elections'. Dr. Owen P. Lippert, country Director of NDI Bangladesh, Mr. Shobeb Siddiqui, Interim Country Director of Action Aid Bangladesh, Mr. Tarikul Ghani, an Election Expert, Mr. Abul Hasib Khan, Vice-Chair, FNB and Member Ex-Com, FORUM-ASIA Mr. Mosharraf Hossain, Country Representative of ADD spoke in this session. All the speakers agreed that Bangladeshi immigrants living abroad should have voting rights. Dr. Owen P. Lippert said that foreign observers

come to observe elections in different countries to give some kind of legitimacy to these elections, which might help the flow of aid to come to those countries. He expressed his concerns over the present political situation in Bangladesh. However, he appreciated the efforts of civil society in election related issues. Mr. Shobeb Siddiqui, interim country director of Action Aid Bangladesh, said that external forces became more relevant in our election process because of the politics of interest. According to him, Bangladesh attracted the attention of the multinational corporations for its market potential and availability of natural resources. Donors and imperial countries who are serving the interest of the big corporations became more interested to interfere and influence our political affairs and election process so that their interests are preserved.

On the third day, Mr. Tarikul Ghani, an international election expert moderated the concluding session. Ms. Charlemagne Sophia Gomez, election expert (EPLC), Mr. Marco Sioli, election expert (EPLC), Ms. Tamara Tawaei, election expert (EPLC) Mr. Mikel Ochoa, election expert (EPLC), Shila Huq, representative of The Asia Foundation, Ms. Munira Khan, President of FEMA, Ms. Farida Akhtar, executive director of UBINIG and Dr. Zahurul Alam, director of EWG participated in this session and expressed their concern over the future of politics in Bangladesh. In the end, Ms. Despina Spanoudi, representative of EPLC and Mr. ASM Nasiruddin Elan, office in charge of Odhikar gave the vote of thanks.

The conference on 'Transparency in the Election Process' organised by Odhikar and its partners is a manifestation of the commitment of those organisations and networks who are working tirelessly for such an election process that would ensure the actual participation of the people especially the oppressed ones.

The author is a member of Odhikar.

LAW week

Army given blanket power to arrest

The Election Commission (EC) in an unprecedented move agreed to allow the armed forces to arrest anyone from any place without a warrant during their engagement in election duties. The Armed Forces Division (AFD) in a proposal earlier sought the power for the army, navy and the air force for seven days including the polling day to ensure a peaceful atmosphere and security of voters in light of the existing law and order situation. Responding to the proposal, the EC finally asked the home ministry to issue a notification to allow the armed forces to have the authority as they had desired in addition to the power they already have to arrest any person within a radius of four hundred yards of a polling station on the polling day. The EC in its letter to the home ministry however did not specify the time limit for allowing the armed forces to exercise the new power. The home ministry will decide for how many days the armed forces will be allowed to exercise the power. But sources in the EC said the armed forces will enjoy the power for 20 days from January 10, the day of their deployment across the country on election duties. -- *The Daily Star, January 9.*

EWG won't monitor polls sans all-party participation

Election Working Group (EWG), an alliance of NGOs that monitors polls, will not undertake any national-level election monitoring initiative if all the major political parties do not participate in the upcoming election. The decision was taken following the directives of its donors, said the group's Media and Communication Specialist Javed Ahsan. "There is no use monitoring a 'one-sided' election, which it is going to be," he told The Daily Star. A press release of the group said that it will refrain from monitoring the upcoming polls "if the present political situation prevails and the caretaker government, election commission, and political parties fail to establish conditions conducive to credible polls, and the parliamentary election proceeds on January 22 without the full participation of all major political parties." The group has suspended all voter and civic education activities, but will continue to assess the present situation, with an emphasis on political-related violence. It will sit for discussing its prospective role soon, the release added. The 34-member EWG was formed in August last year with a mission to contribute to a peaceful, free and fair elections in Bangladesh and to help foster a genuine culture of democracy and the highest standards of integrity and accountability of governance. -- *Prothom Alo, January 9.*

Advisers approach grand alliance with election deferment proposal

Amid the donors' enormous pressures for all-party polls and after getting a green signal from BNP, a team of three advisers of the caretaker government approached the Awami League (AL)-led alliance with a new proposal deferring the next parliamentary polls by over a month. The three advisers placed the proposal to the AL General Secretary Abdul Jalil at a meeting. The AL however asked the interim government to postpone the January 22 polls first and then take initiatives to meet the grand alliance's demands of creating a level playing field for all. Sources said the three advisers -- Shafiqul Haque Chowdhury, Shobeb Ahmed and Azizul Haq, approached the AL general secretary at his Gulshan residence after getting a positive response for such a move from BNP high-ups. The initiative by the advisers to the caretaker government appeared to be a new effort to bring an end to the political impasse in the wake of a poll boycott decision by the AL-led grand alliance. LDP leaders Abdul Mannan and Redwan Ahmed were also present at the meeting. -- *The Daily Star, January 10.*

Adviser contradicts Bangabhaban spokesman's statement

The Bangabhaban issued a statement through a spokesman regarding meet-

ing between the chief adviser and an adviser, which was contradicted by the latter. Adviser Dhiraj Kumar Nath met President and Chief Adviser (CA) Iajuddin Ahmed discussed his upcoming official visit to Noakhali and recent transfer of the secretary of his ministry, fisheries and livestock. But the Bangabhaban spokesman told the UNB that adviser Dhiraj Kumar called on the president as part of the CA's initiative since to discuss the emerging issues with the advisers. They discussed issues relating to law and order situation, and stressed the need for upholding the constitution and democracy through holding the general election on January 22, the UNB reports, quoting the Bangabhaban spokesman. They viewed that the next parliament to be formed through this election would play an important role in fulfilling the desires of the people and solve various problems, the spokesman said. Contacted by The Daily Star last night, Adviser Dhiraj Kumar Nath said he met the president on his own initiatives to discuss the issue of his visit to Noakhali and transfer of the secretary to the Ministry of Fisheries and Livestock. -- *The Daily Star, January 10.*

Separation of Judiciary SC gives govt 7 days to publish rules

The full bench of the Appellate Division of the Supreme Court ordered the government to publish various rules on separation of the judiciary through gazette notification within a week and remove major hurdles for the separation. This order came when the attorney general (AG) said it will take more time to make effective various amendments of the rules for separation of the judiciary as the amended rules would be made effective through promulgation of an ordinance. Visibly angered by the AG's submission, the court asked why the government would amend them anew when the court had already amended all the necessary rules. The government has already been given as many as 22 deadlines to implement the 12-point directives of the Supreme Court on the matter, beginning from 1999. The time extensions were given mostly during the tenure of the BNP-led four-party alliance government. On November 27 last year, the Appellate Division of the Supreme Court, aggrieved at the government's repeated delays, asked the latter to implement the 12 directives within six weeks and submit progress reports on it to the court. The hearing of this matter took place when Attorney General AJ Mohammad Ali's submission irked the court once again. The court asked the government not to play 'cat and mouse' with the court. -- *The Daily Star, January 11.*

NDI, IRI won't watch Jan 22 elections

US-based election watchdogs National Democratic Institute (NDI) and International Republican Institute (IRI) suspended plans to send their delegations for the January 22 parliamentary elections as all of the major parties are not participating in it. "The NDI and IRI have concluded that an international observer mission would be unable to make a positive contribution to the process because all of the major parties are not participating in the elections," they said in a joint statement. The statement said the IRI and NDI are also concerned about the impact the current political environment might have on the ability of international observers to safely and effectively observe the elections. Earlier on January 6, the European Union also said its Election Observation Mission for the upcoming general elections in Bangladesh may not proceed as expected if the political stakeholders fail to resolve the ongoing crisis. "A failure of the current electoral process would be a major setback for democracy in Bangladesh and for the international credibility of the country," the EU stated in a release of the local EU presidency. -- *Prothom Alo, January 11*

Corresponding with the Law Desk

Please send your mails, queries, and opinions to: **Law Desk, The Daily Star** 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, fax 8125155; email <slawdesk@yahoo.co.uk, lawdesk@thedailystar.net