



LAW letter

Sad tale of our criminal justice system

IN Bangladesh, the difference between law and practices is colossal. Law in book does not often match with law in action. Those law students, who are highly elated with the ideals of rule of law, justice, human rights, people's welfare and the like, have to wait for something different in practice. Reality in practice is bound to shock a credulous, sensitive and quixotic human mind to a greater or lesser degree.

This write-up is a sympathizer's spontaneous reflections on certain aspects of criminal proceedings based on a real case that touched this writer. Of course, this case may reasonably be counted as representing hundreds of thousands of such cases.

Abdur Rashid (a fictitious name) is an expatriate to Oman for last 30 years. Beginning from early life he spent two-third of his life there, and with all his life's savings he managed to buy a piece of land in his country and built a decent house of his own. Soon he was faced with souring responses from his neighbors who out of jealousy started to ostracize him by blockading his entrance and exit to the house and other collateral activities. Having been away from home for long three decades and devoid of any knowledge of obnoxious village politics, he made more enemies with his wayward middle-eastern behavioural pattern and tried to base his claims merely on bare legal grounds. Perhaps he depended highly on law in book, finally getting severely shocked with the extralegal practices prevailing in vogue, which he found unparalleled with his middle-eastern experience.

Three days before the last Eid-ul-Azha, he along with his wife and elder son was severely beaten by his conflicting neighbours, with total disfigurement of his left ear, displacement of his right shoulder joint and severe fracture on left forearm joint. At one stage, he became senseless. Opponents arranged this deadly attack having been failed in all legal battles. However, regaining the sense, Abdur Rashid with bloodstained clothing went to file an FIR to the nearest police station. But the officer-in-charge refused to record his FIR, instead suggested him to take the treatment first and then to come to the station again. Later on that day, one of his relatives went to the police station with a printed FIR, but the officer-in-charge

without recording it left to be recorded for the next day. The next day, Abdur Rashid went to the police-station again to file the same FIR, now he came to learn that his attackers already filed an FIR against him with the help of a (so-called) local journalist early that day with a totally concocted story alleging him of theft and extortion. Of course later on that day, the officer-in-charge recorded Abdur Rashid's FIR mentioning ordinary sections of the Penal Code for investigation.

The question is, why didn't police take the FIR at the first instance? Why did he record Mr. Rashid's FIR next day showing a later-in-time filing after recording the opponent's totally fabricated FIR? If a journalist does not become true to his professional ethics, who will then hold up the conscience of the society? Can there be anything more pernicious than the unholy marriage between a corrupt police officer and a perverted journalist?

With my modest privilege to contact with the Chief-Reporter of the newspaper the journalist was working for, I complained such ominous activity on the part of his fellow news-representative. He assured me of an investigation, and we came out of his office satisfied and with a hope that at least somewhere there are some people who can hold up the torch beyond a total ruin. I did not know that it was just another rhetoric that was to shock me, to say the least.

After ensuring the filing of his FIR, Rashid took admission in Chittagong Medical College and had to stay next fifteen days there. Doctors suggested an operation of his left hand joint, for it was both a fracture and displacement. Whereas police should have arrested the criminals whose attack could even cause Abdur Rashid's death, it was him instead who along with his sons and brother had to rush to the court to take bail in such a moribund condition, lest he was not arrested and victimized twice. His family was bound to sacrifice the Eid-festivity. He was to think of managing the Police. Why is a police to be so scared of without committing any crime?

Another part of surprise was waiting for me in the medical. For the first time, I came to learn that you can manage any kind of medical report (MC) for money for the purpose of a case. If you want even a true report, you have to spend a big



amount. Some doctors are ready to sell you a report according to your choice. The greater the degree of falsity, the higher the amount of money charged. From the practice, it is found that courts depend highly on the medical report in granting or rejecting the bail, because at this stage courts generally do not test the veracity of medical report for time constraint. Where does doctor's accountability lie while selling false medical reports so much important in case of bail, acquittal and punishment of a criminal?

Once on bail, comes the question of police report, which results in either charge sheet or final report. A corrupt police officer earns for both. However, in the case under discussion, which was in fact a cross case, police knew that one case was true, another false. Police knew because police was present at the place of occurrence just five minutes after the occurrence, as later on revealed to be pre-arranged. But police gave charge sheet in both, and I am sure, both reports were good bargains on police's part.

What remains for the victim? What fate is unfailingly attached to his lot in a criminal

case? The conviction rate is so low in comparison to colossal criminal activities. Even if the criminal is finally convicted, would it benefit the victim, would it mean 'justice' to the victim? As against the amount spent for the treatment, for collecting medical report, for managing police not to victimize him twice, for hiring a legal practitioner to act for punishing the criminal; as against his physical pains and mental agonies and social and economic devastation, is it enough to punish one or two out of ten criminals. Punishing criminals can bring some mental peace for the victim, but can we not think of some other alternative remedial measures for the victim? What if we seriously think of a compensation-based criminal justice system as an alternative to existing punishment based system, to be applicable at the option of the victims concerned? Maintaining criminal justice system solely in the interest of state totally ignoring the interest of victims is no more acceptable.

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GOOD NEWS



UK to compensate man wrongly accused

Amnesty International has welcomed a move by the UK authorities to compensate Lotfi Raissi, a flight instructor who was wrongly accused of training the hijackers of airplanes used to carry out the attacks on the US on 11 September 2001.

Following his arrest in September 2001, Raissi spent five months in prison in Belmarsh high security prison while the USA attempted to have him extradited on minor charges unconnected with terrorism.

In April 2002, a judge ordered his release, stating that the court had received "no evidence at all" to support the allegation that he was involved in "terrorism".

The UK Ministry of Justice told Lotfi Raissi via his lawyer on Friday 23 April 2010 that it considered him "completely exonerated", more than eight years after he was first arrested. The agreement, which came on the last possible day permitted by a 26 March 2010 judgment by the Court of Appeal of England and Wales, allows Raissi to apply for compensation. The final amount will be determined by an independent assessor.

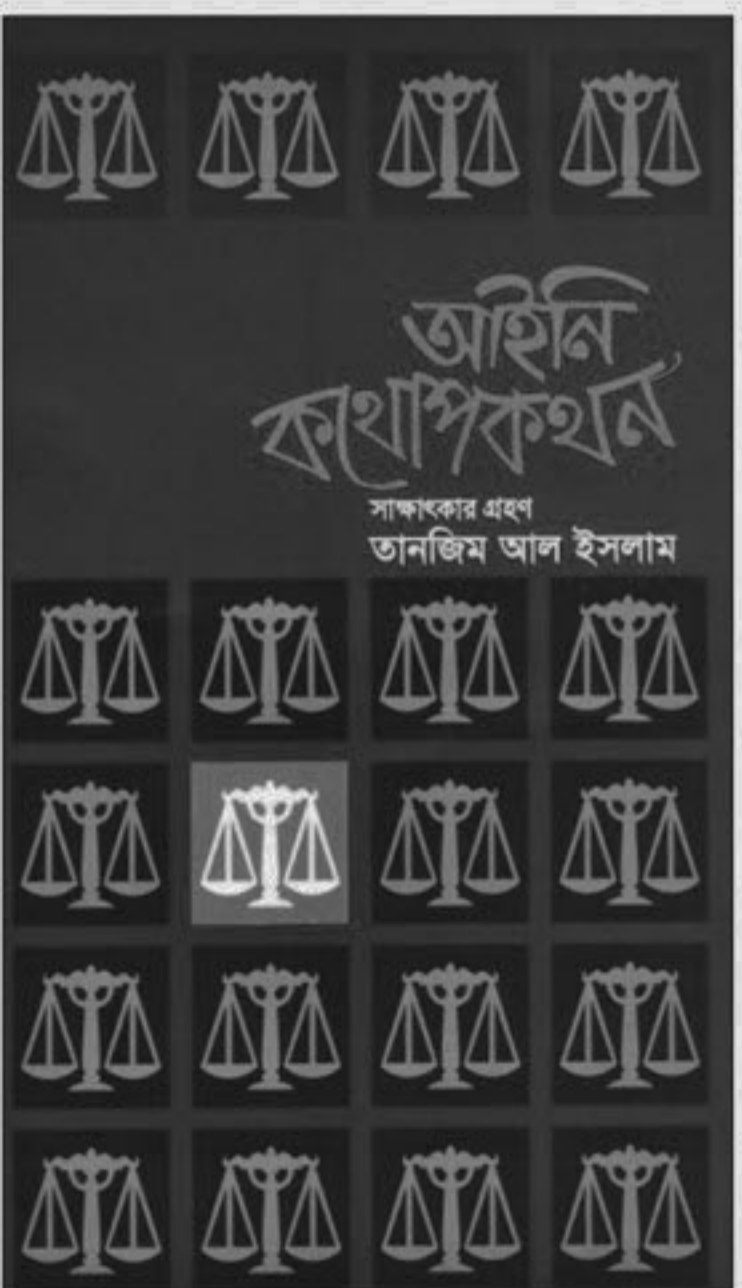
Lotfi Raissi told Amnesty International via his lawyer on Friday 23 April, "I am delighted. I have waited for this for nine years. I hope that this government statement will help get rid of the cloud of suspicion that has hung over my life for so long."

In March, the Court of Appeal found the UK authorities' "inordinate delay" to reconsider Raissi's compensation claim to be characterized by a "high degree of unreasonableness".

Lotfi Raissi's lawyer, Jules Carey, said to Amnesty International on Friday that "the allegations of terrorism were utterly ruinous to Mr Raissi both personally and professionally" and that he hoped that the decision to compensate Lotfi Raissi "marks a new chapter in his life and that his rehabilitation will begin."

Source: Amnesty International.

New book: Aini Kothopkothon



Tanzim's book 'Aini Kothopkothon' (Law Conversation) is a collection of interviews of 33 legal giants of the country. As a journalist Tanzim took the interviews while he was working with the law page of the leading national daily Prothom Alo. In that sense, the interviews appeared in the page of the newspaper at some point of time. However, its bookish appearance certainly is an accumulation of legal thoughts on diverse issues. Tanzim has pondered over the answers of pertinent questions on issues like politics, caretaker government, rule of law, democracy, legal system, police reform, family law affairs, environment, human rights and the constitution from the legal luminaries of the country. The book would be of ready reference for the lawyers, legal researchers, students and the interested ones. ['Aini Kothopkothon', Tanzim Al Islam, Polol:2010]

-Law Desk.

HUMAN RIGHTS monitor



ASIA AND MIDDLE EAST

Partial reforms fail migrant domestic workers

On International Labour Day, governments should pledge to make comprehensive reforms

THE reforms undertaken by Middle Eastern and Asian governments fall far short of the minimum protections needed to tackle abuses against migrant domestic workers, Human Rights Watch said in a report released in advance of May 1, International Labour Day. Despite recent improvements, millions of Asian and African women workers remain at high risk of exploitation and violence, with little hope of redress, Human Rights Watch said.

The 26-page report, "Slow Reform: Protection of Migrant Domestic Workers in Asia and the Middle East," reviews conditions in eight countries with large numbers of migrant domestic workers: Lebanon, Jordan, Saudi Arabia, Kuwait, the United Arab Emirates, Bahrain, Singapore, and Malaysia. The report surveys progress in extending protection to domestic workers under labour laws, reforming immigration "sponsorship" systems that contribute to abuse, ensuring effective response by police and courts to physical and sexual violence, and allowing civil society and trade unions to organize.

"Several governments have made concrete improvements for migrant domestic workers in the past five years, but in general, reforms have been slow, incremental, and hard-fought," said Nisha Varia, women's rights researcher at Human Rights Watch.

Several countries across the Middle East and Asia host significant numbers of migrant domestic workers, ranging from 196,000 in Singapore and 200,000 in Lebanon to approximately 660,000 in Kuwait and 1.5 million in Saudi Arabia. Migrant domestic work is an important source of employment for women from Indonesia, Sri Lanka, the Philippines, Nepal, India, and Ethiopia. Migrant domestic workers' earnings constitute a significant proportion of the billions of dollars of remittances sent to these countries each year.

Human Rights Watch research over the past five years has shown that migrant domestic workers risk a range of abuses. Common complaints include unpaid wages, excessive working hours with no time for rest, and heavy debt burdens from exorbitant recruitment fees. Isolation in private homes and forced confinement in the workplace contribute to psychological, physical, and sexual violence, forced labour, and trafficking.

Most governments exclude domestic workers from their main labour laws, denying them protections guaranteed to other workers, such as limits to hours of work or a weekly day of rest. Only Jordan has amended its labour law to include domestic workers, guaranteeing protections such as monthly payment of salaries into a bank account, a weekly day off, paid annual and sick leave, and a maximum 10-hour workday. However, domestic workers cannot leave the workplace without permission from their employer.

The governments of Lebanon, the United Arab Emirates, Kuwait, Bahrain, Saudi Arabia, and Malaysia have all publicly announced they will amend existing labour laws or draft new legislation on domestic work. But despite years of proposals, none have adopted such reforms. Saudi Arabia's Shura Council approved an annex on domestic work to the labour law, but the cabinet has not yet approved it. Singapore's Ministry of Manpower has repeatedly rejected calls to extend labour law protections to domestic workers.

Immigration reforms have proceeded even more slowly than labour reforms, Human Rights Watch said. In the countries surveyed, domestic workers migrate on fixed-term visas, under which their employers double as their immigration sponsors. This system heightens the risk of abuse by giving inordinate control to employers, who can have domestic workers sent home at will or prohibit them from being hired by a new employer.

Human Rights Watch also examined the governments' responses to criminal abuses against domestic workers. Some governments have begun to investigate and successfully prosecute abuse against domestic workers, but numerous obstacles continue to stand in the way of such victories, Human Rights Watch found. For example, systems for filing complaints are

often out of reach of domestic workers trapped in private homes and unable to speak the local language.

For cases that do reach the attention of the authorities, legal proceedings often stretch over years, while victims typically wait in overcrowded shelters, unable to work. The lengthy waits and uncertain outcomes cause many domestic workers to withdraw their complaints or negotiate financial settlements so they can return home quickly. In other cases, domestic workers who bring charges are forced to defend themselves against counter-allegations of theft, witchcraft, and adultery.

"Successful prosecutions of abusive employers and labour brokers is not only justice served but also a strong deterrent against abuse," Varia said.

Reforms on regulating domestic work are taking place not only at the national level, but globally. In recognition of the importance of protecting a major source of employment that has been historically neglected, members of the International Labour Organization will begin formal discussions in June to



establish global labour standards for domestic work. Lebanon, Bahrain, and Jordan support legally binding standards, while Malaysia, Saudi Arabia, and the United Arab Emirates support a nonbinding recommendation. Singapore and Kuwait did not submit official responses.

Human Rights Watch urged governments to take the following steps to prevent and respond to abuses against migrant domestic workers:

- Extend equal labour protections in national law to domestic workers, and address unique circumstances relating to their intermittent working hours, lodging, and board;
- Improve regulation and oversight of employment agencies and fees charged to these workers by private recruitment agencies;
- Reform immigration policies so that workers' visas are not tied to individual sponsors, and so that they can change employers without the first employer's consent;
- Improve workers' access to the criminal justice system, including through confidential complaint mechanisms, prosecutions, and expansion of victim services;
- Cooperate with labour-sending countries to monitor transnational recruitment, respond to complaints of abuse, and facilitate repatriation;
- Support a binding convention on domestic work with an accompanying recommendation during the International Labour Conference in June.

Source: Human Rights Watch.

LAW week



Male nurses too partners in crime

Several male nurses (medical assistants) of Bangladesh Rifles took up arms and helped others in killing and dumping the bodies during the bloody mutiny at the headquarters on February 25-26 last year. A case was filed with the BDR Special Court-6 against 256 members of the BDR hospital unit in the force's HQ in Pikhana. Medical assistant of this unit nayek subedar Md Nannu Mia filed the case with the three-member court headed by BDR Director General M Mainul Islam. The other members of the court are Lt Col Md Nurul Alam and Maj Md Ali Mustain Khan. Taking the case into cognisance, the court ordered the prosecution to produce the 256 accused before it. - The Daily Star, April 29, 2010.

Remain above political bias

Chief Justice Mohammad Fazlul Karim urged young lawyers to discharge their professional duties remaining above any political bias, for upholding the constitution and establishing the rule of law. He said the lawyers could protect the people's rights by placing appropriate legal interpretation before the court. The chief justice made the remarks while addressing as chief guest the certificate awarding ceremony of young lawyers who were permitted to practice in the High Court Division by Bangladesh Bar Council on February 8. The ceremony was organised by the council at Dhaka Officers' Club. - The Daily Star, April 29, 2010.

WB worried at amendment to ACC law

The World Bank has expressed its concern at the government's initiative to amend the Anti-Corruption Commission Act. WB Managing Director Ngozi Okonjo-Iweala expressed the concern at a meeting with Finance Minister AMA Muhith in Washington. Muhith at a press briefing at the Finance Division said, "They raised their concern about it. I've told them the amendment is now under our consideration. After having these examined by the law ministry, a final decision will be taken in this regard." The finance minister added the government is considering the amendments to the Act on the basis of a recommendation of a taskforce. - The Daily Star, April 28, 2010.

Liberia detains 41 workers

The 41 Bangladeshi workers recently detained in Liberia for their irregular status are expected to be brought back home soon by UN peacekeeping mission flights. A brigade commander of Bangladeshi peacekeepers in Liberia told Dhaka that he is hopeful to get the UN Headquarters' permission for transporting the workers in phases, said Saida Muna Tasneem, director general of the external publicity wing of the foreign ministry. In another development, Bangladesh's Chargé d'Affaires in Morocco Lutfar Rahman is going to Benin to help repatriation of the 31 Bangladeshi seamen stranded on eight ships offshore the West African country. - The Daily Star, April 28, 2010.

No to Lafarge mining in Meghalaya to stay

The Indian Supreme Court refused to lift a stay on mining by cement giant Lafarge in the forests of Meghalaya. A special forest bench headed by Chief Justice KG Balakrishnan said: "Till the time, appropriate reports (on damage to environment) are submitted by the Ministry of Environment and Forest, we are not inclined to permit the mining." The apex court on February 5 stopped Lafarge from conducting limestone mining in Meghalaya for its cement plant in Bangladesh, saying mining in the environment sensitive zone cannot be allowed. The bench stayed mining activities on the basis of a report from the Ministry of Environment and Forest, which said the company was extracting minerals in the forest zone. - The Daily Star, April 27, 2010.

Govt asked to form teams to end illegal power use

The High Court (HC) directed the government to form a vigilance team in each city corporation to snap all unauthorised power connections to shops, markets and commercial organisations to stop illegal use and misuse of electricity. It asked the government to form the team with members of law enforcement agencies, and to submit to it reports on their actions within 30 days. The HC also ordered a probe into the reported allegation against the deputy commissioner of Rangpur about his playing lawn tennis by using floodlights. The court asked the establishment secretary to place a report before it in this regard within 15 days, and directed the DC concerned not to play lawn tennis by misusing power for three months. An HC bench comprised of Justice AHM Shamsuddin Chowdhury Manik and Justice Md Delwar Hossain issued the directives following a writ petition filed by a rights body -- Human Rights and Peace for Bangladesh. - The Daily Star, April 27, 2010.

Probe reports on 'identified' war criminals likely by May

Investigators are likely to provide prosecutors with reports on allegations against some identified war criminals by next month to start the long-awaited trial. They have already collected relevant information on some perpetrators of crimes against humanity committed during the Liberation War, 1971. Chief investigator Abdul Matin told this to the government at an inter-ministerial meeting at the law ministry's conference room. A three-member tribunal has been formed, and a seven-member investigation agency and 12-member prosecution team appointed on March 25 in efforts to try the war criminals. - The Daily Star, April 26, 2010.

Defamation case against CEC dismissed

A Dhaka court dismissed the defamation case hours after it was filed against Chief Election Commissioner Dr ATM Shamsul Huda for hurting the sentiment of Muslims. Metropolitan Magistrate AKM Emdadul Haque dismissed the case saying that the complainant did not take proper approval from the home ministry before filing the case. Earlier, Mohammad Hossain Akand, an activist of Bangladesh Khelafat Andolon filed the case with the Chief Metropolitan Magistrate's Court, Dhaka. The plaintiff, in his case statement alleged that Huda in an interview with BBC on April 16 said, "Army men are no angels and if Allah himself comes down, He cannot do anything about the Bhola by-election." - The Daily Star, April 26, 2010.

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