



Star LAW book review

LAW week



Constitution: Beloved wealth for the nation

Bangladesher Songbidhaner Bikash, Boisisho O Bischuti
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MD. RAISUL ISLAM SOURAV

JUSTICE Rabbani treats his present book *Bangladesher Songbidhaner Bikash, Boisisho O Bischuti* as the prelude of the preceding book, 'Bangladesh Shonbidhaner Shohoj Paath'. He does not treat it as a sequel rather a prologue. Interestingly, this prelude came after the publication of his 'Sohoj Paath' of the Constitution. He feels reminder to inscribe a preface of his former book for the readers. This book is the initiative of that aide memoir. In point of fact, "Misbahuddin Khan Memorial Lecture" constitutes the contents of the book. The book consists of principally three chapters.

The opening chapter deals with the chronological growth of Bangladesh Constitution. "Constitution is the adored wealth for every nation", J Rabbani said in his elucidation of this writing. Hence, understanding of the Constitution is essential. In this episode, writer focuses on the historical milieu of the birth of Bangladesh and misfortune she confronted with. The epoch of his discussion is four century before Christ to 4 November 1972 (when this Constitution was adopted by the parliament of independent and sovereign Bangladesh). Prior to 16 December 1971, Bangladesh was governed by Pakistan for 24 years and about 200 years by British. Earlier than this phase, we were not truly independent rather governed by different Kings and Samrats. Who were not men of this land! Consequently, prejudice, inequity and oppression perpetuated in our forehead. Accordingly, swinging arose in different time by the peasants, planters or by the workers. So-called leaders of this territory did not contribute to make this land free from the foes, although history was written in the name of them.

Rabbani J. recognises the contribution of the cultivators and workers who fought for us in making the country. The history of this land is not written over night, to a certain extent it relates with the blood of the unsung poor sons of this land. No one give them freedom, they achieve this freedom by dedicating their life. Author mentioned glorious history of Bangladesh in this chapter. He tells us that the victory of British against Mughal emperor was a "Historical Accident". In the eye of the writer if this accident did not occur then the territorial area of Bangladesh as stated in Art. 2 of the present Constitution might have expanded to Himalaya in north and in east Bhutan and in west Nepal.

Rabbani J. reminds us the history. Today's Bangladesh is made by sweat, labour and blood of million cultivators. A single aggrieved or an agitated village might not counted by the historian, but billion agitated must be

counted. In this chapter author, mainly hub on assorted insurrection of Bengal, absorbance by the ruler, Hindu-Muslim sectarianism, division of India and lastly historical birth of Bangladesh by freedom fight in 1971. The history of Bangladesh Constitution will be clear from this chapter. 1972's Constitution was written with the spirit of getting freedom from all sorts of obstacles and it was full of the reflection of wish of such rebellious farmers and workers who fought for that freedom for themselves.

Afterwards, in chapter two, writer describes features of Bangladesh Constitution. Here the writer remarks that Bangladesh Constitution is a 'self-born' Constitution. Since it was not achieved by any exterior power; jingoism of the liberty fighters and expectation to be a free nation influenced to born it. He argues if individual-person enjoys real independence then its communal result turns into social independence; otherwise, social independence becomes an abstract concept.

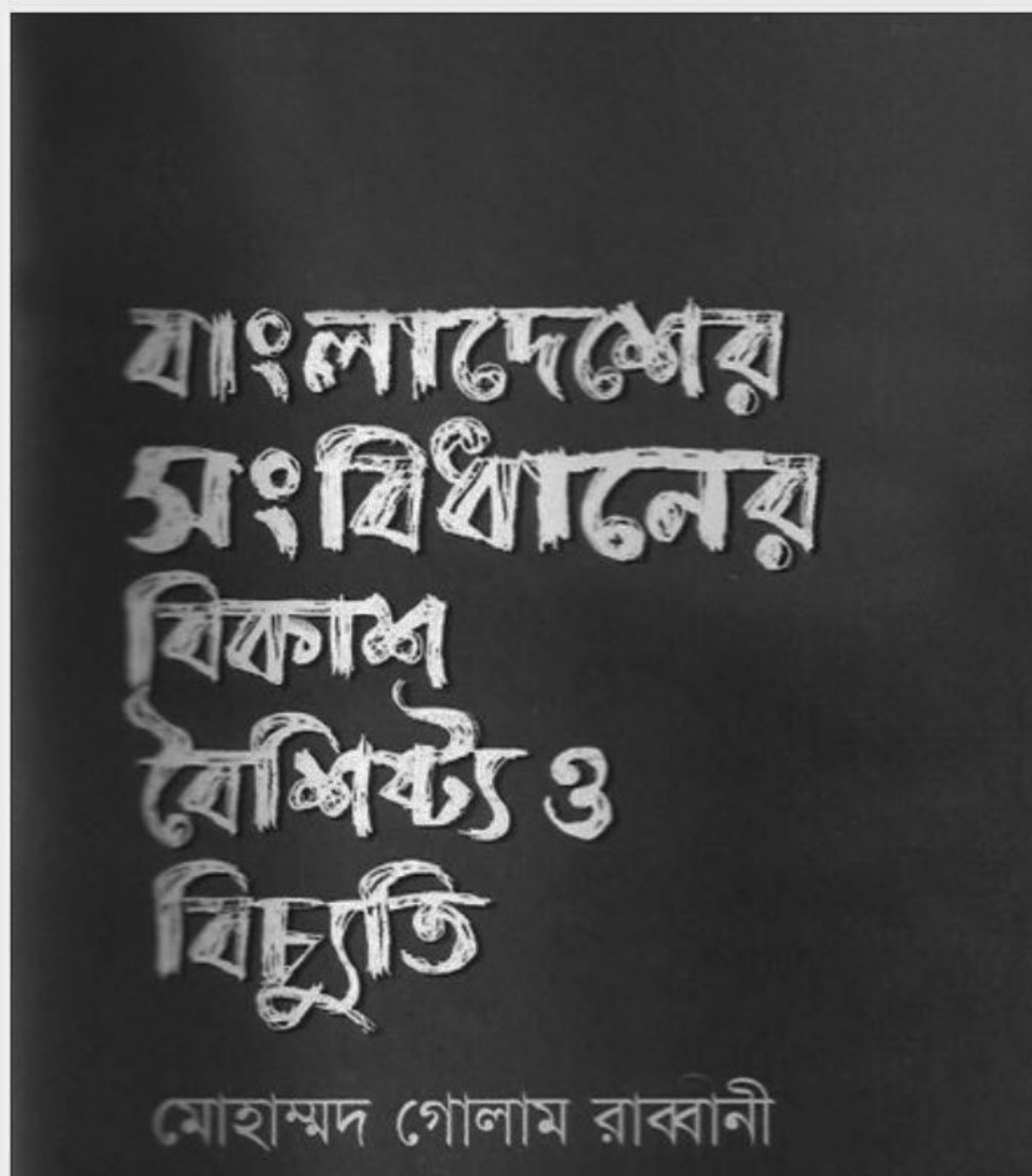
What are the characteristics of Bangladesh Constitution is described in its preamble (Para 2): "Pledging that...the spirit of nationalism, socialism, democracy and secularism shall be the fundamental principle of the Constitution" ('72's Constitution). Identical aspire is avowed in the part II of this Constitution, which deals with fundamental principles of state policy. Art. 8(1): "Nationalism, socialism, democracy and secularism together with the principles derived from them as set out in this part, shall constitute the fundamental policy of state policy".

Next, writer explains the bona fide concept of nationalism, socialism, democracy and secularism one by one in his book. In case of our nationality, we are often bewildered with whether we are "Bangali" or "Bangladeshi"? Golam Rabbani endeavors to reach a decision regarding this question in his book. None of the Articles in the constitution per se cannot furnish authentic meaning of nationalism or nationality. As a result, to grasp the connotation of nationalism one must read Art. 6 along with Art. 23, 24, and 29(3).

On the whole, part II bears the spirit of socialism. It aims to establish a well-fare state. Art. 10, 13, 14, 15, 16, 17, 18, 19, 20 and 42 of our Constitution reflects the sprit of socialism. Afterwards Art. 7, 11, 59 & 60 straight the true trail of democracy and last one, secularism was determined by Art. 12 and 38.

In the last chapter of the book the author, transcribe the deviation of Bangladesh Constitution from the original Constitution of 1972. He alleged, lacuna of ought ness is liable for this digression. What is ought ness? Firstly, lucid perception amid what is done and what is ought to be done? Secondly, constant exploration of truth in a logical manner. Divergence of the Constitution must humiliate such ought ness and this was done by the despotic ruler who were appropriated the power by illegal and undemocratic way with mal intention.

Earliest deviation of Bangladesh Constitution was altering the expression independence instead of freedom (which type of audacity they exposed!). Freedom and independence does not clutch the equivalent denotation. It is not synonymous word. Independence means mere sovereignty of a state whether freedom means all sorts of



freedom emphasizing economic freedom, social freedom etc. Later distorted the sense of "Socialism"- Art. 8(1). They inserted a self-made interpretation of socialism. Repealing of original Art. 10 was one more step to deviate the Constitution from its key track and as opposed to that Article place a superfluous as well as flabby Article with a sub-title of "Participation of women in national life".

Art. 12 of the Constitution contain occupied gist and definition of "Secularism". These tyrannical rulers rescind it as well as changed the provision of Art. 38. Moreover, added "Bismillah-ar-rahman-ar rahim"! Yet we acquainted that, the state, which we acquired from Pakistan, was founded on the strength of secularism. Apart from this, they meditated these changes were not adequate to sturdy their chair, as a result they misused Art. 25. The author makes his writing dependable by using numerous references. Researchers shall be benefited from such references. The manuscript will be supportive for not only the Researchers but also Students, Teachers, Lawyers, Judges, Lawmakers and other professionals.

It appears that the concluding part of the book bears the essence of the book. In this portion writer describes three incidents of 1992, 2008 and 2012.

1. In the first confrontation, minstrel-journalist Monazatuddin reported about an ill luck freedom fighter Shah Alam, who begged

at the street for his livelihood. He changed his former place of begging to Firmgate over bridge for better income. One-day police was arrested him. Consequently, his family became unaided. Our Govt. is fails to arrange least means of survival.

2. In 2008, Dr. Andrew Alok Kumer Dewari, a teacher of Chittagong University committed suicide. Before committing the suicide, he wrote a note that- "no one is answerable for his suicide, born in this country is curse for me". The malignant boil of sectarianism was seeded by the dictatorial govt. is responsible for his death.

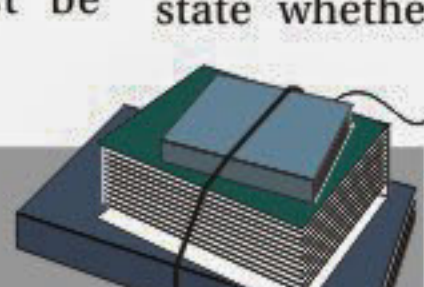
3. Golam Rabbani here sketches a dreamt Bangladesh of 2012. When, we will rejoice 40 years of our Constitution adoption day (according to Art. 153, 16 December is our Constitution adoption day). When fundamental principles of state policy would be implemented and Bangladesh would turn into a welfare state.

Rabbani J. has dedicated his current book to the present plus future youthful age group. In addition, he vests the duty of making such dreamt Bangladesh to them. He is as optimistic as Rabindranath. In Balaka Rabindranath said: "Ore nobin, ore amar kacha/Ore sobuj, ore obuj/Adh-morader gha mere tui bacha".

Can we succeed Justice Golam Rabbani's dream?

The writer/ reviewer is a student of LL.M., Department of Law, Northern University Bangladesh (NUB).

LAW lexicon



Contempt of court - Willful disobedience of a judge's command or of an official court order.

Continuance - Postponement of a legal proceeding to a later date.

Contract - An agreement between two or more persons which creates an obligation to do or not to do a particular thing. A legally enforceable agreement between two or more competent parties made either orally or in writing.

Contributory negligence - The rule of law under which an act or omission of plaintiff is a contributing cause of injury and a bar to recovery.

Conveyance - Instrument transferring title of land for one person or group of persons to another.

Conviction - A judgment of guilt against a criminal defendant.

Corpus delicti - The body (material substance) upon which a crime has been committed, e.g., the corpse of a murdered man or the charred remains of a house burned by an arsonist.

Corroborating evidence - Supplementary evidence that tends to strengthen or confirm the initial evidence.

Costs - An allowance for expenses in prosecuting or defending a suit. Ordinarily this does not include attorney fees.

Counsel - A legal adviser; a term used to refer to lawyers in a case.

Counterclaim - A claim made by the defendant in a civil lawsuit against the plaintiff. In essence, a counter lawsuit within a lawsuit.

Court - A body in government to which the administration of justice is delegated.

Court-appointed attorney - Attorney appointed by the court to represent a defendant, usually with respect to criminal charges and without the defendant having to pay for the representation.

Court costs - The expenses of prosecuting or defending a lawsuit, other than the attorney fees. An amount of money may be awarded to the successful party (and may be recoverable from the losing party) as reimbursement for court costs.

RIGHTS corner



UN creates single entity to promote women's empowerment



IN a bid to accelerate the empowerment of women, the General Assembly on July 2, 2010 voted unanimously to create a dynamic new entity merging four United Nations offices focusing on gender equality, a move hailed by Secretary-General Ban Ki-moon and other senior officials.

"The newest member of the UN family has been born today," Mr. Ban told the Assembly after it passed the resolution setting up the new UN Entity for Gender Equality and the Empowerment of Women, to be known as UNWomen.

"This is truly a watershed day," he declared.

The new body will merge four of the world body's agencies and offices: UN Development Fund for Women (UNIFEM), the Division for the Advancement of Women (DAW), the Office of the Special Adviser on Gender Issues, and the UN International

Research and Training Institute for the Advancement of Women (UN-INSTRAW).

"By bringing together four parts of the UN system dedicated to women's issues, Member States have created a much stronger voice for women and for gender equality at the global level," said the Secretary-General.

"It will now be much more difficult for the world to ignore the challenges facing women and girls or to fail to take the necessary action," he added.

UN Women is the result of years of negotiations among Member States and advocacy by the global women's movement. Set to become operational next January, it will drive the world body's efforts to promote women's rights.

UN Women is set to have an annual budget of at least \$500 million double the current combined resources of the four agencies it will comprise.

Mr. Ban acknowledged that many Member States are facing resource constraints due to the global economic downturn, but expressed confidence that the new office will receive strong financial support.

"Today's action will do more than simply consolidate United Nations offices," Deputy Secretary-General Asha-Rose Migiro told reporters earlier today. "It will consolidate the United Nations strengths."

She noted that while the UN has made significant strides, it has also faced serious challenges such as inadequate funding and fragmentation.

One of the main goals of UN Women will be to support the Commission on the Status of Women (CSW) and other inter-governmental bodies in devising policies.

The new body will also aim to help Member States implement standards, provide technical and financial support to countries which request it, and forge partnerships with civil society.

Within the UN, it will hold the world body accountable for its own commitments on gender equality.

"UN Women will give women and girls the strong, unified voice they deserve on the world stage," Ms. Migiro said, calling today a "positive and exciting moment" for the entire UN family.

Set to be based in New York, UN Women will be headed by an Under-Secretary-General, to be appointed by Secretary-General Ban Ki-moon.

The UN, said General Assembly President Ali Treki, is "uniquely placed" to take the leading role on the issue of promoting women's rights, expressing his delight at the creation of UNWomen.

HR Commission to exercise its power

The National Human Right Commission (NHRC) will not hesitate to apply its powers in cases of extra-judicial killings and custodial deaths, Chairman of the commission Prof Mizanur Rahman asserted. The NHRC is empowered to investigate incidents of violation of human rights, recommend to the government taking action regarding such incidents and file criminal cases against the perpetrators. "We have already conveyed our concern over incidents of extra-judicial killings, deaths in custody and missing of some people to the higher authorities of Rapid Action Battalion (Rab) and the police," he said. Mizanur was talking to journalists after the NHRC had a meeting between with Law Minister Shafique Ahmed at his secretariat office. Mizanur noted that extra-judicial killings are not acceptable in any civilised country. *The Daily Star, July 8, 2010.*

Money-laundering charges pressed

The Anti-Corruption Commission pressed money-laundering charges against BNP Senior Vice-Chairman Tarique Rahman and his business partner Giasuddin Al Mamun. ACC Assistant Director Mohammad Ibrahim submitted the charge sheet to the Chief Metropolitan Magistrate's Court in Dhaka, accusing the two of laundering Tk 20.41 crore in between 2003 and 2007. Tarique had realised the money in foreign currencies from different companies and organisations. In exchange for the sums, he had promised to win them contracts using his clout as son of the then prime minister Khaleda Zia, read the charge sheet. *The Daily Star, July 7, 2010.*

JS body roots for servicemen's HR

A parliamentary body recommended that the armed forces review their laws and regulations and bring necessary amendments to update those and to ensure human rights for military personnel. The parliamentary standing committee on defence ministry made the suggestion observing that the age old laws of the army, navy and air force do not have the provisions to guarantee human rights for servicemen. Bangladesh Army in a letter to the parliamentary body said a process is underway to amend the army laws and regulations to "strengthen country's democratic process and ensure its transparency and accountability", said a meeting source. Bangladesh Navy and Air Force also informed the committee in writing that they are also working to bring amendments to their regulations, the source added. *The Daily Star, July 7, 2010.*

Rab told of zero tolerance policy

The National Human Rights Commission will pursue a "zero tolerance" policy on extra-judicial killings and custodial deaths in violation of human rights, NHRC Chairman Prof Mizanur Rahman said. "We want to convey our stance on the issue to everyone," he told journalists after a meeting with the director general (DG) of Rapid Action Battalion. Earlier, the commission had asked DG of the elite force Hassan Mahmood Khandker to appear before it to discuss alleged extra judicial killings and custodial deaths. *The Daily Star, July 7, 2010.*

Cops slammed for custodial deaths

The High Court slammed the police for custodial deaths, and said such incidents must not recur. It ordered the Dhaka Metropolitan Police commissioner to turn in a report within two weeks on measures to prevent lock-up deaths. It also asked him to submit inquest reports on three recent deaths in police custody. The bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Md Zakir Hossain came up with the orders in response to a writ petition filed by two rights groups. It directed the home secretary to form within a week a committee comprising officials other than police personnel to investigate the three deaths. *The Daily Star, July 6, 2010.*

EU worried as RMG unrest continues

The European Union has expressed concern over the frequent unrest in Bangladesh's apparel industry as garment workers continued their agitation vandalising several factories and vehicles in Ashulia and Narayanganj. The violence resulted in the temporary production halt at 26 factories. A three-member delegation led by the EU Ambassador Stefan Frowein met Labour Minister Khandker Mosharraf Hossain at his Secretariat office and informed him about their concern. They told the minister that the EU and their citizens, who are consumers of the Bangladeshi garment products, are very worried over the state of the sector. *The Daily Star, July 6, 2010.*

Telcos must have right to appeal

A parliamentary body recommended setting up a "telecom appeal board" allowing telecom operators and ICT based organisations to appeal against actions of the government and BTRC. On scrutinising a bill seeking amendments to the Bangladesh Telecommunications Act 2010, the parliamentary standing committee on post and telecommunications ministry came up with the suggestion following concerns raised by telecom operators and ICT based entrepreneurs. The bill, placed in the parliament on June 13, proposed a number of amendments to the act including punishment to telecom operators for wrongdoings, giving them no scope for challenging the actions of the government or Bangladesh Telecommunication Regulatory Commission (BTRC). *The Daily Star, July 6, 2010.*

Alamgir acquitted; hopes for others

The Supreme Court scrapped jail sentence of Awami League lawmaker Mohiuddin Khan Alamgir and cleared corruption charges against him, paving the way for four dozen suspects to be relieved of graft charges. Alamgir's legal win would frustrate the first move of the immediate past caretaker government to bring 50 high-profile graft suspects into book, observe legal experts and anti-corruption officials. Also nears a fruitless end the first drive against rampant corruption by the reformed ACC, which emerged from an apparently non-functional commission led by Justice Sultan Hossain Khan and politically biased and now-defunct Bureau of Anti-Corruption in 2004. *The Daily Star, July 5, 2010.*

2yrs jail for disgracing national flag

The cabinet approved the Bangladesh National Anthem, Flag and Emblem (Amendment) Act, 2010 with provision of maximum two years' imprisonment or Tk 10,000 in fine or both for disrespecting the national anthem, flag or emblem. Prime Minister's Press Secretary Abul Kalam Azad said this to reporters after the cabinet meeting with Sheikh Hasina in the chair. The decision was taken to bring under a legal framework the proper use of national anthem, flag and emblem, a highly placed source in the Prime Minister's Office told *The Daily Star, July 5, 2010.*

Amendment needed to stop false case filing

Law Minister Shafique Ahmed said the women and children repression prevention act should be amended in order to prevent its misuses by the victims. In many cases, the victims file cases against the offenders and a number of their relatives though all of them are not involved in the offences, he said, adding that many of the accused are, therefore, acquitted on the court orders. The minister made the remarks while speaking as the chief guest at a workshop on "Draft law, 2010 to prevent sexual harassment at educational institutions and work places", "Amendment of the existing law regarding eve teasing as well as sexual harassment" and "Amendment of the Women and Children Repression Prevention Act 2000" in the city. Bangladesh Law Commission and Bangladesh National Woman Lawyers Association (BNWLA) jointly organised the workshop at BRAC Centre Inn at Mohakhali. *The Daily Star, July 4, 2010.*

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