

## Presidential prerogative to grant clemency

There will be repetition of such cases until the Constitution allows the president to act independently in the disposal of cases relating to Article 49 of the Constitution. It is expected that our lawmakers will give a thought to the matter.

M. ABDUL LATIF MONDAL

FOR the last three weeks or so, the presidential clemency to 20 convicted murderers in Jubo League leader Sabbir Hossain Gama murder case has been in the news. There have been mixed reactions to the pardon from different quarters, including eminent jurists and rights activists. While the supporters of the clemency have argued that the president had constitutional power to grant the clemency, others have questioned whether the power was exercised after due consideration.

Let me briefly state the fact of the case before discussing the above points.

The fact of the case, in brief, is that the Speedy Trial Tribunal, Dhaka convicted and sentenced 21 persons to death for killing Jubo League leader Sabbir Hossain Gama, also nephew of former BNP Deputy Minister Ruhul Quddus Talukdar Dulu, at Ramsharkazipur Amtali Bazar under Naldanga Upazila of Natore district on February 7, 2004. As reported in the newspapers, prior to the presidential pardon, the 20 convicts -- Anisur Rahman, S. M. Firoz, Faisal Hossain, Sentu Shah, Shahjahan Shah, Jahedul Islam, Badal Shah, Fazlul Haq Shah, Faruq Hossain, Abdul Jalil, Jahurul Shah, Sajjad Hossain, Sohag, Mohammad Bablu, Abul, Ataur, Ashraf, Farmazul, Fakruddin and Wahidur Rahman -- filed appeal with the High Court (HC) against their death sentence.

On the alleged assurance from responsible quarters of the ruling AL to grant them presidential pardon, the 20 convicts withdrew their appeal petition from the HC and

prayed for presidential clemency. On September 6, President Zillur Rahman granted them pardon. Only one convict, Akhbar Ali, was not pardoned, as he remains at large.

As reported in the newspapers, the home ministry, which processed the case for presidential pardon, has said that the 20 convicts prayed for the president's clemency, and the president, in the exercise of his powers conferred by Article 49 of the Constitution, granted them pardon. Article 49 says that the president shall have power to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.

Law Minister Shafique Ahmed has said that on receipt of the case from the home ministry, the law ministry placed its opinion to the president that he had absolute constitutional power to give clemency to the convicts. He further asserted the president could have refused to grant the mercy if he had wished.

Renowned criminal law expert Anisul Haq has said that "the president has absolute and exclusive constitutional power and discretion to grant mercy to any convict, and he can do it."

Eminent jurist Shahdeen Malik has said that apparently both the verdict and the presidential clemency seemed very unusual, and it has inevitably led to the perception of misuse or abuse of the presidential power to pardon. He has further added that it does not augur well for our state or its future.

Former caretaker government adviser and leading human rights activist Sultana Kamal has said that as both the court and

the president are the highest places of the nation's expectations, the people want and expect true and impartial judgements from them. She has also asked for an explanation from the government about the grounds on which those 20 convicts were granted presidential clemency.

While protesting the pardon, BNP standing committee member and a Supreme Court lawyer, Rafiqul Islam Mia, has questioned how the Gama murder case could be completed without going through the HC. While suspecting the case as "pre-planned," he has lamented that a high institution of the republic, like the president has been made controversial for political reasons.

In a column of The Daily Star (DS) on September 17, it was noted that "the question is not so much whether the president has the right to grant this pardon. The question is whether he was right to do it."

Another column, in the DS of September 21, noted that the presidential power to grant clemency should be "exercised judiciously when all other avenues for seeking justice or redressing injustice had been exhausted, and should be offered to one with the highest degree of remorse in addition to service to the nation or to humanity or to one whose survival could potentially contribute to the cause of mankind." It raised the question whether the president had met that implied expectation of the nation in granting pardon to the convicts of Gama murder case.

The law minister's assertion that the president could have refused mercy if he had wished is not consistent with Article 48(3) of the Constitution. Article 48(3) says that in the exercise of all his functions, save only that of appointing the prime minister and the chief justice, the president shall act in accordance with the advice of the prime minister.

In view of the above constitutional provision, the prime minister was under obligation to send the case to the president with a definite advice. And to give a definite

advice in this case, the prime minister needed clear-cut opinion of the law ministry as to whether the convicts should be pardoned or not by the president.

The prime minister would not have sent the case to the president at this point of time if the law ministry opined that the case was in the middle of the trial process, and the president's clemency might be considered only after the trial process was exhausted.

The Constitution has not given the president any discretionary power to grant pardon to a convict, and in the present case, he had no option but to agree to the advice given by the prime minister for granting clemency to the convicts. The president would have violated the Constitution if he had acted against the advice of the prime minister in this case.

We find an instance of presidential pardon to a convicted murderer during the time of the immediate past BNP-led government. On the recommendation of the then Prime Minister Khaleda Zia, President Dr. Iajuddin Ahmed had to grant clemency to convicted murderer Mohiuddin Jhantu, a Jatiyatabadi Chhatra Dal leader.

In July 1982, a Dhaka martial law court sentenced Mohiuddin Jhantu and two others to death for murdering two Demra businessmen. The judgement was delivered in absentia. After evading arrest for more than two decades, Jhantu surrendered to the metropolitan sessions judge's court on January 3, 2005 and prayed for presidential clemency. He was granted presidential pardon within 10 days of his surrender although the death penalty of two co-convicts in the case had already been carried out.

There will be repetition of such cases until the Constitution allows the president to act independently in the disposal of cases relating to Article 49 of the Constitution. It is expected that our lawmakers will give a thought to the matter.

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## Steps out of the global development crisis

Coping with current crises is impossible without the state playing a more active role. Remedying the social and environmental impacts of the crisis and overcoming the structural problems of poverty and environmental destruction require an active employment policy, social security systems, and an economic policy in harmony with the environment and climate.

JENS MARTENS

THROUGHOUT the developed world, the global economic and financial crisis appears to have come to an end. The G20 ministers of finance already discuss exit strategies. Major international banks such as Goldman Sachs or Deutsche Bank once again enjoy quarterly profits totalling billions. As if there had never been a crisis, hedge funds are more active than ever before on the international finance markets.

However, the tsunami waves sent out by the global crisis are just reaching the developing countries, hitting them with full power despite the time lag. The crisis is having a dramatic social and economic impact on the South.

The International Labour Organization (ILO) estimates that the number of registered unemployed had grown by 34 million between 2007 and 2009. In addition, millions of people have been pushed into informal employment owing to a lack of social security systems. The number of people living in extreme poverty is on the increase again too. According to estimates by the World Bank, up to 263 million more people is expected to live in poverty by 2015 than would have been the case without the crisis. The number of people living in hunger exceeded a billion in 2009 -- the highest number in human history. The number is expected to decline this year, but remains higher than before the crisis.

Given this grim scenario, the prospects of achieving the internationally agreed development goals, including the Millennium Development Goals, or MDGs, by 2015 recede ever more into the distance. Combined with the climate crisis and the unresolved food crisis, the financial crisis has turned into a global development crisis.

So far, governments have not delivered an appropriate response to dramatic consequences of the crisis. In particular, G20 crisis management has given too little consideration to the needs of people in poorer countries.

Without doubt, the crisis has brought about changes in economic policy discourse. The blind faith of neoliberal economists in the self-regulatory forces of the market has been shaken. So far, however, these changes have not been reflected in any corresponding substantial shifts in policies. Instead, a trend towards business as usual is again becoming apparent. One example is an observation by Holger Schmieding, Bank of America's chief economist for Europe. Given the collapse of Lehman Brothers, he noted:

"Lehman was an accident. Now the accident site has been cleared, and traffic can roll again."

This is precisely the wrong approach.

Instead, a comprehensive programme is needed to tackle the global development crisis at its roots, mitigating its social and environmental impact and preventing future crises. In addition to effective regulations and reforms in the global economic and financial system, fundamental shifts towards a Green Welfare State and a holistic rights-based development paradigm are necessary.

Coping with current crises is impossible without the state playing a more active role. Remedying the social and environmental impacts of the crisis and overcoming the structural problems of poverty and environmental destruction require an active employment policy, social security systems, and an economic policy in harmony with the environment and climate. To this end, three initiatives have been formulated within the United Nations system that governments ought to speedily implement:

First, in order to prevent the economic crisis from turning into a long-lasting, worldwide employment crisis, the Global Jobs Pact adopted by the ILO needs to be fully implemented. Combating unemployment needs to be a top priority for the governments.

This applies in particular to the increasing levels of youth unemployment. Here, public investment in infrastructure, employment programmes that ought to be oriented on the ILO agenda for decent work and the introduction of minimum wages to counter the growing phenomenon of the working poor should be of top priority. An active employment policy must also deal with problems of increasing informal work arrangements and precarious employment relationships, both of which affect women.

Second, the ILO has pointed out that access to social security is a human right. But in times of crisis in particular, an effective social-security system is also economic and political necessity -- reducing poverty, strengthening the purchasing power of people and hence domestic demand, and preventing social tension and societal conflicts. The ILO has developed the concept of a Global Social Protection Floor based on four pillars:

- Universal access to public healthcare for all;
- Guaranteed state allowances for every child;
- Universal basic pension provided by the state for persons in old age or with disabilities; and
- Guaranteed state support for unemployed and underemployed people living in poverty.

Such basic social security ought to exist in every country and would prevent people from falling into poverty as a result of economic crises.

Third, a massive investment in environ-



The state must play active role in removing poverty.

mentally friendly technologies and measures to reduce energy consumption is required to limit the threat of climate change. The UN Environment Programme (UNEP) has taken up proposals for a Green New Deal and developed them into a global initiative. UNEP is calling on the governments to invest at least US\$750 billion, about 25 percent of the stimulus packages worldwide, in five areas:

- Improving energy efficiency of buildings;
- Developing renewable energies;
- Establishing sustainable transport systems;
- Protecting the planet's ecological infrastructure including freshwater systems, forests, soils and coral reefs;
- Investing in sustainable agriculture, in particular organic farming.

Changes in politics are not enough. There is a need for a more fundamental change of the dominant development paradigm. The current crises reflect a model of development that is oriented on a modernisation approach, blind to environmental and human rights issues and confusing economic growth with progress in society. The model regards combating poverty as a primarily technical challenge in which the category of social justice plays no role.

A coherent analysis of the common causes of the multiple crises and their interdependencies is needed now. This presupposes overcoming the current fragmentation in the development discourse of politics, science and civil society. Depending on

the respective actors, this discourse focuses on narrow topics such as poverty alleviation and millennium development goals, climate change, trade and investment, and human rights and conflicts.

A holistic model of development, based on six cornerstones, must be reconsidered:

- Environmental sustainability,
- Social justice,
- Economic efficiency,
- Democratic participation,
- Cultural diversity, and
- International responsibility.

A model of this kind must be based on international law and universal human rights, including the rights of women and children.

From 20 September to 22 September, the UN General Assembly convenes an MDG Summit in New York. The next UN Summit on Sustainable Development will take place in 2012 in Rio de Janeiro -- 20 years after the Earth Summit 1992. The time between these summits provides an excellent opportunity to reflect on the obvious shortcomings of the traditional development and growth model -- and promote discourse on new models of welfare and development.

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## Ensuring real estate accountability

Law adopted by JS must be followed by implementation

THE passage of the real estate-related bill by the Jatiyo Sangsad gives us some hope that the concerns of late expressed about the sector will now be dealt with. It has been a fact over the past many years that the unbridled and unaccountable manner in which real estate developers have gone about building and selling property has left some very critical questions to be answered. Among these have been complaints that in many instances developers have not maintained the terms of the contracts they made with those authorising them to develop their property. At the other end, buyers of flats in a number of apartment complexes have regularly alleged that the amenities promised them by developers have been slow in coming or have not been there at all. Apart from all this, a section of developers has been seen to violate the plans, approved by the authorities, on the basis of which they were supposed to have developed their housing projects.

With the passage of the bill by the JS, one hopes (and with fingers crossed) that a streamlining will now come into real estate development in the country. The various provisions of the bill are surely encouraging in that they provide for legal action against any developer not following procedures and codes regarding real estate activity. Developers found guilty of wrongdoing, that is, failing to maintain the terms and conditions of building property, will now face the penalty of jail terms or monetary fines. An encouraging feature of the bill relates to a registration of development firms, now made mandatory for them. That is a good step, given that in the last two decades developers have come up in mushroom-like manner, to a point where no effort on the part of the government has been effective in checking them. In the process, it is an entire urban landscape that has changed, and not always for the better, through unplanned development dictated by unadulterated monetary interests. The damage done by such unmitigated real estate activity can also be seen these days on the outskirts of the nation's capital. Lush rural regions have been falling captive to lopsided urban concepts of progress.

We are, therefore, happy that the Jatiyo Sangsad has finally come up with the law necessary to keep real estate in check. However, we must also serve the old caveat here that the effectiveness of any law comes through its purposeful application. In the present instance, all the provisions relating to the payment of various fines and going through various terms of imprisonment on the part of developers overstepping the law will be set at naught if the machinery for the implementation of the law is not activated. We, therefore, emphasise the huge need for a constant oversight of real estate activities from here on through an effective mechanism to ensure that the provisions of the just passed bill are followed in letter and spirit.

One last point: there is an urgent need for decisive action against those real estate developers who have in recent years been accused of grabbing land and turning it into a lucrative commercial enterprise for themselves. Such criminality, if ignored, will defeat the purposes of the bill the JS has adopted.

## Living dangerously

Moral of the horrific abode needs heeding

JUST how desperate cliffhanger living for the low income groups has become was graphically depicted in a report titled 'House of horror' front-paged in our yesterday's issue. The three-storey tenuous structure of a living quarter cobbled with stray metallic sheets fronting out around wooden-cum-bamboo frame of sorts at Kamalbagh in the capital is a study in dangerous living.

Alternatively it is an example of resilient and courageous living. Even it may be a glimpse of prefab, ingenious housing. That is where the state could provide inexpensive materials for them to raise a structure for living.

At least, they are not living in slums, one could say in an attempted fairness to the enterprise. But who is making capital out of the enterprise, anyway? Surely it is an exploitative mill for the self-proclaimed owner and manager of the project. Three hundred souls belonging to 50 families including 100 single workingmen make the rabbits-of-a-warren. The wobbly structure is not only a danger in itself, unauthorised electric connections woven by interlacing wiring is also susceptible to short-circuiting and resultant fire.

In fact, this story should be regarded as eye-opener to many such structures in different shapes and sizes waiting to be discovered. Indeed the issue of low cost housing for the poor and low income groups associated with various services being provided to city dwellers and factories has yet to draw the attention of the government. It is the obligation of the state to provide shelter to its citizens; and the poorer they are, the stronger their claim to roof overhead. It must be remembered that people driven by landlessness, lack of employment and river erosion induced pauperisation migrate to the capital city. Their concerns must be integrated into the urbanisation process in which they are marginalised on top of the rural marginalisation that landed them in the city in the first place. This is a raw deal.

As human beings they are entitled to minimally safe living conditions. And taking into account their contribution to the service sector, they deserve more than that.