

Summary trials and the worries

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MUHAMMAD NURUL HUDA

HERE is no denying that criminal offences cause worries in the minds of citizens and thus it was not surprising for many concerned Bangladeshis to be worried about the increasing incidents of the so-called eve-teasing. There was widespread criticism of the lack of speedy and prompt action from the authority in tackling the offence and the offenders. One remedy that followed the public outcry was the application of summary trials to counter this dimension of juvenile delinquency.

While following the application of summary trials there have been some punishment of a few bad hats across the country and the public experienced some relief, there have been, however, objections from concerned lawyers to the effect that the summary trials have been perfunctory and have not met the ends of justice. Such lawyers have brought the matter to the notice of the higher judiciary.

It is, therefore, in the fitness of things that one should try to find out the meaning of the letter and spirit of the relevant legal provisions of summary trial. At the outset, it has to be borne in mind that laws relating to summary trials do not infringe the equal protection clause of the constitution. There is no denial of fair trial to a person who is tried in a summary way.

In fact, the pettiest offences have been grouped together and put into one class. The object with which it has been done is to ensure speedy trial of persons committing the offences in the group. There is a well-defined classification and no ground for apprehension of capricious discrimination by judicial authority.

Whether an offence is to be tried summarily or not is to be determined by the facts stated in the complaint as well as the sworn testimony of the complainant. The magistrate is competent to dispose of a case summarily where the facts which are alleged to have taken place disclose an offence that is triable summarily. Similarly, when the magistrate ascertains from the evidence that the facts alleged to have taken place disclose an offence that is triable summarily, he can dispose of the case summarily.

A summary trial is undesirable in a case where a large number of correspondences have to be gone into and the case is by no means of a simple character. It is undesirable where the complaint petition discloses a very serious or heinous offence and there must not be any effort to reduce it into a lighter one so as to enable the magistrate to clutch at a jurisdiction to try the case summarily.

The responsibility thrown on magistrates entrusted with summary power is very great. They should take care that the procedure

and the record are not made more summary than what the law has laid down. The object of a summary procedure is to shorten the course of trial, but is nevertheless incumbent on the magistrate to put on record sufficient evidence to justify his order.

It has to be remembered that if the particulars required by section 263 of Criminal Procedure Code are not clearly given in a judgment in a summary trial convicting the accused, the judgment is defective and the conviction cannot stand. The record should be written by the magistrate himself and the same should be made at the time of the trial and not afterwards.

In summary proceedings a certain expedition is intended and indeed is most desirable. But the summary procedure laid down in the Criminal Procedure Code must not be made more summary. Section 263 of Criminal Procedure Code lays down the minimum requirements of the law. While this section dispenses with the formality of recording evidence, it does not dispense with the necessity of hearing evidence or of following the procedure for summary trials. In short, section 263 merely relieves the court of the burden of recording evidence.

In summary trials, it is very important that there should be clear findings on questions of fact, because it is only through such findings that the court of revision can form its own judgment with regard to the legality or otherwise of the proceedings of the summary trial court.

Section 263(h) of the Criminal Procedure Code enjoins that a brief statement of reasons for the order should be given by the magistrate. It is absolutely necessary that this should be done, otherwise the general public is likely to lose faith in the administration of justice.

In a summary trial a brief statement of the reasons would necessitate at least a short summary of what the prosecution

witnesses had said, so as to indicate that the evidence had made out the case with which the accused had been charged, and also an indication that the magistrate has believed that evidence. If there was defence evidence, it would further be necessary to say why the magistrate preferred the evidence of the prosecution to that of the defence.

The magistrate in a summary trial must, in recording the reasons for the conviction state them in such a manner that the High Court may in revision judge whether there were sufficient materials before the magistrate to justify the conviction. The magistrate should set out so much of the reasons that have influenced him as to satisfy the accused that the magistrate has considered each of the ingredients of the offence.

The reasons mentioned above should be recorded with brevity, but such brevity should not be such as to tend to obscurity. These safeguards are essential so that sufficient materials are on record in the event of a revision. Therefore, a judgment in a single line is not a judgment according to law.

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From the foregoing it is clear that if the summary trials are held in a careful and circumspect manner then the ends of justice can be met and the suffering public's woes can be redressed in a significant manner without venturing to craft additional legislations.

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The king is naked

India is facing another embarrassing situation. This is about the Nira Radia tapes, disclosing her -- she is a lobbyist -- telephone conversations with the industrialists and top journalists. Industrialist Ratan Tata has approached the Supreme Court for an injunction on the leaks which, he alleges, have violated his right to privacy. He has questioned whether India has turned into a banana republic and asked the government to punish those responsible for it.

KULDIP NAYAR

HOWEVER strident the voice of Secretary of State Hillary Clinton, it lacked the ring of sincerity. She had to defend the indefensible but she could have been more transparent and more forthcoming on the leakage of the US classified documents (popularly known as WikiLeaks expose). This might have revived confidence among the countries which the United States has hurt. They would have got some justification to give it the benefit of doubt.

No doubt, Uncle Sam has been caught with his pants down. But Mrs. Clinton's statement that the leakage was an attack on peace in the world does not wash. Nor does it condone the breach of faith that the nations repose in Washington. Published comments made by top American diplomats on the countries where they represent the US are simply lewd. These were not off the cuff remarks. They had certain thought behind them, even though devilish.

How can the leaders of these countries trust the US, which says something pleasant in their presence and entirely the opposite at their back? This is no diplomacy. It is sheer betrayal. President Obama, who swore by transparency when he was electioneering for the office, comes out a double-faced personality after the disclosures. His oratory and diction cannot hide the fact that the countries have been taken for a ride.

What can be the moral stance of the president when his secretary of state tells the US diplomats at the UN to spy on their counterparts? But then American has the example of Watergate, which made President Nixon resign on the ground that he had tapped the political discussions of the opposition party and thus misused the government machinery.

It seems as if Washington treats other countries as the fodder for its mighty machine of diplomacy. Mrs. Clinton is right in her remark that President Obama and she framed a world policy which America is trying to implement. But what sort of policy is she alluding to? No doubt, national interests come first. The US is no exception. But then why does it delude the world by pretending that Washington is guided by altruistic motives?

The Wiki tapes, naturally run down by the American officialdom, have done a great service to the world. The US citizens should be more indignant because their government has put a question mark over their credibility. If such are the means that the most powerful democracy adopts to achieve its ends, the very ideology becomes dubious. How is the US different from dictatorships since they too use oily words in public and cut throats in private?

ing to discuss the future course of action at Kabul. Both the countries, as US documents reveal, did so to "appease" Pakistan. Since this information has come out within 24 hours of President Pratibha Patil's return from the UAE, India's foreign office wonders how the relationship would develop. It has a good understanding with the UAE and wants to sustain it.

Similar is India's attitude towards the US. It is upset with Mrs. Clinton's message to ascertain deliberations regarding the UNSC expansion among "self-appointed front runners" for permanent seats -- India,

India is facing another embarrassing situation. This is about the Nira Radia tapes, disclosing her -- she is a lobbyist -- telephone conversations with the industrialists and top journalists. Industrialist Ratan Tata has approached the Supreme Court for an injunction on the leaks which, he alleges, have violated his right to privacy. He has questioned whether India has turned into a banana republic and asked the government to punish those responsible for it. He could have named them because the Department of Income Tax says that it authorised the tapping of

After Sheikh Hasina's trips abroad . . .

New possibilities open up for nation's foreign policy

PRIME Minister Sheikh Hasina's twelve-day trip abroad appears to have opened up some new possibilities for Bangladesh in its dealings with the global community. In broad measure, the prime ministerial visit as also the flurry of diplomatic activities observed in the nearly two years the government has been in office reflects a clear emphasis on a strengthening and reshaping of foreign policy priorities by the administration. It goes without saying that in these times, a nation's global significance depends in large measure on how it utilizes the opportunities which diplomacy opens up before it. From that perspective Sheikh Hasina's visits to Belgium, Russia and Japan, as her earlier visits to India and elsewhere, can be looked upon as an opening of new windows for the country.

Bangladesh's economic links with the European community have in recent years been quite well pronounced. The EU has actively been engaged in promoting trade, particularly through providing encouragement to Bangladesh where its exports are concerned. We believe the prime minister's visit will add a good deal more meat to the substantive nature of the ties already existing between the EU and Bangladesh. The prime minister's meetings with the Belgian leadership can be looked upon as a further step toward impressing upon Europe the priorities Dhaka has set for itself where its dealings with the outside world are concerned. Insofar as relations with Japan are a focus of discussion, the fact that Japan has been a steady and powerful partner with Bangladesh in the economic development of the latter has clearly been re-emphasised through Tokyo's agreeing to provide an additional \$100 million for the construction of the Padma Bridge. Besides, the Japanese authorities' willingness to relax the rules relating to certain areas of trade are a sign of the sympathetic manner in which Tokyo looks upon Dhaka's efforts toward economic progress. The consistency which has underpinned Bangladesh-Japan relations has obviously been reinforced by Sheikh Hasina's talks with Prime Minister Naoto Kan and other important figures in Tokyo.

Much importance can be attached to the Bangladesh leader's visit to Russia since it is for the first time since the early 1970s that a Bangladesh head of government has had the opportunity to interact directly with the Moscow leadership. A newly assertive Russia, almost twenty years after the collapse of the Soviet Union, will certainly be in the mood to cultivate its links with nations which once were close to the Soviet leadership. For Bangladesh, relations with Moscow are grounded on history, dating particularly from the country's War of Liberation. Dhaka can now, in light of Sheikh Hasina's visit, move to expand the dimensions of its relations with Moscow.

These and other diplomatic moves need to be carefully sustained through our Foreign Office doing the necessary follow-up work. Regrettably, our diplomatic establishment has not exactly, so far, shown any sign of being an active mechanism for the conduct of foreign policy in the 21st century. There have been frequent complaints over the years from our missions abroad that the Foreign Office generally has a laidback attitude even toward messages and missives of the utmost urgency. Such an attitude must change, through an infusion of activist diplomacy necessarily based on an intellectual perception of global realities. For a small nation like Bangladesh, a smooth, effective conduct of diplomacy is the one sure way of tackling the outside world. Let our diplomacy, therefore, be infused with a new dynamism through provisions of training and other facilities that will inject a sense of purpose and finesse into the Foreign Office. The bottom line must be made clear: Bangladesh is in need of a modern Foreign Office, able to comprehend the ways in which international relations are practiced.

A question of food security

Measures needed for steady foodgrain supply

THE food ministry is preparing to stock up granaries with quick imports. This preparation is due to delayed monsoon and less-than-average rainfall that is casting uncertainties over the expected output in Aman production in the southern districts. It is indeed worrying that the foodgrains stock has almost halved over the past year. It was 7.19 lakh tonnes in August 2010, compared to 13.75 lakh tonnes in the same period last year; and within the time limit set for the procurement drive, the government could buy only 4.66 lakh tonnes of rice. That is what the food ministry noted in a report to the purchase committee a few months ago.

There is no doubt that a completely free market economy would bring about dissonant results for a developing country. In this regard, importing food is not highly encouraged in Bangladesh because it drains the country of foreign exchange. It also makes the country susceptible to the whims of international food trade. But in several circumstances it becomes necessary and sometimes the government has no alternatives before it.

In recent years, there has been a shortfall in production of foodgrains in several countries, the changing pattern of climate being one of the reasons. It is obvious that food price hikes in the international market are another problem. In the case of Bangladesh, we are aware that a huge amount of crops were destroyed during the floods of 2007 and 2008. Even then, the government did not have to import foodgrains for those periods. There was no scarcity, but the poor could not afford to buy food at high prices owing to obvious drawbacks in fair distribution and in other procurement processes.

The preservation and management of food products are vital measures for ensuring food security. The government needs to build higher capacity silo facilities at different border areas, which will help to maintain a strategic reserve of essential foodgrains. Even after a bumper production of crops we have observed the grievance of farmers due to wastage. This is also to ensure that the farmers receive a fair price of the produce; reasonable prices should also be maintained through a monitoring process so that consumers, particularly the lower income groups, can buy food at an affordable price. If necessary, open market sales (OMS) should be resumed.

Keeping in mind the problems consequent upon a reduced production of foodgrains in a highly populated country, we need to go for climate resilient technology for irrigation to increase domestic production. The government also needs to initiate fair credit availabilities, subsidy facilities and development of communication and market. Public investment is indispensable in these areas in order to guarantee food security.



Countries taken for a ride?

That America wanted to have some nuclear transfer programme for Pakistan's enriched uranium to some "safe place" has been known for some time. But Pakistan did not allow the US to remove the enriched fuel from the nuclear reactor Washington had supplied to Islamabad in the early part of 60s.

President Asif Ali Zardari gave Islamabad's reaction when he said that Pakistan's nuclear weapons were under its control. Subsequently, Pakistan's foreign office spokesman Abdul Basit also clarified that "reports concerning Pakistan's experimental nuclear reactor acknowledge that Pakistan did not allow any transfer of the fuel from the experimental reactor." In other words, the US suggestion to have the fuel transferred was plainly refused by Pakistan. And America has admitted in one of the tapes that no amount of money could persuade the Pakistan army not to manufacture more bombs.

The disclosure on Afghanistan has annoyed India the most. Both Turkey and the United Arab Emirates used their clout to keep New Delhi out of the London meet-

Brazil, Germany and Japan (the group of four). New Delhi has not reacted to this statement. But it has been hurt by the cable sent to the American ambassador at New Delhi. At present, its position is to let things rest at where they are although a foreign office spokesman has said, more for the US consumption, that the relationship between the two countries is too deep to be disturbed by exterior considerations.

WikiLeaks has in its possession 3,000 cables which the US embassy in New Delhi has sent to Washington. The worst is yet to come. India suspects that since the leaked documents are dated between 2005 and 2008, there would be a lot of material on its nuclear and defence deals negotiated between 2005 and 2008.

It is an open secret that there was a lot of pressure on the Manmohan Singh government on the nuclear deal. The CPI (M) left the alliance headed by Congress President Sonia Gandhi, making the deal a crucial issue. Any concession shown by either Washington or New Delhi can be disastrous for the battered Congress-led coalition.

phones, said to be for more than 500 hours. The Home Ministry says that it had given the permission. It is a questionable order because in democracy tapping of private telephones is an attack on personal liberty.

Only a part of the conversations has been transcribed, but it establishes the nexus between business houses, politicians and journalists. I do not know why only a few journalists were picked up because some 30 of them figure in the tapes. Indian media has to have a code of ethics which journalists should adhere to in all situations.

Unfortunately, some journalists have not come up to the standard they are expected to maintain. In the few cases which are in the public domain, they have been found going beyond the limits. They behaved like power brokers and crossed the Lakshman rekha between legitimate news gathering and lobbying. Politicians are naturally jubilant because they can now say: Physician heal thyself.

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