

Putting the Torture and Custodial Death (Prevention) Act to the test

ANIRUDHA NAGAR

WHAT is particularly disturbing about Sub-Inspector Jahidur Rahman Khan's alleged torturing to death of a garment-waste trader in Mirpur last week is that it may not have been his first. In February this year, he was implicated in the custodial death of a 28-year-old man while stationed at Pallabi Police Station. Although the details of that incident are unclear, we know he was only suspended for his alleged involvement. This time, the police have taken the allegations more seriously; they have arrested Khan and filed a case under the Torture and Custodial Death (Prevention) Act, 2013. With police torture being widespread in Bangladesh, the strengths and weaknesses of this law merit consideration. The aim of any torture prevention legal regime must be to deter future acts by bringing credible investigations and prosecutions, and by providing victims the right to reparations. Khan's case is reportedly the first under the Act, and promises to put it to the test.

A long-awaited Act

In November 2013, amidst the violent clashes over the upcoming elections, the Bangladesh Parliament took the much-awaited step of passing torture prevention legislation. This came as a welcome surprise. Although Bangladesh ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1998, there was no attempt to bring in domestic legislation for more than a decade. A 2009 Private Member's Bill to comply with the Convention was cast into cold storage. In this time, Bangladesh also ignored its reporting obligations to the United Nations Committee set up to monitor compliance with CAT.

Prior to the Act, the legal regime was lacking. The Constitution expressly prohibits torture and acts amounting to torture are already criminalised by some offences. However, these offences do not cover the full range of acts that may constitute torture, nor do they provide for an enforceable right to reparations. A com-

prehensive law was sorely needed. The Act creates two core offences: firstly, torture by a law enforcement officer, punishable with at least 5 years imprisonment and a Tk. 25,000 fine, and secondly, custodial death due to torture, punishable with life imprisonment and a Tk. 100,000 fine. The Act applies to all law enforcement agencies -- not just the police -- and renders inadmissible various excuses for torture. As a result, a police officer cannot justify torture on the basis that it was required due to internal political unrest or a superior's orders.

Safeguards for investigation, victim protection and compensation

The Act provides for easy avenues of complaint and prompt, impartial investigations. If a person brought before a court complains of torture, the court will immediately record the statement of the person, send a copy to the police and direct that a case be registered. The police must then complete the investigation within 3 months. Encouragingly, the Act acknowledges the inherent bias involved in the police investigating one of its own. It explicitly enables an aggrieved person to apply to the court to contend that a fair investigation by the police is not possible. If satisfied, the court may order a judicial investigation.

Important safeguards are also included at the trial stage. Victims or their families may apply to the court for protection measures, including having the case transferred to another court or prohibiting the accused from entering a particular area in the interests of safety. If a person is convicted, monetary compensation is available to victims or their families: Tk. 25,000 for the offence of torture and Tk. 200,000 for death as a result of torture, to be paid by the convicted person.

Retaining sanction for prosecution

While the Act treats the foregoing issues with remarkable consideration, it does not address the main impediment to prosecutions against police officers: Section 197 of the Code of Criminal Procedure. This section prohibits prosecutions against public officials without the government's prior sanction if the offence is committed in an official capacity. The logic underlying Section 197 is to ensure that responsible public servants are protected from motivated, vexatious and

frivolous criminal proceedings in the discharge of their official duties. In practice, however, while sanction is insisted upon, it is seldom granted. This provision has served to obstruct access to justice rather than facilitate it. In its failure to dislodge Section 197 for the prosecution of torture, the Act risks denying victims the right to an effective legal remedy, central to CAT.

Neighbouring India fares no better, and is lagging behind Bangladesh with no torture prevention legislation in place. Like Bangladesh, the "protective" net of Section 197 in India has become a shield to police accountability, with sanction rarely granted in cases alleging torture. There was a small breakthrough in December 2010. A Select Committee of India's Upper House of Parliament -- the Rajya Sabha -- published a report on the Prevention of Torture Bill, 2010, recognising the need to strike a balance between protection and accountability. In the face of stiff political resistance against outright removal of the sanction requirement, the Committee proposed a deeming provision: if the government has not acted on a sanction request within three months, sanction would be deemed to be given. This may prevent a government from frustrating prosecutions by simply refusing to act on a sanction request. The Committee's report has not seen the light of day since. However, such a provision might be one way of chipping away at this impediment to prosecuting police torture in the Bangladesh context.

We should all closely follow the investigation and prosecution of Jahidur Rahman Khan. Although the Torture and Custodial Death (Prevention) Act 2013 was celebrated as the first concrete step on the part of the government towards addressing impunity for police torture and custodial death, the true test will be in its implementation. Will cases be promptly investigated and prosecuted? Or will the government continue to use Section 197 to shield police officers who torture from accountability?

The writer is Programme Officer, Police Reform, Commonwealth Human Rights Initiative.

"The quality of mercy is not strain'd"

SHIFTING IMAGES



MILIA ALI

MY current visit to Dhaka has been especially enjoyable, and in some ways enlightening. It's the first time in a decade that I am spending the summer in Bangladesh. Needless to say, the beauty of the monsoons has once again entranced me. The pattering sound of raindrops, the misty landscape and the cloudy sky revived memories of the romantic dreams of my youth, the "Borsha" songs of longing I sang, the way I would lose myself in the surreal world of the rains drenching my soul in its idyllic beauty!

That the monsoons coincided with the fasting period of Ramadan added a somewhat different flavour to my visit. For many Muslims, Ramadan is a month of meditation and reflection whereas for some it also serves as an opportunity for frenetic socialising -- iftar parties, shopping sprees and gift swapping. Hence the fasting season allows one to observe two contrasting aspects of life: the material pursuits we get embroiled in as well as the spiritual rejuvenation we aspire to achieve!

My regular winter holidays in Dhaka are a different kind of renewal: connecting with childhood friends, visiting relatives, attending weddings and partaking of Dhaka's rich cultural scene. But Ramadan combined with the monsoons provided a sobering opportunity to separate the wheat from the chaff and go through some deep introspection. This is not to say that I did not indulge in fun activities like the World Cup and iftar get-togethers. The latter provided the finest culinary experiences of colour, taste, scent and flavour -- more eclectic than the contrast of the scorching July heat and the pouring monsoon rains.

In the midst of all the activity a mundane incident presented a soul-searching "Ramadan experience." On a hot afternoon my husband and I made a trip through nerve-racking traffic to the Jamuna Park Mall to watch "Noah" in 3-D. On arriving at the Box Office we were casually informed that the show was cancelled, ostensibly for want of "sufficient audience." Needless to say I lost it and got into a rather brusque argument with the man at the ticket counter about bad management, unethical business practices, and insensitivity to clients' needs. The complaints were addressed with the standard bureaucratic response: "Madam, it was a management decision, I have no say in the matter."

Halfway through the argument, a sudden, but unoriginal, flash of insight came to me. "Why am I venting my anger on this helpless employee who has no power over the decision making process?" I asked myself. Isn't this kind of intolerance at the core of the hatred and violence we encounter in our world today? If a small inconvenience in my daily routine prompts an explosion of emotions on my part how can I blame those facing larger disruptions when they create an avalanche of violence? After all, accepting setbacks and moving on without any feeling of acrimony or vengeance at an individual level may be the first step toward creating greater understanding among human beings.

Once my anger subsided, I realised that the incident had taught me a valuable lesson. A lesson that might be the essence of Ramadan's spirit of abstinence -- namely, abstaining from "hitting back."

As I rode back home in a reflective mood, my thoughts reverted to a book that I am currently reading -- *The True American* -- a real life story of a Bangladeshi-American, Rais Bhuiyan, who was shot and maimed by an "American Terrorist" after 9/11. This was a life-changing event for this young immigrant who had come to America to realise his dreams. Ten years later, a pilgrimage to Mecca transformed Bhuiyan and he decided to forgive his attacker following Islam's core message of mercy. Subsequently, he waged a public-relations campaign in his home state of Texas to save his assaulter (who had killed two other men) from the death penalty.

Written with great empathy and feeling, by Anand Giridharadas, *The True American* is about the universal spirit of compassion and forgiveness that transcends race, religion and ethnic boundaries. It tells us what a "true human being" is capable of and rightly puts forgiveness on a pedestal as the most important quality that inspires magnanimity.

History shows that the soft power of forgiveness and non-violence can go a long way toward solving even intractable problems. But this lesson seems to have escaped the powerful world leaders, as ongoing events in Gaza confirm. What we see today is an uncontrollable spiral of violence and killing extending from Syria to Afghanistan. There seems to be no respite and there will be none until the protagonists realise that the solution lies not in seeking vengeance but in empathy and forgiveness. For it's only through empathy that we can connect with each other and reach mutual understanding.

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MONETARY POLICY

Regaining confidence in financial sector

MAHFUZ KABIR

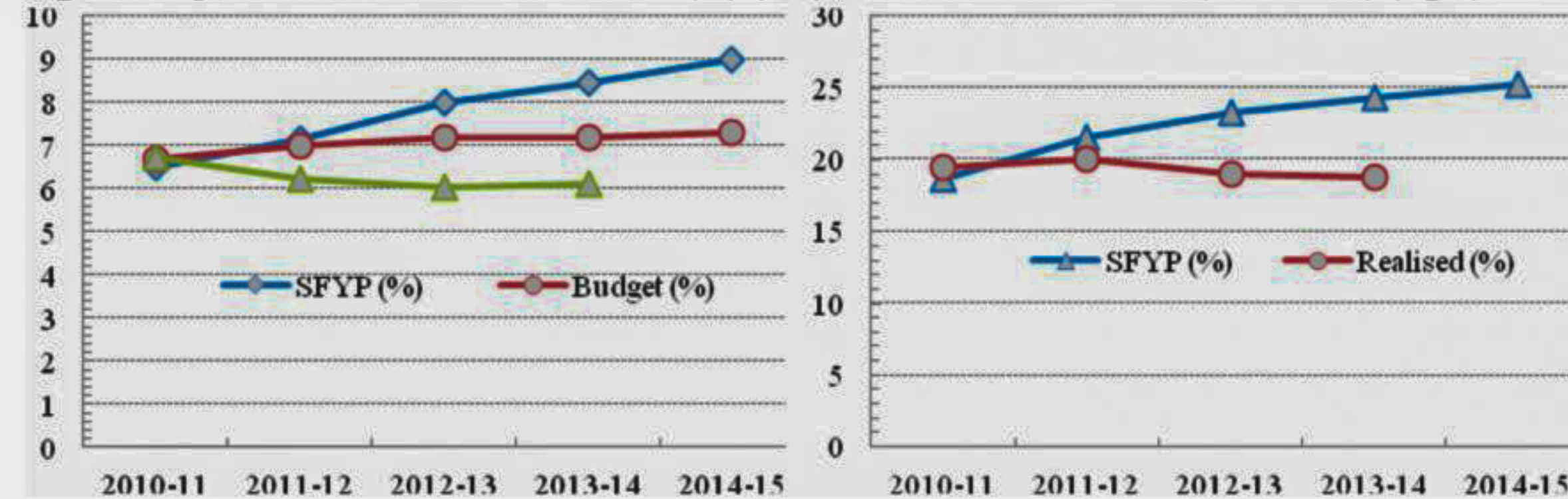
THE new monetary policy for the first half of FY2014-15 was announced in the backdrop of a large number of challenges in the macro economy and financial sector amidst an apparently stable political atmosphere giving a breathing space for the economy. Keeping aside the apprehension of political turmoil in the coming months, there are mainly three persisting critical policy questions. First, how to attain a growth of 7.3% stipulated in the present national budget? Second, will the monetary instruments work to accelerate private investment which has been disappointing for the last couple of years? And finally, is there a strategy to remove the disgrace of the financial sector which has been suffering from lack of people's confidence for quite some time due to critical incidents in two public banks.

Curbing inflation has been an overarching 'mission' of monetary policy since 2010, which gained success due partly to tightened monetary regime of three consecutive years despite criticism. The new monetary policy has followed the footprint of the earlier ones in this regard. Achieving higher growth in line with the Sixth Five-Year Plan (SFYP) and even the downward revisions in the budgetary targets still remain a mere 'vision.' In the 'mission' side, consumer inflation (measured by CPI) came down to 6.97 in June 2014, which is well below the target although the annual average is 7.39 for 2013-14, which is still higher than the target. Conversely, progress in attaining the 'vision' is quite dismal, which can be readily observed from divergence of growth stipulated in the SFYP and realised ones (see the Figure). The realised growth has also been falling short of the budgetary targets continuously even though the last fiscal year can be regarded as an exception due to unprecedented political turmoil.

Private investment ratio has been discouraging, suffering from acute divergence between the SFYP target and realisation due mainly to structural factors like infrastructure, energy and governance deficiency; political turmoil, however, adds to the miseries of the existing and potential investors. Even though the stipulated private investment was 24.4% of GDP in the SFYP it was estimated to be about 18.7% of GDP in 2013-14. Promoting accelerated growth through attracting private investment would, therefore, be the top challenge for the monetary policy given a seemingly stable macro economy for a while.

Export performance was quite satisfactory amidst dark polity, and crossed the landmark of \$30 billion, but this was due to untiring efforts of the exporters who had to

Figure: Stipulated versus Realised Growth (%) (left) and Private Investment (% of GDP) (right)



spend considerably more to comply with the buyers. Now the government is thinking of crossing \$33 billion in the current fiscal year, which would be a big task for the monetary policy. The governor has pressed the banks to reduce interest rate on industrial credit. If realised, this would be a good signal for the investors to come forward although the real interest rate may not alter due to declining inflation. At the same time, the efficiency and productivity of capital must be improved. Currently, the incremental capital-output ratio is about 8.7 calculated based on constant price of the base year 2005-06, which would be even higher for the base year 1995-96. The ratio is about 3 in most of the countries, which clearly indicates that our capital can produce less when compared internationally. Merely fiscal incentives and lessening interest rate for investment are unlikely to help attain the 'dream growth.'

Coupled with amazing export performance, forex reserve crossed the landmark of \$20 billion in April 2014. It has been a notable success of monetary policy that continued to have discouraging impact of spending foreign currency on unproductive sectors. This happened due to strong and macro-prudent policies taken by Bangladesh Bank despite upheavals in the financial sector, and deserves a big applause. By contrast, a big chunk of forex will be spent on Padma Bridge, which would create pressure on the reserve.

The declining trend of foreign remittance, especially since March 2014, is a matter of concern in the short run; it is likely to alter shortly because of two Eids. However, increasing export of manpower services is necessary to achieve sustained growth of remittance, a major lifeline of the Bangladesh economy. On the other hand, productive use of remittance is yet to be encouraged sufficiently through monetary policy.

Perhaps a separate policy document is required to yield desirable national returns to support graduation of Bangladesh to a middle-income country.

Stock market is still on the 'Penelope stairs' portraying the recurrent story of a monkey on an oily pole. A recent scam has added another black feather in its dark crown. Indeed, the market is currently suffering from acute capital crunch, which could be largely addressed through operation of Bangladesh Fund. Incentives of small investors who lost their capital have to be realised. More importantly, the market price of most of the shares, including ones of some good banks, is very close to the scheduled price, which can be well utilised by the government institutions. Since price earning ratio of these shares is good, it is even better than earning of fixed deposits. Therefore, the government should come forward as a pull factor to bring dynamism in the market.

Finally, a big problem is the overall negative impression about the financial sector, which is due to credit scams in two public banks. The supreme oversight authority, Bangladesh Bank, performed its duty to uncover the scams and advised the government to take rapid measures. Taking punitive measure is the job of the government, not of Bangladesh Bank, and strong will is required to prevent recurrence of such events. The implementation of monetary policy should aim at creating further pressure on all banks through intensified vigilance, which would help regain people's trust in the financial sector. Without such an invaluable but intangible capital this sector may be like a house of cards, which would ultimately lead to schism in the entire economy.

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One test of the correctness of educational procedure is the happiness of the child.



Maria Montessori

CROSSWORD by Thomas Joseph

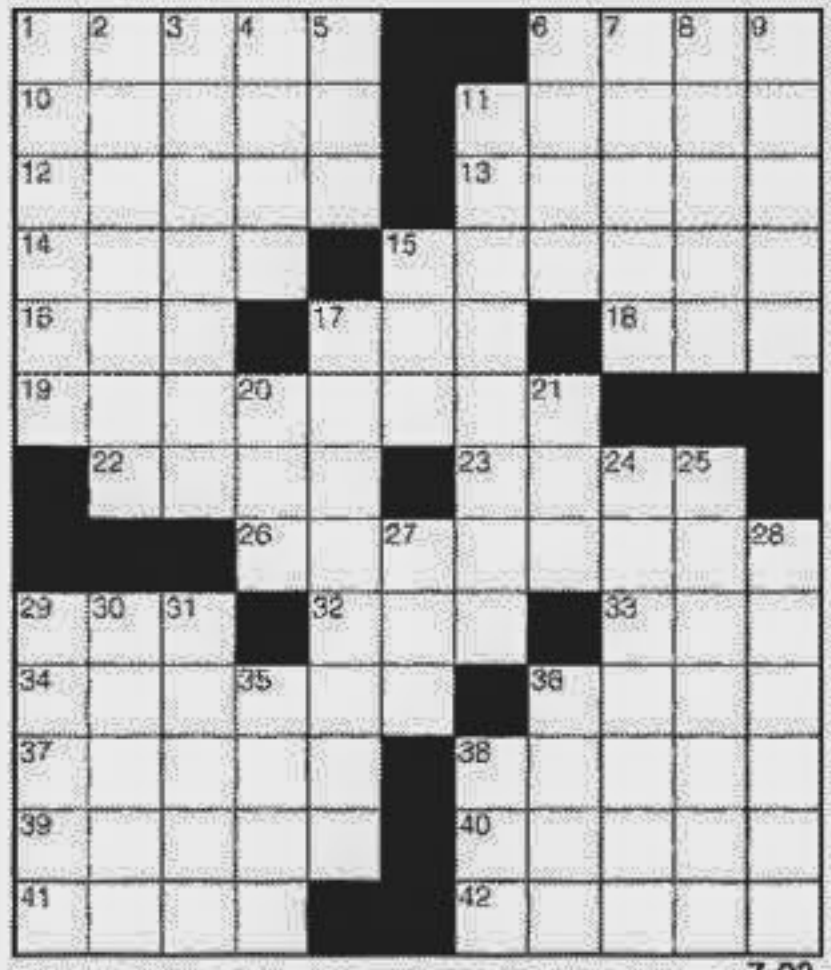
ACROSS

- San Antonio landmark
- Judge
- Low point
- Southern lass
- Start of a Caesar quote
- Last Greek letter
- Act sullen
- From Florence, say
- Tiny worker
- Decimal base
- Attempt
- Well-read
- Soda choice
- Ticks off
- Set free
- Do something
- Vegas
- Freight weight
- Like teen idols
- Polar explorer
- "Eye phonetically"
- Sir's counterpart
- Book section
- Friendly seniorita
- Porgy's love
- Will Smith's son

DOWN

- Beast
- Terse
- Get comfortable with
- Silent performer
- Bonanza stuff
- Reps' rivals
- Put in office
- "Pomp and Circumstance" composer
- Nasty fellow
- Rewards for nabbing criminals
- Hot brew
- Fruit-and-nuts snack
- Building wing
- Goof up
- Noisy grasshopper
- Closet use
- Cove
- Minstrel joker
- Wing it
- Witch
- Cares for
- Gets on
- Crimson Tide, for short
- Capt's superior

Yesterday's answer



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