

REVIEWING THE VIEWS

# ADDRESSING HATE CRIME in Bangladesh

KHANDAKAR KOHINUR AKTER

RECENTLY, a letter threatening to kill 19 persons including ministers, teachers, cultural activists, Ganajagaran Mancha organisers and bloggers has been sent to the media. Those listed were described as 'satanic bloggers', 'enemies of Islam and madrasa education', 'atheists', and 'Sylhet-haters'. To add the background, four bloggers and online activists, all who wrote against religious extremism have been killed this year 2015 by religious terrorists. So it seems that all of a sudden the bloggers have become a vulnerable social group and victims of hate crime.

In criminology, 'Hate crime' generally refers to criminal acts that are seen to have been motivated by bias against one or more of the types above, or of their derivatives. Incidents may involve killing, physical assault, damage to property, bullying, harassment, verbal abuse or insults, or offensive graffiti or letters. In both crime and law, hate crime (also known as bias-motivated crime) is usually violent, prejudice motivated crime that occurs when a perpetrator targets a victim because of his or her perceived membership in a certain social group. Examples of such groups include but are not limited to: ethnicity, gender identity, disability, language, nationality, physical appearance, religion, or sexual orientation.



As to refer, hate crime is a serious societal problem found in other states also. Only in USA; more than 7,722 incidents of hate crimes in 2006 have been reported of which about 52% were directed at people because of their race, 19% because of the victims' religion, 16% because of their sexual orientation and 13% because of their ethnicity or

national origin. So it is not new in societies going through transitions and modernization. Research found that people commit hate crimes for many reasons:

- They are ignorant about people who are different from themselves and intolerant of the difference.

- They need to be able to look down on others in order to compensate for their own low self-esteem and suffering.
- They have been brutalised themselves (though not by their victims) and therefore see brutalising others as fair game.

In case of Bangladesh, though it is officially a secular state, but huge populations are still illiterate. Poverty often means segments of populations lack access to formal education institutions so join the madrasa system of education instead. It is alleged that these institutions are run by clerics who are neither enlightened and nor well read in religious texts. Thus they are easily influenced and dogmatic, and promote a vicious circle of religious intolerance based on rigidity.

If we examine, we find that perpetrators of hate crimes in Bangladesh are young people from poor families, educated from various religious institutions and out of touch of concepts like freedom of expression, cultural diversity, peaceful co-existence and tolerance. Being young, they are immature and due to ignorance, they can easily be motivated. Also the leaders who train them also help them financially and gain their respect. Continuous instigation and direction from childhood makes them unable to think otherwise. In such environment, their belief system gets contaminated and hateful feelings towards any particular group of people get paramount consideration. We find that two bloggers belong to Hindu religion so hatred

towards Hinduism can be an associative reason that rationalised their action.

Though the criminal justice system of Bangladesh is trying to prosecute the offenders under the penal code but still special law is needed to address hate-crimes because these are not general cases of murders. Surely these killings are clear violation of right to life under Article-32 of the constitution of Bangladesh and threat to secularism which is one of the basic political philosophies incorporated in our constitution.

To find the solution we can conclude that lack of knowledge is one root cause behind hate crimes. People, who lack exposure to other people, cultures, and diversity, tend to be xenophobic. So the cure is to remove ignorance by introducing an enlightened education system that will allow making informed choices. That education can come from what we learn in school (academic) or what we learn by observing the experiences of others (vicarious) or what we learn from our own experiences (empirical). So we must strive to educate ourselves and be willing to educate others by sharing our knowledge and experience in every educational institution.

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LAW EVENT

## Inconsistent sentencing

IN Bangladesh, our Criminal Justice System does not allow us any separate sentencing hearing on the background of accused persons. This is because we do not have any sentencing guideline and in absence of this, our judges habitually award the sentences by exercising their individual sense of discretion. The sentencing practice in Bangladesh is regulated by some provisions of Penal Code 1860 and other special criminal laws enacted time to time. In general, the punishment should be regulated with the proportionality between sanction and the gravity of offence. In *Alister Anthony Pereira v State of Maharashtra* Indian Court held that: 'One of the prime objectives of the criminal law is imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of [the] crime.' This objective is reasonably tough to achieve without any effective mechanism in our criminal justice system. The lack of any appropriate guidance can generate latent discrepancy in sentencing practice. In addition, extra-legal factors could be an issue on sentencing decision. As a result, an offender can be a victim of judge's discretion and at the same time another offender can be lucky for the amount of same offence.

On 29th August 2015, Bangladesh Institute of Law and International Affairs (BILIA) have conducted a seminar on 'Sentencing: Policy and Practice'. The seminar was chaired by Kazi Habibur Awal who is the Senior Secretary of the Ministry of Defence. Muhammad Mahbubur Rahman, who is an Associate Professor, Department of Law, University of Dhaka and H M Fazlul Bari, who is an Additional Chief Judicial Magistrate of Bangladesh were two distinguished speakers. Mr.



Sheikh Hafizur Rahman, Associate Professor of Department of Law, University of Dhaka and Dr. Redwanul Haque who is an also Associate Professor from the same university were two distinguished discussants of the seminar. Including Dr. Shahdeen Malik, honorary Director of BILIA, MK Rahman, honorary treasurer of BILIA, Dr. Asif Nazrul, Professor, Department of Law, University of Dhaka, Dr. Borhan Uddin Khan, Professor & Chairman, Department of Law, University of Dhaka, researchers, lecturers and many more prominent senior advocates from Bangladesh Supreme Court have participated in the seminar.

Mr. Bari has discussed about various forms of sentencing options in Bangladesh. He more talked about the discretion of sentencing and how it does work with the concept of mitigation and aggravation. In his research, he has found the redundancy of the penal law of Bangladesh, sentencing statute, policy and commission, disparity in sentencing, harsh punishment, lack of victim protection, absence of plea bargaining, cripple criminal justice system and many more loopholes. The whole presentation of Mr. Bari was very resourceful and helpful for the audience. At the end of his presentation he also recommended some prospective solutions. After Mr. Bari's presentation, Dr. Mahbubur Rahman has exposed some interesting data from 838 sentencing judgments of the Supreme Court of Bangladesh as reported in major law reports of Bangladesh from 1972 to 2010. According to his view, the lack of sentencing guideline has created some inconsistencies in the judgments.

THE EVENT IS COVERED BY MD MUSTAKIMUR RAHMAN, RESEARCH ASSISTANT FOR LAW, BILIA.

LAW NEWS

UN Secretary-General Ban Ki-moon in his message for the International Day of the Victims of Enforced Disappearances 30 August, 2015 said that victims of enforced disappearances are deprived of their liberty, kept in secret detention and seldom released. Often their fate remains unknown; they are frequently tortured and in constant fear of being killed. Even if they are eventually set free, the physical and psychological scars stay with them for the rest of their lives. The victims' families and loved ones also suffer immense anguish.

Far from being a practice employed only in the past by military dictatorships, enforced disappearance continues to be used by some States. In the past year alone, the Committee on Enforced Disappearances and the

## Time for an end to disappearances

Working Group on Enforced or Involuntary Disappearance — the two United Nations mechanisms on enforced disappearance, composed of independent experts — received 246

requests by family members across the world to take urgent action. This figure is just a fraction of the thousands of cases that are never reported either because of security conditions

or because of a lack of knowledge of the existence of international mechanisms that can help.

The prohibition of enforced disappearance is absolute. The International Convention for the Protection of All Persons from Enforced Disappearance affirms unequivocally that the use of enforced disappearance is illegal under any circumstances, including war, internal political instability or any other public emergency.

On this International Day, all Member States to ratify or accede to the Convention without delay, and I call on the States parties to the Convention to implement it. It is time for an end to all enforced disappearances, he urged.

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LAW VISION

IMTIAZ AHMED & MD. SABBIR HOSSAIN

GENETICALLY modified Organism (GMO) is basically an organism (plant, animal or microorganism) created by application of bio-technology. The application of which a new genetically characterised organism is created by introducing a new character or genetic carrier or gene in any organism found from that organism or from any wild species thereof or from completely different type of organism.

The term GMO or LMO (Living Modified Organism) are used interchangeably to denote the same thing pertaining to modern biotechnology. In the context of Bangladesh, GM crops and foods are highly debated issue over the last few years. This issue at first drew the attention of Bangladeshi people after the agreement between Monsanto and Grameen Bank in 1998. On 30th October 2013 Government by a notification approved to cultivate Bt. Brinjal and by that Bangladesh becomes the first in South Asia to grow a GM food crop.

The promoters of GM crops or foods argue that, Bangladesh's population is increasing rapidly but cultivable land is decreasing at 1% per year, agriculture is also threatened by adverse impacts of climate change (i.e. salinity, drought, flood, storm), insects and diseases. So, high yielding GMOs (e.g. Golden Rice, Bt. Brinjal and GM Banana) will be the miracle solution to meet demands of food production and nutrition.

On the other hand, environmentalists allege that, some international companies are trying to deprive Bangladesh from her rich variety of agricultural crops by appropriating and displacing them by introducing their own GM crops. This would make Bangladeshi farmers permanently dependent on them for seeds. Eco-feminists are also committed not to sacrifice their seed and food sovereignty for corporate control and profits, as women are primary food-growers and food-givers claim that, alternative lies in women's hands and minds and demands a paradigm shift from monocultures to diversity and from chemicals to organic.

Previously there were no special laws regulating biotechnology, biosafety and GMOs in Bangladesh even though the country ratified the Cartagena Protocol on biosafety (makes provisions to regulate, manage or control risks associated with transfer, handling and use of GMOs/LMOs and products thereof that may have adverse effects on conservation and sustainable use of biological diversity). In 2012 Government has passed The Bio-Safety Rule, in exercising rules making power delegated under Section 20 of the Bangladesh Environment Conservation Act,

## Strengthening bio-safety

1995. With passing this Rule, GMOs are no more unregulated in Bangladesh.

Rule no. 3 imposes restrictions on import and export of GMOs as 'no person or institution can import, export, buy, sell or commercially use the Genetically Modified Organism and products thereof, without prior permission from the Ministry of Environment and Forest'. This Rules also provides for mandatory provision for identification or labeling of GMOs in rule 5 as 'any box or cover, which carries Genetically Modified Organism or Products thereof, shall have detail identification or labeling on it relating to the nature of Genetically Modified Organism or products thereof, which is additional provision, notwithstanding anything contained in any other law regarding this'. This Rules criminalised adverse impacts of GMOs as 'environ-

Bangladesh has also developed a Bio-safety Guideline in 2007, which is endorsed by the Bio-safety Rules. The Guidelines of 2007 formed the basis of the regulatory framework of monitoring and enforcement processes in respect to biosafety in Bangladesh and it also structured the institutional frameworks. This Guideline provides different biosafety Committees and their composition, powers, functions and responsibilities.

Biosafety guidelines are applicable to all research and development activities of modern biotechnology conducted in laboratories of the government research institutes, state enterprises, universities, international organisations located in Bangladesh, private companies or non-governmental organisations etc.

In accordance with the mandate of National



mental pollution and damaging the ecosystem' in the following words 'if any environmental pollution is created or ecosystem is damaged by the Genetically Modified Organism or Products thereof, the producer institution, exporter, importer, store keeper, supplier and retailer, all shall be liable for the offence of environmental pollution or ecosystem damage, unless he/they proves that he/they does not have direct involvement with such pollution or damage' (rule 9).

In respect of biosafety related to GMOs,

Bio-Safety Framework- 2007, the Government of Bangladesh is now framing a National Bio-safety Policy and a GMO Enforcement Manual. As regards the laws of Bangladesh non-compliance is the main problem. These legal provisions should be monitored properly and enforced strictly, so that no one can take advantage of the weak regulatory mechanism of biosafety in Bangladesh.

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