

Oishee and our penal culture

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"The murderer has killed. It is wrong to kill. Let us kill the murderer"—Arthur Koestler, Drinkers of Infinity (1969).

Oishee Rahman has been found guilty of 'parricide'. The court is satisfied to hand out a death sentence to Oishee. Media reports suggest that the trial judge found the O'level student's offence as 'premeditated' and 'cool-headed'. The trial also came to the conclusion that Oishee had committed the crime with her 'full senses' and she was not in a 'drunken state of mind'. The defense lawyer's plea of Oishee's being a minor and under the influence of toxic elements also did not attain ground. We assume that the verdict will be appealed against and the findings of and the punishment inflicted by the trial court will be tested in the higher judiciary.

However, the case being unusual and unique in nature involves extra-legal factors and as such attracts huge public attention from the beginning. We raise a few issues, considering the case's extra-judicial nature, in this short write-up.

The penal statutes by their very nature are rigid. Such rigidity is widely recognised in different jurisdictions. The judges hardly enjoy any freedom in interpreting such statutes. As such, when the commission of an offence is established, they have no other alternative but to strictly apply the provisions of the penal law. In spite of this, judges enjoy a good deal of discretionary power while sentencing given the nature, magnitude and impact of the crime committed. For example, the judge may provide a death sentence or life imprisonment, if somebody is found guilty of homicide. From that perspective, Oishee was considered by the trial court to be a fit case for death penalty as it seriously shocked and shook the conscience of the society. However, the social networks and media narratives suggest that many people see the issue with a flexible and reformist approach.

Oishee's case is not merely legal. It's a psycho-socio-legal matter. The case has brought to light our preparedness to establish a relationship between law and psychology. The discipline suggests a serious study about law's response to

appreciate the psychological factors of the offender. Moreover, the discipline also invites attention to the factors that influence the characters of the court (ie. judges, lawyers) in reaching a conclusion. The discipline also permeates the study of the psychology of law in defining a crime and prescribing a particular punishment. We may need to revisit our penal law to see the possible influence of this approach in our penal culture.

Bangladeshi society is bombarded with the news of such crimes on a regular basis. As a result, the public mind favours rigorous punishments including death sentence for the wrongdoers. This social construction also comes from the frustration with the widely practiced culture of impunity that allows criminals to go scot-free. But even then, we cannot remain indifferent to the modern developments of law taking place globally and its cross-disciplinary implications.

The Oishee case also unfolds the necessity of revisiting the aim of our punitive culture. The reformation theory, that the law students are taught, has to have a meaning to our legal understanding. The judiciary

should come forward in fashioning new penal jurisprudence against the old state of the colonial penal system. The Oishee case should not be confused with the crimes committed by repetitive wrongdoers. As such, there is scope to apply a reformatory approach to the case. For, it is not clear what 'retributive' purpose the death sentence in this case is going to serve. The paradox and pathology of the death sentence is that nobody has better interest in Oishee's parents' lives than herself.

The defense's effort to save Oishee's death penalty largely revolved around proving her to be a 'minor' (below the age of 18). It may be that had they been able to prove that she was a minor, they at least would have been able to invoke the protection of a law that bars death sentence to children. It reminds us about the absence of strong legal arguments in attracting the court's attention to the suitability of death penalty in such psycho-socio-legal cases. It also lacks effort to bring the state machinery under accountability to provide reformist prison system. The legal fraternity should contribute in

creating such an opportunity. At least it needs to establish a base for social dialogue. It, however, needs to be noted that the process of age determination in Bangladesh is seriously flawed and largely administrative in nature. We hope that all relevant considerations along with this aspect of the case will be debated in the apex court.

The Oishee case is a question, not an answer. It's a wake-up call for the society constantly changing. Apart from that the case also got its meaning from our penal system, law and legal culture. It has posed a challenge for the judiciary to fashion a reasoned, balanced and reformist penal jurisprudence. Here, we recall Gabriel Mistral's oft-quoted saying: *"We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait, the child cannot, right now is his time- his bones are being formed, his blood is being made and his senses are being developed. To him, we cannot answer 'tomorrow'. His name is 'Today'."*

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Selective memory dictates

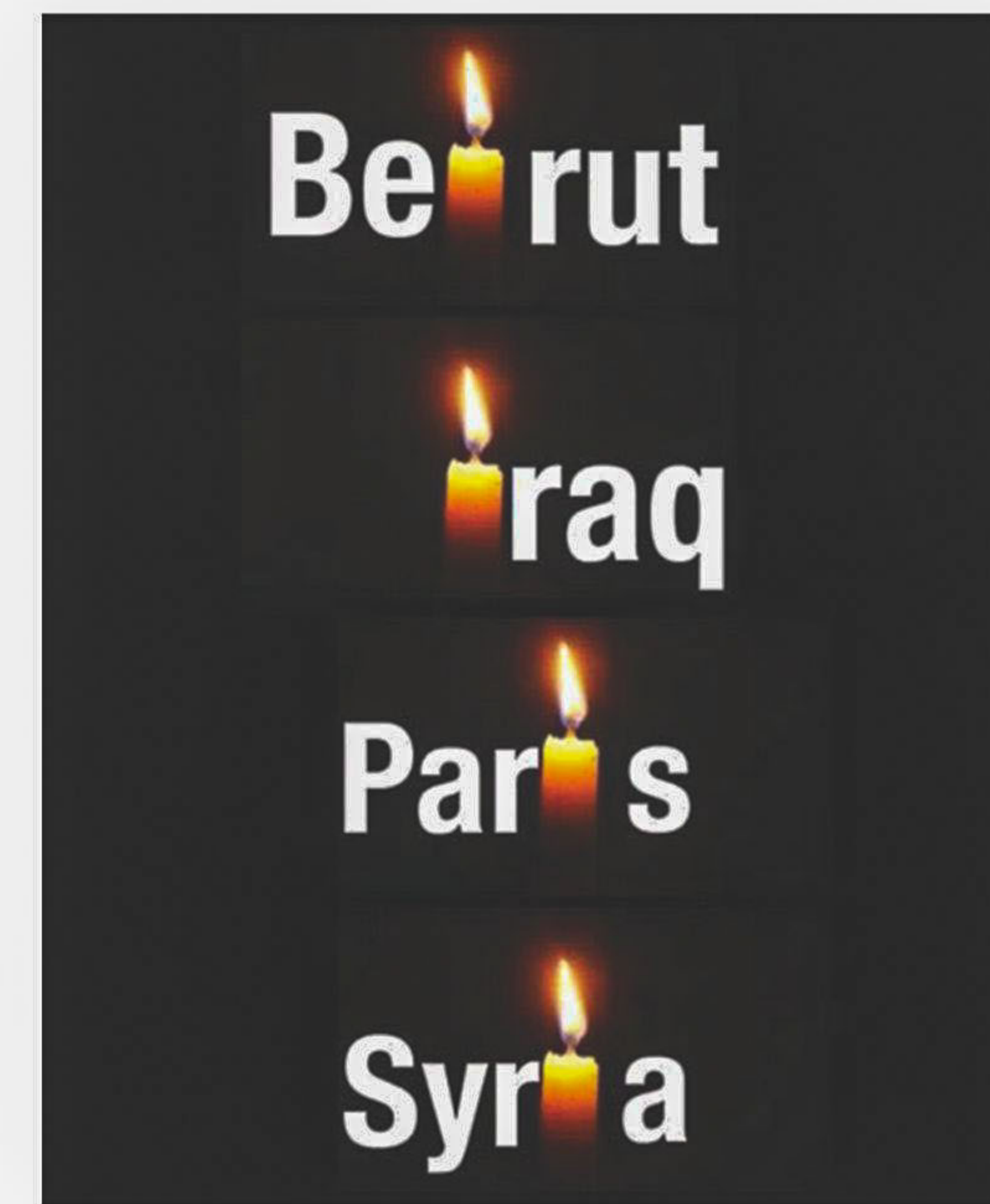
ADNAN R. AMIN

PERSISTING with selective remembrance, fuzzy logic and contrived debates is what sustains global Terrorism. Let me explain. If suddenly asked to comment on the scourge, most of us would think back to the murder of publisher Dipan and the latest "French 9/11" terror attacks. That's how it works: we understand abstract concepts in terms of narratives, events, places and personalities. *Specifics*. Recent attacks rank high on recall; ones from yester-years fade. As a result, the layman's understanding of Terrorism is limited by a peculiar historic amnesia and a lack of cultural, social, economical or political context. The amnesia is transformed into Denial by meta-narratives and tribal allegiances. This is why leaders and Media can easily tell us which deaths to mourn and which lives to eulogise, thus sowing the early seeds of Division.

Terrorism in the present day is a concept that arose and received meaning in the West. The narrative is therefore a one-sided saga of armed barbarians wreaking havoc on civilised, soft targets. Western intellectual-political-industrial consensus on Terrorism is sustained by two basic tenets: (a) the opposition has no morality or legitimacy and (b) the allied forces can never be stripped of moral high ground or legitimacy. Terrorists are thus the modern-day *Others*, opposites who define what First World citizens are not. Even terror *suspects* are treated as sub-human beings without any basic rights.

What this means is that moral judgment is predicated not upon intentions or actions, but upon tribal-religious identities and political affiliations. It is not *what* but *who* that elicits labels of Terrorism. Consider the evidence: even the use of 'White Phosphorus' or bombing of orphanages is spared the tag of 'terrorism'. But the 'kidnapping' of a soldier of an invading army is painted as terrorism. Such is the power of interpreting. This meaning-making is neither unorganised, nor is it arbitrary; analysts' and Media's eagerness to stick 'terror' labels to certain events/persons, while blaming aberrations or disabilities for others, is by design.

A crucial outcome of this distinction, whether intended or otherwise, is the continued refusal to allow adversaries a motive or a voice (unless it is a threat or responsibility-claim). As a result, fantastic ideas like "they hate our Freedom" or "the Quran wills it" can be advanced as the root-



cause of Terrorism. Any deeper resentment or grievance thus remains unknown.

Western academics, analysts and experts have produced heaps of theories on Terrorism, but have lent little credence to Muslim/Eastern interpretations. This creates a monopoly of meaning-making concentrated in the West, enforced by premier think-tanks, international media conglomerates and social media giants. Ask yourself: would the news stories be the same if the apparatus were based in Muslim countries and owned by Muslims? Would we not hear more of the ravages perpetrated by western colonialism and invasions? Would Facebook profile picture campaigns then be

about Paris or Beirut?

The Muslim World's experience of Terrorism is a grotesque reflection of itself as mirrored by western media. It has been divided and rendered incapable of articulating its opinions, values and morality. Though some Gulf States are involved in patronising Salafist extremism, the Muslim World generally has no interpretive or analytical role in Terrorism discourse. This leaves them with only the symbolic responsibility of routinely conveying condemnation after each terrorist attack.

Significant political power is bestowed through absolute control over 'meaning'. A discerning reader may notice that Terrorism is

often times more useful to western leaders, than they are to terrorists. The French 9/11 alone has allowed President Hollande to invoke 'acts of war' and launch airstrikes. In the aftermath, Poland has suggested creating an army out of refugees and sending them back to 'liberate Syria'. Donald Trump has used it to advocate the need for more guns. Soon, another al-Qaeda offshoot may be funded and armed to engage Assad. It is unkind to say so, but 120 odd European deaths carry enough political capital to justify airstrikes, militant funding, racial profiling and anti-immigrant policies for years.

Yet the deaths will not lead nations to wonder why so many precious lives were taken. The spectrum of Terrorism debate is narrow and protected. Terrorists' motives are a taboo topic. As are 'WTC Building-7' and 'entrapment'. Take unwritten, social dictums for example: 'researching the motive of terrorists is the same as trying to justify killing of civilians' or 'if you invoke American/European atrocities in the East, the terrorists win'. These civic norms – not unlike religious edicts – are geared to protect precious narratives and symbols. For example, you may *not* suspect or claim that the official 9/11 story is not factual. You may *not* theorise that Charlie Hebdo stood for anything but Free Speech. You may *not* suggest that the Muslim Brotherhood had a democratic power-base. Such secular edicts govern how Terrorism may be spoken about, and to what end.

Selective remembrance, fuzzy logic and contrived debates are what sustain global Terrorism. But then, are the terrorists free of blame? Of course not! Terrorism is evil. Even when carried out by non-Muslims. But our opinion of Terrorism must not be conflated with our study and evaluation of it. This entails treating both the terrorists and the western War on Terror bloc as rational, rival sides in an unannounced, unauthorised war. The contrast in methods is merely a reflection of unequal capabilities. Terrorists are guilty of genocide, human rights violations and contravention of International Law but such crimes have also been committed in the name of War on Terror. Both sides are vying for public support: one by portraying itself as victims of barbarism, the other by painting itself as a force of resistance against imperial forces. There is no compelling reason to unquestioningly accept their war-propaganda or to favour any one over the other. Our sympathy, for either side, only furthers this unholy war.

The writer is a strategy and communications consultant.

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QUOTABLE Quote

J.M. COETZEE

A book should be an axe to chop open the frozen sea inside us.

CROSSWORD BY THOMAS JOSEPH

ACROSS

- Scheming groups
- Ring event
- Flowering shrub
- Writer Rice
- Like old cars
- Test software version
- Singing groups
- Fragrant wood
- D.C. VIPs
- Herod's niece
- Declare
- Tie the knot
- Jazz style
- Kitty comment
- Proton's place
- Artemis' twin
- Plucked instrument
- Martial arts schools
- Preclude
- Tag sale words
- Judo's cousin
- Silent performer
- Foot part
- Marquee name
- Gauges

DOWN

- Course carriers
- Sky hue
- Bathroom fixture
- Art Pepper's instrument
- Sediment
- Feeling down
- Tower setting
- Possible puzzle start
- Wild
- Began to cry
- Monte --
- Take care of
- Small bottles
- Account addition
- Battle site of 1945
- Massachusetts school
- House keepers
- Chump
- Let up
- Critic, at times
- Gets ready, briefly
- Copenhagen native
- Kipling book

YESTERDAY'S ANSWER

F	A	C	E	S	L	A	K	E	R
L	E	A	S	T	A	T	A	L	E
A	R	T	S	Y	M	E	T	E	S
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E	B	B	I	R	S	M	E	N	
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A	U	D	I	T	E	D			
T	O	N	G	V	E	L	D	T	S
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S	C	E	N	T	A	T	A	T	E
A	L	T	A	R	A	L	O	N	E
L	E	T	G	O	R	E	N	T	S

BEETLE BAILEY by Mort Walker

BABY BLUES by Kirkman & Scott