

AMENDING THE 2013 CUSTODIAL TORTURE LAW

Police's preposterous plea

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Anti-militancy operations

Greater caution can reduce own casualties

THE security forces deserve credit for detecting and neutralising militants, particularly over the last one year after the Holey Artisan encounter. Needless to say, the militant tactics have taken a unique character in Bangladesh. In some places, they have taken the benefit of built up areas to set up bases and are involving their family members in militant activities, using children as human shields. In others, secluded houses have been turned into militant dens. Obviously, the idea is that presence of women and children will not arouse suspicion among the public. And that is what has made the raids on militants den more sensitive, not to speak of the fact the anti-militant operations are taking more time than normal. And it has also made the job of the security forces more dangerous, as the death of a fireman in recent anti-militant operation in Rajshahi has demonstrated.

Admittedly anti-militant operations, where bullets fly and grenades are hurled, cannot rule out the possibility of own casualties, but adequate precaution and safety measures might help in reducing fatalities on own side. Regrettably, the fireman was employed in a particular task but neither adequate personal protection nor safety measures for his team was provided while they were involved in the job of blowing a hole through a wall of the building using water hose. Whatever may be the cause of his unfortunate death, either from splinters of IED hurled by the militants or from knife wounds inflicted by them, had there been adequate protection Abdul Matin might still be alive.

Illegal hoarding of medicine

Probe must strive to ensure accountability

HOW does medicine and medical equipment meant to be supplied to patients according to their needs end up in a pond? That is what happened inside Sher-e-Bangla Medical College Hospital (SBMCH) in Barisal last Friday. Later, police also found medicine in the house of an employee of the hospital. A day later, a cache of medicine, enough to meet the requirement of the ward for three months, was seized from a ward in the hospital, even though medicine is supposed to be supplied to the wards on a day to day basis. According to the rules, hoarding of medicine is illegal, and any medicine which is not returned is supposed to be returned.

The Director of the SBMCH has expressed frustration at the case, because this indicates that a portion of the medicine, meant for patients, is probably being stored to be sold later. Last year, medicine worth 8 crore 25 lakh was bought for the hospital, a major portion of which, the authorities are now fearing, did not reach the intended patients. That the police are thinking that there is a syndicate at work speaks of failure in monitoring. Each ward has officials who are supposed to monitor this supply of medicine and ensure that patients are receiving them.

The hospital authorities have formed two committees to investigate whether the medicine and equipment were stolen from stores of the hospital. The police are investigating too and arrests have been made. We hope that these will result in determining who were behind this crime and how far it extends. That there has been corruption and failure to ensure transparency cannot be overstated. The institutional safeguards have failed, and in the process it has been the patients who suffered the most.

LETTERS TO THE EDITOR

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Suicide of rape victims

The Daily Star reported on the death of Sheuly Akter from Shariatpur, who was raped by the caretaker Babul on May 8. In order to cover up the crime, Babul along with his aides forced Sheuly to marry the boy, alleging that they had an "illicit affair". This is just one in countless cases where woman are assaulted, humiliated and blackmailed in a country where the Prime Minister and several political and social leaders are women. Girls cannot walk on the streets, use public transport, or go to schools or public places without being harassed in some way. Victims of the most severe cases are so traumatised and humiliated that they are taking their lives.

According to the Bangladesh National Women Lawyers Association, almost 90 percent of girls aged 10-18 are victims of public sexual harassment. While poverty increases the risks of assault, but affluence is no guarantee of safety. After a crime is committed a girl is humiliated again by our authorities. The test of proving loss of virginity is utterly demeaning; it has no relevance to the crime of rape. It is about time we start treating rape victims with dignity, and instead of subjecting them to humiliation, develop new ways to hold the culprits to justice.

Zubair Khaled Huq
By email



C R ABRAR

THE senior leadership of the police, if not the institution as a whole, subscribes to the idea. The appeal has caused deep concern among sections of the citizenry who seek rule of law to prevail on the land.

So, what was the plea about? Along with genuine demands for higher salary, better work and living conditions, higher number of sets of uniforms, the law enforcers have demanded scrapping of the landmark Torture and Custodial Death (Prevention) Act, 2013 (henceforth custodial torture law). The Act was put in place to regulate and monitor their conduct. The framing of this Act was in conformity with Bangladesh's commitment under the Convention Against Torture (CAT) that the country had ratified in October 2013. It also became a necessity to enforce the State's guarantee to its citizens that: "No person shall be subjected to torture or to cruel, inhumane or degrading punishment or treatment" (Article 35(5)).

Any conscientious citizen would acknowledge the pressing need for reining in elements, hopefully very small, among law enforcement agencies who abuse and mete out harsh and inhumane treatment to the detainees in their custody. The law in question is an important instrument for the victims of abuse and their families to seek redress. The lawmakers hoped that it would have a deterring effect on the rogue elements and thus protect the rights of detainees in custody.

In the last two months, the Jibon Ara (Cox's Bazar), Jafar Alam (Swandip) and Romel Chakma (Rangamati) cases clearly demonstrate that the practice of abuse of detainees in custody has far from waned. Instead of taking action against the violators and engaging in soul searching on how to improve the application of the law, the police administration appears to be endorsing such vile acts and thus, in effect, encouraging the perpetrators.

At the 'welfare parade' held on January 23, 2017 at Rajarbagh, Dhaka, the additional superintendent of police

(Ad SP) of Comilla raised the demand that the 2013 law should be revoked to "protect peace, stability and security of the country" and "to inspire the police". Press reports inform that the gathering of several hundred members, ranking from constable to inspector general of police, clapped, supporting the demand. The Ad SP further argued that the 2013 Act's stipulated provision against mental torture was encouraging many people to file 'false cases' against police.

Instead of rebuking and disciplining the concerned officer and ordering him to comply with the law, the Home Minister told the gathering that he assumed "all the demands raised were legitimate". One wonders at that moment whether it crossed the mind of the home boss that he was one of the MPs who legislated the very Act that his subordinates were demanding annulment of.

The Ad SP went to say that recently a Supreme Court order allowing judicial

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magistrates to receive cases against law enforcers on charge of custodial torture was curbing the rights of the police under other existing laws. Endorsing the observation of the young man, the inspector general of police requested the prime minister to examine whether there was any scope of a review of the apex court's order.

This was not the first time that the custodial torture law has been subjected to contemptuous criticism by law enforcers. In March 2015, the Police Headquarters put forward the idea of amendment of the custodial torture law, 2013. In a letter to the Home Ministry, the police headquarters proposed that amendment be made to the Act to exclude the RAB, as well as the Criminal



PHOTO: STAR

Investigation Department, Special Branch and Detective Branch from the definition of the law enforcement agency altogether, from responsibility and prosecution under the Act. Those are the very actors frequently alleged to resort to torture.

The proposal further suggested limiting the definition of torture to "acts or omissions which cause physical pain to any person for the purpose of obtaining information or confession". The other purposes – punishment, intimidation, coercion and discrimination – as well as causing "mental pain" were proposed to be repealed.

The two proposed amendments were in contravention with Article 1 of the CAT that provides comprehensive definition of torture binding upon all parties to the Convention. Article 1 of the Convention clearly defines the perpetrator as being "public officials or other persons acting in an official capacity", and includes any branch of police, investigating body as well as the military. Bangladesh as state-party cannot absolve from such universal principles.

The police further proposed to amend the complaint and investigation procedures (Section 7 of the Act). The proposal suggests that complaints should be lodged before the police or a magistrate instead of court. This would entail the petition to be filed with the very entity that is accused of committing torture. This is against the principle of natural justice. It also contradicts Article

12 of CAT that stipulates "impartial and independent investigations" into torture allegations.

The police also suggested the repeal of Section 12 of the Act. It provides that "a state of war, threat of war, internal political instability, public emergency, or an order of superior officer or a public authority" shall not be an excuse for torture. Readers may note it was precisely on those grounds that the Ad SP had premised his demand for revocation.

Section 12 has been in compliance of Articles 2 and 3 of the CAT that made prohibition of torture both absolute and non-derogable. In other words, nothing can justify torture under any circumstances including war, emergency or superior orders.

Despite having an appropriate legal framework, Bangladesh has a long way to go in containing torture, let alone eliminating the practice. As the country's criminal justice system has overwhelmingly become dependent on confessions of the accused, the practice of torture has become endemic.

Commitment of the political leadership, accountability and professionalism of members of law enforcement agencies, and application of forensic methods are necessary to bring about change. No less important is the sustained engagement of a committed unbiased civil society and upholders of the true spirit of the War of Liberation in demanding such a change.

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The ills of too much *maya*

OPEN SKY



BIRU PAKSHA PAUL

when Arjun decided not to fight against his relatives, Sri Krishna defined Arjun's averseness as an outcome of '*maya*' – an illusion that often prevents us from performing righteous acts. After a few thousand years, the concept of '*maya*' seems to have obtained a new interpretation by bank owners, who have finally succeeded in convincing government officials to realise that owners have the maximum *maya* or sense of attachment for their banks. This is why it seems that the cabinet division has approved the change in the Banking Company Act to dictate that four family members (instead of two) can now be on the bank's Board of Directors virtually until death with short vacations (to further elaborate, the directors can serve the post nine years in three phases with a three year break after each term). This is reminiscent of the Permanent Settlement in India by Lord Cornwallis in 1793.

The government seemingly has unfathomable *maya* for the super-rich, who allegedly aggravated the default culture mainly in state-owned banks and are now slowly encroaching upon private banks. Not only will this damage corporate professionalism, but will create an oligarchy in the banking industry by weakening the central bank even further. It is unfortunate to see how even government officials now parrot the voice of business tycoons and justify their ever aggressive greed for wealth and control in the name of *maya*. Who owns a bank? Mostly, the depositors. If this so-called *maya* is a prerequisite to occupy a directorship, would we be able to accommodate millions of depositors on the board? Let us not transform corporations into family clubs. Let us not damage institutions further.

A country has broadly two development paths: capital market-led and bank-led. We have already suffocated capital-market institutions by

indulging scams and not punishing the real culprits. An anaemic capital market contrasting commendable economic growth is a terrible irony for the nation. Bengalis like to stand on hope and till now, we did so by looking at the banking sector. But our state-owned banks have already been wrecked and hence, our last hope resides in private banks which have been doing well mainly due to the seasoned expertise of the Managing Directors (MDs) and their diligent employees.

Thousands of business graduates would like to see growing professionalism in the banking sector.



ILLUSTRATION: BARRIE MAGUIRE

Any familial image imposed on a bank could thus deter these young people from performing their best. They cannot be expected to sideline their ambitions for the sake of the growth of a family. The familial monopoly over private banks will surely squeeze the space of independent decision making, committing more harm than good to the private banking sector. This is an ill-fated move that will push the country backward in corporate governance.

While the management of state-owned banks is already in shambles, the government should not have succumbed to such pressures from the

businesspersons to debilitate the functioning of the private banks where CEOs are already displeased at the ever-growing interference of their chairs and directors. Previously, directors would allow more freedom to MDs to act independently for the betterment of the institution. Now many chairs and directors visit the premises every other day, send slips to MDs to recruit their nephews and in-laws, dictate marketing decisions, and finally impose indirect threats on MDs to earn 'that amount of profit' at the end of the year.

These acts emanating from the *maya*-culture make MDs fiercely competitive

Bangladesh need around 40 private banks? Surprisingly, more are in the pipeline. Bengalis are notoriously bad at making profits under a healthy corporate ambience. And as part of that habit, they like to convert corporate banks into family clubs. Well, there are other types of businesses that entertain family dynasties. Why then are they so interested in banks? The reason is simple. Banks can act as sources for plundering money. Excessive family clout in the management will most likely ensure this. And this leads to the emergence of 'the new *maya* theory,' which the government seems to have swallowed without knowing how poisonous it could be in the long run.

We are at least happy to see that Bangladesh Bank from its professional judgment opposed this *maya*-prone move of increasing the number of family directors. But how far can they go? The ministries want to see the central bank as a 'good boy' with no disagreement in any aspects, no matter how self-defeating the policies the ministries advocate under the direct influence of the tycoon syndicate. One senior government official consoled us by saying that Bangladesh Bank will have an option to say yes or no in the selection of directors. Bangladesh Bank has to say approve any decisions initiated at the ministries, which are accustomed to seeing the central bank as a compliant wing of the Secretariat, regarding the banking sector.

Let us hope the neo *maya* theory will not be approved. Conscientious parliamentarians, though mostly businesspersons, will strongly debate over the issue and prevent this anti-market move from being passed, because it will be a state-sponsored stimulus to manufacturing the supper-rich. Pakistani rulers had deliberately patronised the growth of 22 families. We do not want to see the same culture, adding only two 'zeroes' after 22. An independently powerful central bank and a competitive private banking sector, with fewer family members on the board, are essential ingredients to guard corporate governance, to reduce the default culture, and to stimulate vibrancy in the domain of private investment.

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