"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH ● dslawdesk@yahoo.co.uk

LAW ANALYSIS

Is punitive action enough to prevent abuse of drug?

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ALTHOUGH Bangladesh is not a drug producing country, in terms of geographical location, it is juxtaposed between the golden and crescent triangle and the crescent ways that pass through it. As a result, the problem of drug abuse has taken an epidemic form that destroys the productive forces of the country creating imbalances through narco-terrorism and handicaps the development process. The drug scenario in Bangladesh nonetheless, has changed with time with marijuana and alcohol in place and drugs like heroin, phensedyl and then yaba replacing opium. This conjuncture has spread from cities to villages, from high societies to middle/low classes. At the moment, there are more than 7 million people in Bangladesh engaged in illegal drug abuse with most of them being between the ages 18-30.

However, public and non-public governance are concerned about the magnitude of drug addiction and the devastating consequences of this crisis and have been institutionally responding to the problem. In line with international obligation, Government of Bangladesh promulgated the Narcotics Control Act 1990. A recently adopted Narcotics Control Act 2018 has repealed the old laws and has imposed rigorous imprisonment upon the drug abuser/manufacturer/seller/transporter. Additionally, the government of Bangladesh has also inclined towards executing stringent provisions of penal sanction such as death penalty and deadly anti-drug operation by security forces.

It has been witnessed that through implementing strict law and through extrajudicial killings of drug abusers, Bangladesh has not achieved apical success in drug demand reduction. Though the new law seeks to punish any individual or organisation financing or patronising drug dealing with death penalty, apart from the legal initiatives, still there are many issues untouched by the government which should be included within the master plan of prevention of substance abuse in Bangladesh.

The prevention programmes of drug use must include four types of approaches in a broad sense: awareness-raising campaigns, interventions in schools, programs with families, and community-based interventions.

Adopting a holistic approach

The consumption of illegal drugs, and the associated prevention strategy, should not be considered in isolation of larger social issues, since it is intricately linked to other social problems. For an example, a noteworthy extent of the young populace in Bangladesh is influenced by chronic drug use, likewise being engaged with any gang culture is known to incredibly expand the likelihood of drug addiction. Therefore, a uniform approach needs to be taken by combining different strategies which would focus on demand, supply and harm reduction factors.

On the demand side of the framework, substance abuse is addressed through poverty reduction strategies, initiating education and communication, fostering socio-economic security and development and advancing anti-substance abuse social programmes and participation. On the supply side, the key areas are

concerned with controlling manufacturing, sale, marketing and distribution of harmful substances. It includes law enforcement and punishment against harmful substance abuses and supplies. Harm reduction is about providing treatment, care and reintegration of abusers/dependents on illegal drugs. It has to be noted that the issue of substance abuse in many countries has been considered as public health issue which is more likely to contribute to prevent drugs abuse. The new law of 2018 in Bangladesh gives discretion to the courts dealing with drugs offence to offer rehabilitation to a person addicted to drug (if the court is satisfied that he has not been involved with any other offence related with drugs); however, in practice, this provision is not implemented properly.

Identifying the high profile drug traders and keeping them under surveillance

It has been evident that most of the persons arrested and killed throughout war against drugs are low profile suppliers and influential drug mafias have remained unscathed. The groups involved transcend borders with godfathers having their networks even in neighbouring countries and it is estimated that they make a net profit of more than TK 10 million in a week. Many media reports project that political leaders, officials of the drugs control directorate, members of the law enforcement, professional criminals and others are involved in this racket. The ruling government as well must be very proactive to cleanse individuals of their own party to get a hold of the yaba dealers as it has been witnessed that the 2014 list prepared by the Department of Narcotic Control includes the names of 87 leaders of the ruling party and its front organisations who back the yaba traders in Dhaka. Without prosecuting the yaba high-up traders and dealers, it would not be possible to prevent substance abuse in Bangladesh.

Executing evidenced-based prevention programs: school, family and community involvement

In Bangladesh different awareness programs are often organised by the Department of Narcotics Control through electronic and print media; however there has been very limited initiative taken in school, family and community settings. In pursuit of safeguarding drug abuse prevention strategy, the programs implemented in the strategy must be evidence-based, preferably inspired by works which have taken place in similar socio-cultural settings to find closer rates of success. The prevention programmes of drug use must include four types of approaches in a broad sense: awareness-raising campaigns, interventions in schools, programs with families, and community-based interventions. There should be a master plan focusing on different types of interventions in institutional settings specially providing information to potential users about the risks associated with drug use, reinforcing the skills that can make it possible to resist the social pressure associated with drug use, correcting the false impression that using drugs is the norm for young people.

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FOR YOUR INFORMATION

Rivers are now 'legal persons'

TAKING duly into account a report titled "Time to declare Turag dead" was published in The Daily Star on November 6, 2016, Human Rights and Peace for Bangladesh (HRPB) filed a writ petition challenging legality of earth-filling, encroachment and construction of structures along the banks of river Turag. On November 9 of the same year, a High Court Division (HCD) bench directed the government to stop the challenged acts of earth-filling, encroachment and construction along the banks of Turag, and to submit a report after complying with the order. It also issued a rule upon authorities concerned to explain as to why their inaction to stop such activities would not be declared illegal.

In response to the foregoing, in October 2017, chief judicial magistrate of Gazipur submitted a report before the HCD, saying 30 structures were set up illegally along the banks of the river in Gazipur. On December 13, 2017, the HCD directed authorities to demolish the structures immediately.

The High Court on January 30, 2019, started delivering its verdict on the writ petition filed in 2016. The bench comprised of Justices Moyeenul Islam Chowdhury and Md Ashraful Kamal.

Four fundamental decisions were taken by the court

● In pursuance of the doctrine of public trust, the court declared that State shall perform responsibilities of a trustee in respect with all the rivers, sea, mountains, forests, lakes, ponds and other receptacles of water within the territory of the State.

● In pursuance of its parens patriae jurisdiction, the court accorded 'living entity' status to Turag and asked the concerned authorities to remove all the structures from its banks in next thirty days. The Court also said that the status will be applicable for all the rivers of the country.

● National River Protection Commission is declared by the court as the legal guardian of all the rivers of the country.

● From now on, National River Protection Commission will take necessary measures to protect all the rivers of the country.

"Governments of different countries are trying to protect rivers through enacting laws. If there'd been no directive in the form of verdict, there might have been high rises over the Buriganga River or a housing estate of an illegal grabber over the Turag River," the Court added.

Certain directives have also been given through the judgment in order to ensure better protection of the rivers. Some of them are as follows-

● The government is directed to amend the National River Protection Commission Act 2013 for making the National River Protection Commission effective and independent and to submit a report after complying with the order before this court in six months.

● Election Commission is directed not to allow any person accused of grabbing river land to contest any election including local government and parliamentary polls.

● Bangladesh Bank is directed to take steps so that any person, accused of grabbing river land, cannot borrow money from banks.

● The Ministry of Education is asked to take steps so that an hour-long class is taken once in two months in all government and private academic institutions including schools, colleges, universities and madrasahs in order to raise awareness regarding the rivers.

● The Ministry of Industries is asked to take necessary steps so that meetings are held for at least one hour in every two months among the labourers of mills and factories across the country for raising awareness concerning the protection of rivers.

Regarding the recognition of river as 'legal and juristic person', it will not be out of place to note that for the first time, a New Zealand river revered by the Maori indigenous group was recognised by New Zealand parliament as a 'legal person'. This legislative move was seen as a never-before-seen combination of Western legal thoughts with Maori mysticism and spiritualism. "[It] will have its own legal identity with all the corresponding rights, duties and liabilities of a legal person," Attorney-General Chris Finlayson said.

In India in 2017, the river Ganges - worshipped in Hinduism as "Ganga Mata" or mother and its tributary the Yamuna were declared as having the status of legal person by the High Court of Uttarakhand. But Uttarakhand's state government took the issue to the Supreme Court arguing that the declaration was legally unsustainable because the ruling simply was not practical and could lead to complicated legal situations like claims against the rivers in cases of flooding or drowning.

The Supreme Court of India took those objections into account and in the same year, overturned the earlier ruling by Uttarakhand High Court.

FROM LAW DESK.

LAW IN-DEPTH

ICC jurisdiction and Non-party States

RASHEDUL ISLAM

THE coming into force of the Rome Statute of the International Criminal Court (ICC) on 1 July 2002 was an unprecedented accomplishment. A court was established that would have the competence and jurisdiction in pursuance of the principle of complementarity to deal with the most grievous crimes ever heard by the humankind. The ICC has jurisdiction over genocide, war crime, and crime against humanity, the crime of aggression that are known as the 'core crimes' of international law. The jurisdiction of the ICC is conditional upon either the nationality of the person or the territory within which the crime supposedly took place. At least one of these two needs to be satisfied in order to invoke jurisdiction of the Court.

Another important aspect of invocation of the jurisdiction of the Court is a referral by the Security Council against non-party states as provided in article 13(b) of the Rome statute acting under Chapter VII of the Charter of the United Nations. When the Security Council does not refer any issue as mandated by chapter VII of the UN charter, then the question arises as to whether there is any scope to invoke the jurisdiction of the ICC over individuals of non-party states who have supposedly committed the crimes enumerated in article 5 of the Rome Statute.

Recently this question arose concerning the Rohingya issue where the prosecutor of the ICC on April 09, 2018 asked advisory opinion to the pre-trial chamber of the ICC as to whether ICC has jurisdiction against Myanmar for the crime of deportation of Rohingyas. In this situation, the pre-trail chamber of the ICC has positively said that it can exercise jurisdiction as per article 12(2) (a) of the Rome statute because the crime of deportation was committed in Bangladesh which is a state party to the Rome Statute.

The pre-trial chamber expanded the legal connotation of article 12(2) (a) of the Rome Statute which provides that "the Court may exercise its jurisdiction" if the "State on the territory of which the conduct in question occurred" is a State Party to the Statute. The chamber dealt with the question of whether this "conduct" requirement means only that "at least one legal element of the crime of article 5 must occur on the territory of a State Party or all elements of a crime have to be committed on the territory of the state party when the Rome Statute does not give any interpretation of this matter. The pre-trial chamber has interpreted article 12(2) (a) to the effect that since one element of a crime has been completed in a country which is a party to the Rome Statute, the ICC can exercise jurisdiction.

The United Nations (UN) presently has 194 member states whilst the Rome Statute has 123 state-parties. The possibility of the commission of crimes that are within the jurisdiction of the ICC by individuals of non- party states is always there. Since the Rome Statute is a treaty, this could mean that individuals of non-party states to the Rome statute are beyond the reach of the ICC. This can clearly undermine the international community's quest to end impunity. It is common knowledge that most serious crimes against humanity are usually committed by different organs of State (exercising Governmental authority), and in such cases, it is less likely that governments would ratify the Rome statute. The Security Council of the UN is mandated to refer any issue against the non-party to the ICC. But there is public confidence crisis over the Security Council. Security Council has so far referred two issues which concern African countries and it remains silent when the big powers and their allies commit grievous offenses.

As we know that ICC is different from any other international dispute settlement bodies like DSU of trade Law, ICJ, and ITLOS which only bind member states. But ICC was created with a purpose to end impunity on the most grievous international crime where Security Council was given the mandate to bind the non-party as well. When the SC is failing to perform in accordance with its mandate then the issue is how the purpose of creating ICC would be fulfilled. Like Rohingya case the similar circumstances may arise in any other places sharing an international border like Palestine and Israel where the former is party to the Rome Statute and later is non-party to the Rome statute. In such circumstances, it is worth saying that recent ruling of the pre-trial chamber of the ICC against Myanmar can be a landmark example for future cases.

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