"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 OPINION

The myth of tough punishments and crime prevention

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IT has been somewhat fashionable in our country to demand tough punishments as a prevention tool for crimes that society abhors. In view of the apparently increasing rate of rape, some observers have demanded capital punishment for perpetrators of rape. Even responsible officials of the law enforcing agencies have demanded capital punishment for food adulteration. While both of these crimes are grave, these calls for tougher punishments for committing these crimes in some way misses the point. Rather surprisingly, at times some legal experts have also joined in this simplistic chorus of tougher punishments as an effective tool for the reduction of crimes. However, tougher punishments alone would have very little role to curb the rate of commission of a crime.

While no systemic study seems to be available, it may be safely said that the rate of violent crimes in Bangladesh (though not necessarily all type of crimes) is not too high by the global standard. The people's perception of the relatively high rate of violent crimes may be attributable to two main reasons. One is the apprehension of people that punishment may not be meted out to the perpetrators and that perhaps gives impetus to the cry for tough punishments even for not so grave offences in some sort of desperation. Secondly, even common violent crimes get significant coverage in our mainstream media which creates an image that our society is violent-crime prone and tough punishment can play an important role in curbing them.

However, this write-up does not argue that punishment would never have any bearing on curbing crimes. Too lenient a punishment in the form of a slap on the wrist can well be a problem. In other words, the punishment has to have the prospect of inflicting some proportionate pain on the perpetrator of the crime. For instance, let us assume the food adulteration yields a business a gain of a few thousand takas per day. Let us also assume that the chance of that business being inspected by the magistrates or Directorate of National Consumer Rights Protection and being fined more than once or twice a year is virtually zero, and the maximum potential punishment is one hundred thousand takas. In this scenario, the business may have an incentive to engage in food adulteration than comply with the law. However, a proportionate punishment to render it a real punishment and tough punishment is not the same thing. While the former is necessary, the latter in itself can be virtually useless.

If the severity of punishment stood in a simple correlation with the rate of reduction of crime, then reducing the crime rate could have been a very simple task for the lawmakers. The lawmakers of every country could curb the rate of crimes by merely imposing severe punishments for a very long list of crimes. In the same manner, those countries which have abolished death penalty should witness a higher rate of incidents of crimes which does not seem to hold factually. In medieval England, even minor offences such as pick-pocketing carried severe punishments, and that did not have any real success in reducing the crime rate. Since the independence of Bangladesh, the list of crimes punishable by tough punishments has not diminished and it does not seem to have played any role in reducing the crime rate. Even rape which is not punishable by life imprisonment under the Penal Code,1860, now is punishable by life imprisonment under the Repression of Violence against Women and Children Act, 2000; but it does not seem to have played any role in reducing the number of rapes since the introduction of the latter Act. Thus, it is to argue that the lack of tough punishments has never been a problem in our criminal justice system.

Indeed, tough punishments for a long list of crimes may be a symptom of desperation. After all, the question of punishment only comes in when there is a conviction after a full-blown trial process. Tough punishment may at times make the judges more restrained in convicting an accused because the general principle of law is that the stronger punishment a charge carries, the more concrete the evidence should be. For prevention of crime, in addition to imposing proportionate punishment and ensuring conviction of the offenders, another critical point is addressing the root cause/s of the crime and taking specific measures to address them. To take one example, according to statistics available on the website of Acid Survivors Foundation (www.acidsurvivors.org/Statistics), the rate of acid attack in Bangladesh since 2010, has been on the wane. It is unsure that without taking stringent legal and administrative measures on reducing the easy accessibility of acids, the severe punishment as imposed by the Acid Attack Prevention Act, 2002 could have achieved this.

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FOR LAW STUDENTS

9TH INTER-YEAR MOOT COURT COMPETITION BY DUMCS

Raihan Rahman Rafid

DHAKA University Moot Court Society (DUMCS) has been continuously striving to foster mooting culture in Bangladesh. The pioneer organisation has recently organised the 9th Inter Year Moot Court Competition, held from 29th August 2019 to 1st September 2019.

The team consisting Tahseen Lubaba, Raihan Rahman Rafid and Rifat Zabeen Khan emerged victorious in the competition while the team of Shahrima Tanjin Arni, Mollik Wasi Uddin Tami and Md Mozammel Hoque was the runner-up.

The inauguration ceremony was graced by Prof. Dr. Borhan Uddin Khan and Prof. Dr. Mohammad Nazmuzzaman Bhuian. The guests shed light on the glorious journey of DUMCS in their inaugural speeches and wished the tournament success. The final rounds took place on 1st September after two days of intense competition. The rounds were adjudicated by Prof. Dr. Muhammad Ekramul Haque; Shahriar Kabir (Additional District Judge) Deputy Secretary, Bangladesh Judicial Service Commission; Prof. Dr. Md. Mahbubur Rahman, and Ms. Sharowat Shamin. The judges also attended the valedictory ceremony where the best performers were announced.

Sal Sabil Chowdhury bagged the Best Mooter for her excellent performance throughout the competition. Azizul Hakim and Parban Chakma were recognised respectively as Best Researcher and Best Intern Researcher. Awards were also given in other categories such as Best Respondent Memorial, Best Petitioner Memorial, Best New Team and Spirit of the Moot.

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FACT FILE

The socio-economic implication of the Rohingya crisis

BANGLADESH is hosting to nearly a million Rohingyas that fled Myanmar from fear of military persecution. The country, which already grapples with social and economic constraints and is also densely populated has received international praise for its efforts, but the growing reality of the adverse impacts of the influx can hardly be overlooked. The UNDP report of 2018 portrays the effects that the influx has had on the already weak socio-economic development of the areas in which the significant proportion of the Rohingyas have been sheltered. The report terms the scenario as an "extraordinary burden," which is further compounded due to the fact that these places are already "confronted with formidable challenges". Substantial effects have been found on the decline of daily wages as well as public services and the environment.

As per the study that was conducted in Ukhiya and Teknaf, at least 100 ha of crop land was damaged by refugee activities between August 2017 and March 2018, in addition to 76 ha of arable land that has been occupied by refugee settlements and humanitarian agencies. Moreover, around 5000 acres of land have been rendered useless because of sandy soil flowing down from the mountain slopes, which are being used for refugee housing purposes. A decrease in daily labour for the local communities were found, owing to the fact that the Rohingyas are willing to do the work at an even lower rate.

A rise in headcount poverty has also been identified in these areas. The study has also found that the influx has had a significant impact on vulnerability of the communities to poverty. In Teknaf, 3,719 individuals and 567 households have become vulnerable whereas in Ukhiya the figures are 3,762 and 685, respectively.

Security concerns and law enforcement issues are also widely pervasive in the areas that house the Rohingyas. It has been observed that although sympathetic to their plights, the host communities harbour negative views of Rohingyas and cite security concerns as the reason. The increase in checkpoints and security restrictions have also not been well-received by the communities. Amidst the growing incidents of violence between the Rohingyas and the host communities, a widely held perception is that the instances of drug trafficking, addiction and smuggling have increased in Cox's Bazar since the refugee crisis began. The rising sense of divide is a clear obstacle to social cohesion between the refugees and the host communities.

Environmental damage is one of the most significant results of the Rohingya crisis. As per the Cox's Bazar Forest Department, the influx has destroyed about 4,818 acres of forest reserves worth US$55 million. This has caused deprivation of livelihood to those who earn a living from forest resources. Moreover, around 750,000 kg of timber, vegetation and roots are collected as cooking fuel daily, thus signalling an increased need for consumption of finite resources. This is causing deforestation and loss of habitat for wildlife.

While Bangladesh has an obligation under customary international law against "non-refoulement", it is not a party to the 1951 Refugee Convention. However, the responsibility towards the persecuted Rohingyas cannot be bypassed since they are mandate refugees, who are entitled to protection under the mandate of the UNHCR regardless of which country they are situated in.

These persistent concerns bring to light the existing inadequacies in the international legal framework for refugee protection, which places specific responsibilities upon the host States but does not enumerate guidelines on the burden-sharing obligations of other countries. Therefore, amidst the talks of repatriation and the persistent international concerns regarding the conditions in Myanmar, it is a pressing need of time to address the sustainability of the facilitation of the Rohingyas keeping in mind the needs of the local communities as well.

FROM LAW DESK.

BOOK REVIEW

Influence of colonialism in criminal sentencing

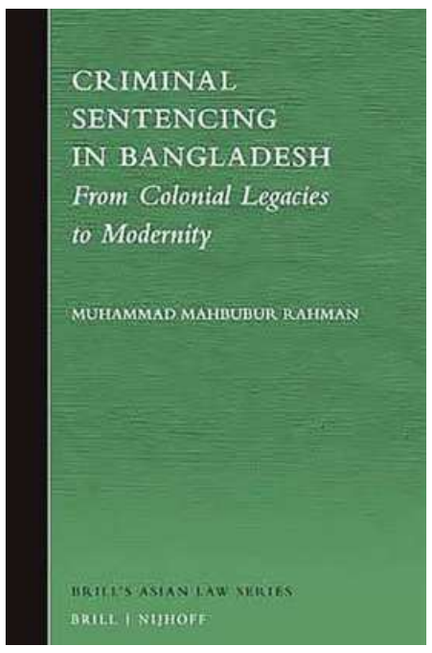
"Criminal Sentencing in Bangladesh: From Colonial Legacies to Modernity" by Dr. Muhammad Mahbubur Rahman is a book which provides "important lessons for global policy making with regard to sentencing policies in a variety of areas," as stated by Werner F. Menski, Professor Emeritus of South Asian Laws at SOAS.

Jalal Uddin Ahmed

PROFESSOR Werner F. Menski, in the foreword of the book "Criminal Sentencing in Bangladesh: From Colonial Legacies to Modernity", describes it as a "splendid book" which is a "highly significant contribution to the ongoing global debates." Although Professor Menski cautiously approaches the author's argument for locating debates on sentencing within highly diversified contextual domains, he lauds the methodological approach as it seeks to honour the principle that "the punishment should fit the crime."

Authored by Professor Dr. Muhammad Mahbubur Rahman of Dhaka University, the book examines the sentencing policies of Bangladesh - a major non-Western, post-colonial jurisdiction. The author undertakes a deep examination of criminal sentencing, which is a major public law policy for practical applications. The findings of the examination are then interpreted within the purview of larger social, political and legal viewpoints of the country. The author describes the term 'sentencing policies' in the book primarily as "the laws and the jurisprudence of the higher courts of Bangladesh that shape the normative framework within which criminal sentencing takes place." However, he clarifies that the research has not been confined to only an institutional understanding of sentencing policies. The study shows that policies not mentioned in law or jurisprudence but in action not only influence but also take over as a dominant factor.

This book demonstrates that criminal sentencing in Bangladesh is still tainted with the shades of the colonial past - it is seen by policy makers as an instrument of coercive authority rather than public policy. Dr. Mahbub argues that the sentencing policies in the country have not been developed in a consistent fashion; rather they are a part of the problem. He substantiates this contention through the examination of relevant laws, jurisprudence of the higher courts and a case study.



The book is divided into seven coherent chapters. The first chapter deals with an introduction to the field of study and how to incorporate it in the broader academic and country specific perspective. Chapter 2 starts with the discussion on criminalisation and the power and extent of the State to criminalise. In this part, the author discusses the various schools of thoughts that have developed regarding this issue. The chapter then discusses the various theories of punishment and the debates on the quantum of punishment. Lastly it discusses various forms of punishment.

The next chapter brings forward the historical background on the sentencing policy of Bangladesh and provides the background to the next two chapters. Chapter 4 discusses the sentencing policy of independent Bangladesh and how the volatile political climate influenced the policymakers at different periods of time. In chapter 5, the legal framework of sentencing policies is interrogated. The chapter discusses the provisions on death penalty and mandatory death sentence provisions.

Chapter 6 undertakes a case study of reported judgments by the High Court Division (HCD) in murder cases under Section 302 of the Penal Code, 1860. The author clarifies that the scope of the study has been kept limited for "better concentration and comparison in determining the consequences of sentencing policies on sentencing practices in Bangladesh." The study also tries to see if there is any bias involved in the sentencing. The cases under study have therefore been classified as per variables such as gender, religion, presence or absence of eye witnesses, delay in execution and legal representation and consequently on whether death penalty was imposed. The chapter also discusses the normative guidelines and the history of amendments as regards to sentencing for murder. The study finds that not all Judges apply the doctrine of 'rarest of rare cases' while handing out death penalty. It concludes that there is no consistent pattern in death sentencing.

In the concluding chapter, the author reiterates strongly how the field of sentencing is largely neglected in policy debates in the country and how reforms need to be brought about for better coherence as well as contextualised rationality.

In his book, the author seeks to show that non-western societies, most of the times neglected in the field, can provide valuable theoretical and empirical data with possibilities of furthering the studies on sentencing. The indigenous philosophies of these societies on justice and punishment, the author states, "that are not identical with Western philosophies supply rationality to Western policies and thoughts on sentencing." This book is a valuable resource for academicians, judges, prosecutors and defense lawyers as well as the students of law, history and criminology.

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