"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

PARLIAMENT SCAN

The 'Eastminster' Parliament of Ours

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WESTMINSTER parliamentary system is both a political heritage and a concept. Jurisdictions featuring the Westminster model around the world got it either as a matter of 'implanted' colonial legacy (South Asia, for example) or as a system 'transplanted' by the settlers of British ancestry (Australia, for example). Conceptually, the system represents an adversarial majoritarian democracy that contrasts the consociational democratic system practiced across Scandinavian Europe. Westminster is a majoritarian system where a bare majority party would control the executive and legislative powers of the republic. Consociational democracies in general rely on a consensual, multiparty coalition and power sharing approach to governance.

A Westminster minority party would make an institutional opposition and a government in waiting. Though the intra-party cohesion within parliament weakens the opposition's influence over policy making, the very presence of opposition in a standard Westminster parliament keeps the government alert to the pulse of its own backbenchers.

Also, sometimes a strategic opposition, instead of an outright one, exploits the exigencies of situations that may require the government to travel beyond party line.

Beyond the pure or near pure Westminster nations, former British colonies in Africa, South East Asia and the Pacific region harness a great popularity for the model. Tailor made through local adaptations and transformations, the systems installed in this region are not purely Westminster, rather something 'approaching to' it. In some cases, it is intertwined with some other non-Westminster concepts like federalism (Australia) and local tradition (Papua New Guinea and Fiji), etc. In some other cases, it is overshadowed and infused by hegemonic traits like military authoritarianism (Pakistan), monarchic paternalism (Nepal and Bhutan), developmentalist one-party monopoly (Singapore, Malaysia), and illiberal and dynastic party system (India, Pakistan, Bangladesh) etc.

Signapore has radically transformed the model in favour of a developmentalist one-party dominance. Malaysia has installed an absolute dominance of Malay ethnic group through its avowedly Westminster parliamentary and electoral process. The Indian system endured a 'structural authoritarianism' of Indian Congress party during its initial years. It is believed that existence of free and fair periodic universal adult suffrage, agrarian land reform, provincial self-governance and military's subordination to the civilian authorities helped Indian Westminster system survive a very dangerous risk of one-party dominance in the long run.

Pakistan however is not that much lucky. Military's direct or indirect, but persistent, involvement in politics and absence of even the most elementary democratic practice of periodic electioneering put it in glaring contrast with India and other tainted Westminster models across the Asia. Additional problem of Pakistan lies in the ultra radicalisation of its society in sectarian and religious line which cultivated hierarchy and intolerance over equality and democracy. In 1971, Bangladesh drew upon the familiarity and ease of the revolutionary leadership with the Westminster model. It was strongly felt that the Pakistani civil-military bureaucratic elites did not give the Westminster system a chance there. Also, by the time Bangladesh was independent, India was somewhat successful in consolidating its Westminster model. Unfortunately, Bangladesh would soon fall prey to Pakistani styled military rule, the fall over of which could not be fully recompensed till date.

On a general analysis, issues haunting the Westminster system in Bangladesh are three-fold. First, remembering the checkered history of manipulation at the hands of Pakistani military, Bangladesh opted for a floor crossing bar upon the legislators which halted the intra-party democracy and legislative freedom in parliament.

Second, Bangladesh utterly failed the core Westminster norms of bipartisanship, ministerial responsibility and reception and treatment of parliamentary opposition. While the Westminster system does not triumph the majority by trampling the minority, Bangladesh's parliamentary system appears a mere imitation of the structure, not the spirit, of the Westminster. Opposition here is always a matter of threat and suspicion and hence subject to manipulation and suppression.

Third, Bangladesh's devastating state of electioneering puts her in odds even with the illiberal multiparty system of India and the authoritarian one-party systems of Malaysia and Singapore. While the long-held monopoly of Indian Congress party and Malaysian Barisan Nasional party could be curved through the blessings of their consolidated electoral process, current state of electioneering in Bangladesh does not generate much hope in this direction. Considering the use of elections as legitimising tool for Singapore's People's Action Party (PAP) dominance, the current state of one-party dominance in Bangladesh may seem travelling towards the Singapore style of transformed Westminster. While the election of 2014 was termed by the UN as an 'election of polarisation', the election of 2018 could be called one of monopolisation. Yet, the Singapore analogy loses much of its ground when the internal democracy and non-dynastic leadership structure of People's Action Party is considered. Bangladesh's party system barely resembles that of Singapore.

All the unpleasant facts boiled together, our Westminster system essentially turns into a 'Eastminster' one. Coined by Kumarasingham, 'Eastminster' refers to an apparently Westminster system that symbolises its institutions but leaves out its attitudes and conventions (H Kumarasingham, *A Political Legacy of the British Empire: Power and the Parliamentary System in Post-Colonial India and Sri Lanka*, 2013, London).

Bangladesh is a Westminster system only in a very limited sense of having single-member-constituency based majoritarian system and the strongest possible Cabinet domination over the affairs of the parliament. Apart from these, ours is a 'Eastminster' so fundamentally different from the West that it rather works for perpetuating an inequity and structural imbalance that effectively forecloses the possibility of redeeming the body politic in near future.

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LAW NEWS

Reprisals against victims and activists on the rise

MORE instances of intimidation and reprisals against victims, members of civil society and activists have been recorded by the UN Human Rights Office, depicting a global rise in such violations. A full report was presented last week before the Human Rights Council, which reprted such instances in 48 countries across the globe, including Bangladesh.

Andrew Gilmour, the UN Assistant Secretary-General for Human Rights, stressing on the severe cases of threatening and intimidation of the activists, stated that some countries would "go to any length" to punish those who cooperate with the UN.

The report identified "the use of national security arguments and counter-terrorism strategies by States as justification for blocking access to the United Nations." Some individuals have also been "charged with terrorism, blamed for cooperation with foreign entities or accused of damaging the reputation or security of the State".

With the growing use of online media of communication, it is unsurprising that hate speech, cyberbullying and smear campaigns has been significant trends in the furtherance of the reprisal. Vulnerable groups, such as, women and lesbian, gay, bisexual, transgender and intersex persons were specifically targeted.

The report identified the use of intimidation against activists of the indigenous communities in Chittagong Hill Tracts during the 18th session of the UN Permanent Forum on Indigenous Issues in New York in April 2019 and reprisals against staff members of the NGO Odhikar. The Government of Bangladesh expressed dismay over the former incident. The report also mentions the Foreign Donations (Voluntary Activities) Regulation Bill of 2016, a law that allows suspension of NGOs if they fail to comply with the national laws of Bangladesh.

COMPILED BY LAW DESK (SOURCE: UN.ORG).

LAW WATCH

WHAT DO OUR LAWS SAY ABOUT GAMBLING?

GAMBLING encompasses various concepts like wagering, betting, gaming etc. in different jurisdictions, but it essentially refers to a transaction of staking money or something of value on an event whose outcome is not within the control of the person. The predominant moral values of Bangladesh (which may or may not be rooted in religious perceptions) disapprove of gambling activities and the same is reflected in its laws.

The Constitution of Bangladesh contains a clear mandate on the part of the State to prevent gambling. Article 19 under the Fundamental Principles of State Policy confers upon the State a responsibility to "adopt effective measures to prevent prostitution and gambling". While this provision is not judicially enforceable, it has a directory authority over the State's legislative actions.

The primary law which regulates gambling activities in Bangladesh is the Public Gambling Act of 1867. While the law dates back to the British regime, it is in line with the constitutional provision against gambling. Post-independence, the Act was amended in 1973 and subsequently in 1976 to exclude Metropolitan Areas which now regulate public gambling under the Dhaka and Chittagong Metropolitan Police Ordinances. The two Ordinances gives the police authority to penalise gambling activities in streets and other public places. As per the Ordinances, public places include public buildings and monuments whereas streets include ways to which the public has a right of access. The amendments also excluded lottery from the definition of gambling.

While the Metropolitan Police Ordinances penalise gambling in public places and streets, the Public Gambling Act prohibits the "owning or keeping, or having charge of common gaming-house". Gaming is defined under the Act as "wagering or betting" except wagering or betting on race horses under certain conditions. Section 3 of the Act penalises a person for using or allowing to be used, any space for the purpose of facilitating a gaming house to a fine not up to two hundred taka, or imprisonment up to three months.

The Act authorises a District Magistrate and District Superintendent of Police (or any officer authorised by him through a warrant) to search any facility on the basis of credible information, if it causes him to reasonably believe that a gaming house is situated in such a facility and seize the instruments of gaming found at the premises; a convicting Magistrate may also order for the destruction of the gaming instruments found therein. As per Section 6, any cards, dice, gaming table, boards or other instrument found at the premises is presumed to be evidence of the use of such premises as a gaming house. In case of conviction of any person owning or managing a gaming house, it is not necessary to prove that the persons engaged therein were playing for money, wager or stake. The Act also imposes a penalty of fine up to 100 taka or imprisonment up to one month on a person for being found in the gaming house for the purpose of gaming.

As can be seen, the existing laws of Bangladesh place stringent prohibitions on any gatherings or establishments that facilitate gambling. Allowing gambling businesses to function, therefore, will not only be in contravention to the laws, but also to the Constitution. However, as newer avenues of gambling open up, laws need to be updated and properly implemented to ensure that the constitutional duty to prevent gambling is upheld.

FROM LAW DESK.

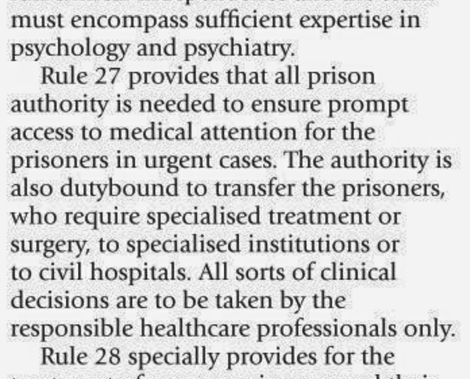
FOR YOUR INFORMATION

The prisoners do have rights

ON 17 September 2019, a special report by The Daily Star revealed the deplorable condition of our prisoners across the country. The title of the report is self-explanatory: "9 prison doctors for 90,000 inmates"! Believe it or not, over 23 prisoners are dying every month, amid a shortage of doctors, nurses, and ambulances, and poor medical facilities in 68 prisons of the country. Moreover, 60 of the prisons have no doctors at all. Instead of doctors, these prisons only have nurses or pharmacists taking care of the prisoners. For years, the prison authorities have been requesting the Home Ministry to fill the 141 vacant doctor's posts in prisons. Due to the lack of adequate number of doctors and health-care services, sick and seriously ill prisoners are often taken to hospitals at the very last moment.

According to the report, at least 188 prisoners died due to illness in the eight months of this year. Last year, 316 prisoners died - an average of 26 inmates each month. The fact remains very clear that the prisoners lead a sub-human standard of life. The status of prisoner can, in no way, be grounds for the deprivation of their basic human rights. We must acknowledge that the prisoners – convicted or awaiting verdict – are also entitled to certain basic rights like others.

Historically, States have had a tendency to deprive the prisoners from basic rights and subject them to undue hardships. The experience of inhumane treatment associated with stigmatisation and sufferings has been a common phenomenon for many prisoners. Heeding the vulnerability of prisoners at the hands of the State, the UN Congress on the Prevention of Crime and the Treatment of Offenders adopted the UN Standard Minimum Rules for the Treatment of Prisoners (SMRTP) in 1955. Subsequently, the Rules were revised on 17 December 2015 to honour the legacy of Nelson Mandela, who spent so many years of his life in prison. Let us now see what sorts of rights, specially the right to health-care services, are provided for the prisoners under the UN SMRTP.



According to Rule 24.1 of the UN SMRTP, the State is responsible for maintaining healthcare services for the prisoners. Irrespective of legal status, prisoners are entitled to access necessary healthcare services free of charge. Furthermore, healthcare services are to be organised in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases.

Rule 25 requires every prison to have in place a healthcare service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special medical needs or with health issues that hamper their rehabilitation. Additionally, the healthcare services are to be consisted of an interdisciplinary team with sufficient qualified personnel acting in full clinical independence and the team must encompass sufficient expertise in psychology and psychiatry.

Rule 27 provides that all prison authority is needed to ensure prompt access to medical attention for the prisoners in urgent cases. The authority is also dutybound to transfer the prisoners, who require specialised treatment or surgery, to specialised institutions or to civil hospitals. All sorts of clinical decisions are to be taken by the responsible healthcare professionals only.

Rule 28 specially provides for the treatment of women prisoners and their new-born children. According to the provision, the prison authority needs to arrange a special accommodation for all necessary prenatal and postnatal care and treatment in women's prisons. Arrangements are to be made wherever practicable for children to be born in a hospital outside the prison. The fact that a child is born in prison is prohibited from being mentioned in the birth certificate.

According to Rule 30, a physician or other qualified health-care professionals are required to see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. During this activity, the physician needs to extend his or her special attention in identifying healthcare needs and taking all necessary measures for treatment.

Rule 31 requires the physician or, where applicable, other qualified healthcare professionals to have daily access to all sick prisoners, all prisoners who complain of physical or mental health issues or injury and any prisoner to whom their attention is specially directed. All medical examinations are to be undertaken in full confidentiality.

According to Rule 33, the physician has a duty to report to the prison director whenever he or she considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment. Under Rule 35, the prison director is required to take into consideration that report and take immediate steps to give effect to the advice and the recommendations in the report.

Bangladesh is a State that promises to defend human rights for all, and hence, it cannot ignore the international mandate and requirements for proper treatment of its prison population. As the healthcare services in prisons are evidently poor and sub-standard, the government must immediately and seriously address the issue of health-care of the prisoners and take effective measures as per the UN Standard Minimum Rules for the Treatment of Prisoners.

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