

New low in the dispensation of justice?



C R ABRAR

THE process of the dispensation of justice has suffered a new hit in Bangladesh. Across the country, citizens are dismayed at what appeared to be a blatant violation of independence of the judiciary.

The unfortunate events unfolded on Tuesday after the District and Sessions Judge of Pirojpur, Md Abdul Mannan, rejected bail petitions and ordered the authorities to send AKMA Awal, the president of the district Awami League (AL) and former member of parliament, and his wife, to jail. Three cases were filed by the Anti-Corruption Commission (ACC) last year against the ex-MP for obtaining the lease of government land using fake documents. His wife was accused in one of the cases. Hours after the bail rejection, Judge Mannan was stand released and attached to the law ministry. Almost immediately, his subordinate Judge Nahid Nasrin was given the responsibility of acting District and Sessions Judge. Later that day, she granted bail to the two accused.

Opposition parties, jurists, the lawyers' fraternity and activists have sharply reacted to this patent breach of independence of the judiciary. They claim that the incident has eroded people's faith in the judicial process and damaged the judiciary's image. Terming the episode unprecedented, the corruption watchdog Transparency International Bangladesh (TIB) expressed concern that the incident would further strengthen vested interest groups who want to establish the culture of impunity. TIB felt it will create a dreadful example that will strangle the rule of law, justice and accountable democracy.

The president of the Supreme Court Bar Association argued that from the Pirojpur event, it appeared that a person could secure bail through the court on the government's directives, and demanded the resignation of the law minister. The minister binned the claims, and justified the decision to stand release the judge "to bring the situation under control" and went on to claim that the concerned judge was "insolent and rude" towards lawyers and "people took to the streets". His other explanations are no less baffling. "If the court behaves in such a manner and creates a situation where law and order and upholding of the rule of law come

under question, then a step has to be taken. Under such circumstances, the step has been taken. There was no violation of the law", he asserted.

In a further twist to this bizarre tale, the chief protagonist AKMA Awal has pointed the finger at a sitting minister for influencing the original "illegal rejection of the bail prayers".

The Pirojpur district court episode has given rise to some important insights.

Firstly, the local AL president and former lawmaker has been accused by the ACC of fabricating documents, presumably using his authority to unlawfully gain control over government land. Secondly, Judge Mannan had to lose his position for a decision that

one of the grounds for removal was the judge's "insolent and rude behaviour" with the lawyers of the local bar. This begets the question—aren't there procedures in place to take action against such misdemeanours of the judges, if indeed they take place? If the answer is yes, then were those procedures followed in Judge Mannan's case, and was he given the opportunity to present his case to a competent authority before the summary action was taken? On the contrary, isn't the decision of Pirojpur Bar to boycott the court in the wake of bail rejection tantamount to contempt of court and a breach of the "Cannons of Etiquette" framed by the Bangladesh Bar Council, which all bar

wonders if the law minister draws his wisdom from a shadow jurisprudence that obligates judges to consider not only the merit of the case under the law, but also to take into consideration possible ramifications of their pronouncements on public order. Jurist Shahdeen Malik has already asked—isn't the law minister sending a message to other judges that they risk being "attached to the Ministry" if their verdicts negatively impact the law and order situation? Doesn't the case also signal a new reality in which, along with police, RAB and other related agencies, the onus now also rests with the judiciary to enforce the law? Analysts have raised some important legal



STAR FILE PHOTO

he had taken in good faith, a decision that did not augur well in some powerful quarters. Thirdly, it reflects tensions that plague key power-holders within the ruling party.

Finally, and more importantly, the reaction of the law minister, the most important officeholder tasked to ensure the rule of law, is quite revealing. Instead of expressing regret over this unsavoury development, he justified the action against the judge in unequivocal terms. The minister said that

members are bound to maintain? It also leads to a larger question: doesn't this set a dangerous precedent in which lawyers linked to the ruling party, disgruntled by a verdict, will press frivolous charges of misdemeanour against the judge and create ground for the latter's removal, and subsequently get to reverse or amend the original verdict?

The law minister has invoked the law and order question to further justify his action. "Bringing the situation under control" was his ultimate rationale to remove the judge. One

questions. Article 116 of the Bangladesh Constitution reads: "the control (including power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the President and shall be exercised by him in consultation with the Supreme Court". Until now, it is not clear if the Supreme Court was indeed consulted in the Judge Mannan case and if so, in what form that consultation took place within that narrow time margin.

Under Section 20 of the ACC Act of 2004, only Special Judges have the jurisdiction to try cases. The additional district judge who became the Acting District and Sessions Judge after the stand release of Judge Mannan (and subsequently granted bail to the Awal couple) was not accorded the power of Special Judge and thus was not duly authorised to try the ACC case at all. Therefore, as analyst M R Khan has argued, there is every reason to believe that the controversial decision to grant bail by the substitute judge suffers from *Coram non iudice* (without a judge or without jurisdiction).

The Pirojpur case was not the only instance of summary removal of a judge for pronouncing an unfavourable verdict. On June 4, 2014, when local police authorities refused to record a complaint of custodial torture related death against a RAB official, the senior Judicial Magistrate of Brahmanbaria District, Nazmun Nahar, ordered the Officer-in-Charge (OC) of Nabinagar Police Station to register a First Information Report on a case involving death due to alleged custodial torture of one Shahnoor Alam. On June 5, the Magistrate was withdrawn from the case, or "closed", for allegedly issuing the order to the police to record the complaint. On June 8, 2014, Magistrate Mohammad Kawsar of Brahmanbaria District and Session Judge Court, amended the previous order given by Nazmun Nahar; and instructed the OC to take the case only after investigation.

The stand release of district judges and the subsequent reversal of their judgements by substitute judges demonstrates the strain under which the country's lower judiciary has to function. It also reflects the degree of control that the executive branch wields over the process of dispensation of justice. All these make the claim of the existence of an independent judiciary fairly tenuous. It is time that the concerned authorities commit to and act for the full independence of the judiciary, in which the Ministry of Law and Justice can only be concerned with matters pertaining to the drafting of laws, supervising the work of the attorney general's office, public prosecutors and the likes, and advising the government on legal issues, leaving the whole gamut of dispensation of justice to the Supreme Court. Only such an arrangement can ensure an independent and robust judiciary and regain people's trust in this important branch of the state.

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Crossfire deaths in Teknaf

Why have there been so many?

KAMAL AHMED

THE deaths of seven suspected Rohingya robbers in a single incident of so-called crossfire are not normal, even in an environment where such extrajudicial killings have become the new normal. The latest incident of an alleged unfight with suspected criminals in the Teknaf area in Cox's Bazar involved the elite force Rapid Action Battalion (RAB). The sheer scale of these killings in a single operation on March 2 has alarmed most rights' activists, who are fearful of a return to the past when RAB earned global criticism and international organisations like Human Rights Watch called for the disbanding of the force. Following a global outcry, RAB in recent years have seemingly shown some restraint, although crossfire remains a favoured tactic of security forces in the fight against drugs, terrorism and other crimes. But, more worryingly, a new investigation shows that Cox's Bazar accounts for more than one-fourth of all crossfire-deaths in the country, even before these seven deaths.

On February 28, the French national broadcaster, France24, aired an investigative documentary on the fight against drugs in Bangladesh, alleging that it was a "dirty war" and the police were acting with impunity. French24 correspondent Charles Empatz said dealers were killed on sight while the executions looked like "accidental crossfire". The 16-minute-long documentary holds disturbing pictures, eyewitness accounts and expert opinions that invalidate official narratives. It claims that in the last year alone, on an average two people per week have been killed in Cox's Bazar, taking the total death

toll to 117.

This journalistic investigation, however, has also shown that handlers or distributors of drugs are largely from the Rohingya community, and one of them told the reporter that lack of economic opportunity inside the camps made them choose the trade. The most worrying part of the said broadcast was the suggestion that the police in Cox's Bazar, and in particular Teknaf, were themselves involved in the illegal trade and allegedly killing rivals. It notes that the rate of extrajudicial killings

happy than others in the rest of the country?

What is the psychological impact on those involved in repeat incidents?

The France24 documentary reaffirms what rights activists have been claiming for quite some time, that the term "war on drugs" has become a licence to kill and the most favoured tactic of the security forces. Data compiled by rights organisation Odhikar shows at least 466 people were killed in 2018 after the government launched an anti-narcotics drive on May 4 that year. Last

extrajudicial acts committed by members of the security forces.

Despite such denials by our diplomats at various international forums, recent admissions by lawmakers in parliament of employing crossfire as a policy in curbing the drug trade were well publicised. Those admissions were made when some of the lawmakers belonging to both Treasury and the Opposition benches demanded similar actions to tackle suspected rapists. Even the Awami League MP Tofail Ahmed, who has served all previous cabinets of his party in senior roles, argued for a tougher law to combat rape, saying "if we can take instant actions through "crossfire" on drug-related issues, then why can't we follow the same in case of rapists?" His statement contained suggestions that when he was in the government, the official policy for combating drugs was "instant actions" and those actions were so-called "crossfires"—a claim that neither the home minister nor any other of his cabinet colleagues have countered in the house.

Promotion of the so-called idea of "instant justice" by anyone, be it a lawmaker or law-enforcer, makes one wonder whether they realise that such actions undermine peoples' trust in the justice system. Besides, lack of accountability in such a large number of killings makes allegations of abuse of the process by corrupt officials more plausible. This policy, meanwhile, has spread further fear in the political sphere, as there are instances of victimisation of political opponents. On the other hand, continuance of this controversial practice after two years of its initiation suggests that it has failed as a deterrent to crime.

Impunity of the members of law enforcing agencies has long been a subject of criticism

against Bangladesh. Last year, the United Nations Committee on Torture (UNCAT) expressed serious concerns on continued impunity of the law enforcing agencies. It has long been argued that an independent investigation mechanism is essential to end this impunity. Rejecting the current system of so-called internal investigations, the UNCAT in its observation said, "The Committee is further concerned at reports that there is no independent body authorised to carry out investigations into allegations of torture by officials, so investigations are carried out by officers from the same units or within the same official hierarchy as the alleged perpetrators, resulting in conflicts of interest."

It has recommended that the government should (a) establish an investigation mechanism to handle complaints regarding torture and ill-treatment by law enforcement officials that is independent of law enforcement agencies, including the police hierarchy; (b) expeditiously enact legislation ensuring effective victim and witness protection; (c) ensure that an oversight body monitors the progress of investigations into allegations of torture and ensures strict adherence to the time limits for investigations and trials outlined in the Torture Act; and (d) enhance the training of medical professionals and ensure that medical examinations ordered to assess torture allegations are carried out in accordance with the Manual on the Effective Investigation and Documentation of Torture (the Istanbul Protocol). Unless the government implements these recommendations, it can neither win the war against drugs, nor ensure the rule of law.

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QUOTABLE
Quote

ERICA JONG
(Born 1942)
American novelist, satirist, and poet.

Everyone has talent.
What's rare is the
courage to follow it
to the dark places
where it leads.

CROSSWORD BY THOMAS JOSEPH

ACROSS

1 Herring's cousin

5 Church Fixture

10 Circle Dance

11 Farm Machine

13 Prayer ender

14 Tex-Mex treat

15 Inhabitant

17 Spying org.

18 Pencil ends

19 "2001" computer

20 "You there!"

21 Flexed

22 You're reading

them

25 Delicious

26 Painter Holbein

27 Egg layer

28 Thurman of film

29 Some bigots

33 Fresh

34 Refueling break

35 Scoundrels

37 Aspiration

38 Manhole setting

39 "—go brag!"

40 Water melon waste

41 Splinter group

DOWN

1 Window cover

2 Ballpark feat

3 Sports spot

4 Breakfast pastries

5 Blood line

6 Inclines

7 Scot's cap

8 Western Indians

9 Dependent

12 Investment choice

16 Last letters

21 Sends away

22 Big pieces

23 Bemoans

24 Oblivious

25 Printed matter

27 Bank jobs

29 Velocity

30 Mall business

31 Subject

32 Wasn't thrifty

36 Neckline shape

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3-2

YESTERDAY'S ANSWERS

C R O W D S B E S T O

O U C H I E A L T E S

S P H I N X T E E S

T E R S E L O V E S

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by Mort Walker