

The Daily Star

FOUNDER EDITOR
LATE S. M. ALI

DHAKA SUNDAY JANUARY 17, 2021, MAGH 3, 1427 BS

Why the delay in justice for rape victims?

What is the point of having laws if they aren't implemented properly?

SINCE the beginning of last year, the epidemic of sexual violence against women and children in Bangladesh has dominated headlines, leading to nationwide protests demanding justice for rape victims. This leads us to an obvious question—when we have existing laws that protect the rights of women and children in Bangladesh, why is justice still proving elusive in the cases of rape and sexual violence?

A recent study by Manusher Jonno Foundation and its partner NGOs, which followed up the current status of 25 rape cases filed from 2012 to 2016 in their working areas, sheds some light on this matter. The study aimed to find the reasons behind lengthy trial procedures and found several anomalies—for example, all the accused were granted bail between 24 hours and 15 days of arrest, although the offence is not bailable under the Women and Children Repression Prevention Act 2000. The study also found huge delays in investigation and charge sheet submissions (majority of charge sheets were submitted six months after the cases were filed, even though the law mandates that investigations have to be completed within 15 working days), continued postponement of hearing dates (some up to 23 times) and delayed verdicts in most of the cases, even though the law mandates completion of cases within 180 days of the date of receipt of documents for trial.

The list is endless—MJF also found victims being blamed and mistreated in the judicial process by police and the defendant's attorneys, failure of the state in bearing responsibility for children born as a result of rape, the continued use of the banned two-finger test in certain remote areas, lack of forensic labs for DNA tests and more. Perhaps most worryingly of all, it found that some of the accused, who are under the protection of local influentials, were going scot-free after misusing section 19(4) of the act—which entitles any person accused of the offence to get bail upon the court's satisfaction to ensure that justice is not hampered—while justice continued to be delayed. The end result is that despite existing laws and the highest possible punishment for rapists, most victims' families were giving up on their legal battles, especially due to financial constraints.

This is a shocking state of affairs that cannot be allowed to continue. What is the point of having laws that protect women and children, only to have irregularities and inefficiencies mar the process to such an extent that justice is denied to them? If the state is not able to implement laws that punish violence, what is stopping society from spiralling into violence and lawlessness? The authorities must demonstrate their commitment to equality and rights and do everything in their power to strengthen the justice system and ensure that the judicial process is not allowed to be manipulated or made ineffective. We cannot lay claim to being a functional society if our judiciary is not able to deliver justice.

Case evidence piling up in police storage, getting damaged

Govt should make proper arrangements to preserve them

IT is concerning to learn that important pieces of case evidence are kept like garbage in many of the police maalkhanas (areas where evidence is stored) due to lack of proper facilities to preserve them. According to a report in this daily on Saturday, items considered evidence in various cases have been found lying haphazardly in the shabby, damp maalkhanas of our police stations—many of them for as long as 20 years. Also, the maalkhanas in many police stations are so small that case evidence are often kept in open spaces like rooftops, verandas, makeshift tin-shed structures, corridors or stair rooms, and even in generator rooms. Our reporters visited 33 police stations last year and found this worrying picture with an exception in the DMP maalkhana where most of the evidence was kept with a tag number, known as Properties Register (PR) number, on it and the same number is also written on a register book for easy tracing.

While lack of space is the most important reason for such a deplorable condition of evidence preservation, delay in case disposal is another reason. It doesn't make any sense why there should be 20-year-old case evidence in the maalkhanas. Why can't a case be disposed of in 20 years? Won't the evidence get damaged after so long? This points to the limitation of our justice system where cases remain pending for years without any acceptable reason. Reportedly, there are still around 37 lakh cases pending with higher and lower courts of the country. As the number of cases is increasing every day, case evidence are also piling up in police stations.

Another issue that needs to be resolved is where the evidence should be kept after the police submit the charge sheet in a case to the court. According to an OC working in the capital, a few years ago, courts requested the police not to submit evidence to them along with charge sheets and asked them to preserve the evidence instead, because the courts also do not have enough spaces to preserve them.

The situation is extremely worrying and needs immediate attention of the authorities concerned. Properly preserving case evidence is very important for convicting the real accused in a case. Since a good number of our police stations are situated in old and damp buildings, chances of evidence getting damaged is also quite high. Therefore, the government should consider renovating the old police buildings and arrange proper facilities for evidence preservation. We have learned that a proposal to renovate and reconstruct the old thana buildings has been given to the home ministry. We hope the ministry will work on this on a priority basis. Moreover, the government must ensure speedy trial process in all cases to reduce case backlogs due to which our police stations are struggling to preserve the evidence properly.



ANDREW SHENG

A week is a long time in politics. Last Wednesday, armed supporters of President Trump stormed the sanctity of the Capitol, the temple of American democracy. This Wednesday,

President Trump became the first president in American history to be impeached twice. Next Wednesday, Joseph Biden will be anointed president, guarded by 20,000 National Guard in battle gear against not foreign enemies, but domestic threats. This was supposed to happen only in Hollywood movie scripts.

Consider these bizarre facts: the pandemic is claiming more than 4,000 deaths daily in the US; digital media like Twitter, YouTube and Facebook have banned tweets and comments by their own president; all US stock market indices are still rising, and Bitcoin has surged by 27.9 percent in 13 days.

The article of impeachment stated in more stark terms than any foreign commentator would dare to express: "President Trump gravely endangered the security of the United States and its institutions of Government. He threatened the integrity of the democratic system, interfered with the peaceful transition of power, and imperilled a coequal branch of Government. He thereby betrayed his trust as president, to the manifest injury of the people of the United States. Wherefore, Donald John Trump, by such conduct, has demonstrated that he will remain a threat to national security, democracy, and the Constitution if allowed to remain in office, and has acted in a manner grossly incompatible with self-governance and the rule of law. Donald John Trump thus warrants impeachment and trial, removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit under the United States."

House Speaker Nancy Pelosi summed it up as "he is a clear and present danger to the nation."

Arguably, Trump has committed the sin of poisoning the well of democracy, not just in America, but for the rest of the world.

Although Western democrats extol its virtues back to the Greek Age, modern liberal democracy is very recent. As late as 1978, only one third of the world lived in democracies; by 2015, more than half do. But since then, populism, Brexit and Trumpism have caused many to lament that democracy is receding. Today, the gold standard of liberal democracy in America is being tested, if not questioned.

The problem is that liberal democracy based on social equality, rule of law, tolerance of diversity, is a work in

Democracy in clear and present danger



The clear and present danger to democracy is a distorted system where heads I win, tails you lose.

PHOTO: AFP

progress. Given very different cultures, history, religion and institutional set-ups, democracy is practiced differently, requiring huge efforts by all citizens. Democracy has no performance accountability when what is promised is not delivered. That became evident when the 2008 global financial crisis accentuated rising social inequality and insecurity to large segments of the population. Democratic politics fragmented and did not seem to be able to deliver on its promises.

Austrian economist and political philosopher Joseph Schumpeter became famous for his observation that the driver of capitalism was entrepreneurship, which led to creative destruction. He was equally original and sharp in his realist analysis of democracy. In his classic *Capitalism, Socialism and Democracy*, four conditions must be satisfied for democracy to work: the quality of politicians in terms of ability and moral character; social consensus that democracy does not solve everything; a well-trained and effective bureaucracy; and finally, "effective competition for leadership requires a large measure of tolerance for difference of opinion."

Schumpeter understood that democracy has difficulty in making decisions when society is deeply divided. Vote-seeking behaviour means that policies are always for the short-term, so politicians under serve the long-term interests of the nation. For

example, democratic and rich countries like Australia cannot even agree on dealing with climate change, because vested interests in the mining industry consistently block change through lobbying. If democracies cannot deliver long-term structural reforms that are painful and unpopular, then in the long-run, citizens will seek alternatives, such as autocracies or anocracies (democracy with autocratic characteristics).

Trump put American democracy in clear and present danger by violating all four Schumpeter conditions. First, nearly half the voting population ignored his moral issues, because they believed him calling the mainstream news as "fake". Second, he violated many of the unspoken rules, codes and conventions that buttressed democratic checks and balances, aided by lawyers and attorney generals whom he also threw under the bus. Third, he questioned the loyalty and efficacy of the vaunted American bureaucracy, which then failed to protect the Capitol from violent protests. Lastly, he openly sought division, rather than work bi-partisanly to heal social divisions.

Asians have much to learn from Schumpeter, who foresaw that democracy is about majority rule, but works in practice through an elite that deals in votes rather than in money. Since capitalism by definition values money more than labour, money under financial capitalism has a nasty habit of corrupting politics. How to control money politics

from corroding diverse rights and public goods is a perennial issue in all systems of governance.

If there is one lesson that should resonate in Asia, it is that violence cannot be an answer to the democratic process. Trump realised too late that inciting violence in his supporters to protect his version of electoral victory ended up with him denouncing violence in the name of law and order. Retribution occurs to those who incite violence abroad, because violence can bounce back at home.

Next week, the Trump Reality Show will thankfully end, and life will return to some form of normality, so we can address the threats of pandemic and job losses without being diverted by another tweet. For Trump, impeachment will only withdraw his right to hold further public office. He was made by media, and he will be haunted by media for the rest of his life. But he will go on to earn millions from book sales and paid appearances.

The clear and present danger to democracy is a distorted system where heads I win, tails you lose. We need to change this system, but we don't know how to do this democratically. Perhaps Joe Biden has the answer.

Andrew Sheng is an honorary adviser with the CIMB Asean Research Institute and a distinguished fellow with the Asia Global Institute at the University of Hong Kong. He writes on global issues for the Asia News Network (ANN), an alliance of 24 news media titles across the region, which includes *The Daily Star*.

An insurrection is not a tea party

ALI AHMED ZIAUDDIN

IT'S messy, rowdy, bloody, irrational, and bewildering. Yet, it happens, and can happen anywhere when the ruler and the ruled start considering each other enemies. It happened a few days ago in the US. But isn't the US a democracy? Isn't an orderly transfer of power the norm in the so called most, democratic, powerful, and exceptional country in the world? It seems not. How to explain this anomaly? Is it a wayward incident in the otherwise peaceful, adorable, God's chosen country? That's what the political leadership across the partisan divide would want the world to believe. But they and the world were horrified and rightly abhorred by the silly but dangerous act of a disillusioned president and some of his equally crazy followers to have struck the citadel of American democracy. I am sure the

If America chooses it can be a wealthy, democratic, and a socially equitable welfare country like a few others in western Europe, the anger will slowly dissipate. Or it can go on acting like an imperial oligarchy dictating to the world.

French and the Russian monarchs were equally shaken and baffled to see the mob storm the Bastille and the Winter Palace. While the American rulers got away with just a few feathers ruffled, the other two were not so lucky.

But that's no comparison, while the other two were absolute monarchies America is a democracy or supposed



Trump is no aberration; he is the cumulative result of long years of neglect of ordinary Americans by the elites.

PHOTO: REUTERS

to be. Well here comes the tricky part. While a democratically elected president is awaiting his inauguration nearly half of America believes the election was rigged in spite of no evidence at all. But perception in politics and faith is far more important than evidence. The Christians believe Christ was God's son; how can one contest with blind faith? Same goes for half of the American electorate. Well, that says a lot about them; no wonder a crude philanderer, and a known con man like Trump gets elected in the first place. Were they so desperate to replace the old order? Well it seems so! The question is why?

Here is where the story gets murky. No matter what the written constitution says or claims, America was established on the unwritten understanding of white supremacy by the Anglo-Saxon, Christian slave owning oligarchs right from day one. Even if they themselves suffered the colonial yoke, they had no qualm in following the moral and cultural dictum of the European's infamous "white man's burden" for pursuing the colonial project. This justified the mass slaughter of the natives and confiscation of their lands. Guns and duplicity were the two main weapons. But the lands needed to be farmed; slavery was the answer, and all in the name of God, democracy and the self-righteous high moral supremacy. These

two crimes against humanity committed between 17-19 centuries were the two most basic foundational stones of the future wealthy America. So, the dirty faces of racism and expansionism became part of America's DNA.

But fortunately this is not the whole story. With gradual advances in material condition, growth of social consciousness and the ideas of human dignity, decency, education, and other civilizational attributes, the crudity and aggressiveness of white settler mentality slowly receded alright but didn't vanish. So long as the ruling elite could provide full employment, housing, and other basic necessities for the majority, not much grumbling was heard. In fact, most Americans went along with the governments narrative of the necessity to control/police the world to keep America safe. But what they didn't realise or couldn't care less about was that it was only an excuse, exerting global influence by waging endless wars across the world became the most lucrative enterprise. Pursuing this policy over nearly half a century became the key priority of a collective of elites in Capitol Hill, the Pentagon, and Wall Street, cryptically called the military-industrial complex. They enforced a policy of neoliberalism at home and abroad that enabled massive income and wealth gains for a few at the

top, but regular economic stagnation and deprivation for all else.

Rank of the middle class kept on dwindling, joblessness increased; medical care and education for the common people became unaffordable, while at the same time the endless cost for the endless wars kept on increasing by leaps and bounds as did national debt. Right after the market crash in 2008, people were disgusted with the established order and put great trust in Obama to change course, but he proved a disappointment. He gave in to the pressure of the three power centres that hold the levers of actual power in Washington. When Trump pointed out these failures and anomalies and promised to clean the mess, and stop the endless wars the disgruntled sections of the populace jumped on his bandwagon. Trump is no aberration; he is the cumulative result of long years of neglect of ordinary Americans by the elites. It will be a grave mistake to paint them all white supremacists. In the last four years constant vilification of Trump by the liberals and calling his supporters "deplorables" or "white trash" helped him to galvanise them into an organised grassroots fighting machine. America got polarised into two hostile camps boiling at the seams just beneath the surface of constitutional norms. And finally it burst open on January 6.

It delivered a stark message. No amount of civilities, constitutional talks, and empty rhetoric of healing by the elites will work. The hypocrisies, outright lies, and the widening wealth gap needs to be addressed. If America chooses it can be a wealthy, democratic, and a socially equitable welfare country like a few others in western Europe, the anger will slowly dissipate. Or it can go on acting like an imperial oligarchy dictating to the world, which can only imperil its own and the world's future. One thing is for sure; it can no longer be both. And it cannot pretend that nothing has happened and get back to business as usual. If a serious dialogue and accommodation across the divide cannot be worked out, Trumpism is here to stay with or without Trump. America needs to search for its soul.

Ali Ahmed Ziauddin is a researcher and activist. Email: aliahmedziauddin@gmail.com