

Legal reforms only first step to ending rape impunity

Govt must expedite reforms to the Evidence Act

THE law minister's statement that the government is going to introduce legislation removing two questionable sections of the colonial-era Evidence Act lifts our spirits, coming as it does after tireless advocacy for such legal reforms over the years. Speaking to this daily, the minister said they had already finished the work to amend sections 155(4) and 146(3) of the act, which will be placed before the next cabinet meeting, and a bill will hopefully be passed in the next parliamentary session. This, he expects, will help block all avenues of questioning the character of rape survivors while in trial.

Although we have heard similar statements from him before—in mid 2021, to be specific—we would like to believe that greater efforts are being put in to make it a reality this time. According to Section 155(4), “When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.” Meanwhile, Section 146(3) allows the imposition of questions that may injure the character of a witness, thereby acting as a backdoor through which to impeach the credibility of the survivor. The seemingly impossible threshold of “morality” that these two tenuous and legally unsolid provisions set on rape trials has long allowed defence lawyers to discredit a rape complainant or witness, who are often the same person. Prohibition of character evidence in trials will, thus, be the first step towards tackling the courtroom culture of victim-blaming.

The word “first” is significant here. Rape cases get tossed out for all sorts of reasons—often even before reaching a court. Therefore, we should be reasonable about how much we can expect from a single reform in terms of ending the impunity for rape crimes, when a number of other vital reforms long sought by experts—both legal and institutional—remain unheeded. Among these reforms are: broadening the legal definition of rape to cover all forms of non-consensual penetration, irrespective of the gender of victims and irrespective of the type of penetration; enacting a Victim and Witness Protection Act; respecting proportionality of punishment through the introduction of sentencing guidelines (and repealing the ill-advised death sentence provision); establishing a state compensation fund for rape survivors; conducting gender-sensitisation training for all justice-sector actors; introducing consent classes in schools, etc.

These demands are all grounded in reality, and go beyond legal or institutional reforms to include a whole-of-society approach to combating the devastating effects of patriarchy. Recent figures show that incidents of rape and violence against women and girls increased in 2021 across Bangladesh. Clearly, wider reforms are urgently needed. We sincerely hope that the authorities will take legislating the planned amendments to the Evidence Act—and reforming all other similarly questionable provisions—as a first step to ending the rape culture and ensuring fair and equal judgment in trials.

Rising LPG cylinder hazards demand attention

Monitoring and awareness are vital

WITH Titas gas connection, particularly residential, becoming rarer by the day, it is only natural that people would turn to liquefied petroleum gas (LPG) for cooking and other essential purposes. Indeed, LPG is the most commonly used source of fuel insofar as cooking at home and restaurants is concerned. But there is also the ever-present danger of accidents if the gas cylinder is not handled properly, or if it is faulty. According to official figures, there were 894 cylinder-related accidents in 2021, averaging more than two per day, and six major gas cylinder explosions in 2020-2021. This shows that users are living with veritable bombs in their kitchens.

According to experts, there are several reasons for the increasing number of LPG cylinder explosions. Topping the list are poor quality of cylinders and their improper use resulting in gas leaks. While gas leakage does not cause explosions per se, an ignorance of safety measures while handling it can indeed do. The case of the unfortunate Jodge Mia is an example. On Sunday, he was killed in Fatullah, Narayanganj when a gas cylinder, being taken for repair, exploded after a nearby truck driver lit a cigarette in close proximity.

We don't know the current number of LNG and CNG cylinders being used commercially. But according to a report, the figure stood at around 25 million LNG and half a million CNG cylinders in 2020, the quality of which was not reportedly tested by the administration.

Given the possibility of the increase in the usage of gas cylinders in the future, the chances of cylinder explosions and fatalities may rise further—unless the authorities take effective preventive measures. And both suppliers and consumers must be targeted with equal importance. Strict scrutiny and oversight of the suppliers must be ensured to prevent cylinders with faulty regulators, valves and connectors from entering the market. In the same manner, the users should be targeted to be made aware of the consequences of neglecting safety measures or failing to ensure maximum precaution while using LPG. Merely printing and distributing leaflets will not be enough. We urge the relevant authorities, including the Department of Fire Service and Civil Defence and the Department of Explosives, to conduct awareness campaigns and area-wise visits across the country.

SEARCH COMMITTEE FOR EC

Transparency can counter confidence crisis



Dr Badiul Alam Majumdar is the secretary of SHUJAN: Citizens for Good Governance.

BADIUL ALAM MAJUMDAR

IN a recent press briefing, Justice Obaidul Hassan, chair of the Search Committee for the Election Commission (EC), confirmed their decision not to disclose the names of the 10 individuals they will recommend to the president to constitute the new EC. This is deeply disappointing, and we are afraid that the pervasive crisis of confidence, which already exists in many citizens' minds regarding this whole process, will not be alleviated.

There is a widespread perception that the search committee does not really search for competent people for appointment to important institutions. The committee is believed to be normally confining its search to a list of individuals given by the government, and basically rubber stamping the names preferred by the authorities. A recent interview of former Justice Abdul Matin, who chaired and served on several such search committees, reinforces this perception (*Prothom Alo*, January 23, 2022).

The experience of appointing the KM Nurul Huda commission adds further currency to such belief. A *Prothom Alo* report (February 8, 2022) indicated that in 2017, the ruling party pre-selected four people—KM Nurul Huda, Rafiqul Islam, Kabita Khanam, and Brig Gen (ret'd) Shahadat Hossain Chowdhury—for appointment to the Election Commission and adopted a strategy to have those names repeatedly proposed by their coalition partners and allies. According to an interview given by Prof Manzoorul Islam to *Prothom Alo* (February 12, 2017), Nurul Huda's name for the position of chief election commissioner (CEC) was proposed by seven or eight parties, while Ali Imam Majumdar's name was proposed by two. The search committee appeared to have tallied the names suggested by the political parties and recommended to the president the names proposed the most.

The search committee did not appear to have exercised due diligence in preparing the final panel for recommendation to the president. According to Black's Law Dictionary, due diligence means “such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case.” By not exercising due diligence, the previous search committee appeared to have largely played the role of a post office.

If the search committee had exercised due diligence, they would have found out that Nurul Huda was a BCS officer from the special '73 batch, and he had been sent to forced retirement as a joint secretary by the BNP government in the early 2000s. After a court battle, he got



ILLUSTRATION: ANWAR SOHEL

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his job back and retired as a secretary in 2006, and he did not seem to have served as a secretary even for a single day. There were also serious allegations of partisan behaviour during his career as a civil servant, and he was a victim of the BNP and a beneficiary of the Awami League. Given such a history, it would have been difficult to recommend Nurul Huda for

in their closet. Only with full disclosure and allowing the citizens to share their views can the search committee act transparently—as well as be seen to have acted transparently.

It is argued that disclosing the names of those in the short list of 20 or the final list of 10, and their nominators, will create controversies and character

the CEC position, had the process been transparent and the search committee exercised due diligence.

According to Section 4(1) of the Appointment of the Chief Election Commissioner and Other Election Commissioners Act, 2022, the search committee “shall act in accordance with the principles of transparency and neutrality and shall make recommendations to the President for appointment to the posts of Chief Election Commissioner and Election Commissioner, taking into consideration the qualifications, disqualifications, experience, honesty and reputation of the individuals, as described in this Act.”

Clearly, the law mandates the search committee to act neutrally and transparently to find honest, competent, and reputed individuals to recommend to the president for EC constitution. Acting transparently will mean doing everything openly and not hiding anything; it will mean full, not partial disclosures. Thus, the search committee is obliged to disclose not only the names of the people proposed for its consideration, but also the names of those who proposed said names, as we requested on behalf of SHUJAN.

The law's requirement of recommending reputed individuals for EC appointment also requires disclosure of the names of the people being considered by the search committee, as there is no yardstick for measuring reputation other than public perception. Thus, only if the names are made public, and the citizens are given the opportunity to express their opinion, the committee will have a good idea as to whether the individuals they are considering have anything hidden

assassinations. The disclosure is intended to get the truth out, not to assassinate anyone's character. In addition, if there is any controversy about anyone, it should come out before their names are recommended to the president, rather than after being appointed to the EC.

The Right to Information Act, 2009, too, makes it obligatory for the search committee to make public the proposed names for EC appointment, and the names of those who proposed said names. In “Badiul Alam Majumdar and others vs the state” case, a divisional bench of the High Court ruled that all information that the “authorities” have, even from the third parties, are public information—not secret or confidential—and are subject to disclosure.

Article 48(3) of our constitution requires the president to act on the prime minister's advice, except in the cases of appointing the chief Justice and the prime minister. If the search committee discloses the proposed names for the EC, along with a report justifying their recommendations, only then will we know whether the president's appointment came out of the committee's recommendation.

We strongly feel that the search committee's decision not to disclose the names of the panel it will propose to the president and of those who proposed those names is ill-conceived and will serve no public interest. We, therefore, respectfully request the committee to reconsider its decision. Otherwise, the pervasive crisis of confidence will continue to persist in the public psyche, which will not be in anyone's best interest.

Handling machines requires training. What about ‘handling’ humans?



Mozghan Bahar has authored seven books and enjoys conducting discourses online on various social issues.

MOZHGAN BAHAR

WE are all well-versed in enumerating the most prominent social problems in our country and can probably elaborate on each eloquently. Murder, abduction, bribery, truck and bus drivers' blatant neglect of traffic rules resulting in deaths, and a general lack of honesty in multiple walks of life. Violence against women has been an age-old form of injustice. Where does all this crime, corruption and negative perceptions and notions stem from? Are they innate to human beings? Or are they picked up from our families, communities and society at large?

Is parenting about putting food on the table, or is there more to it? How is it that handling the smallest of machines, such as a physiotherapist's electric devices, requires training, certificates and licences, but parenting does not? Is the handling of humans not more significant than that of machines? Doesn't every single problem—

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whether of an individual, family, society, or a nation—have its roots in human behaviour? How, then, has the moulding of human character been left to the whims of parents, elders and teachers?

Just as trees grow up straight and bear fruits if pruned as young saplings, humans, too, can develop into worthy beings capable of the highest attainments if trained from childhood. In fact, harmful habits can best be curbed in childhood so that a firm foundation for good ones may be laid down.

Parents need courses that impart knowledge and skills in “handling” humans. Good parenting is exceedingly paramount to building a just and peaceful society. And parents can only do justice to their roles if they inculcate good qualities and lofty perceptions in their children—by the power of words as well as through their own examples.

Academic institutions must also include moral and character training for children. Academic education is obviously not enough for building a civilised society dedicated to advancement. There's no scarcity of doctors, nurses, engineers, architects, managers and the like. And yet, crime and injustice, dishonesty and violence abound. Might we not assume that, unless trained in ethics and morals, human beings cannot attain true civilisation no matter how elevated a

level of academic education they might achieve? The engineers who designed the gas chambers during the Holocaust did a perfect job at it. The doctors and nurses excelled in testing chemicals on humans. But did that add value to human civilisation, or did it sink it into the lowest abyss?

Honesty, trustworthiness, fairmindedness, compassion, empathy and cooperation can be taught to children through stories, songs and cooperative games. In a world where even children's movies are filled with images of brutality and vengeance, and where unequal gender roles are promoted, the importance of such training cannot be overemphasised.

I believe understanding the coherence between material and ethical aspects of civilisation is crucial to forming a just and peaceful society. If the material aspect is a lamp, the ethical aspect would be the light in the lamp. The lamp will only be functional if there is light in it. Material progress alone does not bring about true advancement.

As Baha'u'llah, the founder of the Baha'i Faith, stated, “Regard man as a mine, rich in gems of inestimable value. Education alone can cause it to reveal its treasures and enable mankind to benefit therefrom.”