



LAW OPINION

Rethinking capital punishment in Bangladesh

The international community has frequently urged Bangladesh to re-examine its capital punishment policy, emphasising that suspending executions would demonstrate a commitment to human dignity and conform with a global minimum standard. Moving away from the death penalty might represent a significant shift, one that respects human rights, promotes fairness, and promotes life.

MD. FAHMEDUL ISLAM DEWAN

While the international community has made tremendous progress in moving away from the death penalty, Bangladesh continues to use it for a wide range of offenses, including many that do not result in the loss of life. This approach puts Bangladesh at odds with a growing global movement to reduce or eliminate the death sentence based on a commitment to human rights and justice. Currently, 55 countries have the death sentence in their legal systems. Nine of these countries limited its application to the most heinous offences, such as multiple homicides or war crimes. Furthermore, over 112 countries around the world have abolished the death sentence. Irreparable suffering, the empirical evidence suggesting wrongful conviction, ineffective deterrence, etc. are the main reasons behind this movement. This growing standard is further institutionalised in international instruments, such as the International Covenant on Civil and Political Rights (ICCPR), which limits capital punishment to the most heinous offences. In its recent resolutions, the United Nations has urged all governments to adopt a moratorium on the death penalty as a step towards its elimination. Despite this, our law permits the death sentence for both murder and other non-lethal offences, including drug-related crimes (Special Powers Act 1974) and certain

terrorism-related offences (Anti-Terrorism Act 2009). The recent introduction of the death penalty for rape in the Women and Children Repression Prevention (Amendment) Act 2020 demonstrates a firm stance against gender-based violence. Still, it also raises important questions about its proportionality. The number of prisoners on execution row in Bangladesh is particularly concerning. In a report by the Amnesty International, between 2018 and 2022, Bangladesh had 13 executions and 912 death sentences, with 2,000 individuals on death row by late 2021. Concerns about fair trial in Bangladesh, characterised by poor legal representation, lengthy detentions, and claims of forced confessions, underlie the possibility of false convictions. The United Nations has also asked Bangladesh to consider a moratorium, pointing out that capital punishment violates human dignity and lacks strong evidence that it is more successful at discouraging crime than alternative types of punishment. Bangladesh's large death row population stands unusual, significantly, since countries like Japan and the United States, which still use capital punishment, limit its application to situations of purposeful and severe injury. While some may claim that harsh penalties prevent crimes, studies from abolitionist countries challenge the long-held belief that capital punishment is required to keep communities secure. The death sentence is legal in the United

States, but its use is becoming increasingly restricted. The Eighth Amendment, which prohibits "cruel and unusual punishments", has caused the Supreme Court to impose restrictions, such as barring executions for people with intellectual disabilities (*Atkins v Virginia* 2002) and minors (*Roper v Simmons* 2005). According to a report posted on 16 December 2022 in the Death Penalty Information Center, executions have decreased, with only 18 carried out in 2022, indicating a decline for its support. The death penalty has proven controversial in Bangladesh, primarily when it has raised questions about justice and human rights. Many international human rights organisations claimed that the death sentences awarded by the International Crimes Tribunal Bangladesh in cases concerning the 1971 Liberation War, was fraught with violations of fair trial standards. The international community has frequently urged Bangladesh to re-examine its capital punishment policy, emphasising that suspending executions would demonstrate a commitment to human dignity and conform with a global minimum standard. Moving away from the death penalty might represent a significant shift, one that respects human rights, promotes fairness, and promotes life.

The writer is lecturer, Department of Law, World University of Bangladesh.

FOR YOUR INFORMATION

Food adulteration and its deadly consequences

TAHSINA ZAMAN

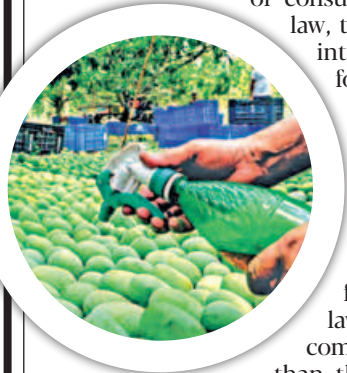
Food adulteration slowly damages people's health in ways that are not immediately visible, but have serious long-term effects. However, this despicable crime has become quite normalised in our society. Not all businessmen engage in food adulteration, yet a large portion of food in Bangladesh is adulterated. While there are strict laws against food adulteration in Bangladesh, they are rarely enforced. As a result, business owners continue to adulterate food for profit, and the general public has come to view the consumption of adulterated food as routine. The first law against food adulteration in Bangladesh was introduced in 1974. Section 25C of the Special Powers Act of 1974 laid out strict penalties for food adulteration, the maximum punishment being life imprisonment or even the death sentence. In all cases, fines could also be imposed.

Despite having penalties as severe as death, food adulteration in Bangladesh has not been curbed, primarily due to the lack of enforcement. Since the law is not enforced, even the threat of the death penalty has failed to instill fear in unscrupulous traders. Additionally, in 2009, the Consumer Rights Protection Act was enacted for the benefit of consumers. In 2013, another law, the Food Safety Act, was introduced to eliminate food adulteration. This Act imposes penalties for food adulteration, producing substandard food, and importing, processing, storing, supplying, or selling adulterated food. Under the new law, the punishments are comparatively less severe than the 1974 Special Powers Act. Instead of repealing the 1974 Act, the introduction of this new law has effectively reduced the severity of the punishment.

According to legal theory, punishment has various purposes and kinds, such as deterrent punishment, retributive punishment, reformative punishment, and preventive punishment. Section 25C of the Special Powers Act of 1974 is designed as a deterrent and preventive punishment. The aim of deterrent punishment is to discourage future crimes by setting an example through the punishment, while preventive punishment seeks to prevent further crimes by incapacitating the criminal. But without proper enforcement, the law's goals are not achieved, making it ineffective—this law is a clear example of that.

We occasionally find in the media the Consumer Protection Authorities and the Bangladesh Food Safety Authority conducting operations. However, in reality, food adulteration in the country is not decreasing; in fact, it is rising. This shows that the lack of enforcement is the root cause here. Merely passing laws without implementing them only leads to disappointment for the nation and its people. Therefore, immediate steps must be taken to enforce these laws so that crime is reduced, and the people of Bangladesh are freed from the scourge of adulterated food.

The writer is LLM candidate at Bangladesh University of Professionals (BUP).



CONSTITUTION REFORM

Five reform proposals to ensure a more DEMOCRATIC CONSTITUTION

A B M FOISAL HOSSAIN

During the 2024 anti-discrimination movement, the people of Bangladesh shed their blood on the streets to achieve a fair and just society. The movement raised a burning question in its immediate aftermath: Does our current Constitution empower us to achieve the ideals our martyrs gave lives to protect? Many claim that our existing Constitution is a barrier to this vision. Although opinions differ on whether it is required that we adopt a new constitution or amend the current one, there is a consensus that significant changes are needed for a better democracy. Here are five constitutional reform proposals that may help make our system a more democratic one. Firstly, the judiciary must have a separate secretariat under or within the Apex Court. Currently, the President cannot act independently of the advice of the Prime Minister (PM), except for the appointment of the PM itself and that of the Chief Justice, as mandated by Article 48(3) of the Constitution. Thus, the PM has been given the power to control the President's actions, which extends

to the matters related to judiciary as well. For example, according to Article 116 of the Constitution, the President, in consultation with the Supreme Court, has the authority to manage and discipline employees in the judicial service and magistrates who perform judicial duties. But the President cannot make decisions without the advice of the PM. This practice results in the subordinate courts often facing pressure from the executive branch. Indeed, a separate secretariat for the judiciary that looks after the administrative matters is a must to ensure judicial independence. Secondly, the members of the Supreme Judicial Council should be increased and be appointed on an *ad hoc* basis. In *Government of Bangladesh & others v Advocate Asad-uz-zaman Siddiqui & others* [(2017), the Appellate Division (AD) noted that if Parliament can remove a Judge of the Supreme Court, it could exert undue pressure on the judiciary. Citing that reason, the AD restored the Supreme Judicial Council system in removing judges. On the other hand, many would argue that without such power in the hands of the parliament, the



judiciary could become unchecked and tyrannical. One possible solution to this scenario can be to reform the Supreme Judicial Council by expanding the number of its members to include two members from the legislative branch, one from the ruling party, another from the opposition, as well as the Judges from all branches of the Judiciary (AD, High Court Division and Subordinate Courts). These committee members will not be prefixed but be formed on an *ad hoc* basis. This approach would further

ensure collaboration between the legislative and judicial branches. Thirdly, floor-crossing should be allowed, but only in certain circumstances. Article 70 of the Constitution does not allow a member of the Parliament to vote against his/her own political party. One is bound to vote for their own party or remain silent regardless of their viewpoint on that said matter. Thus, MPs become hostages in the hands of their party's high command. One may argue that the absence of Article 70 would allow

illicit floor crossing causing the government to fall. Taking such view into consideration, the proper solution is to make Article 70 inapplicable unless there is a vote of confidence on the PM and the budget bill. Fourthly, Article 7B should be removed from the Constitution. Article 7 states, "All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of, this Constitution." Therefore, people are the primary source of power. Article 7(2) further explains that this Constitution is the solemn expression of the will of the people. However, Article 7B of the Constitution makes many provisions of the Constitution unamendable. Thus, there is an obvious conflict between Articles 7 and 7B. If the people are supreme, how can they not amend the Constitution as per their will? Finally, referendum should be included as a condition for binging in constitutional amendments. True that the basic structure doctrine is not a good sign for our Constitution. An incumbent parliament should not be able to take away or limit

the power of a future Parliament. Also, as the world is changing rapidly, our Constitution should adapt to new needs. Fifty years later, our fundamental rights and state policies may change, but because of the entrenchment of basic structure, we cannot adopt the demands of time to our Constitution. One possible solution is to introduce referendum. A system should be adopted where the parliament would have to propose a constitutional amendment with a two-third majority, and then the people would get it ratified with a referendum. Apart from these reforms, we may need to change many other provisions of our Constitution in the future. We must understand that reform does not undermine our constitutional practice but reflects our democratic spirit. Through reform, we can create a new Bangladesh where power belongs to the people, justice is delivered equitably, and democracy is not codified only as a principle but also as a practice for the people to live by.

The writer is undergraduate law student at North South University.