LAW OPINION

Can an approver be punished?

According to media sources, the Chief Prosecutor of the Tribunal said that it is within the exclusive jurisdiction of the tribunal to pardon him if a full and true disclosure of the crime is made through his testimony or make any other order. The conditions for such pardon outlined in the law are that it has to be i) full (not partial), ii) true (not fabricated) disclosure about the iii) whole (not in part) of the circumstances by the approver.

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The International Crimes Tribunal (ICT)-1 has recently delivered the first verdict concerning the crimes against humanity committed during the July uprising. One of the three accused and subsequently considered as an approver in this case was Ex-Inspector General of Police (IGP) Chowdhury Abdullah Al-Mamun, who was eventually sentenced to five years in prison upon conviction.

Chowdhury Abdullah Al-Mamun's sentence has since been an issue of public and intellectual discussion. A report in the Prothom Alo says that the family members of the July uprising martyrs are unhappy with the lenient punishment of only five years in prison that he received, and demanded that he be sentenced to at least life imprisonment. On the other hand, some within the legal community seem to believe that the law requires him to be acquitted.

Section 15 of the International Crimes (Tribunals) Act (ICTA) 1973 deals with the provision of 'approver' although the Act does not provide its definition, and the term is used as rather a heading/marginal note to the mentioned section. It mentions that at any stage of trial, the tribunal may tender a pardon to an approver. Similarly, the Code of Criminal Procedure (CrPC) 1898 neither defines nor uses the term, but it is usually applied to a person, supposed to be directly or indirectly concerned in or privy to an offence, to whom pardon is granted under section 337 of the Code with a view to securing his testimony against other persons guilty of the offence. In cases in which a pardon is tendered under the CrPC, the intended approver should always be clearly informed of the extent of the pardon offered to him; it should be explained to him that he is being tendered pardon and will be prosecuted in respect of such and such a case, and no others. Former police chief Chowdhury is the first person declared as approver under the Act, and perhaps this is why his lenient penalty has stirred debates.

As per media reports, during the charge hearing, the tribunal asked him whether he was guilty or innocent. At that time, the former IGP pleaded guilty saying, "I plead guilty. I am willing to voluntarily disclose the truth and details of all the circumstances related to the case". Consequently, the tribunal granted his plea and went on to treat him as an approver for the case. Since then, being turned into a prosecution witness, he has provided crucial evidence. The vital legal question then arose whether a prosecution witness, who was an accused in the case, should be awarded a harsh sentence or be acquitted if the conditions are fulfilled.

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In this case, the ICT pronounced that the former Police Chief's role/contribution/confession/cooperation in proving the charges in the case as an approver was taken into consideration, which indicates that he, in the court's view, fulfilled the conditions. Because of that, he has been awarded a punishment lesser than that of his co-accused; notably, the tribunal convicted Sheikh Hasina, Asaduzzaman Khan and Chowdhury Mamun for instigation, incitement, issuing orders to mass killing, offences under superior command responsibility, and joint criminal enterprise.

Another question is whether there is any exception when the tribunal can inflict punishment on the approver. The answer is that if the approver does not fulfil the above conditions, then the pardon will be revoked. In that case, the approver can be tried for the original offense for which s/he was pardoned, and his/her own confession/statement given as part of the pardon process can be used against him/her in that trial. Moreover, punishment can also be awarded if the approver is found to have committed a different crime, not covered by the pardon. Hence, the pardon offered under section 15 of the ICTA does not provide blanket immunity for all criminal activities of the approver.

The complexity does not end here. Now the question is, what does the word *pardon* mean as used in the law? Does it mean acquittal or a lesser punishment than what should have been given? It requires an interpretation from the court to avoid confusion. Notably, section 26 of the ICTA has an overriding effect over all other laws, including the CrPC and the Evidence Act of the country.

Nonetheless, if we scrutinise the international criminal law jurisprudence, then we will see Article 65 of the Rome Statute of the International Criminal Court provides a framework. It mentions that for proceedings on an admission of guilt, the tribunal is not bound by the admission and must satisfy itself that the accused understands the nature and consequences of the admission; the admission is made voluntarily after sufficient consultation with the defense counsel; and such admission is supported by the facts of the case, based on the charges, any evidence presented by the prosecutor, and any other materials presented by the accused.

Nevertheless, it is clear in the Rome Statute that the accused remains an accused and does not turn into a prosecution witness, and the Chamber may convict the accused even if the accused satisfies the above requirements. Hence, in my view, there is no scope for a predetermined or lenient sentence for an admission under Article 78. In addition, the Guidelines for Agreements Regarding Admission of Guilt adopted by the ICC heavily emphasise the Court's independent duty to establish the truth. Judges must examine not just the agreement between the parties, but also other evidence presented by the prosecutor and any other relevant evidence, which can include victim representations and other sources, to ensure that the facts are complete.

In contrast, the statutes and rules of the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) contained provisions for formal plea agreements under Rules 62 of of the ICTY and 62 of the ICTR. An accused could plead guilty to specific charges, often after negotiations with the prosecutor, who might agree to drop other counts or recommend a sentence. However, the Trial Chamber is not bound by the agreement. Judges have to verify that the plea was voluntary, informed, and unequivocal and that a sufficient factual basis for the crimes existed. In such cases, a convicted person received a sentence determined by the judges, with a guilty plea being a significant mitigating factor, often leading to a substantially reduced term.

To understand the issue of pardon in international criminal jurisprudence, we should further consider that the primary goals of international criminal law and tribunals are not just to punish, but to establish a historical record of atrocities, promote reconciliation, deter future crimes, whereas a unilateral pardon could undermine these goals by appearing to offer impunity. Sentences are meant to reflect an individual's guilt and the gravity of the crime, while a pardon would circumvent this carefully calibrated judicial process. Hence, in my view, for someone such as Chowdhury, who was a superior as the police chief, a complete pardon or acquittal would be incompatible with the core principle of individual criminal responsibility for international atrocities, which seeks to eliminate impunity.

Now the question is, was he punished without getting the opportunity for a fair trial? How can a prosecution witness be punished without violating the conditions? Or did he get a chance to call witnesses on his behalf? Did he get a chance to cross-examine the witnesses brought against him? Or was he sentenced based on the guilt pleaded at the beginning of the trial?

Although there remains confusions about these issues, it is clear that despite repeated attempts and amendments, there still are ambiguities, vagueness and loopholes in our ICTA, and the law has not yet reached international standards. Due to these legal uncertainties and weaknesses, there is a renewed opportunity to critique the trial process and the punishment received by Chowdhury Abdullah Al-Mamun.

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LAW LETTER

Navigating our case backlogs and some proposals for reform

'Justice delayed is justice denied'- the aphorism has become a lived reality for many Bangladeshi victims. Our courts are groaning under a mounting backlog: by the end of 2024, roughly 4.5 million cases were pending across the judiciary, with well over 3.8 million cases in the lower courts alone.

This ballooning docket is not merely an abstract administrative problem. Pendency corrodes the rule of law: victims wait years for hearings, witnesses disappear, or their memories fade, evidence grows stale, and the incentive to settle outside court, sometimes under coercion, rises. For the disadvantaged, protracted litigation is effectively a denial of remedy. The backlog also imposes enormous economic and emotional costs on litigants and saps public confidence in institutions meant to protect rights.

Hence, the question remains why are the cases piling up. First, Bangladesh suffers from a chronic shortage of judges in the judiciary. In fact, Bangladesh has one of the lowest judge-to-population ratios in the region. Courts often have to cope with vacancies and heavy dockets. Similarly, sessions courts and district benches face acute staff shortages that make timely hearings impossible. Recent reports also show persistent year-on-year growth in pending cases at the High Court Division and Appellate Division.

Second, there is acute procedural inertia. Many aspects of the Code of Criminal Procedure (CrPC) 1898 and Code of Civil Procedure (CPC) 1908, some dating from the colonial era, still govern our courts. Repeated adjournments, remands, and other procedural loopholes lengthen trials. Academic and policy studies often single out archaic procedures and weak case management as core drivers of delay.

Third, weak or delayed investigation means that prosecutors and the defence face evidentiary gaps at trial. That problem is especially stark in serious crimes (rape, homicide) where investigations require forensic capacity that the system often lacks. The result is frequent acquittals, referrals for further enquiry, or protracted retrials that multiply court work. Lack of witness protection measures or delays in preparing the charge-sheets also prolong the trial process.

Also, corruption also obstructs access to justice. Transparency International Bangladesh's national household surveys and related reports show that interactions with law enforcement and judicial services are often tainted by bribery and informal payments. When citizens perceive the path to justice as costly or corrupt, they either abandon their claims or seek extra-legal resolutions, which further clog the system and erode rights.

In order to offset the situation, certain reforms must take place. Case management measures, which the Law Commission had time and again proposed, should be implemented. Instead of article-level commitments, the state should set and publish times as disposition targets for different categories of cases and establish an independent monitoring mechanism to report progress.

Since convictions depend on timely and credible investigations, the government should prioritise establishing regional forensic labs, fast-tracking the police training on preservation of evidence, and creating protocols that limit otherwise needless remands. Investing in mobile forensic units and specialist prosecution teams for complex crimes would shorten the investigation-to-trial pipeline.

Additionally, judicial strength should be enhanced through the recruitment of more judges, magistrates and court staff. At the same time, digital case-tracking systems, remote hearings for routine interlocutory matters, and stricter rules on adjournments should be enacted. Digital docketing reduces duplication and makes bottlenecks visible to policymakers and the public. Several jurisdictions have shown that digital case-management units at the court level dramatically reduce adjournments, and Bangladesh may pilot the same.

Furthermore, since convictions depend on timely and credible investigations, the government should prioritise establishing regional forensic labs, fast-tracking the police training on preservation of evidence, and creating protocols that limit otherwise needless remands. Investing in mobile forensic units and specialist prosecution teams for complex crimes would shorten the investigation-to-trial pipeline. Notably, fear of reprisal is key reason why witnesses disappear and victims withdraw from prosecutions. Hence, robust witness-protection mechanisms, backed by budgetary commitments, must be adopted.

And finally, anti-corruption safeguards, clearer fee structures, public online tracking of case progress, and independent grievance mechanisms can restore confidence and reduce extra-legal settlements that mask systemic failure.

In conclusion, the reforms will require both political will and resources. Yet reforms can also save money. Delayed justice perpetuates uncertainty that deters investment, inflates transaction costs, and raises social instability. A court system that disposes of its cases promptly protects not only individual rights but also social order and economic activity.

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