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Journalism Without Fear or Favour

[Stop Extra Judicial Killings: Respect and establish an effective judiciary](#)



Arafat Hosen Khan

ON 17th November 2009, a Division Bench of the High Court of the Supreme Court of Bangladesh passed a *suo moto* Rule to show cause as to why appropriate action shall not be taken against Major Kazi Wahiduzzamn and Lieutenant Hasan and their companion for the liability of killing Lutfor Khalashi and Khalilur Khalashi of Shirkhara union under Madiripur Sadar Upzila, within 48 hours from date, along with an explanation by D. G. of Rapid Action Battalion (RAB) as to such heinous activity now continuing in his Battalion. For many, this was a long awaited and much needed reassertion of the rule of law and an important call for accountability with respect to our criminal justice system. However, this sense of hope came to a halt as 11 more "crossfires" were reported in the subsequent 27 days. Once again, it was back to square one.

Nevertheless, on 15 December 2009, the High Court briefly heard representatives of the state and two human rights groups acting as interveners in a *suo moto* petition regarding 'crossfires' by the Rapid Action Battalion (RAB), a paramilitary force. On the Attorney General's request, the matter was adjourned for hearing until 9th January 2010.

Unfortunately, however, the matter has not been taken up for hearing as yet as several Benches, including the one which had issued the initial show cause on the Government and which had

scheduled a hearing of the matter, were reconstituted by the Chief Justice with effect from 10 January 2010. The matter went out of the daily cause list following the reconstitution of the Bench. It is not clear if the Bench, which had heard this matter, would be specially reconstituted for a specified date in order to conclude the hearing. Meanwhile the incidents of so-called 'crossfires' continue as the nation waits for reinstatement of justice and fundamental rights.

Ironically, on 22 March 2010 the police closed down an exhibition aimed at raising public awareness about extra judicial killings at the Drik Gallery in Dhaka. Police were deployed in front of the Drik Gallery Premises thereby restricting entry of visitors, including the famous writer Mahasweta Devi and other well known media personalities, who had been scheduled to formally open the photography exhibition entitled 'Crossfire', without any prior notice or notification of any kind to the organizer. Isn't it now evident and blatantly obvious that the concerned law enforcement agencies have no respect for rule of law and fundamental rights enshrined under the constitution in particular freedom of expression?

The newspaper report, which triggered the suo moto rule, had alleged that, two men, Lutfor Rahman and his younger brother Khairul Haque, were arrested by the RAB on November 13, 2009 and later, after they had been taken into custody, killed in a 'shootout' with RAB in Shirkhara village under Sadar Upazila, in Madaripur District on November 16, 2009. Lutfor's wife Jharna Begum and son Bablu Khalasi, following the arrest, spoke at a press conference, where they claimed that the 2 arrestees had not been handed over to the police and the authorities did not give them any information about their whereabouts. They had apprehended that the arrestees may be taken to Madaripur on the false plea of recovering illegal arms and made victims of encounter killing and chillingly their fears were materialized in the following few days

We live in a democracy where our constitution protects and ensures fundamental rights for every individual in our country. Extra-judicial killings in the name of "crossfire", "gunfights" or "encounters" constitute blatant violation of fundamental rights that are enshrined in Articles 27, 31, 32 and 35 of the constitution.

According to Article 27 of our constitution, all citizens are equal before law and are entitled to equal protection of law; that is they are entitled to be treated in accordance with the law of the land administered by the ordinary law courts. However, by such acts of arbitrary and illegal killing, the victims are deprived of the opportunities of ever facing justice. It is a fundamental principle of law that every person is innocent before the law until proven guilty. Hence, until it is proved in court with all the safeguards provided by our criminal justice system, that a person is

guilty, he or she should not be branded a “criminal” and in no event should he be subject to the process of extra-judicial execution practiced by our law enforcers.

Our constitution also provides in Article 31 that: "To enjoy the protection of law, and to be treated in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law." In reality however, the authorities can and do get away with murder and function as if they are above the law and even the supreme law, the constitution. The systematic protection of members of the law enforcement agencies by the State has meant that not a single case of extra-judicial killing has yet been investigated by any competent authority and therefore no prosecutions or punishments of the alleged perpetrators have taken place.

According to Article 32 of the constitution of Bangladesh, “Everyone has the right to life, liberty and security of person.” During 2004 to 2008 alone, there have been at least 1051 extra-judicial killings perpetrated by Bangladesh's law-enforcement agencies, notably the Rapid Action Battalion, the police and the armed forces. However, in not a single one of these cases is there any information available about the specific legal proceedings undertaken. According to the data compiled by *Ain O Salish Kendra*'s documentation unit, in 2008 175 extra-judicial killings took place, compared to 180 in 2007. An important point to be noticed here is that the numbers of killings without arrest in 2007 were 81 and in 2008 it was 127. The new statistic suggests that in 2009 there have been 229 killings by the law enforcing agencies of the state.

What is implicit in Articles 31 and 32 is the right to access to justice, and it cannot be said that this right has been dealt with in accordance with the law unless a person has a reasonable opportunity to approach the court in vindication of their right or grievance. Even a fugitive is entitled to a legal defense when the death penalty is involved.

Since 2004, extra judicial killings by law enforcing agencies, custodial deaths and torture, and lack of any public reports of investigation and prosecution of those responsible demonstrate the vulnerability of the right to life of Bangladeshi citizens. In the vast majority of instances, the state failed to publish any information regarding actions taken to investigate, prosecute or punish those responsible for such.

Bangladesh has ratified all the core human rights treaties (ICCPR, ICESCR, CERD, CEDAW, CAT, CRC) and is subject to the Universal Declaration of Human Rights (UDHR). However, Government, RAB and law enforcing agencies have breached their obligations under all these provisions of international law. Extra-Judicial Killings in the name of “crossfire”, “gunfights” or “encounters” constitute flagrant violations of basic human rights enshrined UDHR where Article 5 of the UDHR ensured right to life for all.

Moreover, according to Article 2 and 6 of the ICCPR (International Covenant of Civil and Political Rights), the Bangladeshi authorities have the obligation to ensure the right to life of the country's people and must provide prompt and effective remedies in cases where any violations takes place. Bangladesh also has the obligation to introduce legislation that is in conformity with the ICCPR, but continues to fail in this regard.

The concept of democracy needs to be clearly understood before we can appreciate the role of judiciary in its sustenance. Democracy is a system of government under which the people exercise the governing power either directly or through representatives periodically elected by them. In modern times, the main features of democracy are free and fair elections, judicial independence, free press, majority rule and protection of minority rights. The activities of political parties are critical for effective democratic governance. The principle of rule of law is the basic substance of democracy and it includes supremacy of constitution, equality before the law and civil liberties

For effective administration of justice in a democracy; courts have a definite and decisive role to play. A state which declares itself a legal state has to accept the role of the judiciary to maintain checks and balances on the execution of power by the legislative and executive branches. To control the latter, the judiciary is responsible for deliberating on the legality of any administrative action, and to control the former, to consider the constitutionality of any legislation passed by parliament. The judiciary in modern legal states thus plays very important roles. Apart from ensuring legality, it is obliged to protect against the infringement on the rights and liberties of people by abuse of power by the state and to uphold democracy. Hence, it is high time to ensure the law and order through our judiciary to get the best out of democracy.

Criminal activities are not accepted; not by any one. It may be the case that some of those killed by RAB were involved in criminal activities at some point of their life. If so they would be liable to punishment according to the law of the land but not by the way of killing in the name of crossfire. Even recognizing rising insecurity, how can we accept killing them without any legal justification by the state's law enforcing agencies?

The social and economic progress achieved by the flourish of democracy in many societies has been shaped by their efforts to successfully protect the rule of law. But in Bangladesh instead of showing respect to the judiciary and the law enforcing agencies of the state has shown disrespect to the directions given by the highest court of the state by continuing with the practice of extra judicial killing.

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