

“Article 35 of the Constitution: Towards Better Protection of Rights of the Accused”

Bangladesh Institute of Law and International Affairs (BILIA) organized a conference on Article 35 of the Constitution (Protection in respect of trial and punishment) on 29 June 2019 at BILIA Auditorium. The Constitution of Bangladesh confers such protection as a right to an individual and such right to be exercised from pre-trial till post-trial stages. The conference was divided into two sessions. In the first part of the session, inclusion and practice of Miranda Rights in the trial system and necessity of fair trial ensuring natural justice, were discussed. Amongst others Dr Shahdeen Malik, Advocate, Bangladesh Supreme Court, Dr Raushan Ara, Associate Professor, Department of Law of University of Dhaka and Justice Md Ruhul Quddus, Judge of Supreme Court of Bangladesh were present in the first session of the discussion. While inaugurating the session, Dr Malik in his welcome speech mentioned that fundamental rights regarding trial and punishment are enshrined in the Constitution but very few constitutional law practitioner practice criminal law in Bangladesh. Justice Md Ruhul Quddus, who was the chair of the first session in his welcome note stated that Article 35 covers various areas of law and while analysing the Article a number of legal aspects will come into consideration and researchers need to address those aspects in achieving a better study result.

In the first session, Mr Iftekhar Sahariar, Assistant Judge, Joypurhat, in his paper emphasized on expressly communicating Miranda Rights to the accused while in custody. He in his presentation further mentioned that the provision of Miranda Right is present in the legal system of Bangladesh but as the Right is not verbally communicated in front of the accused in police custody, accused are deprived of their best defense. Mr Sahariar recommended inclusion of Miranda Rights in Police Regulation of Bangladesh (PRB).

Ms Farzana Rifat Siddique and Mr Md Hasibul Islam jointly presented a paper on the very concept of Fair Trial and addressed various factors in the criminal trial procedure, hampering fair trial in Bangladesh. Delay in trial procedure, cost, corruption, inadequate resource person were the factors identified as key to hampering fair trial. The paper recommended; trial monitoring, independence of judiciary, facilitating more ADR and providing further training to police force to work in line with the justice system.

According to Dr Raushan Ara proper implementation of law and following appropriate procedure are essential to fair trial. While addressing the papers, Dr Ara mentioned that eradicating corruption, restricting misuse of power, strengthening policies and enhancing the arrangement of legal assistance and legal aid; can ensure fair trial.

Justice Md Ruhul Quddus in his concluding remarks said that observance is very important to establish fair trial. In order to ensure fair trial courts' interpretation and abiding the procedural rules are essential. Regarding eliminating corruption he said creating pressure group and working at policy level can eliminate corruption as

people involved in the legal system are from different background with different mindset.

Second session of the Conference was held on the same day chaired by Justice Md Nizamul Huq, former judge of Appellate Division, Supreme Court of Bangladesh and Dr Mahbubur Rahman, Professor, Department of Law, University Dhaka was the designated discussant for the session.

Ms Shadika Haque Monia, Lecturer at Britannia University, Cumilla commenced the session with her paper titled, Extrajudicial Killing in Bangladesh. Ms Monia in her presentation addressed that extra judicial killing is against the protection enshrined in Article 35 of the Constitution. She further cited a number of cases where extrajudicial killing was condemned and court ordered a number of recommendations for law enforcing agencies to stop such activity. Ms Monia recommended proper implementation of procedure, appreciating human rights, addressing rule of National Human Rights Commission's guideline and active participation of Law Commission in procedural matters can stop extra judicial killing and ensure justice.

The last paper of the session was presented by joint authors; Mr Muhammad Omar Faruque, Assistant Judge of Bangladesh Judicial Service and Mr Md Tawhid Al Azad, Judicial Magistrate of Chief Judicial magistrate Court, Munshiganj. In their paper they tried to highlight how formatted justice is hampering the Criminal Justice System. The need of proper investigation is being undermined by formatted justice. Ensuring justice based on format system, will not only loss our trust on the justice system but also deprive us from knowing the fact of the incident. Conviction rate never gives a true picture as law enforcing agencies cannot give enough time in investigation and to prosecuting agencies. Moreover, they also addressed witness as another impediment to know the real scenario as most of the cases the witness is either fake or unwilling to speak the truth. A number of recommendations were suggested, notably; law enforcing agencies and judiciary should work more efficiently, lowest grade police officers should get training on regular basis, testing and verifying mechanism should be available at district level, video recording as evidence should be accepted and tort law should come into force immediately.

Dr Mahbubur Rahman, while making comments on the papers emphasized on the importance of moral values of the law enforcing agencies in ensuring justice. He further stated that in order to stop extrajudicial killing and reduce practice of format system in the justice delivery, there has to be proper monitoring and accountability of police force.

The conference concluded with the remark of Justice Md Nizamul Huq that although there are some loopholes in the current trial practice but they can be rectified with some time allowance.