

## Rohingya Repatriation: A Common Concern

As ill luck would have it, it has not always been positive developments but snags mostly that pushed the Rohingya repatriation issue on to the centre of media attention. But lately there has occurred a welcome change in the pattern of focus on the question. It is the humanitarian sensibilities that seem to have been stirred afresh by the devastation caused to the Rohingya refugee camps in Cox's Bazar and Bandarban by the May 3 cyclone. The UNHCR has resolved to boost the repatriation process which has had more downs than ups.

The UNHCR Director Werner Blatter who has been here to assess the damage at the refugee camps where 61 died and announce allocation of 25,000 US dollars for the cyclone victims put the repatriation issue in a fresh perspective. It also came to light that donors have pledged another 12 million dollars for repatriation "rather than on maintaining the refugees at the camps," as the visiting UNHCR executive hastened to add. While the funding aspect is important, even crucial, having regard to the staggered repatriation — and there ought to be realistic allocations — we would like to confine ourselves for the present to the fresh resolve being expressed to expedite the return of the Rohingyas to Myanmar.

This is because from 1991 when the refugees had come here fleeing military persecution up until April 13 of this year, only 54 thousand have gone back home. There are one lakh 96 thousand who still languish in the camps awaiting repatriation.

Werner Blatter says, much to our relief, that the UNHCR has had "good access" to Myanmar since February this year. Presumably taking heart from this he goes on to hope that the remainder of refugees would all be back in Myanmar by 1995. It would seem, therefore, that all the four parties involved in the exercise — the Bangladesh government, the refugees themselves, the Myanmar government and the UNHCR — are well-poised to wrap up the repatriation process at the earliest.

Now, the UNHCR has been working here under an MOU signed with the Bangladesh government which falls due for renewal on May 13. It has been extended by upto a month to consider the draft MOU that is before both the Bangladesh government and the UNHCR. Werner Blatter has made clear the UNHCR's position on this by saying: "We can negotiate any point except for voluntary repatriation and verification of the refugees by UNHCR officials" in reply to a question about the "excess" purportedly committed by some local UNHCR officials, the visiting UN official promised to take action if proofs against them are furnished.

We are all dealing with a human problem with a common thread of concern binding us together to the task. That being the nature of their involvement, rigidities about technicalities and nuances cannot be stretched too far without doing disservice to the cause for humanitarian resettlement of people in their own homeland which is so dear to the hearts of both Bangladesh and UNHCR. It is a call of duty for the UNHCR and, for Bangladesh, a resource-poor country, which has played a host to the refugees painstakingly, the prime concern is to see a smooth completion of the repatriation process.

## Questionable Trade

Blinded by profit motives traders sometimes show least concern for consumers' health and well-being and end up selling adulterated edible items, or as is this case, selling palm oil in the name of soyabean oil.

Details of their misdeeds sometimes pour into the press but those are nothing more than the tip of the iceberg. One such report carried in a vernacular daily yesterday says that for about last two months some traders have been passing palm oil as soyabean oil and pocketing a fabulous sum of money in the process. Even the retailers, according to the report, are aware of the racket but they have to succumb to the pressure of the whole-sale traders. Thus the small traders are forced to become a party to this dishonest trade.

However, the racketeering is being carried on with impunity at the cost of the unsuspecting consumers. For each litre of palm oil, sold as soyabean oil, a consumer has to pay Tk 50 to 52, whereas the same ought to have cost only Tk 38-40. For the last two months the traders have sold about an estimated one lakh ton of edible oil. This entire amount was palm oil and passed as soyabean oil. We do not intend to raise the issue whether soyabean is better and healthier than palm oil. The question we cannot help asking is, why should the customers be so deceived, why they must not know what they are purchasing and have the freedom to choose if they like to buy palm oil at all? Even more importantly, why should they pay Tk 10-12 more for each litre of oil?

The economic concern is quite big because if the estimate of one lakh ton of oil — thought to have been consumed during the past two months — is correct, no less than Tk 10,000,000 (one crore) in excess has been fleeced out of the consumers' pockets. Both government sources and vegetable oil refining association hold that supply of soyabean has virtually stopped for months; in fact, ever since the government deregulated the import of soyabean oil with a view to maintaining adequate supply in the month of Ramadhan and also putting a brake on the item's spiralling price. The importers have ceased to import any further consignment of oil as a ton of unrefined soyabean oil has recorded a price of US \$640 as against \$380 to 390 only one and a half years back.

All this is understandable. But why the consumers have to be cheated? The government turns a blind eye to all such cheating and malpractices with consumer items. Given the records of our traders, how can this area be glossed over with the government failing to develop an effective system of monitoring and constant watch? The Food and Drug Administration in the US is responsible for determining the quality of everything that is consumed by people. We need one such establishment with wider power and responsibilities.

# International Human Rights Law : Its Application in National Jurisprudence

by Justice M H Rahman

BA NGLADESH was a part of Pakistan till 1971 and before that it was a part of the province of Bengal of British India. Its jurisprudence is an admixture of various influences. Most of the substantive and procedural laws are codified and are by and large based on English Common law principles. With regard to marriage, divorce, inheritance and guardianship Muslims and Hindus are generally governed by their respective personal religious laws. Buddhists follow the Hindu law. Christians are governed by statutes enacted during the British time. Personal religious laws in certain matters have also been modified by statute-laws.

On April 10, 1971 by the Proclamation of the Independence the elected representatives of the people of Bangladesh resolved that they would undertake to observe and give effect to all duties and obligations that devolve upon themselves as a member of the family of nations and to abide by the Charter of the United Nations.

All laws in the country take their validity from the Constitution. Part II of the Constitution contains an elaborate list of the fundamental principles of state policy. Article 11 of the Constitution lays down that: "The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed." The principles of state policy describe the rights relating to individual's socio-economic and cultural activities. They "shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh and shall form the basis of the work of the State and of its citizens, and shall not be judicially enforceable."

Part-III of the Constitution enumerates the fundamental rights: equality before law; non-discrimination on grounds of religion, race, caste, sex, place of birth; equality of opportunity of public employment; right of protection against arrest and detention; protection against forced labour; protection in respect of trial and punishment; right to any profession and occupation; right to practice any religion; right to property; right to protection of home and correspondence.

Article 26 provides: (1) All existing law inconsistent with

the provisions of this Part shall, to the extent of such inconsistency, become void on the commencement of this Constitution.

(2) The State shall not make any law inconsistent with any provisions of this Part, and any law so made shall, to the extent of such inconsistency, be void.

(3) Nothing in this article shall apply to any amendment of this Constitution made under Article 142.

There is a great similarity between the fundamental rights enumerated in Part III of the Constitution with the human rights mentioned in the United Nations Declaration of the Human Rights, 1950 and the International Covenant on Civil and Political Rights, 1976. There are dissimilarities as well. Bangladesh is yet to ratify the ICESCR and ICCPR.

When we gave ourselves the Constitution in 1972 we did

**There is a great similarity between the fundamental rights enumerated in Part III of the Constitution with the human rights mentioned in the United Nations Declaration of the Human Rights, 1950 and the International Covenant on Civil and Political Rights, 1976.**

not make any provision for declaration of emergency or for preventive detention. This was not surprising. The first President, the first Prime Minister, a number of cabinet members and quite a few members of the Constituent Assembly suffered from preventive detention during the Pakistan regime. Within less than two years the Constitution was, however, amended and the provisions for emergency were inserted. Articles 141B and 141C provided for suspension of fundamental rights.

141B. While a Proclamation of Emergency is in operation, nothing in articles 36, 37, 38, 39, 40, & 42 shall restrict the power of the state to make any law or to take any executive action which the State would, but for the provisions contained in Part III of this Constitution, be competent to make or to take, but any law so made shall to the extent of its effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.

141C. (1) While a Proclamation of Emergency is in operation, the President may, on the written advice of the Prime

Minister, by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III of this Constitution as may be specified in the order, and all proceedings pending in any court for the enforcement of the right so specified, shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

(2) An order made under this article may extend to the whole of Bangladesh or any part thereof.

(3) Every order made under this article shall, as soon as may be, be laid before Parliament.

Article 33 was amended and provisions for preventive detention were inserted. The followings are the safeguards:

(4) No law providing for

preventive detention shall authorise the detention of a person for a period exceeding six months unless an Advisory Board consisting of three persons, of whom two shall be persons, who are, or have been, or are qualified to be appointed as, Judges of the Supreme Court and the other shall be a person who is a senior officer in the service of the Republic, has, after affording him an opportunity of being heard in person, reported before the expiration of the said period of six months that there is, in its opinion, sufficient cause for such detention.

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order.

Provided that the authority making any such order may refuse to disclose facts which such authority considers to be against the public interest to disclose.

(6) Parliament may by law prescribe the procedure to be

followed by an Advisory Board in an inquiry under clause (4). The Special Powers Act was passed in 1974. The Anti-Terrorism Act, 1992 passed recently, is to remain for two years. The Parliament may, however, extend its duration. In the Act the appellate and supervisory power has been given to the High Court Division of the Supreme Court. The cases under this Act are to be conducted by a senior Police officer, not less than an inspector.

More than 40 countries have so far prohibited death penalty. In Bangladesh clause (5) of Article 35 of the Constitution enjoins that no person shall be subjected to torture or to cruel or inhuman or degrading punishment or treatment, but clause (6) provided that nothing in clause (3) or clause (5) shall affect the operation of

an existing law which prescribes such punishment or procedure for trial. In our Penal Code, an existing law at the time of coming into effect of the Constitution, there are several provisions for death penalty.

The Supreme Court in Bangladesh functions independently, without any let or hindrance from any quarter. The appellate division of the Supreme Court is the last court in the country and it hears appeals from the High Court Division of the Supreme Court. It can issue any order for doing complete justice. The High Court Division exercises original jurisdiction in writ, admiralty, company matters and hears appeals from courts subordinate to it.

A citizen's right to equal protection to law is not well-matched by an adequate legal aid system. This is mainly due to financial constraint of the country. In civil matters any person, not entitled to property worth one hundred taka, other than the necessary wearing apparel and the subject matter of the suit can file a suit as a pauper. There is no provision for state assistance in criminal trial. Only an underfed accused in capital pun-

ishment trial is provided with a defence lawyer by the state. The law provides for presentation of an appeal by a prisoner in jail. It is available to him both in the appellate Division and the Supreme Court.

The old English Common law doctrine, to which Blackstone gave expression in a striking passage, that the law of nations is a part of the law of the land is not acceptable by all countries with regard to international treaties. Unlike Netherlands in most of the countries including the UK international treaties are not automatically received as domestic law. The history of the International Bill of Human Rights, and provisions for ratification with reservation, and non-ratification of an international covenant like ICCPR by big power like the UK indicate that international convention for human rights need to be ratified for application in na-

tional jurisprudence. A country honestly deciding to ratify an international human right convention is to brave a formidable task of review of the existing laws. In countries suffering from political instability there will be little or no enthusiasm for ratification of such an international convention.

Incorporation of international human rights law in national jurisprudence may be done (i) by ratification of an international covenant or treaty, or (ii) by necessary amendments in the constitution, where there is a written constitution, or (iii) by making new laws, or (iv) by the courts in their law making power. Of these four methods incorporation of human rights by ratification of an international covenant is the most convenient. Incorporation of a particular human right by amending the constitution may be the most difficult, often requiring votes of two thirds of the total number of members of Parliament. Law making power of the courts is uncertain as the courts only act on a lis. Opportunities may be rare or none by the courts to intervene suo motu, implementing human rights by legislation will

depend on the willingness of the legislature and its time constraint in law making. In many a country because of lack of legislative time recommendations of bodies like law commissions can not be given effect to. In my country, and I believe in many other countries law existing from before 1950 may be required to be adjusted by a general repealing and amending bill. After coming into effect of the constitution a repealing and amending bill was passed in our country.

Despite the presence of well structured legal institutions like the court and the Bar, sophisticated investigating and prosecuting agencies, and prevailing general awareness of citizen — rights, violations of human rights are taking place in developed countries like the USA or the UK. Whatever may be the reasons — the anxiety over the law and order problem, or overzealousness of the executive for the maintenance of law and order or just sheer abuse of power, or unexplained negligence — violation of human right appears to be a human condition, taking place in every human society. We do not think soon there will be any end to such violation. There is no other alternative but to take continuous measures, both remedial and preventive, against this human disease.

In a case of flagrant violations initiatives taken by non-governmental human rights — groups have often been proved to be more effective than protracted persuasions through formal diplomatic channels. However, internationalisation of a question touching a raw religious issue may backfire and even retard the progress of human rights in non-controversial issues. A human right matter may have better chances of success if pro-human rights forces are mobilized within the country. Civil rights movement in the USA without being internationalised, achieved a considerable success. The sheer cause of justice in a particular case may, on proper persuasion, inspire the court to find out a way-out in a human right imbroglio and grant an appropriate relief without violating any law of the national jurisprudence.

These are excerpts from a paper placed before a judges' seminar held on 22-24 April at the Wye Centre of The Aspen Institute of the USA.

## Eurotunnel Binds Britain Closer to the Continent

by Arshad-uz Zaman

THE recent opening of the Channel Tunnel known also as Eurotunnel is not only rich in symbolism but has practical meaning going far beyond the pomp and pageantry of the occasion. It means that Britain has ceased to be an island nation and has become tied closer to the European continent, a thought that was simply expressed by President Francois Mitterrand when he said to the Queen, 'we have a land border, Madame'.

A tunnel under the Channel was first conceived by Napoleon, when he tried to unite East and West Europe under the French flag. Although that effort never got off the ground, the idea continued to march along. After two catastrophic wars, which left Europe in ruins, it was a Frenchman Jean Monnet, who conceived the idea of Unified Europe. This called for reconciling two historical adversaries — France and Germany.

Once the groundwork was laid other elements fell in place. From its first foundation nearly

four decades ago, to the present 12 member European Union, it has been a long and often bumpy road. One of the toughest hurdles was to conquer the mistrust that separated the English and the French, much more than the channel did.

Britain's membership of the European Union went through tortuous path and De Gaulle never showed any keenness to get the British in nor did

Churchill show any keenness to join the Europeans. In fact the British for a while set up a rival organisation. The success of the experiment of united Europe, brought Britain and her partners within the European Union. Although European Union is an accomplished fact, differences of view among the members and particularly Britain surface frequently. Yet

the European Union is a success story and the proof is that many nations of Europe — East and West — are in the queue for membership. There are many more farther afield in Africa waiting for Associate status.

De Gaulle viewed Britain and the US as a world apart and lumped them together as Anglo-saxons. He preferred to

keep them at arm's length although he carried on his resistance movement during the Second World War against German occupation of France with the help mainly of the British. Winston Churchill had ruefully exclaimed, of all the crosses I have to bear this is the heaviest'. He was referring to the Cross of Lorraine, the ensign of De Gaulle.

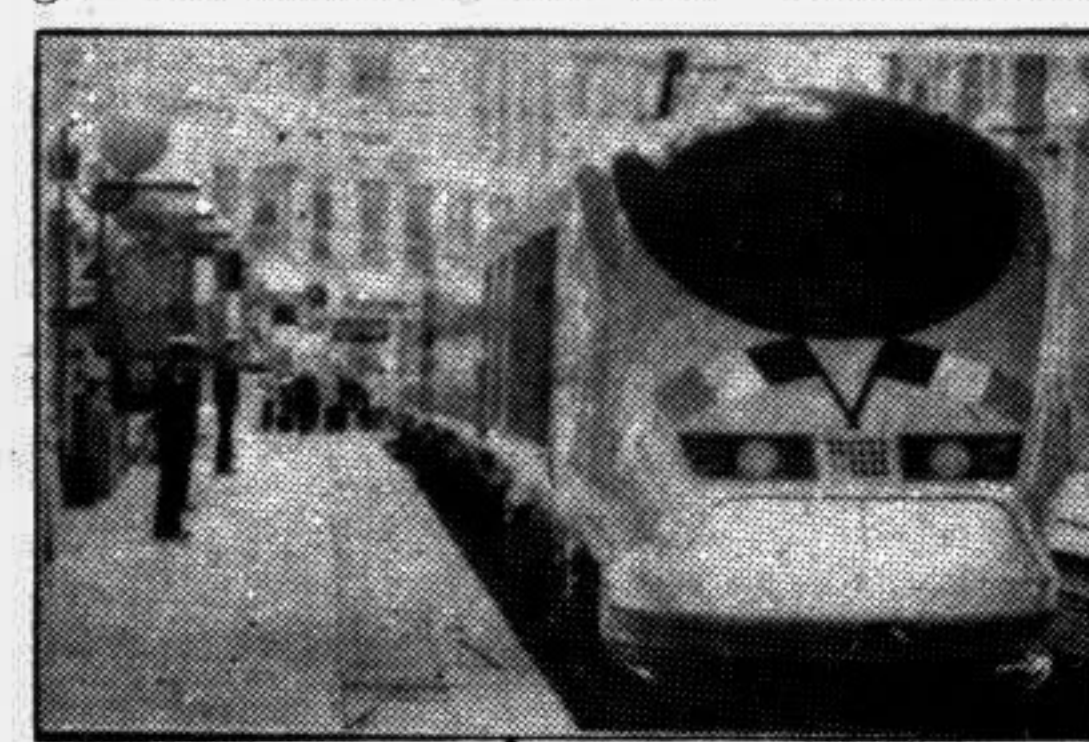
The building of the Tunnel deep in the seabed of the Channel is an astonishing engineering feat which cost 15 billion US Dollars. The foundation had been laid by Prime Minister Margaret Thatcher from the British side and she rode with the Queen the special train from Waterloo station. Freight services are due to start shortly although passenger services will start in autumn. The distance between Calais and Folkestone, which took several hours by ferry will now be covered in half an hour.

Since Britain joined the European Union, she has been progressively drawn closer to Europe. The Eurotunnel ends effectively what separated her from Europe nearly 40 million years ago. Whereas France has

been free from any controversy regarding the tunnel, in Britain it has caused serious misgivings. A cursory sampling of opinion is enough to establish the veracity of this statement. Although the British realize that their future is with Europe, they find it difficult to commit themselves wholeheartedly to it.

European Union started off as an economic idea and so far it has remained limited to economic union although on an ever growing scale. European Union has so far refrained from venturing into the political arena. The most glaring example is Bosnia, in the heart of Europe, where Serbian majority has inflicted on the Muslim minority for more than two years grievous wounds and European Union has remained a spectator.

Napoleon had conceived of Eurotunnel as a tool for his dream of world hegemony. The Eurotunnel, which has just been inaugurated by the Queen of Britain and the President of France is designed to bind island Britain closer to the European continent and it does. Good old England will never be the same again.



The inaugural TGV-Eurostar train leaves 6 May the Paris Gare du Nord station, past flags of the EU and European nations, as it carries French President Mitterrand and Prime Minister Edouard Balladur to their rendezvous with Queen Elizabeth II of England. (Right) French President Francois Mitterrand and Britain's Queen Elizabeth II clip the ribbon. 6 May, marking the opening of the French terminus in Coquelles, during the inauguration of the Channel tunnel. At left is French First Lady Danielle Mitterrand. — AFP



## To the Editor...

Letters for publication in these columns should be addressed to the Editor and legibly written or typed with double space. For reasons of space, short letters are preferred, and all are subject to editing and cuts. Pseudonyms are accepted. However, all communications must bear the writer's real name, signature and address.

### 'An Unspeakable Crime'

Sir I am a keen reader of your esteemed daily for the last couple of months I have been following with great interest your write-ups over different social and political issues. It is indeed praise-worthy that while our newsmen keep silent on serious issues, you are very much vocal and outspoken. I particularly appreciate you for the editorial 'An Unspeakable Crime' published on May 9 issue. You very correctly pointed out the irresponsibility of the authority who instead of punishing the culprits for gang-raping a girl student took up the easiest way of solution by merely banning the entertainment of female guests within the hall. What the authority failed to understand is that their easy solution cannot bring back the immense 'loss' of the girl. I have no words to reproach the criminals. They committed not

only and 'unspeakable' crime rather an 'unpardonable' one also.

I congratulate you again for your courageous stand, for while the other journalists treated the incident as a mere common or usual news item, you gave so much importance to it and wrote an editorial.

Neema Haq,  
Shantinagar, Dhaka.

### Why not alien services?

Sir, As we know, if water is put on a slope, it always goes down the slope unless forced otherwise; so people prefer the commodities of better qualities at lower prices irrespective of its origin. That is why people in our country purchase the products not only from across the neighbouring country available in local bazars but also from the countries far away; more and more such commodities are flooding our markets.

In our daily life, one can effortlessly find the ladies in foreign sarees, breakfast tables adorned with the omelettes of alien eggs, tea sweetened by sugar imported or routed through illegal channels from the other side of the border, desserts and custards abound in fruits from another land. The list may turn endless. Common consumers do not feel regrets because they enjoy the products better in quality and cheaper in price.

Our manufacturers complain that they cannot compete with those products because of higher manufacturing costs. The reasons, among others, are faulty machines, procedures etc. But we cannot overlook another side of the story: Our entrepreneurs have the tendency to earn super-normal profit and become rich overnight which they strive through cutting qualities and charging higher prices.

Anyway, these are the things, we are sure, our economists and the people in-charge of affairs are thinking deeply. What we want is comfort and security of life.

Like the commodities, the consumers would appreciate inflow of beneficial foreign expertise. Perhaps, an influx of medical professionals from somewhere with the devotion

to serve and knowledge to cure and prevent diseases would be welcome.

The people of the country are progressively losing faith in the country's medical professionals (physicians, paramedics and nurses) because of many a case of wrong diagnoses and treatment. Many a time, many of our surgeons began to operate upon without proper investigation and later failed to handle the situation arisen because of inadequate knowledge and facilities available. Many a time some of them could not decide about the diseases but continued to prescribe medicines and charge very high. For some unknown reasons, which we suppose bizarre, most of our medical professionals value lives of their patients very poorly. They seem to be more interested in the fees and charges and do not consider whether the patients get help and comfort or not.

Recently, many reportedly visited the neighbouring countries for medical treatments.

Their number is significant and most of them, upon return, have shown satisfaction about the cordial behaviours, professional handling and result-oriented treatment and proper advices as well as

economy of expenses.

In the light of above, would it be just a wishful thinking to ask the concerned authorities to take steps to revamp the health sector by raising the standard of medical professionals and also facilities keeping the cost at a minimum? In this vein, the authority may make arrangements for foreign medical experts to visit our country from time to time so that our people can avail of their services at door-steps.

In the meantime, they may facilitate the willing patients to avail medical treatment in the neighbouring countries by way of easy permission and allowance of transfer of fund.

This will have dual effects — our people will get better treatment and competitions will force our medical practitioners improve their quality of service.

The press can also help by reporting the wrong diagnoses and wrong treatments in the newspapers and the follow-ups including the legal protections one may seek, on one hand, and the medical facilities available in the neighbouring countries and required estimated expenses, on the other.

John Arun Sarkar  
Dhaka.

### Hartal April 26, '94

Sir, The hartal of April 26 last appeared as a success in more ways than one to me since Municipal street lights at Maghbazar-New Eskaton-Bangla Motor were not put off even through the scorching sunny day. No one was there.

Electricity is generated by burning lone natural resource of the country i.e. natural gas. Bangladesh is not within the top twenty gas producing countries of the world and we are not within the list of top twenty gas reserve countries.

Against this backdrop — whichever party be in power domain — should we waste our scarce resources! It reminds me our school days Bengali poem, "He who kindles light during day time delightfully, soon will not be able to light her/his house during night-fall."

Let the learned authorities of politics look into the matter while city corporation must protect the interest of tax payers of Dhaka city leaving aside the question of national squandering of scarce resources!

Sadiq Ale  
920/1 Maghbazar  
Dhaka.