



Law and Our Rights



Year in Review

January

1994 January 25: H M Ershad, and two others in dicted under 5(1)D of Prevention of Corruption Act 1947 for non-payment of rent of an abandoned house in Dhaka used as Jatiya Party headquarters.

February

February 1: Chittagong first Additional District Judge and Election Tribunal Judge declares null and void the election of Akhtaruzzaman Chowdhury Babu as member of parliament. Advocate Kabir Choudhury filed the suit alleging that the candidate resorted to terrorism, compelled voters to vote and even occupied the polling centres.

February 3: CMM, Dhaka orders the confiscation of property of 16 persons accused of killing in the post polls violence in Lalbagh.

February 31: Local BNP leader Advocate Molla Khabir Uddin files a case against editor of Ajker Kagol, and novelist Mostafa Mir for publication of the novel Danab Bangsha.

April

April 12: Special Judges court indicts H M Ershad under the Prevention of Corruption Act 1947 on charges of misusing his position and influencing the Relief Ministry to award the contract to the second lowest bidder, Marubeni, in the Japanese Boats case.

May

May 9: Special District and Sessions judge sentences three hospital workers of the Moakhali Infectious Diseases Hospital to imprisonment for the rape of nurse Rani Ghauri.

June

June 4: Case filed with the Motijheel OC against writer Taslima Nasreen for hurting the religious feelings of Muslims. Taslima Nasreen goes into hiding as court issues order for her arrest.

June 8: Four editors of the Janakantha are charged under s.295A of the Penal Code for allegedly offending the religious sentiments of Muslims. Court refuses bail petition.

June 22: The Appellate division of the Supreme Court upholds the verdict of the High Court restoring Bangladesh citizenship of Professor Golam Azam. Justice MH Rahman said that, "Even a diehard pro-Pakistan, born in this country is entitled to be a citizen of Bangladesh if he fulfills the requirements under Article 2 and is not disqualified under clause (1) of the Article 2B (the Bangladesh Citizenship Order 1972)." The government does not have power to cancel citizenship.

June 23: Notorious serial murder Mukim Gazi is given 85 years imprisonment.

August

August 1: A charge sheet is compiled against 21 persons for the shooting of seven people participating in the Dhaka City Corporation post polls procession.

October

October 4: A two member vacation bench of the High Court Division issues a mandatory injunction upon the Bangladesh Medical and Dental Council and the Bangladesh Medical Association (BMA) to call off their indefinite strike started on September 21 and to resume their duties. Dr. Mohiuddin Farooque of Bangladesh Environmental Association filed the writ petition submitting that the people were dying and suffering because of non-existence of facilities due to the strike.

October 4: Police arrest maid servant Rumana, the key suspect in the Lalmitia twin murders of mother and daughter Nilufar Maula and Mahjabeen Shoma Choudhury.

October 6: High Court orders the government to show cause as to why the terms of agreement reached with the BMA on the doctor's demand should not be implemented. Rule Nisi is ordered returnable in four weeks following a writ filed by the BMA president.

October 11: The BNP decides not to extend the term of the Anti-Terrorism Act after its expiry on November 5. Till September 1994, some 1,394 cases were filed under the law and 3,358 accused were arrested.

October 22: Five alleged killers between the ages of 16-20 are arrested for the murder of Ishfaq Ahmed (Isha), class X student in Dhaka on October 8.

November

November 16: A special bench of the High Court declares the government notifications issued in 1992 relating to the promotion of a group of Bangladesh (BCS) cadre officials as illegal and made without lawful authority. Petitions were filed in February 1992 challenging the promotion of 642 BCS officials and alleging that section 5 of the BCS recruitment rule is violative of Article 140(1) of the Constitution because it gives excessive delegation without any guidelines or yardstick for them.

November 25: 40 accused of involvement in the sensational murder of sub-inspector of police, Hasnul Farhad killed on March 5 during the gunfight among two feuding student groups at Jagannath College. 27 are detained in Dhaka Central Jail and 13 are absconding.

November 30: Case is filed against the Mirpur OC, two guards and two constables for the death in custody of Sanuallah. Police claim that the boy died of a heart attack while his father, Adar Ali, believes that his son was murdered by the police.

December

December 6: Rehana murder case transferred to Dhaka District and Sessions Judge court from Dhaka magistracy. Abdul Halim, suspended army major was indicted and sent to Dhaka Central Jail for the murder of his wife in Cantonment in August 1994. He is ordered before the court on January 15, 1995.

December 9: 639 Ansars facing legal action are detained on charges of anti-state activities ss 121(a) and 124 (a) as well as on charges of rioting with deadly weapons, causing grievous injuries, deterring public servants from performing duty, and for wrongful confinement under the Bangladesh Penal Code.

December 11: High Court directs the opposition leaders to attend parliament when it is summoned. The continued opposition boycott of parliament was termed "illegal and unconstitutional". The salary, allowances and other benefits the absentee members received were also illegal.

December 11: Taslima Nasreen case Hearing deferred until January 3 following petition by her counsel.

December 15: The managing director and the advisor of Bangladesh Muktiudho Kalyan Trust (MKT) were sued by the member secretary of the MKT Action Council for defaming a section of freedom fighters at a December 12 press conference.

December 17: A case is filed in the CMM court Dhaka, against New Zealand Milk Products Bangladesh Ltd for alluring customers with pans made in Taiwan to boost sales of Anchor powdered milk. It was also alleged that the demand for local dairy products decreased as a result of the respondents' vigorous publicity campaign.

Compiled from newspaper reports by Lamin H. with help from Gemini Wahhaj and Ali Ajgar Shaupon

Fatwa in Islam : Bangladesh Perspective Playing with a Dangerous Decree

DURING the last couple of years the volatile socio-political arena of Bangladesh has been rendered more volatile by the ubiquitous rise of what has been jargonised as the 'fatwabaz'. Literally it means a person(s) peddling in religious decree with some ulterior motive. The phenomenon such as this, or to be more specific, the enormity of it, may have taken, liberal, progressive and conscientious Bangladesh watchers by shocking surprise; but the phenomenon itself is neither unprecedented in Bangladesh nor unique to Islam or Muslims of Bangladesh. In fact, the phenomenon of *fatwa/fatwabaz* is as old as the history of any religion. But what distinguishes the Bangladesh phenomenon is the enormity of the same as well as it fall-out on the fledgling society and polity of Bangladesh.

This paper, an exploratory one, seeks to understand this phenomenon in three specific contexts. First, what is the meaning and role of *fatwa* in Islam? Second, to what extent is *fatwa* witnessed in Bangladesh compatible with Islam? Finally, socio-political fall-out along with reaction, or the absence of it, is explained in an empirical context.

Meaning and origin of *fatwa* in Islam

The world *fatwa* is of Arabic origin meaning opinion of a jurist in response to a question of legal (relating to Sharia) referred to him. Islamic law or Sharia is based on the Quran and Hadith (sayings of Prophet). This *fatwa* is an interpretation of Sharia in the context of a specific issue. During the early years of Islam and up to the Umayyad and Abbasid dynasties, courts used to pass *fatwa*. It was, therefore, incidental that these courts were presided over by renowned theologians of the day. In most cases *fatwas* took the form of well researched findings culled from the Quran and Hadith by scholars well trained in the relevant discipline. Considering the intellectual worth of such *fatwas*, some collections of the same have been published.

As the Muslim empires fell and were supplanted by Western domination, dispensation of justice came under the influence of the Western legal system. The ordinary but devout Muslims would now seek *fatwa* from such renowned Islamic centres as the Al-Azhar University in Egypt and Dar-ul-Ulum of Deoband in British India for sorting out many day to day problems. Subsequently, these *fatwas* were also published as collections.

How can an individual receive compensation for such continuous victimisation? One avenue is the law of tort. Unfortunately this is hardly invoked in our courts due mainly to people's ignorance of their rights. Advocate Ehsanur Rahman explains how a government officer could sue the government in tort.

A tort is a civil wrong for which three things must occur: i) a wrongful act done by the defendant, ii) legal damage caused to the plaintiff and iii) the wrongful act must be of such a nature as to give rise to a legal damage in the form of action for unliquidated damages. An act is wrongful if it invades the private rights of a person, which the right of good reputation, the right of bodily safety and freedom, the right of property and the right of service. The party or the person whose right is infringed does not have to prove any special damage, because

In the first of a two part essay, Dr Syed Anwar Husain explains the context of the *fatwa*

After achieving independence, some of the Muslim countries arranged to have distinctive state *fatwa* committees. These committees are manned by renowned Islamic scholars and headed by grand muftis. Experience in these countries suggest a common modus operandi of *fatwa*. First, *fatwa* is pronounced by these state appointed committees. Second, *fatwa* is pronounced only when it is sought by person or government; and nowhere have these committees pronounced *fatwa* on their own free will. The Religious Advisory Committee, the relevant body in Turkey, pronounced *fatwa* on the necessity of family planning only when it was called upon to do so. Third, nowhere do we find any instance of *fatwa* being used for political purpose or as a system in-parallel with (or in confrontation with) existing legal system of the country. Moreover, the quality of persons who comprise or head such committees clearly demonstrates the prerequisites for the persons pronouncing a *fatwa*. As this is not a superficial business of literal interpretation of the Quran and Hadith, only versatile religious scholars known as *mufti* are trained to understand both the letter and spirit of Sharia and to interpret the same in the context of existing reality.

It is thus clear that mere literal interpretation of scriptural prescriptions is not in keeping with the spirit of Islam. It is also revealed that a private person, however religious he might be, cannot pronounce a *fatwa*. A *mufti* pronounces *fatwa* as and when he is called upon to do so by government under certain circumstances, and a *mufti* has to be a person appointed by state for the purpose.

Varieties of *Fatwa*

Considering *fatwa* generally across a multi-religious spectrum, it can be suggested that there may be at least three types of the same. Such variations are linked to the purposes to be served. For example, the first type is necessitated when existing religion/religious practice is believed to be threatened by certain quarters. In 1415 the Czech professor John Huss challenged the corrupt church and clergy. But he was accused of heresy by *fatwa* pronounced by the Church and he was burnt to death. In reality, however, John Huss was representing true Christianity and the church abused Christianity

to sustain its corrupt religious practices. The second type of *fatwa* is occasioned by sheer financial motives. The overriding motive for such a distorted practice of the Vatican pope was to raise money. It is interesting to note that during the parliamentary elections of 1991 the Jamaat-e-Islami is reported to have pronounced the *fatwa* that people contributing generously to their party fund would be issued tickets to heaven. A large number of simple religious people in some parts of Bangladesh fell victim to the propaganda.

The third type of *fatwa* arising out of societal context is more relevant for our discussion. A *fatwa* of this type abuses scriptural provisions to perpetuate hegemony by a social segment over other segment(s). A glaring example of social fall-out of such a *fatwa* in Hinduism is the *suttee*, a rite that arose out of the distortion of scriptural provision perpetrated by the Brahmanas.

With such a conceptual perspective on *fatwa*, we now turn to its manifestation in Bangladesh. But Bangladesh has had its share of experiencing manifestations of *fatwa* dating from the Pakistan days and the process was initiated by the Jamaat-e-Islami. In 1948, Maulana Maududi, the founding father of this party, pronounced the *fatwa* that the struggle of the Kashmiri people was against the spirit of Islam. In 1951, another *fatwa* by the Jamaat declared the Ahmadis non-Muslims, leading to the most gruesome intersect riot in Lahore. They are repeating the same *fatwa* against the Ahmadis in Bangladesh. In 1954, when the United Front, a combine of Bengalee political parties stood up against the central government headed by the Muslim League, the Jamaat came out with a *fatwa* that any male voting against the Muslim League would automatically have his wife divorced.

During the liberation war of 1971 at least two *fatwas* were pronounced against the Bengalees. In February 1970, one hundred and thirteen *ulama* of various schools of Islamic thought from Karachi issued a *fatwa* that divided political parties into four categories

- those upholding Islam in letter and spirit;
- those opposed to the ideology of Pakistan;
- those expounding regional nationalism and preferring fellow Hindus to distant Muslims and pledged to secularism; and
- those adhering to the Quran and Sunnah but assisting the socialists and regional nationalists.

According to this *fatwa*, it was jihad (holy war) to strengthen the first category of parties, but *kafir* in the case of second, third and fourth categories. The third category of parties included the Awami League, the party that was then spearheading the autonomy struggle of the Bengalees. But when the liberation war started, another *fatwa* dubbed the 'freedom fighters Hindu and women to be secured in war with them would be treated as booties of war by the Pakistan army. Little wonder that the Pakistan army is on record as having gone on a looting and raping spree in Bangladesh with religious zeal throughout nine months.

Even as late as 1991, during the parliamentary elections a Jamaat *fatwa* considered women leadership in politics and government haram (forbidden). In support of such a *fatwa*, Maududi provides a clear statement, "Quran and Sunnah categorically deny to women the right of election to legislatures or appointment to responsible posts in government". But subsequently, they lent support and assistance to the Bangladesh Nationalist party (BNP) in forming a government headed by a women. In the recent anti-establishment agitation, Jamaat supported the Awami League, a party also headed by a women. Thus principles and politics are poles apart insofar as the Jamaat is considered. Principles are cast away when expediency dictates politics.

In the recent past, such leading liberal thinkers as professors Ahmad Sharif and Kabir Chowdhury have been the targets of *fatwa* that castigated them as 'murtads' (heretics). Taslima Nasreen, a highly controversial writer and women's lib activist has a price on her head amounting to Tk 50,000 (fifty thousand) because of a *fatwa* issued by an imam (religious leader) in Sylhet. In the Quran, definite indications have been given as to how to deal with the critics of Islam. But nowhere is there mention of the way that has been followed in Bangladesh in dealing with these writers and thinkers.

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Next issue: women, *fatwas*, and an explanation for the phenomenon

A government employee recounts a tale of ten years of victimisation at the workplace. The gentleman, who prefers not to be identified, was handed a compulsory retirement order as a disciplinary measure in 1985. He was, however, reinstated in 1987 when a court quashed the retirement order. Once he was back at work, the employee proved to be an eye sore for those he defeated in court. Various steps were thus taken to make his life more difficult: he was denied promotion and a study leave, and he was not placed on the regular time-scale. His pay was also stopped as a result of a transfer to a non-sanctioned post.

The employee received a verdict against the unauthorised transfer earlier this year and was reinstated to his original post. Within a few months, however, he was compulsorily retired once again.

Suing the Government in Tort
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every injury imports a damage when a man is thereby hindered of his right. It means that the damage comes in the substantial sense of money, loss of comfort, service, health or the like.

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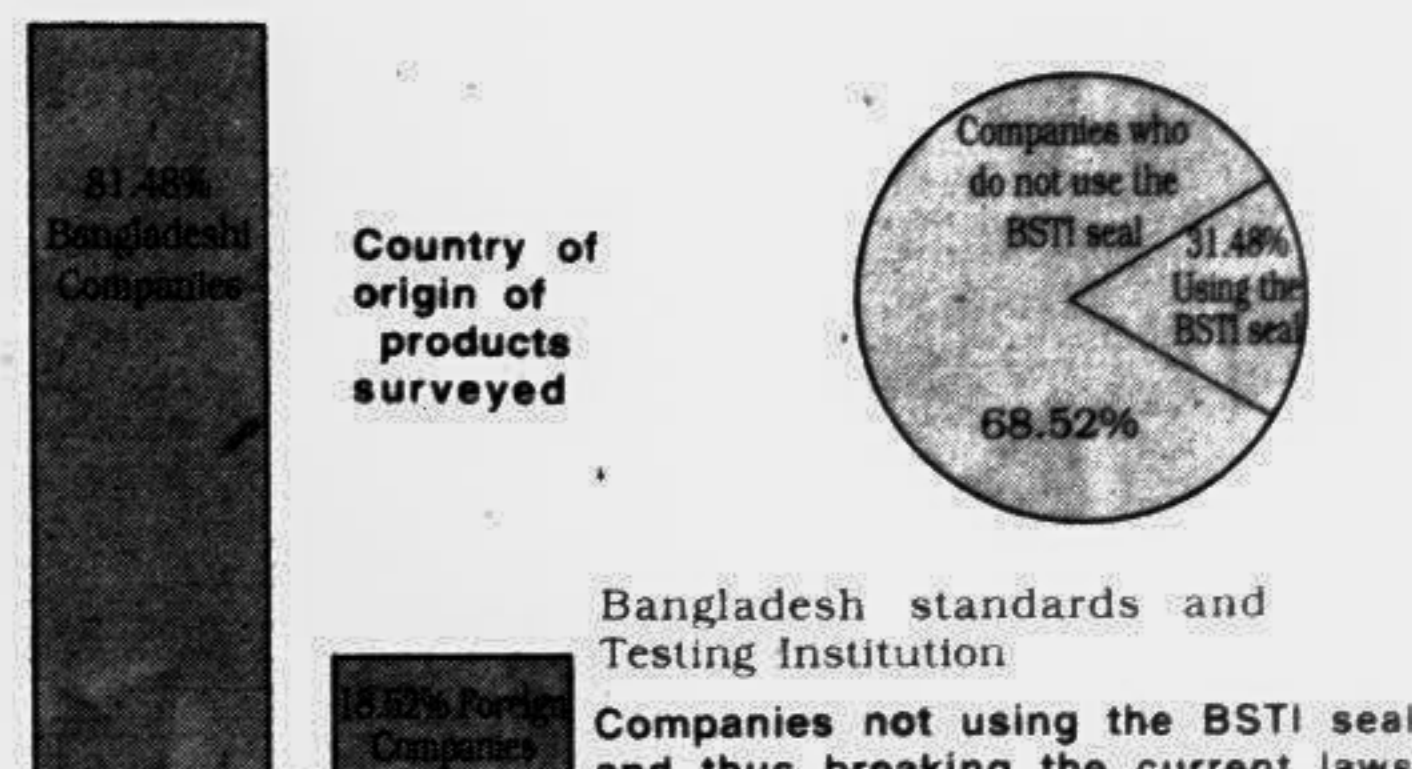
The main principle of tort, is therefore enunciated as justice, equity and good conscience. This principle cannot allow unauthorised interference, or wilful and malicious mistake causing injury to the

spective of whether they are the general public, a private person or a public official. This is guaranteed under the article 27 of Bangladesh Constitution. It indicates that the right of the government official to sue the government in tort, is guaranteed under law.

Shop Products Below Par

Are we getting our money's worth of consumer-friendly goods? CAB reports

From September 10 to October 13, the Consumer's Association of Bangladesh (CAB) conducted a survey of 87 brands of edible oil, soap, ground spices, ghee, butter oil, wheat-flour, biscuits, and toothpaste produced by 54 manufacturing companies. These samples were taken from different markets in Moakhali, Gulshan, Banani, Shantinagar, Fakirapool, Farmgate, Mirpur, Hatirapool, Kalabagan, and New Market.



Brands not using the BSTI seal

Out of the different products, none of the powder soaps, clothes washing soap or wheat and flour had used the BSTI seal. Nearly all the wheat-flour bags contained at least 1-2 grams of 'bhushi' and other dirt.

Out of the 87 brands surveyed, 33 brands did not have Bangla on the packaging even though they are only marketed in this country. These brands are bought and used by the educated, half-literate and the illiterate alike. Even if some of these consumers wish to be more alert, they cannot do so because of language barriers. Consumers often buy these products in the belief that they are of foreign origin.

Nearly everywhere in the world, food and essential items are marked with their production and duration/expiry date on the packaging. Among the thousands of products in Bangladesh, only one or two goods had any such information. In developing countries, this expiry date is also seen on fruits and vegetables. In CAB's survey of 11 goods of 87 different brands, none were found to have this date.

Imported goods have to pass the BSTI authorities examination and obtain a certificate. None of the goods surveyed had this seal.

Bangladesh imports nearly 50 types of powder milk and baby food. All of these are tested for radiation. However, there is no provision of rule which indicates whether passing the radiation test alone makes these goods marketable, even though Tk 5-6 crore worth of powder milk and baby food is imported every year. Presently many baby food and powder milk packets are marketed in plastic packets. These do not have the BSTI seal either. Whether the production and expiry dates used by these companies is actually their repacking dates or the real production date cannot be known by anyone other than the company employees. The authorities concerned did not show much enthusiasm to pursue this area.

Data compiled by Emdad Hossain Malek. CAB. Graphs and translation by the Daily Star

public official by the superior public official during the course of statutory duty. The state is liable for tort in respect of such tortious act committed by its servant within the scope of his employment and functioning as such.

Executive Acts

Ministers have no legal authority to visit any government office to ensure attendance of the government employees and to enforce disciplinary action, such as removing an employee from service. This will amount to undue interference without jurisdiction. Clause VII of rule-4 of the Rules of Business 1975, says that the secretary shall be the official head of the ministry and shall be responsible for its administration and discipline and for proper conduct of business assigned to it.

Public authorities even acting within the defined limits of their powers, must not conduct themselves arbitrarily or tyrannically. If they are manifestly abusing their powers, the court has jurisdiction to interfere. If the public officers commit a wrong or other illegal act, they are like any other wrongdoer liable to be sued and the authority of the government is no defence for them as stated in the article 27 of Bangladesh Constitution.

The ministers and the heads of the departments are not liable for the act of their subordinates, because their relation is not that of master and servant, but they are both fellow servants of the crown. Subordinate officers are responsible for their respective wrongs. Oral orders of his superiors should not be relied on because they can afford him no protection even if the illegal act for which he has been sued was done by him in good faith. If the executive officers do not comply strictly with the provisions of law under which they act before exercising the power, the law will not protect them.

Public officials may be sued in their private capacity for torts committed by them and the order of the crown is no defence to such action. If the tortious act has been committed by a public servant in dis-

charge of duties assigned to him not by virtue of the delegation of any sovereign power an action for damages would lie. The state cannot claim immunity illegally and unconstitutional. Moreover, the crown cannot authorise a wrong to be done.

Liability for damages in tort:

When the government is not a party and when a decree for damages is passed against an officer, the damages would be recovered from him and in such case it is open to the government to relieve him from liability. But when the officer is sued in his official capacity, he is not personally liable, it is the government that pays the damages. If the officers act dishonestly with an intention to injure others, they will be liable and protection of law will not be available to them in such cases, the government is also not responsible for the misfeasance, wrong, negligence, fraud, corruption or commission of duty of subordinate officers engaged in public service.

Tort in democratic state

In our country, there is republican form of government, there is a Constitution and there are objects for social activities. Hence, there is no justification in principle and law or in public interest or under the Crown Proceedings Act, 1947 that the state should not be held liable vicariously for the tortious acts of its servants.

The immunity of the state in respect of acts done by its subordinates in the exercise of sovereign powers cannot be considered as the dogma and will have to be considered on the facts and merits in each case. If a public officer is guilty of misfeasance in the exercise of the powers entrusted to him by law and in the discharge of his duty, he is liable to an action in tort for any damage resulting from that act, without proof of malice or want of probable cause. If a person or a public official commits a wrongful act, he cannot escape from liability merely because he acted in obedience to the order of the executive government or of any officer of state.



Protesting against fatwabaz. -- Star photo