

Law and Our Rights

Rebuilding Trust Amidst Recriminations

ON March 15, an ethnic clash and a mass arson shook the mostly peaceful co-existence of tribals and non-tribals in Bandarban, two hours away from Chittagong city. Tribal and even a few Bengali families watched helplessly as their neighbourhood ad belongings went up in flames.

The ashes of the 161 homes in Madyam Para, still lie strewn two weeks after the fire. Some of those rendered homeless have begun rebuilding work on their own initiative, but there is still no sign of government help to rehabilitate the homeless. An offer of Tk 200 from the Local District Council was rejected by most of the affected as being too derisory. MPs have not visited the area and except for two, none have publicly condemned the incident.

On that fateful day, the Pahari Chhatra Parishad (Hill Student's Council) planned their yearly conference in Rajbari Math, but two days before the PCP's meeting, the Parbataya Gana Parishad (PGP) called a hartal on the same date. The PCP is an organisation which represents the Jumma people of the Hill tracks. Its demands include, among others, autonomy, but not separation, and the abolition of local District Councils. The PGP is a new organisation set up a few days before the arson. It consists of a group of leaders from Islamic Chhatra Shibir, BNP, District Council Members, and new Bengali Settlers.

According to the report prepared by an eleven member inquiry team consisting of journalists, human rights activists, and student leaders, which visited the area on March 17, the Deputy Commissioner of Bandarban imposed Rule 144 to preserve order on the day.

The inquiry report stated that the president of the PCP, K.S. Mong called on the D.C. to take measures to avoid potential strife between the two groups. However, K.S. Mong

had also told the D.C. that the PCP would have to break rule 144 were it to be imposed because their meeting had been planned for a long time.

The inquiry report stated that on March 15, PCP members were stopped by a police barricade as they headed towards their meeting place. The group was lathicharged when they tried to take an alternative route to the conference. A few of the PCP members threw stones at the police and the police withdrew. The PCP then changed the venue of the conference to Madyam Para where the police later turned up with a group from the PGP. The police apparently fired blanks and tear shells while the PGP proceeded to set fire to homes in the area. According to the D.C. who spoke to the inquiry team, the police action was necessary because the PCP broke rule 144. The D.C. also said that he considered that the PCP had set fire to the neighbourhood because they were present on the scene. (Many PCP members happen to reside in Madyam Para).

Lawyers of Ain O Salish Kendra, dealing with this case informed that 22 people were arrested in connection with the incident. The police seem to have picked people up at random since those arrested included one nine year old boy, a driver, and others who had come for the polio immunization campaign. The lawyers have secured the release 14 of those initially arrested. The magistrate, however, denied bail to the remaining eight on the grounds that it would worsen the law and order situation.

Sanchol Chakma of the PCP informed that there were 2 or 3 active members of the PCP among those still in jail, while the rest were workers/employees of the PCP. The main political leaders were still in hiding as they had warrants out for their arrest.

On March 29, noted intellectuals, lawyers and student

A mass arson in Bandarban destroyed nearly 200 homes two weeks ago. Lamis Hossain recounts her observations after a visit to the area.

Leaders from Dhaka took their places under the shamiana in Rajbari Math (field), Bandarban, to address the inhabitants of the area.

Although the meeting was held in the backdrop of picturesque hills, under a clear blue sky, palpable tension overcast the occasion. Many glanced back in regular intervals to look out for any untoward event. Some jumped out of sheer nervousness as a truck passed by. BDR men were also posted near the field.

even the strong afternoon sun and the tense atmosphere couldn't sap their curiosity. Some were heard saying that the final turnout of around 5,000 people at the gathering, was larger than the one for Sheikh Hasina's visit. There were also some unconfirmed reports that many coming from Ruma thana were not allowed to proceed to the meeting.

The gathering was addressed by various student leaders from the PCP, Chhatra



Madyam Para after the mass arson — Lamis Hossain

The March 29 meeting was organised by the Hill Women's Federation and the PCP to condemn the mass arson and to instill confidence in the visibly shaken community. The HWF is an organisation devoted mainly to improving the rights of tribal women and to the demilitarisation of the Chittagong Hill Tracts.

The meeting began at 4 p.m. The Bandarban inhabitants trickled in slowly to the gathering in Rajbari Math. Initially, many chose to stop a safe distance away and watch the proceedings from a far. But as the meeting gained momentum,

League, Hill People's Council, and Maulana Ahmadur Rahman of Gono Forum. The guests from Dhaka were poet Syed Shamsul Haq, Barrister Lutfur Rahman Shahjahan the Convener for the National Committee for the Protection of Human Rights in the CHT, Syed J.S.D., Sayedur Rahman of Dhaka University's Bangla Department, Dr. Meghna Guhathakurata of the International Relations department, Ain O Salish lawyer Zahirul Alam Babar and Akku Choudhury of Ekattorer Jatre.

The speeches were delivered in Bangla because it was the lan-

guage in common to the audience consisting of different tribes.

"We want to live as citizens here and be guaranteed our constitutional rights here," Kabita Chakma, member of the Hill Women's Federation, said. She said that it was wrong to think that they wanted separation. She like the others who spoke later, found it unfortunate that Bengalis who fought so hard for their language should be unable to understand the tribal people's need to protect theirs.

Other student leaders who addressed the gathering condemned the filing of cases against innocent people, and demanded compensation and investigation into the incident.

Half way through the meeting, the president of the PCP K.S. Mong turned up to the gathering surrounded by a group of men. His presence caused considerable tension since there was a warrant out for his arrest. Nothing happened, however, and K.S. Mong left after conveying his condemnation of the arson.

Unfortunately, by the time Shamsul Haq and Barrister Shahjahan addressed the gathering, heavy rain started pouring and dispersed the crowd.

It was only by sheer luck that no one succumbed in the blaze in Bandarban. But considering the rhetoric, recriminations and rumours, pervasive on March 29, there was at least one casualty: the trust between the tribals, non-tribals, the law enforcing authorities and the local administration.

Bridging this gap will prove to be a greater challenge than rebuilding the homes in Madyam Para. Prompt rehabilitation of the homeless and an investigation by neutral body would be the logical first steps as recommended by the eleven member inquiry team which visited Bandarban on March 17.

There is also a need to constitutionally guarantee the rights of minorities. Non-discrimination on the basis of race, sex, religion etc. as provided in the Constitution, does not offer adequate protection for the minority as a group. We may consider the guidance provided in article 27 of the International Convention on Civil and Political Rights 1966 (which Bangladesh has not ratified): "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group to enjoy their own culture; to profess their own religion or to use their own language." It's at least something to start with.



Too young to be bitter — L.H.

Blasphemy Row Follows Acquittals

By Qudssia Akhlaque from Islamabad

TWO Pakistani Christians rescued by the Lahore High Court from death under the country's blasphemy law remain under threat from Muslim extremists.

Arrested on charges of defiling the name of the Prophet Muhammad, 14-year-old Salam Masib and his 44-year-old uncle Rehmat Masib were sentenced to death by a lower court in what was later described as "a case of no credible evidence."

Now Salam and his co-accused have been exonerated. The judges said the allegedly blasphemous words on a piece of paper were not the work of the two illiterate accused. But in the eyes of some religious zealots, who have already killed another co-accused, Manzoor Masib, they remain guilty.

Manzar was shot dead at a bus stop minutes after he was freed on bail by the Lahore High Court last November. To protect Salam and Rehmat against a similar attack, the government has directed the police to remain vigilant against "Muslim extremists."

Denmark reportedly offered them asylum — a flashback to one of Pakistan's two other post-independence blasphemy cases in which Gul Masib was sentenced to death by a subordinate court before being exonerated by the Lahore High Court. On release from three years in prison, Masib sought asylum in Germany because he did not feel safe from his persecutors.

The other case brought under the blasphemy law introduced by former military dictator General Muhammad Zia-ul-Haq also resulted in the overturning of a lower court's decision by the High Court.

After the acquittal of Salam and Rehmat at the end of February, militant Islamic groups organised countrywide protest demonstrations and threatened the judges and the defence counsel with "dire consequences."

They argue that the acquittal was made under pressure from the government, which in turn wanted to appease the United States before Bhutto's scheduled visit to Washington in April.

Although no-one has ever been executed for blasphemy in Pakistan, Asma Jehangir, the chairperson of Human Rights Commission of Pakistan, recommended the repeal of the law, in order to prevent members of minority religious groups — Hindus, Sikhs and Parsis as well as Christians, who together form less than five per cent of the population — from suffering the fate of Gul Masib.

The blasphemy law featured in the Commission's 1994 report, which suggested the leg-

islation was liable to abuse to harass non-Muslim minorities. Nevertheless, several human rights activists saw the recent case as a blessing in disguise. "Despite all the sound and fury, at least the government has had to take a clear stand on religious intolerance," said one.

Prime Minister Benazir Bhutto expressed concern at the earlier death penalty decision — though one of her arguments was that the verdict was announced at a "wrong time," just as Pakistan was pursuing a case against human rights violations in Indian-



Salam Masib, acquitted but cautious administered Kashmir at the United Nations Human Rights Commission.

After the High Court judgement she announced a "war" against "belligerent religious groups."

She is seeking support from opposition parties, said her Special Assistant, Shehbaz Wazir Ali: "We are committed to safeguarding the rights of the minorities and other weaker sections of society. It is our paramount duty, and we will discharge it as our Islamic and constitutional obligation."

Bhutto says she wants to modify the existing law "so that nobody can get someone persecuted by telling a lie, and if somebody does so, he may be punished."

Attempts to make amendments were made last year when it was proposed that a case should be registered only after the complaint had been examined by a magistrate and was seen to have some basis. Furthermore, to deter frivolous or malicious accusations, the complainant should be liable to a fine if the allegation proved groundless.

The proposal sparked a reaction from the orthodox sections of the community who declared that they would permit no change. There was no word on any modifications in the law after that. — GEMINI NEWS

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Continued from part II on the Companies Act 1994

THE requirements regarding the contents of the directors' report have been amplified to require fuller disclosure of the company's business as well as full explanation of every reservation, qualification or adverse remark contained in the auditors' report. The Annual Report must contain a statement of material developments which have taken place between the end of the financial year for which the balance sheet has been prepared and the date of the Report.

The contents of the balance sheet and profit and loss accounts have to be such as to give a true and fair view of the state of affairs of the company. The balance sheet of a holding company has to be accompanied by reports regarding all its subsidiaries including a copy of the balance sheet of each subsidiary, a copy of its profit and loss accounts, a copy of its directors' report, a copy of its auditors' report, a statement of the holding company's interest in the subsidiary company and detailed other information as required in section 196 of the Act of 1994. The forms are set out in Part I of Schedule XI of the Act.

The Board is now required to appoint auditors within one month of the registration of a company. Only Chartered Accountants may be appointed auditors. The auditors shall have access to all books and papers whether kept at the registered office or elsewhere, the scope of inquiry of the auditors has been elaborately spelt out, unlike in the previous Act, as well as the nature of the certification the auditors must provide.

Apart from the general power to audit the auditors are now required to investigate the specific matters, such as whether advances or loans have been properly secured, and whether the terms on which they have been given are harmful to the interests of the company or its shareholders; and whether the book-transactions of the company are harmful to the interest of the company.

The auditors now have the right to receive notices and attend all general meetings of the company and not only the general meeting in which the accounts are placed. This is intended to allow the auditors to more closely supervise the affairs of the company.

Tighter Controls for Financial Institutions

by Barrister Syed Ishtiaq Ahmed

An auditor must certify that to his knowledge and from the explanations provided to him, he is satisfied that the Auditor's Report contains all the information required by law and that the balance-sheet presents a true and proper picture of the affairs of the company as at the end of the financial year and the profit and loss accounts of the company as at the end of the financial year. He must further state whether to the best of his knowledge and belief he received all the information and explanations which were necessary for his examination.

The 1994 Act introduces new provisions enabling minority shareholders to seek remedies in Court and also enlarges the powers of the Court to pass appropriate orders. Members or debenture-holders may bring to the notice of the Court that the affairs of the company are being conducted or the powers of the directors are being exercised without regard to the interests of the members or debenture-holders, or that they are being or may be discriminated against.

Protection may be sought for members other than the applicants. The Court may make an order as prayed for by the applicants or any other appropriate order and may make orders cancelling or modifying any resolution or transaction, regulating the affairs of the company in the future as specified in the order or amend any provision of the memorandum or articles of the company. In case of such amendment by the Court, the company may not make any subsequent amendment inconsistent with the amendment made in the Court's order, without first obtaining the Court's permission to do so.

Elaborate provisions have been made for the inspection of companies by the government on the application of shareholders holding at least one-tenth of the issued share-capital of a company, or in the case of a company not having a share capital on the application of one-fifth of its members. On the basis of the Inspectors' report the government may itself either institute winding up proceedings or proceedings for recovery of damages or property.

Non-Banking Financial Institutions (N-BFIs) Chapter V of the Bangladesh Bank Order, 1972 (P.O. 127 of

19) is entitled "Provision relating to non-banking institutions receiving deposits and financial institutions." This Chapter consists of 10 sections which, until 1993 constituted the main body of legislation regarding the regulation of financial institutions. These sections gave, in very general terms, regulatory and supervisory authority over non-banking institutions and financial institutions to the Bangladesh Bank. Leasing business was outside the purview of this legislation and came to be regulated by the law relating to bailment under the Contract Act.

Legislators were forced to prioritise the issue of regulatory legislation for N-BFIs when a giant N-BFI, the BCCI, collapsed in 1991

It must be remembered that these provisions were the product of a time when, among others, all banks and development finance agencies had been nationalised in the wake of the independence of the country. Only in the last decade and a half, which has seen the growth of financial institutions of a non-banking nature, has investors' interest been focused on the regulation of such institutions. Even so, the legislators were forced to prioritise the issue of regulatory legislation for N-BFIs when a giant N-BFI, the BCCI, collapsed in 1991 leaving thousands of depositors destitute. 1993 saw the enactment of the Financial Institutions Act, which excluded from its ambit banking companies.

The Financial Institutions Act, 1993 defines "financial in-

stitutions" as such non-banking financial institutions which (a) provide loans and advances for industry, trade, agriculture or housing; or (b) carry out operations relating to the underwriting, take-over, investment or reinvestment of shares, stock, bonds, debenture or debenture stock or other marketable securities issued by the government or any registered organisation; or (c) carry on the business of hire-purchase of machinery or equipment; or (d) finance venture capital, and includes

in the definition merchant banks, investment companies, mutual associations, mutual companies, leasing companies and building societies.

The Financial Institutions Act 1993

The salient features of the Act are as follows:
1) No person (and person includes companies, firms and associations) shall carry on any financial business without a licence from the Bangladesh Bank. Any person contravening this provision will be liable to a fine not exceeding Tk 5 lacs and/or imprisonment for a pe-

riod not exceeding 2 years.
2) Before granting a licence Bangladesh Bank will have to be satisfied about the following matters regarding the applicant: (i) financial status (ii) management structure (iii) adequacy of capital-structure and prospective income (iv) objects mentioned in the memorandum of association (v) public interest.

3) Bangladesh Bank can cancel the licence of any N-BFI for any of the following reasons: (i) not carrying on the activities for which it was established; (ii) winding up or closing down of activities of a financial institution; (iii) submitting false or misleading information or documents in order to obtain a licence; (iv) running its business in a manner harmful to the interest of depositors; (v) assets not

enough to cover liabilities to the depositors; (vi) contravening conditions of the licence; (vii) conviction of the N-BFI or any of its officials for an offence under this Act.

4) No N-BFI will give any dividend on its shares until it has written off its preliminary expenses, organisational expenses, commission on account of sale of shares, brokerage, losses and all other expenditure which has been capitalised.

5) Every N-BFI will exhibit/keep open for inspection at a public place in all its offices and branches a copy of its

latest audited balance-sheet, together with the names of the directors, and within 6 months of the end of the relevant financial year shall publish the said balance sheet in at least one daily newspaper.

6) Extensive restrictions on providing loan facilities etc. are applicable to N-BFIs. For example, no N-BFI can accept any deposit which is payable on demand by order of the depositor or cheque or draft, nor deal in gold or foreign currency.

The directors of an N-BFI will be jointly and severally liable to compensate for any loss arising out of unsecured loans, advances or credit facilities provided in contravention of these provisions. Contravention of this provision may also result in a penalty of Tk 2,000,000.

7) There are restrictions on investment of funds by N-BFIs and these are primarily intended to protect the depositors. An N-BFI cannot spend or use more than 25% of its paid-up capital and reserve to acquire or hold shares of any financial, commercial agricultural, industrial or like organisation and will sell off as soon as possible any shares acquired in the interest of recovering any loan given shares acquired in the interest of recovering any loan given by the N-BFI. However, the amount may be increased to 50% on application by the N-BFI and approval by the Bangladesh Bank.

8) No N-BFI can, generally, acquire or hold moveable assets worth more than 25% of its paid-up capital and reserves.
9) The Bangladesh Bank can determine certain aspects by order. For example it can determine the maximum rate of

interest payable by an N-BFI on different classes of deposits, the maximum amount of loan to be taken from a person by an N-BFI and on other matters in the public interest or for improvement of the fiscal policy.

10) Every N-BFI must maintain liquid assets as determined by Bangladesh Bank from time to time.

11) Bangladesh Bank has wide powers of inspection. Audited balance sheets — and profit and loss accounts have to be submitted annually, and the auditor must be approved by the Bangladesh Bank. An N-BFI must inform the Bangladesh Bank as soon as it apprehends that there is a possibility of its being unable to meet its depositors' claims or when it has to suspend payment to a depositor.

Bangladesh Bank may take a wide variety of measures including prohibiting an N-BFI from carrying on financial business, appointing a person at its cost to properly manage the affairs of the N-BFI, taking over the control or management of the business of the N-BFI or appointing some other person to do so.

12) If the Bangladesh Bank considers it necessary in the interest of the depositors it may suspend the operations of an N-BFI for a period not exceeding 6 months at a time, and may also formulate a scheme to merge the said N-BFI with another N-BFI. These are essential central banking functions in relation to such institutions.

13) Extensive sanctions are provided for the violation of various provisions of the Act, ranging from imprisonment for a period between 1 year for failing to assist the Bangladesh Bank in its inquiries to 3 years for false statements, and fines of Tk 100,000 for an ineligible person becoming a director of an N-BFI to Tk 2,000,000 as mentioned above.

14) No N-BFI can alter its memorandum of association without a certificate of no-objection from the Bangladesh Bank.

15) The Bangladesh Bank may, in consultation with the government, exempt any or all N-BFIs from any or all the provisions of the Act.

The writer is a senior advocate of the Supreme Court. Parts I and II of this series appeared on 9/3/95 and 22/3/95 respectively. The final part on Banking Companies will appear in a fortnight.

Lawscape International Law Moot Court Competition

Washington — The mythical Ozonito River is a very real entity to law school students from throughout the world who are competing for recognition as the best team in the area of international environmental law.

For the 36th annual Philip C. Jessup International Law Moot Court competition, student teams from 40 nations prepared 25 page legal briefs and 45 minute oral presentations concerning the river's development and waters.

Nearly 300 teams consisting of two to five students each began the competition last December in regional rounds, and approximately 60 teams will participate in a series of final rounds in Philadelphia April 3-7. On April 8 at the United Nations, the top two teams will compete for the silver Jessup Cup, which will be displayed at the winning school for one year. Individual members of the victorious team will receive legal publications as prizes.

Administered by the International Law Students Association (ILSA) with the co-sponsorship of the American Society of International Law (ASIL), the competition is named for the late Philip C. Jessup, a member of the International Court of Justice during the 1960s.

The team from the National University of Singapore won the 1994 Jessup cup, defeating one from the University of Melbourne in Australia.

Countries participating in 1995 include Australia, Canada, Hong Kong, India, the Philippines, South Africa, the U.K. and the U.S. among others. — USIA, Stuart Gorin

Law and Order Situation at a Glance 01 January to 31 March, 1995

Type	Number of Incident
Acid Burnt	17
Police Arrested on Various Charges	2701
Dracuity/Theft	223
Death in road/Rail Accident	747
Killing	478
Rape	31
Snatching	477
Suicide	127
Unnatural Death	554

— The Coordinating Council for Human Rights in Bangladesh