



# Law and Our Rights



I will not repeat what I had earlier said on 1 February this year in my reply to the felicitations from the Bar on my assuming the office of the Chief Justice of Bangladesh, excepting on two points.

For various reasons I had to preside over the last court of our country for a much longer period than the three months' honey-moon that ended on 30 April. Within this short span of time I managed to inspect some Subordinate Courts in Khulna, Bagerhat and Rajshahi. What struck me is the great inconvenience with which the Subordinate Courts are functioning in this country.

The atmosphere is intolerably crowded. In Rajshahi the hydraulic horn of the passing motor vehicles by the side of the court premises was intermittently obstructing the hearing to the great annoyance of the court. The high decibel of noise in and around the courts must be stopped. Courts are to be inspected more frequently. I would request the Honorable Chief Justice to see that each of the judges of the High Court Division get an opportunity to see how justice is administered at the lowest level.

The minimum number of personnel necessary for good administration of justice is wanting. Too few functionaries are tackling too many claims and complaints. Auxiliary forces for the courts' business, investigating officers, court inspectors, experts who give

## A Farewell and a Few Home Truths

by Muhammad Habibur Rahman  
Former Chief Justice of Bangladesh

opinion on left thumb impressions and handwritings etc., doctors who hold postmortem examination, chemical examiners who give opinion on examination of blood, viscera etc., the survey-kivcing Advocate Commissioners who hold local inspection of disputed properties or effect partition by allocating shares in the partitionable properties are disconcertingly inadequate. The lack of necessary personnel and logistics is a serious cause for delay in justice.

Behind the off-repeated saying 'justice delayed is justice denied' there are a series of frustrating obstacles. The number of cases pending in the courts is alarming no doubt. But considering the total population of the country,

### Today or tomorrow we shall have to separate the judiciary from the executive.

huge number of claims abandoned by disadvantaged people and the number of cases pending in comparable jurisdictions in the neighbouring region or in the far-off countries like

called as the officer of the Court and who prides on this appellation owes a greater duty to Court. 'Court's convenience' is an expression often found in notices etc. In their applica-

### What struck me is the great inconvenience with which the Subordinate Courts are functioning in this country.

tion for adjournment, most of the learned lawyers, I am sorry to say, are oblivious of Court's convenience. The Hon. Chief Justice Afsar as the Chairman of the Committee on the causes of delay had given us a very helpful report. May I request him to make a sample survey in both the Divisions of the Supreme Court for what reasons and on what prayers and by what kind of lawyers cases are adjourned time and again. Apart from personal difficulties which can be numerous the reasons for adjournment are that the learned Advocate has gone abroad, he is not in Dhaka etc. as if he does not keep a diary of his own cases.

The Court is compelled to

grant adjournment, because instead of praying humbly the learned Advocates often take recourse to Dharna (sit in) that intimidating approach that is purveying through all

kinds of irregular harkats in this country. In one case after granting several adjournments, a prayer for further adjournment was refused. Subsequently in my presence the Court was described as the Munsif's Court. The great word 'insaf' is associated with the Munsif. I do not think the image of the Supreme Court will diminish if it is sarcastically called as the Munsif's Court. Many Munsif's decisions had been upheld by the Privy Council. Thanks to the industry and wisdom of the Munsifs the tenants' limited rights could be protected in this country. The peasants of this country and most of us are their sons and grandsons have got the first taste of empow-

erment from the decisions of the Munsifs. We are now only trying to extend the frontiers of remedies, earlier initiated by the Munsif.

My first reiteration of what I said on 1 February, I shall never tire reiterating the judiciary is to be separated from the executive. It is unfortunate that none of the two bills pending in Parliament will be an Act and, will see the light of the day. In a power game an important legislative proposal has gone lost. In the international world of law there is a persistent demand for separation of the judiciary from the executive and today or tomorrow we shall have to separate the judiciary from the executive. It will be a matter of great regret that the separation of judiciary from the executive will be done not because of the talent, wisdom or good wishes of our parliamentarians, but at the behest of the donors and international human rights agencies.

My second reiteration and I shall never tire reiterating it. In all activities of the State including adjudication by the Supreme Court the State language Bangla should be used. When the complicated question of constitution-making can be done in Bangla, I fail to understand why mundane legal disputes cannot be decided in Bangla. I said on 1

February that 'By learning the law in other people's language we do not achieve that easy ambience that naturally comes to those who learn the law through the medium of their mother tongue. Our contribution in jurisprudence is very little.

In England, English students and lawyers are reported to have been failing to pronounce the Latin word 'centorari' correctly. There are demands in that country to banish Latin, and to write laws in simple English so that the members of the public may have an easy access to law. We have changed the English spelling of Dhaka out of nationalistic pride. Whom are we kidding? There is a feeling that if decisions are written in

### I fail to understand why mundane legal disputes cannot be decided in Bangla.

Bangla, no one outside this country will read them, as if the whole world is awaiting them. I found no law journal in libraries of some of the countries with whom we have con-

siderable business interest. On my personal survey I have found out that my brothers do not subscribe to my views on the medium of court language. Out of great brotherly sympathy none of my brothers has, however, joined issues with me. I understand their difficulties. I also understand no one will opt for Bangla voluntarily. There must be a legislative compulsion if the people of Bangladesh think that it will be beneficial for all to use Bangla in the affairs of the Supreme Court. My views are for tomorrow. Today we shall somehow do our day-to-day job.

In human history there has never been such a great striving to seek protection of the law. This is a good news for the lawyers. It has, however, exacerbated the anxiety of the courts. In the next century, litigation will grow by leaps and bounds. A great challenge is awaiting the Bench and the Bar.

That challenge is to be met with the help of new-found court management techniques, changing old laws and introducing easier procedures.

I wish Godspeed to Hon. Chief Justice Afsar. I am sure the learned Judges of the Supreme Court and the learned members of the Bar will strengthen the hands of the Hon.

This is an English version of the reply to the farewell accorded to Mr. Justice M. H. Rahman, the outgoing Chief Justice, on 2 May, 1995.

## Uncovering the Dark Deeds of '71

by Lamis Hossain

"NOT there," Luthur Rahman stated simply as he was confronted with serious allegations of atrocities during the 1971 Bangladesh Liberation War.

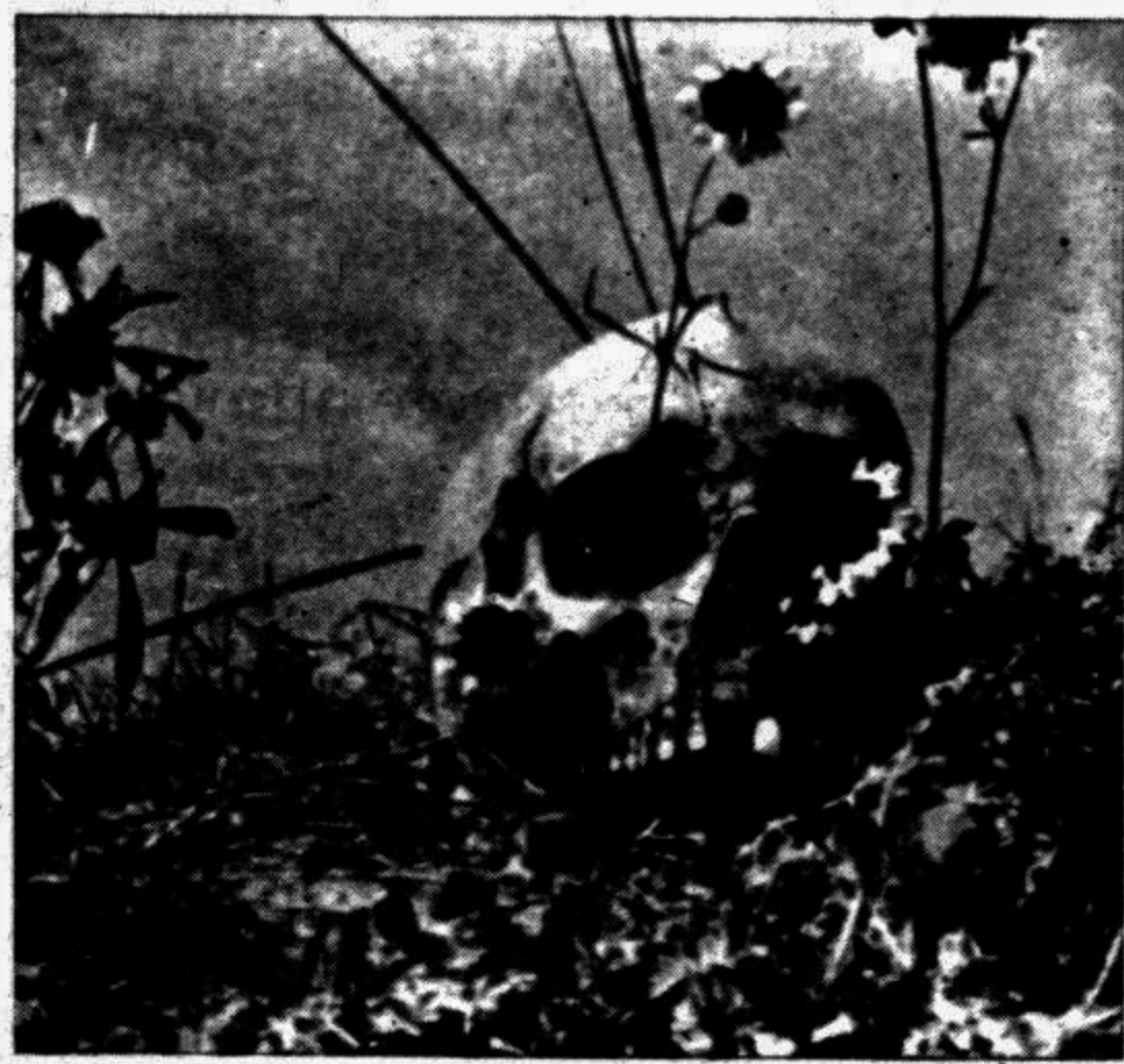
Abu Sayeed and Chowdhury Mueenuddin charged with equally grave offences by a television reporter in England, were just as succinct. One of them only gave a brief written statement that the allegations of war crimes were racially motivated and malicious.

The three men are the focus of a 50 minute documentary film entitled 'The War Crimes File', prepared by twenty-two productions and broadcast in the UK on May 3rd on the Channel Four programme. Dispatches. The film was also shown to a select audience in Dhaka on May 8.

The film produced by Gita Sahgal is the culmination of nine months' research in Britain and England. The documentary is in part a response to the demands of the British Bangladeshis. The film claims that it has gathered massive data on the war time atrocities committed by these three men who are now residing in England as British citizens and prominent leaders in their respective communities.

Chowdhury Mueenuddin is alleged to have been involved with the Al Badr, a paramilitary death squad which collaborated with the Pakistani Army. He is alleged to have been the Operation in Charge responsible for targeting and killing intellectuals such as Shahid Munir Chowdhury, Shahid Mufazzal Haider Chowdhury and Shahid journalists Sirajuddin Hossain and Golam Mustafa in Dhaka. He is now the leader of the Islamic Forum Europe which is the European front of the Jamaat-e-Islam, the president of the Young Muslim Organisation, and a trustee of Muslim Aid.

Abu Sayeed also alleged to be a war criminal is now the imam of East London and the principal of Islamia College in Britain. It is alleged that a fatwa pronounced by him against the Awami League



incited incidents of torture. Luthur Rahman is the imam of a Birmingham mosque.

The film reported by David Bergman, makes extensive use of eyewitness accounts from Shahid families' people who knew the alleged war criminals, and those who were on the spot at the time of certain alleged atrocities.

The documentary visits the actual spots of the occurrences and reconstructs some of the disturbing events. Blood curling film footage is used sparingly but effectively. The viewer is taken to the site where the bodies of victims were dumped. Survivors of horrific scenes of mutilation and killing. Witnesses also claim that mass rapes were organised by Jamaat and Al Badr.

Some of the little details recalled by those interviewed are chilling. Journalist Atiqur Rahman remembers giving a false address to Chowdhury Mueenuddin when asked for it. His suspicion of Mueenuddin saved his life. This false address, given only to Mueenuddin, was later found

on an Al Badr hit list of intellectuals.

The fact that some of the eye witnesses preferred to remain anonymous for fear of reprisals also spoke volumes about the collaborators.

The film itself received mixed reactions in the UK. Relatives of Shahid families who gave eye witness accounts were congratulated. A taxi driver apparently commented, "I did not know that these people were in our midst. If I knew, I would have shot them."

Most significantly, in the latest turn of events in England, Mueenuddin has been removed from the post of housing officer in his area by the very same Bengalis he once served. There was also a demonstration in London on May 9.

On the other hand, some including fundamentalists, sent in letters of complaint in response to a Channel Four press release. They claimed that the film was racist, and politically motivated. Others apparently thought that it was yet another way to divide the

Asian community in England, especially the Pakistanis and the Bangladeshis.

Has this film then served any purpose? Why focus on these three individuals in Britain, when there are collaborators living openly in Bangladesh? Members of Projonmo 71 said that they hoped the film would remind people of the genocide of '71. They would like to disseminate this film throughout the country preferably dubbed in Bengali. They are also planning to take appeals to the British High Commission in Dhaka and the Foreign Ministry on May 21.

The truth is that the present political situation probably means that the chances of holding war crimes trials here are very slim. Enayetullah Khan commented on camera that it is 'our national failure' that war criminals have secured influential positions in our society.

On the other hand, if there is sufficient evidence, the alleged criminals may possibly be tried in Britain under the 1957 Geneva Convention Act passed by parliament. Lord Archer stated that there could be 'no sanctuary for war criminals'. The fact that these individuals are British and are alleged criminals living in Britain may be an added incentive for prosecution there. International jurisprudence clearly states, 'Crimes against international law are committed by men, not abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.'

Whereas the Jewish community would never allow the holocaust to be erased from the world's conscience, we seem only too willing to bury the events of '71. If trials are not held in the near future, the eye witness accounts and the evidence will start losing credibility, with the passage of time.

The war crimes files now rest with the British authorities. Ironically, the ultimate decision to prosecute lies with them.

## Can the Police Protect Our Lives?

by Zaved Hasan Mahmood

A state should be responsible for keeping the law and order situation in the country. A specific law enforcing agency, the police authority is empowered for this purpose. As for the provisions of our constitution, equal protection of law has been guaranteed for all citizens.

But some recent facts and events which have occurred in the country bring many questions to our mind: Does the state authority really perform its responsibility to its citizens? Can the state ensure the constitutional rights of the people?

### Shamsur Rahman's Cancelled Visit

Leading poet of the country Shamsur Rahman, canceled his programme to visit Sylhet for a reception organized by the people of Sylhet. The fanatic fundamentalist group named 'Mortadh protherodh committee' recently announced that they will oppose poet Shamsur Rahman from entering Sylhet at any cost. On April 18 and 19, this group created anarchy in whole Sylhet town. They attacked politicians, cultural activists, with sticks and arms, hurled a petrol bomb at the house of Mr Supri Chakrabarty, treasurer of the reception committee. They forcefully occupied the Sylhet District auditorium, which booked the reception programme and destroyed the stage of the auditorium. But all these socially destructive events were allowed to take place under the eyes of the police. Even after two days of continuous anarchy, the police authority did not take any action against 'Mortadh protherodh committee', and did not arrest anybody. Moreover, as a matter of fact, Deputy Commissioner of Sylhet himself told the leading poet not to go to Sylhet.

### Shrimp Farming and Terrorism

In the greater Khulna District, many unexpected events have been continuously happening for a long time be-

cause of unauthorized 'golden' shrimp cultivation. In some areas of Khulna, unauthorized unplanned shrimp 'ghers' have been built by the muscle powers which destroy the law and order situation of the southern part of country. Recently news and reports have been published in the national dailies on the Batiaghata incidents.

Batiaghata is an administrative unit (thana) of Khulna District. Three Unions, including Amirpur Union, have been badly affected by the terrorists from outside the village. Last year, on September 26, one Zaber Sheike (member of Amirpur Union Council) died from a bomb attack. He was very vocal about the negative effect of unplanned shrimp cultivation in his area, and organized a 'peoples' movement against unplanned shrimp cultivation and terrorism in Amirpur. Following Sabar's death, the whole law and order situation has collapsed. But the local police authority did not take any effective action against the terrorists.

On studying the complaints lodged and FIR it will be seen that 100 to 150 persons were specifically charged and in some cases, along with the names of the specifically accused, two or three thousand unknown villagers were also mentioned; thus accusing the whole village. It was alleged by many villagers that even where the accused were specifically charged, police were arresting innocent villagers haphazardly. This has resulted in the whole village becoming deserted with all the male folk going into hiding. It is also alleged that when innocent villagers went to institute cases against the terrorists, police refused to cooperate and instead arrested them under charges of previous false cases where villagers were directly or indirectly accused. This made villagers shout angrily and say, 'Does our country belong to Khasheem and his gang?' Can the authority answer his question?

On reading the above mentioned case studies, one obviously questions the role of the

### The Story of a Kidnapped Girl

Hasina Begum, daughter of one Abdul Aziz of Lohagara Thana of Chittagong District, is an SSC examination candidate. She came under threat when she refused to marry one Sirazul Islam before completion of her study. Sirazul Islam, son of Sufi Ahmed of Shatkania thana, recently returned from Saudi Arabia. After Hasina's refusal, Siraz continued to pressure her to marry him, or else he openly threatened that she would be kidnapped. On 4th January at nearly 7pm, a terrorist group led by Siraz kidnapped Hasina at gun point. After 17 days, police rescued Hasina from Comilla and arrested Siraz from that place. But after release from jail on bail they again threatened her, and unfortunately the police took no action. Recently in a press conference, Hasina sought security for her family and herself. She helplessly stated, 'Do I have no right to protect myself? Do I have no right to live independently in this country just because I am a woman?'

### Torture of Children

According to a report of April 13 published in a leading daily, 2 police constables of Shahabzbad thana tortured two innocent children. On the night of the 13th, the children Shuman and Sawkat went to the house of police constable Shahidul to watch TV. The constable called the children home and tortured them all night by pricking needles and applying electric shocks. When he sent the bleeding children back home in the morning, the parents went to the house of the constable. He beat them up and demanded Tk 2000 for the pistols he claimed the children stole. But yet no action has been taken against the police.

### Conclusion

On reading the above mentioned case studies, one obviously questions the role of the

law enforcing agency. The one-sided and partial activities by the police authority make us ask whether they are actually working for the people or are emerging as a protective body for terrorists, fundamentalist groups and socially destructive forces. The Penal Code, Criminal Procedure Code and the Police Act specially lay down the duties, rights and responsibilities of the police. How can people rely on the police force or trust it when instead of materializing its duties to the people, the police authority itself plays an anti-people role?

Section 23 of the Police Act 1861 clearly states that a police officer is duty bound to take all measures, to ensure peace and discipline. It mentions that it is a police officer's duty to prohibit disruption of peace or to take measures to stop possible disruption of peace. One of their duties is to collect information regarding the law and order situation and report accordingly.

There is provision for punishment in all government and non-governmental administration for wrongdoers. Will the present concerned administration take any measures to punish the wrongdoing police who help to break down the whole law and order situation of the country? The administration may be reminded that the Police Act of 1861 provides the grounds for punishment of errant police officers.

One of the main reasons for the emergence of fundamentalist forces and terrorist groups in recent times is the debated role played by the police authority. If the present democratic state can do nothing to improve the situation, history has shown us that, when people are fed up, they will take it upon themselves to improve their situation. That time is not so far away.

The writer is a lawyer and member of Ain O Salish Kendra and Odhiker—a coalition for Human Rights.

THE year 1994 witnessed how the mighty pen suffered at the mercy of the sword of religious and social dogmas and how often the Bangladeshi journalists, writers, printers and publishers were harassed, intimidated and even assaulted.

The year was also marked by the country's print media locked in horns with one another. The sharp division was between those taking a liberal stance and those publicising the political issues of the Islamic religious extremists.

The road to the right of freedom of speech and expression was not flowery. Newspaper offices were bombed and ransacked, newspapers seized and set fire, journalists were beaten up, arrested, and sued, and hawkers suffered attacks while selling newspapers.

Religious edicts were served on writers, death threats were issued against them, and cash prizes were offered for their heads.

Besides, the year 1994 also witnessed sharp political divisions among the journalists and a continued rift between two or more of a number of journalist trade unions.

In all the cases, the only casualty was the professionalism of the media that was trying to grow under the shade of a free and democratic society.

The Government stopped advertisements in a number of newspapers, which carried a regular blank space in their eighth columns in protest. Leaders of the Dhaka Union of Journalists (DUJ) condemned the Government and said such a decision was a clear violation of democratic rules. The Government advertisements, a major source of newspaper revenue, were stopped to control those newspapers which

## Mighty Pen at the Mercy of the Sword

took strong positions in criticizing Government activities. A large share of Government advertisements went to the State-owned newspapers and those who supported the Government.

The best and most widely known case of intimidation is that of Eshma Nasrin, the doctor turned feminist writer, who had to leave the country to escape continued threats to her life.

Professor Ahmed Sharif, a former teacher of Bengali at the Dhaka University, became another victim of religious dogma because of his secular position and a printed address of his which he was not allowed to read. Several bombs were hurled at the residence of Prof. Sharif on 16 June in Dhaka, apparently as an out-

come of earlier threats to his life by Islamic fanatics. Three books and a film on the liberation war were banned by the Government.

One author is serving his second six-month term in jail under the Special Powers Act. Because of his defense of the universality of human rights in many publications, Father R. W. Timm's Bangladesh visa has been held up all year. He cannot even leave the country, much less re-enter. He was also attacked frequently by the fundamentalist press.

A Japanese journalist was banned from entering Bangladesh at Dhaka airport on 14 February, even though he had a 6-month Bangladesh visa. He had visited Bangladesh previously with visa and, with permission, the Chittagong

Hill Tracts. After two days at the airport, he had to leave.

State-owned electronic media—Radio Bangladesh and Bangladesh Television—and the official Bangladesh News Agency (Bangladesh Sangbad Sangsthal), continued to operate under strong and direct control of the Government in 1994. Some of the reports of these media came under severe criticism because of almost no or biased coverage of the activities of the Opposition political parties.

The State-run Bengali daily Dainik Bangla and English daily Bangladesh Times also operated under control. However, Government's intervention in the private-owned newspapers was less compared to earlier years. The 'mid-night press advice' from the Government,

a phenomenon which took a menacing shape during the rule of deposed president H. M. Ershad, was absent as newspapers fiercely fought back in the changed political circumstances.

Interestingly, some of the newspapers adopted an 'internal self-censorship' while reporting, mainly on the 'newspaper holy cows', apparently because of their inexperience in working under increased freedom.

The conflict between the liberal and conservative forces in the Bangladeshi media stated in May, 1994 and reached its height in June and early July, 1994.

However, the tension eased after July with the fluid political chemistry of the country taking a definite shape.

The journalists, writers, editors and publishers who took the humanist and liberal path were often tagged as 'un-Islamic', and newspapers like the Dainik Janakantha, Sangbad, Bhorer Kagaj and Ajker Kagaj came under attack from the religious fanatics.

These newspapers had to suffer most, because they highlighted the development initiatives by the NGOs and reported on the progressive social forces.

Newspapers like the Dainik Inqilab, Sangram and Meilat, who prominently displayed the causes of different Islamic groups, often called for violence and attacks against their opponents.

Activists of different religious groups attacked buses carrying newspapers to the outlying areas of the country. They snatched and burned the newspaper copies, threatened the newspaper agents and de-

clared those newspapers banned in the locality.

### Conclusion

Intolerance continued to mount in 1994 as the country's media became subject to repeated violence. Media, being the most public of all organisations, suffered under attacks of not only mobs, but also from a section of political forces who were not satisfied with just rejoinders against the newspaper articles they did not like. Sometimes, police protection and the Government's pronounced assurance to safeguard the media became very inadequate.

from the State of Human Rights in 1994, the Annual Report of the Coordinating Council of Human Rights in Bangladesh