Law and Our Rights

Meetings, Processions and Demonstrations on Populous Urban Roads, the Right and the Restrictions

Can organised strength of large number of people override the ordinary civil rights of other? Isaac Robinson urges to find out a way to reconcile the conflicting rights of the urban citizenry

IN a democratic society, one of the most important rights of the citizen is the right to assemble and participate in public meetings and processions. In urban areas most of the public meetings, processions and demonstrations are conducted on public roads. It is highly unlikely that any person visiting *Motijheel, Paltan* and *Topkhana* areas even for a shortest period of time in working hours, would not come through some sorts of public demonstrations.

In spite of our realisation that the right to assembly is a very important fundamental right of the people, many people in the urban areas are fed up with such a right simply because they cann't any longer suffer the agony of being trapped in populous urban roads.

Meetings, processions and demonstrations are the means of expressing views of an organised group. Nobody can defy this right of the people as since the absence of any such right would struck down the very existence of democracy. Even then, it is equally true that the ordinary citizen have the right of passage along the highways or to enjoy the property which abuts the public streets. It is civil right of every citizen. No group, whatever is the number and strength, has the right to strangulate the ordinary civil rights of others.

The Constitution of Bangladesh bears similar spirit. Though the right to assembly is made a fundamental right, violation of which can be cured by the highest court of the land, it is a right subject to certain restrictions. Right to assembly can be restricted in the interests of public order or public health.

The necessary implication of the proposition "in the interest of public order" is that the right to assembly cann't override the ordinary civil rights of other people. Yet we do not see that civil rights of the people are protected from being trampled by the organized strength of some other.

Ironically we are habituated with two extreme peculiar situations. In the first place we are familiar with situations where the right to assembly is completely restricted by reason of suspension of the Constitution or a part of the Constitution at time of Martial Law or Emergency; And in the second place, when the right is restored, we exercise it without caring for the civil rights of other.

The right can be harmoniously exercised if the organisation and the people involved in the demonstrations make it sure that demonstration doesn't cause blocking of useful roads. Let us first see how the right is exercised at present.

These are only some major events of the day. This is not a special day. Rather this is like the other days when roads are blocked to facilitate processions and meetings conducted by political parties, religious congregations, trade unions, student fronts etc.

As said earlier the right to assembly, as envisaged in the Constitution, is made subject to public order. This is a universally excepted restriction. For example though there are no such restrictive provisions in the Constitution of the United States, the United States Supreme Court has held that the privileges and immunities conferred by the Constitution are subject to 'Social Control'.

Similarly, in England, it does not amount to a common law nuisance to march or conduct a procession through the streets of a town so long as the procession allows other people reasonable room for passage and behaves in a non-violent and sensible manner. But the experience in Bangladesh shows that a procession usually doesn't allow any vehicle to pass through it, and very often it turns into a violent one. Even a gathering of fifty to sixty people tends to block one side of a road.

It is not law that only can change the situation. It is the civic sense of the demonstrators that can reconcile the conflicting rights of the demonstrators and ordinary urban people.

We should not, however, overlook the limitations of the political parties. In Dhaka there is no open ground for holding public meeting. The racecourse at *Ramna* was used for public meetings for a considerable period of time. But meetings are shifted from racecourse after the government had set up *Shishu Park* at that place. Pressure on busy roads can be eased even now, if the government helds some places for public meetings. *Osmani Uddan, Parade Square* and other grounds of the city can be opened for public meetings.

In England, there is the Public Order Act 1936, which any is made for the preservation of public order on the occasion of public processions and meetings in public places. So far our law is concerned, the main restriction is to be found in section 144 of Cr.PC. Under section 144 of the Code of Criminal Procedure, power is vested to the magistrate to restrict assembly of people at same specific place for a particular period of time, if he thinks that there is any possibility of breach of peace. That is, however, a different matter. We are, for the present discussion, confined to processions, meetings and demonstrations which though otherwise peaceful, are causing extreme hardship to general people because of these being conducted in populous areas at a high rate.

For the purpose of holding public meeting in a particular place prior permission is required to be taken from the authority under who's control the road belongs. Thus for holding meeting at *Manik Mia Avenue*, permission should be obtained from Dhaka City Corporation for use of the road for a specific period of time. Similarly permission is required from the Dhaka Metropolitan Police authority for using microphone at the meeting. Usually these authorities grant permission with some restrictions, though these restrictions are hardly followed.

The discretion to grant permission for use of microphone is a important power vested on the police authority. In fact no public meeting is possible without using microphones. But unfortunately we do not see DMP use the power objectively for the purpose of preserving public order.

Rather the power is sometimes used subjectively. In a recent example the Dhaka Metropolitan Police cancelled permission to use microphone at *Manik Mia Avenue* by a NGO of grassroot people. The Organization first obtained permission from the DMP authority and while all the groundworks of the meeting were complete, the authority arbitrarily cancelled the permission without showing any cause. The action of DMP was challenged before the High Court Division of the Supreme Court and DMP subsequently granted the permission again.

It is clear then that instead of using the power for preventing breach of public order, the authorities tend to apply the power subjectively even in cases, where there is no probability of breach of public order.

That is the reason for which we cann't suggest that there should be hard laws for the purpose of preventing public disorder. Because that might lead to gross abuse of the power, as it is always happening in Bangladesh.

Isaac Robinson — General Secretary Law Review, member Ain-O-Salish Kendra.

One Day's Picture of Motijheel and Contagious Areas

Date-Sunday 14th January 1996

Time	Place	Nature of Demonstration	Road Blocked and Jammed
6am to 12:30 pm	Inner Circular Road	Inauguration of Islamic Bank Training Institute by the President of the Republic	Bijoynagar to Fakirerpool
2pm to evening	Baitul Mokarem South Gate	Meeting of Islamic Sasantantra Andolon	Topkhana Road, Dainik Bangla Crossing, Gulishtan, Bijoynagar
Evening	Naya Paltan	Condolence Meeting, JASAS.	Fakirer pool, Inner Circular Road, Kakrail

Discussion on Emergence of Bangladesh and International Recognition

Effective Governance Prime Consideration for International Recognition of Emerging State

"During the nine months of war of liberation, what Mujibnagar Government projected to the international communities was not, that the government should have been given power to run the country, but that the legitimate government had not been allowed to run the country" — commented Barrister Amirul Islam, one of the closest associates of the Mujibnagar government, in an open discussion organized by Law Review.

Lawyers, teachers and students of University of Dhaka attended the discussion on 'Emergence of Bangladesh and International Recognition' held on January 12 at the premises of Nari Grantha Prabartona.

Under international law, no emerging state can expect recognition until it can prove that it has established effective governance in the territory or at least in a part thereof. From that point of view Bangladesh has laid down a unique example. Apart from the case of Bangladesh there was no other emerging state, said Barrister Islam, where a government could govern more effectively without having formal executive authority. In fact from the beginning of March 1971, every directions what Bangabandhu made from his residence had become the law for the nation and there was scrupulous obedience of the law. Such a spontaneous obedience was the evidence of effective governance, a very essential prerequisite for recognition under international law, which the exile government had always referred to when it pursued foreign states for obtaining support for Bangladesh.

Another great success of the Mujib Nagar Government was the abstention of Indian army's direct intervention until December 1971. Had India intervened earlier, that would definitely serve Pakistan's purpose of internationalising the war. The consequence of which could be a ceasefire and a division of the land into Pakistan occupied territory and Indian troops occupied territory — a virtual denial of the dream of millions of martyrs.

In the opening speech, Dr Mizanur Rahman turned recognition as a matter of political consideration of a state. Under international law, no state has a right to recognition. Every new state has to obtain recognition from other state which too depends on the political consideration of the state giving recognition. And that is why Bangladesh was not recognised by some of the Middle Eastern countries until the tragic change of government in 1975.

Professor Abrar Chowdhury argued that what is just for a nation should be decided by that nation. No state or organization having vested interest should be allowed to regulate the aims and aspirations of a population fighting for self determination. Advocate Z.I. Khan referred to the historical background of the liberation struggle and chronologically discussed how the six points demand of 1966 turned into one point demand in a span of five years time.

The discussion programme was followed by the screening up of a documentary film "**Major Khaled Mosharraf at War.**"

British Asians and Immigration

by Manzoor Hasan

The Economist (9-15th December 1995) wrote in its editorial "No rich country can open its doors to all immigration; Nor is the same policy suitable for all countries at all times. The correct degree of control depends on what is going on inside a country (how the economic and social arguments for and against immigration balance out) and in the outside world (how much economic hardship or political oppression abroad is driving people to seek refuge elsewhere). Neither consideration argues for a tightening of policy in Britain".

The Immigration and Asylum Act in force is harsh enough as can be seen from the very high refusal rate by the Home Office of the political asylum applications, for example, 99 per cent of all the Nigerian political asylum applications were turned down by the Home Office in 1994. The present proposals for further restrictions have been condemned by various church and welfare organisations in the UK. This intolerance on the part of the British Government has to be seen in its historic context.

Over the last couple of centuries the British have in turn colonised other parts of the world. The members of those colonies became known as British subjects, and to give its full title, "Citizen of the United Kingdom and Colonies." That title carried with it the automatic right to enter the United Kingdom without any immigration control.

Even after the decolonization of Indian Subcontinent and the creation of India and Pakistan, the British nationality law, as enacted by the British Parliament in 1948, allowed citizens of those two independent Commonwealth countries to enter the United Kingdom "without let or hindrance."

However, during the 1960s the government of the day enacted various legislations to restrict the number of people coming from the new Commonwealth countries. The preamble to all these legislations is forthright on one issue: that the system of immigration control is colour blind, that is, immigration control will apply irrespective of one's skin colour. But let me set out one example of this hollow assertion. The quota-voucher system introduced in the 1960s aimed at the East African Asians. In spite of being British subjects: Citizens of the United Kingdom and Colonies and not being at the same time citizens of any African countries, these East African Asians could not come to the United Kingdom other than without one of these quota vouchers. The argument went that these East African Asians could go to their countries of origin, that is, the Indian Subcontinent. Contrast this with the provision applicable to the citizens of the Commonwealth countries generally: a Commonwealth citizen who wishes to take or seek employment in the United Kingdom does not require a work permit upon proof that one of his grandparents was born in the United Kingdom (paragraph 29 of the House of Commons Statement of Immigration Rules 169). In reality this provision is of no use to those East African Asians because very few of them will have a grandparent who would have been born in the United Kingdom. It will be the grandchildren of the citizens of old Commonwealth countries (Australians, News Zealanders and Canadians) who would benefit. The pronouncements may be colour-blind but in practice it is blatantly discriminatory.

Over the last fifteen years we have heard from politicians the virtues of many things, but prominent among them is the sanctity of family life. But when it is to do with the family life of Asian men and women it is a different matter altogether. Men who have been in this country on their own for decades who then decided to bring their families over faced an uphill struggle. During the 1970s and 1980s a very high percentage, at times nearly 70 per cent, of such family applications were turned down on the grounds that the children of those families were not related as claimed. By the time DNA genetic "fingerprinting" became available to conclusively prove that the Home Office were wrong in more than 90 per cent of these family cases, it was too late for many of these children. The reason being that the immigration rule has fixed the out off age for dependents to be 18 and by the time DNA genetic fingerprinting became available many of these children were over the age of 18.

A similar injustice is being applied to Asian women. When women marry overseas and apply for their husbands to come to the United Kingdom the most common ground on which these applications are turned down is that the primary purpose of such marriages is immigration. It is a difficult concept for anybody to appreciate including lawyers and judges. Much litigation has taken place on this point and the case law is not clear cut. To put it crudely, if it is considered by the British High Commission that the main motive for the husband in applying to come to the United Kingdom is that of entering the United Kingdom and to seek employment for the betterment of himself and/or his family in his own country then he could be refused under the "primary purpose" rule. The assessment is purely subjective. Many women have been living apart and some, until recently, single parent families. A "concession" has been granted by the Home Office, faced with the pressure from the European Court of Justice and the European Commission of Human Rights. Men will not now have to satisfy the "primary purpose" rule if either they have been married for five years or more or they have a child from the marriage. It is unfortunate that a couple can only be reunited by the procreation of a child and not the production of a marriage certificate. Women are naturally resentful of this dilemma. These policies are not conducive to harmonious race relations in spite of assertions such as "firm and/but fair immigration control is good for race relations." The recent troubles in Bradford are just an indication of the alienation that many Asian youths feel despited being born and brought up in the United Kingdom. Politicians are being short-sighted and this could only be damaging in the long run.

The significance of the concept of the British subject was finally reduced by the Nationality Act 1981. The same legislation classified the former British subjects into a number of sub-groups: the best being that of British citizens who are not subject to any immigration control.

These people are confined to those who were born in the United Kingdom, or registered or naturalised in the United Kingdom. But other British passport holders, such as those who are known as the British Dependent Territories citizens and British Overseas citizens, are subject to full immigration control similar to any foreign nationals. But contrasts the situation of certain Commonwealth citizens, who are not even nominally "British," who are free from immigration control altogether.

These, on the whole, are citizens of "white," Commonwealth countries whose parents were born in the United Kingdom and Islands.

Deportation has always been a continuous worry and fear for both recently arrived Asians and other immigrants who do not have British Citizenship. Many men and women have to seek shelter in temples, mosques and gurdhwaras in order to convince the Home Office that they should not be deported when their marriages have broken down within the first year of the relationship. Political asylum is another area of controversy. In cases involving persons fleeing their own countries from fear of persecution, the Home Office have applied the United Nations Convention on Refugees (1951) extremely restrictively. In a case involving a Sri Lankan Tamil the High Court found that the Secretary of State was in contempt of court in returning that person to Sri Lanka in spite of evidence of fear of persecution. It will be hard to find a single case where the Home Office have granted political asylum to a person from Punjab. The British government has opted out of the Schegen Treaty in order to keep the immigration machinery under its own control. Mrs (now Lady) Thatcher in her infamous Bruges speech spoke about the four dangers: terrorists, drugs, AIDS and illegal immigrants. There are many from the Indian Sub-continent who have been settled in the United Kingdom but have decided not to obtain British nationality and are now in a disadvantageous situation. They are unable to enjoy the benefit of the Single Market as they are subject to full immigration control at the borders of all the European Union countries. The 12 million settled non-European Union nationals cannot enjoy freedom of movement. The Asian doctors in the United Kingdom with non-UK degrees cannot practise in other European Union countries but doctors from EU countries are being invited to come and work in British hospitals in spite of the fact that they speak very little English!

It is about time that the British Government had a closer look at these inequities and tried to redress them in order to promote genuine race relations within the country and to revive the special relation with the countries on the Indian Sub-continent.

Manzoor Hasan — Barrister-at-Law

Lawscape

SC's order in India, Canada to prevent humiliation of rape victims.

Indian Supreme Court ordered on 17 January that rape cases to be tried behind closed doors to prevent humiliation of victims in open courtrooms.

A double-judge bench of the Supreme Court made the decision after overturning a state High Courts acquittal of three men who had been charged with raping a 10-year old girl. The three were jailed for five years and fined 5,000 rupees each.

While ordering in-camera trials the judges said they had taken note of a lot of criticism of the treatment of such victims of sexual assault during cross examination.

The judgement also made observations that the defence counsels question victims repeatedly to trick them into making inconsistent statements.

In a similar development, the Supreme Court of Canada made an order in December 95, directing press and mass-media, not to publish name and address of the rape victims without their consent. Before the judgement of the Court there was a consensus in Canada to that regard. Now after the judgement the Courts order constructed a legal basis of the consensus.

Our readers, legal bodies and lawyers are invited to send us factual tidbits, information, and dates for any upcoming seminars, for publication in "Lawscape".

Toying with Worker Rights

Inter Press Service

This Christmas, North American activists spreaded the message that Santa's little helpers in Asia are being exploited. **Stephen Dale** of Inter Press Service reports.

Canadian shoppers received 'Christmas cards' which carry a warning about the stuffed toys they buy.

Two prominent activist groups were telling consumers in the pre-Christmas rush that for workers who toil long hours in grim toy factories in Asia, the cuddly creatures represent untold grief and hardship.

The groups were circulating cards which carry a picture of a teddy bear peering out of a box. A tear is rolling from one eye.

Attached to the bear's legs were tags that are meant to remind consumers of the lives lost in Asian sweatshops.

"We are asking people to contact the manufacturers, to tell them that they want to buy toys that are produced under safe conditions for the workers," says Sunera Thobani, president of the National Action Committee on the Status of Women (NAC).

NAC and the Canadian Labour Congress (CLC) are pressing toy companies to sign an 11-point 'Charter on the Safe Production of Toys'. The document, drawn up by unions in Hong Kong, is calling for basic workers' rights: ventilated conditions, no physical abuse, and proper safety standards.

In May 1993, a large fire broke out at the Kadar toy company factory in Thailand, killing 188 workers, mostly women, and injuring 469 others. In November 1993, fire erupted at the Zhili Handicrafts stuffed toy factory in Schenzhen, China, killing 82 workers and injuring 42 others.

Imposing rights and standards developed elsewhere might be considered "a western imperialistic view towards practices that are considered customary in those countries."

But Sunera Thobani says the underlying problem is not the different customs but a global system of production where countries are forced to compete on the basis of the lowest possible costs, and where manufacturing is so fragmented that it is difficult to monitor.