

## Law and Our Rights

## National Security Laws in Bangladesh

UNDER the colonial rule of the British and Pakistan, laws such as the Indian Safety Act, Defence of Pakistan Ordinance, etc., sanctioned preventive detention, the seizure of property and restrictions on the press, all in the name of protecting the security of the state.

The struggle against colonial rule and for independence was deeply imbued with the aspiration to ensure the right of all women and men to a life of human dignity and to enjoyment of their fundamental human rights and freedoms. It envisaged a democratic society allowing for the full exercise of political freedoms. Within a year of independence, on 16 December 1972, the Constitution of Bangladesh came into effect. It guaranteed the fundamental rights to life, liberty, to freedom of assembly, freedom of speech and expression, freedom of thought and conscience, freedom of religion, freedom of movement, freedom of property and freedom of religion. The Constitution allowed no scope for derogation from these fundamental rights.

Twenty-six years on, we face a bitter reality: the aspirations of the liberation struggle remain largely unfulfilled and democratic rights unprotected. The survival of millions is threatened by vicious poverty. The security of the people, to live with dignity, to enjoy access to food, shelter, health and education, cannot be ensured. And yet, in the name of national security, the Bangladesh state continues to deploy repressive laws to violate political rights. Such laws violate the right to life, to liberty and to security of person; they are discriminatory in their application and they violate all safeguards against arrest and detention and the prohibition of torture or cruel, degrading or inhuman punishment. Such laws may be found in: (i) the Constitution of Bangladesh, Articles 33, 141A, 141B, and 141C; (ii) special laws such as the Special Powers Act 1974 and the Special Security Forces Act 1986; (iii) the ordinary criminal laws such as section 505A of the Penal Code 1860 and section 99A of the Code of Criminal Procedure 1898.

**Proclamation of Emergency**

The second amendment inserted a new section, Part IXA, in the Constitution. This empowers the President, under Article 141A, to proclaim a State of Emergency if he is satisfied that "the security or economic life of Bangladesh, or any part thereof, is threatened by war or external aggression or internal disturbance". He may make such a Proclamation prior to the occurrence of any war, aggression or disturbance if he is "satisfied that there is an imminent danger thereof". The President may, pursuant to Article 141B, also make laws or take executive actions curtailing certain fundamental rights, the right to freedom of movement, freedom of assembly, freedom of association, freedom of speech and expression, freedom of thought and conscience, the right to property, and the right to a profession or trade. He is further invested with the power, under Article 141C, to suspend the right to move the courts for the enforcement of any of the fundamental rights guaranteed in the Constitution.

Some level of accountability is ensured, however, by the requirement that the Prime Minister must countersign any Proclamation of Emergency and any order to suspend the enforcement of fundamental rights; and that no such declaration shall remain valid beyond 120 days, unless ratified by Parliament. However, given the reality of majority parliamentary politics, the ruling party has effectively been handed a constitutional weapon to attack fundamental rights in the name of internal or national security, its main victims being the people of Bangladesh.

**Removal of Safeguards on Arrest and Detention**

Amendments to Article 33 restricted the safeguards available to those under arrest and detention. The right of any person in custody to be informed "as soon as may be" of the grounds of arrest, to consult and be defended by a lawyer of one's choice and to be produced before a magistrate within 24 hours of arrest or detention is denied to enemy aliens and

those in preventive detention.

Article 33 further limits the rights of any person in preventive detention. It is specified that the detainees must be informed of the grounds of her/his preventive detention as soon as possible, and given the "earliest opportunity" to make a representation against the order. However, this is qualified by further provision which enables the enforcing authority to refuse to disclose such facts as it considers to be against the public interest to disclose. Effectively then, the detainees will be unable to discover the grounds for her/his detention.

**Special Powers Act 1974**

Constitutional limitations on the right to liberty have been

supplemented by specific legislation, the Special Powers Act 1974 ("SPA"), which provides for preventive detention. The use and abuse of the SPA in the name of protecting security interests has resulted in a steady pattern of human rights violations.

The SPA was enacted to "take special measures" for the prevention of prejudicial activities, for more speedy trial and effective punishment of grave offenses. It defines a "prejudicial act" as "any act which is intended or likely":

(i) to prejudice the sovereignty or defence of Bangladesh;

(ii) to prejudice the maintenance of friendly relations with Bangladesh;

(iii) to prejudice the security of Bangladesh or to endanger public safety or the maintenance of public order;

(iv) to create or excite feelings of enmity or hatred be-

between different communities,

classes or sections of people;

(v) to interfere with or encourage or incite interference with the administration of law or the maintenance of law and order;

(vi) to prejudice the maintenance of supplies and services essential to the community;

(vii) to cause fear or alarm to the public or to any section of the public;

(viii) to prejudice the economic or financial interests of the state.

These expansive definitions of "prejudicial acts" allow considerable scope for their abuse by the authorities.

The SPA allows the authorities to detain any person on the above grounds. Such detention

can extend to 6 months, and may extend beyond this period if so sanctioned by the Advisory Board. The authorities must supply the detainees with the grounds of detention "as soon thereafter as is reasonably practicable", but within a maximum period of 15 days.

Pursuant to Art 33 (4) of the Constitution, the detainees must be produced before the Advisory Board within 120 days from the date of the order, and the Board shall after due investigation, including affording a hearing to the detainee, submit its report to the government within a period of 170 days from the date of detention. There is no right to legal representation before the Advisory Board. In practice, the detainees are rarely even brought before the Advisory Board.

The SPA has been widely used to detain opposition activists, specially the members

of JSD and the Sarbaha Party under the first Awami League and BAKSAL regimes. It has also been disproportionately deployed against the hill people of the Chittagong Hill Tracts. With the passage of years, its use has increased rapidly. According to Amnesty International, 35,000 people were detained under the first Awami League and BAKSAL regimes of Sheikh Mujibur Rahman during the period from 1972 up to August 1975; 100,000 under President Zia between 1975-1981, and 150,000 under Lt Gen Ershad during 1982-1990. No accurate figures were made available of the numbers of persons who remained under preventive detentions under the Khaleda Zia regime and report-

of detention e.g. the order states that a person has been detained "to prevent him from acting in a manner against protection of public safety and law and order" while the grounds specify "preventing him from acting against the economic or financial interest of the state";

—failure to produce the detainees before the Advisory Board within a certain time;

—retrospective issuance of orders.

On 12 March 1997 Sheikh Hasina, in Parliament, ruled out the possibility of scrapping the Special Powers Act of 1974. She was replying to a question asked by an opposition member of Parliament, who called the Act "a jungle law framed by the previous Awami League Gov-

ernment" (Daily Star 12.3.97). Ironically, a High Court Division Bench recently ruled that, the detentions of four Bangladesh Nationalist Party (BNP) leaders, under the Special Powers Act of 1974, were illegal and held that each be given one lakh taka as compensation.

The Presidential Security Force Ordinance (PSFO) established a security force, to be under the direct command of the President, and to be controlled and administered by a Director who may be invested with the powers of the Chief of Army Staff in respect of operations of the force. The force may seek the assistance of other services, such as the law enforcing agencies, paramilitary forces, defence and intelligence agencies.

The force was originally intended to "provide physical security" both to the President,

wherever he may be and to the VIPs (including any head of the state or government or any person declared to be a VIP by the government). Following restoration of the parliamentary system, it was renamed the Special Security Force (SSF); its primary function is to protect the Prime Minister, the President and other VIPs. Its work also includes "collecting and communicating intelligence affecting the physical security of the Prime Minister, the President or a VIP" (Section 8). The SSF is now accountable to the Prime Minister under the present parliamentary system. The SSF are given the following powers:

Arrest without warrant any person when there is reason to believe that the presence or movement of such person at or near the place where the Prime Minister, the President or a Very Important Person is living or staying or through which he is passing or about to pass is prejudicial to the physical security of the Prime Minister, the President or such VIP and if such person forcibly resists the endeavour to arrest him or attempts to evade arrest, such officer may use all means necessary to effect the arrest and may, if necessary, and after giving such warning as may be appropriate in the circumstances of the case or otherwise so use force against him as to cause death (Section 8).

The wide and unfettered powers granted to the authorities under the SSFO are exacerbated by section 11 which prevents prosecution for such acts without government sanction.

**Criminal Laws**  
(i) Section 505A penal Code  
In 1991, the SPA provisions relating to restrictions on the freedom of the press (namely sections 2d, 3g, 16, 17 and 18) were repealed. Within months, a new section, 505A, was added to Penal Code: this provided that any person who "by words, written or spoken, or by sign or by visible representation or otherwise, does anything or makes, publishes or circulates any statement, remark or report" which threatens national security, public order, or friendly relations with foreign states or the maintenance of es-

ential supplies and services is punishable by seven years of imprisonment.

(ii) Section 99A, Code Criminal Procedure  
If the administration considers any publication to be prejudicial to the security of the state, it may take action under section 99A of the Code of Criminal Procedure to ban and seize all copies of that publication. In the recent years the government has banned several publications, including "Radar" and "Satellite", which contain reports on human rights violations in the Chittagong Hill Tracts, and "Giant" (Shame), which contained the reports of communal attacks against the Hindu community.

**Intelligence services**  
The following intelligence agencies operate to protect internal or national security: National Security Intelligence (NSI), Directorate, General Forces Intelligence (DGI), Special Branch (SB), etc. and more recently, the Special Security Force. The NSI, DGI and SSF are directly accountable only to the Prime Minister. The NSI was created by a cabinet decision in 1972; there is no statutory basis to its creation. The SB is, however, a part of the police and reports to the Home Ministry.

These agencies are intimately involved in the application of national security legislation. In many cases, detainees have been illegally kept in the custody of the intelligence services for interrogation purposes. Many cases have been reported of custodial violence against political activists by members of the intelligence services, surveillance of political, socio-cultural, development and human rights organisations is also conducted by such agencies. NGOs require prior clearance by the NSI and SB to initiate projects or appoint staff.

These agencies have placed themselves in a position beyond the reach of the law. There is no scope to discuss their activities in the national parliament.

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**Twenty-six years on, we face a bitter reality: the aspirations of the liberation struggle remain largely unfulfilled and democratic rights unprotected. The survival of millions is threatened by vicious poverty. The security of the people, to live with dignity, to enjoy access to food, shelter, health and education, cannot be ensured. And yet, in the name of national security, the Bangladeshi state continues to deploy repressive laws to violate political rights. Such laws violate the right to life, to liberty and to security of person; they are discriminatory in their application and they violate all safeguards against arrest and detention and the prohibition of torture or cruel, degrading or inhuman punishment.**

## The Impact of Religious Fanaticism on Women in Bangladesh

Continued from 31-05-97

ACCORDING to Surah Al Kalif: "The truth is from your Lord. Let him who will believe, and let him who will reject (it)". Thus, those who threaten women with doom because of behaving in a so-called 'un-Islamic' manner, who pass 'fatwa' and stone and whip women are crossing the limits and going to extremes — a thing forbidden by Islam.

Women in rural Bangladesh must be educated. Adult literacy programmes are necessary to provide not only formal education, but also to teach women the fact that their contribution in day to day life is just as important as the work done by their menfolk. The low view of women is present because women's work and contribution is grossly undervalued. Most rural poor women work very hard, and have no time for leisure. Although their work is a vital part of family economy, it is rarely valued as much as it should be. Men often do not think just how much their womenfolk contribute to the family's well being. Women must be taught that the Quran advocates women's development in that it has provisions

for women's right to earn a living, that women must be respected and not abused, that men have no right to treat women subserviently, etc.

Sometimes, the only education a rural girl-child has is religious education — where the religious teachers abuse fertile young minds by planting misconceptions and teaching young boys and girls that the sole aim of Islam is to punish non-believers. Some religious schools are serious violators of human rights, not only depriving the children of the right to a proper education, but also by inflicting inhuman punishments on them, like keeping young boys in fetters for days on end, making them stand facing the sun, chaining them up to their desks, etc. Examples of this have been found in madrassahs in Munshiganj and Chittagong and have had a wide coverage in daily newspapers. This has to be stopped. Women and children should be taught — in either NGO run schools or in 'alternative' madrassahs, that Islam is not a religion of punishment and suppression. This sort of education should be for every Muslim in Bangladesh, as abuse of women is not restricted to the rural areas. Mullahs,

members of the Jamaat and their supporters have also targeted women who work in the garment manufacturing industry and the system of patriarchy and chauvinism dominate the work-force and a majority of homes. There are cases where men do not allow their women to work, saying that their place is in the home with the children and to look after his needs — according to 'religion' and 'tradition'.

**The fight against corruption**  
To fight against the fatwa bazis and the vested interest groups, we also have to fight corruption. The corruption in Bangladesh society is so deep that its presence is felt by the poor in almost all their activities. Corruption in the police administration and lower judiciary means that there is no justice for the poor. According to David Abecassis "Although rural Muslims admire and respect an honest person who is not corrupt, corruption is actually accepted as a social norm. Thus both rich and poor alike do know that it is morally wrong, but this knowledge does not generally regulate their behavior to the extent of taking any active steps to resist it. This

is partly because in a society where this aspect of human relations is regulated more strongly by shame and honor — izzat — than by morality and guilt, there is no impetus to resist a social norm". Thus, for example, the family of a rape victim does not always complain to the legal authorities, as it will then become public and ruin the izzat of that family. The concept of izzat prevents families from complaining to the authorities as they prefer to go to the rural elite and imams in order to keep the incident within that particular village. Abecassis remarks "It will be impossible for the poor to create a new society in Bangladesh until corruption reduces, and this cannot be done until the social norm is changed from within". He further suggests that, at the very least, corruption must be presented to the people as a social problem which has to be eradicated as a corrupt person treats others as objects which must be exploited and not respected.

Last but not the least  
I would like to conclude this paper by taking the opportunity

by Saira Rahman

to point the difference between the fanatic and the fundamentalist and would like to stress that fatwa-mongers are not fundamentalists. Webster's Dictionary defines a 'fanatic' as "an extremist... often applied to followers of an especially religious or political party" and 'fanaticism' as "excessive zeal or unrestrained fervor especially religious or political". On the other hand, the term 'fundamentalism' denotes "a belief that the Bible is to be accepted literally as an inherent and infallible spiritual and historical document". The same definition of "fundamentalism" can be given to belief in the Quran. Therefore these two terms are completely opposite in meaning — the former meaning unreasonable zeal and the latter complete belief. Unfortunately, in modern terminology, fanatics and fundamentalists have been thrown together to mean the same extreme personality. The Western media has also played a role in giving the term 'fundamentalist' a negative meaning. Fatima Mernissi, the famous woman scholar and writer comments "... The dehumanisation of Muslims in

America and European television has, by mirror effect, a dehumanising impact on the American and European viewers. They become so frightened that their rational capacities are paralysed and only their defensive aggressive energies are brought to bear on their relations with this important part of world civilisation". Furthermore, in the terms of Ms Riffat Hassan, an Islamic scholar and lecturer at the University of Louisiana in the USA, "... the West in general... use of the term 'fundamentalism' with reference to Islam shows that this term is equivalent of emotionally loaded terms such as extremism, fanaticism and even terrorism... the term 'fundamentalism' when used by the West with reference to Muslim leaders or groups, clearly embodies a negative value judgment..."

In actual fact, the term 'fundamentalist' is a Christian term which apparently came into use early in this century. It denoted certain protestant churches and organisations, particularly those which maintained the literal divine origin and inheritance of the Bible. Unfortunately, a majority of the

world media system under Western influence, has come to accept the term 'fundamentalist' as synonymous to 'fanatic'. However, if this has to be accepted then why have we abolished the terms 'chairman' and 'red Indian' and more politically correct terms such as 'chairperson' and 'Native American'? Why can we not do the same with the term 'Islamic fundamentalist' and give it its proper identity?

I state emphatically that fatwa-mongers and the political powers behind them are not fundamentalists because they act on blind impulses and emotions with little regard to the basic doctrines of peace, tolerance and compassion enshrined in the Quran. The fatwas passed by the village imams are decidedly selfish and bias. They are either misinterpretations or extremist interpretations of the Quran. A fundamentalist — in the true sense of the word — is an educated, enlightened person having a through exposure to the Quran and who, thus, has no scope or reason of perverting it. It must be understood that the Quran is a flexible text and the

institutes of Ijmaa and Quyyas are provided for in order that Muslims use their analytical, scientific and humane sense in applying its teachings. A Muslim who interprets the term 'fundamentalist' literally will have no qualms in calling himself by such term, since a majority of Muslims do believe in the basic principles of Islam contained in Surah Al Baqarah: "It is not righteous for ye turn your faces towards the east or the west; but it is righteous to believe in god and the Last Day and the Angels and the Book and the Messenger; to spend your substance, out of love for Him, for your kin, for orphans, for the needy, for the wayfarer; for those who ask, and for the ransom of slaves; to be steadfast in prayer, and practice regular charity; and fulfill the contracts which ye have made; and to be firm and patient, in pain and adversity, and throughout all period of panic, such are the people of truth the God-fearing". Thus, in relation to Muslims, 'Islamic Fundamentalism' should mean 'The Fundamentals of Islam'.

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## Metropolitan



Md Abdul Hamid, Deputy Speaker, Bangladesh Jatiya Sangsad inaugurated the 65th Branch of National Bank Ltd at Kishoreganj, on Saturday. A M M Farhad, Deputy Commissioner Kishoreganj, Habibullah, Khalilur Rahman, M Nurul Islam, Abdul Alim, M A Reza, Directors and Md Sarwaruzzaman Khan, Managing Director (Current Charge) of the bank are also seen in the picture.

## Decision to form joint action committee to realise Wage Board Awards

A joint meeting of Bangladesh Federal Union of Journalists (BFUJ), Bangladesh Sangbadpatra Press Sramik Federation (BSPSF), Bangladesh Sangbadpatra Karmachari Federation (BSKF) and Dhaka Union of Journalists (DUJ) was held yesterday at the National Press Club, reports BSS.

The meeting decided to form joint action committees in all newspapers and news agencies for immediate realisation of the 5th Wage Board Awards with retrospective effect.

Held with BFUJ president Iqbal Sobhan Chowdhury in the chair the meeting instructed unit chiefs of DUJ, Press Federation and Karmachari Federation to form Local Action Committee in their respective organisations within the next 7 days and report to their respective federation.

The meeting advised the Local Action Committee to immediately submit their charter of demands including implementation of the Wage Board Awards and regular payment of monthly salary to their respective managements.

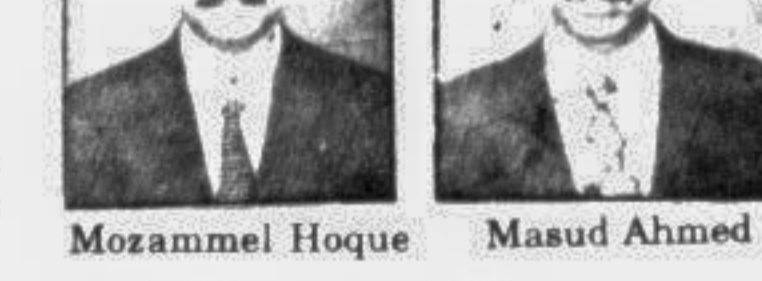
While hailing the government for announcing the Wage Board Awards for the journalists, press workers and general employees of the newspaper industry the meeting called upon the government to take effective measures for implementation of the Wage Board Awards in all newspapers and news agencies.

## Khulna dist Ansar, VDP confce held

KHULNA, June 8: Annual conference of district Ansar, VDP and TDP was held at the Zia public hall here today, reports UNB.

Director General of Ansar Brigadier M Enayet Hossain Mia inaugurated the conference at 10 am.

A total of 700 leaders and members of Ansar, VDP and TDP attended the conference.



Mozammel Hoque Masud Ahmed

## Times Press Sramik Union office-bearers

Mozammel Hoque and Masud Ahmed have been re-elected President and General Secretary respectively of the Bangladesh Times Press Sramik Union for the next one year, says a press release.

The election was held yesterday at the press section of the daily.

## Armed forces continue relief operations in cyclone-hit areas

CHITTAGONG, June 8: Bangladesh Armed Forces continued their relief, rehabilitation and medical assistance programme in coordination with the local administration and other agencies concerned at various cyclone-hit areas, reports BSS.

Bangladesh army relief and medical teams are engaged at the coastal areas while the Bangladesh navy is deployed at the off-shore islands.

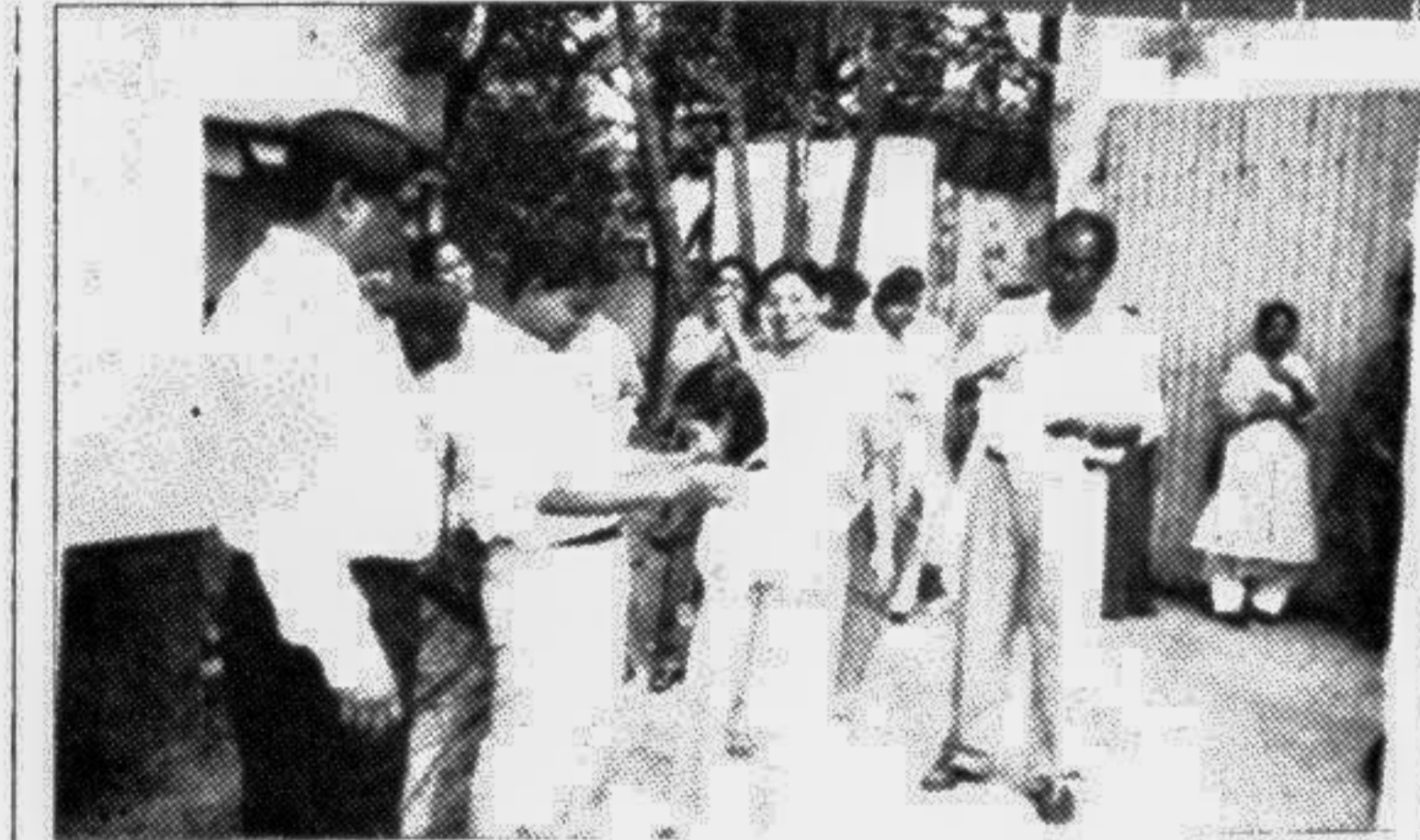
The BN personnel Saturday completed the construction of a low cost house at the St Martin's Island. The completed house will be allotted to 10 homeless families of the locality. Besides, they repaired three mosques and five houses at Kutubdia.

Meanwhile, distribution of relief goods and medical assistance programme of the BN personnel are also continuing.

## New project to be launched on June 14

A launching ceremony for the project on Legal and Judicial Capacity Building will be held in the city on June 14, according to official sources.

Officials said, the Chief Justice of the Supreme Court, the Minister of Law, Justice and Parliamentary Affairs, the Judges of the High Court and the Supreme Court, the resident representative of the World Bank and NGO activists will be present on the occasion.



Principal Augustine Cruze giving award medal to a student of St. Jude's Tutorial at its science fair held recently.

## Young man received bullet injury

Iqbal, 22, son of Abul Hashim received bullet injury by some unknown assailants at Muggapara Wapda Lane under Sabujbagh thana in the city yesterday evening, according to witnesses.

The Sabujbagh thana confirmed the incident saying that the father of the victim has lodged a case last night in this regard.

Azizur Rahman, the head of the development committee of the area told The Daily Star that the locals had already complained to the thana about the spread of terrorist activities in the area.

## Hungarian envoy calls on Khaleda

The outgoing Hungarian Charge d'Affaires in Dhaka I B Buday, called on the Opposition leader and BNP chief Begum Khaleda Zia at her Cantonment residence in the city yesterday afternoon.

The Hungarian envoy spoke about the increased bilateral cooperation between the two countries during the BNP regime, according to a BNP press release.

Begum Zia hoped the friendly relations between the two countries would grow further. She requested Buday to convey the best wishes of her, her party and the people of Bangladesh to the President of Hungary.