

# FOCUS

## Law and Our Rights

### Of Democracy And Liberalism

# Towards a Lost Generation

by A H Monjurul Kabir

**We can not even ensure our children a safe place worthy of living, a playground free from bombs and fire arms, a seat of learning free from narrow party politics, sexual harassment and most unfortunately rape. Children, our future, have the first call over the nation's resources. If we continue treating them in the same way we are treating them now, we should be prepared for a generation without any form of sensitisation, a generation devoid of our core values, a lost generation.**

— "Pledging that the high ideals of absolute trust and faith in the Almighty Allah, nationalism, democracy and socialism meaning economic and social justice, which inspired our heroic people to dedicate themselves to, and our brave martyrs to sacrifice their lives in the war for national independence, shall be the fundamental principles of the Constitution." — 2nd paragraph of the Preamble of the Constitution of the People's Republic of Bangladesh.

WE chose democracy as our form of government. Besides the preamble, article 8 of the Constitution clearly states 'democracy' as a fundamental principle of state policy. But is it unqualified? The simple answer is 'no'. In the 3rd paragraph of the preamble of our Constitution qualifies the notion of 'democracy' by adding — "Further pledging that it shall be a fundamental aim of the state to realise through the democratic process a socialist society free from exploitation — a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social will be secured for all citizens."

No doubt the nature of the democracy we opted for on the 4th November 1972 (The Constitution Day) when the Constitution of the People's Republic of Bangladesh was adopted by the Constituent Assembly is liberal. Hence article 7(1) solemnly declares that all powers in the republic belong to the people, and their exercise on behalf of the people shall be affected only under, and by the authority of, this Constitution. But is our democracy liberal? Again the answer is an emphatic 'no'. The criminalisation of politics and the terror and horror that has been unleashed for quite a long time in our political culture threaten the very existence of the notion of liberal democracy. The language of firearms, bombs and police brutality replaces the usual practices of democracy i.e. debate,



Today, it's Runa: Will tomorrow be better...? — Star photo

campaign, various public programs, etc. Petty party interest gets preference over national interest at every sphere. We are nurturing a politics that lacks any vision for future, creates only hatred for each other. In fact we have given birth to a perverted form of politics based on mindless confrontation, personal vengeance and vendetta which even starts

questioning the meaningfulness of an election held under a unique constitutional arrangement of non-party caretaker government (Chapter IIA, Art 58 B to E). The brutal amputation of hands of tiny Runa in Sunday's haral and the savage death of Akbar Hossain, a 13-year student of Graduate High School during Thursday's haral reminds us the daunting

task ahead to create an atmosphere of people friendly politics.

One can rightly puts the questions now — "Are free and fair elections alone the benchmark of democracy? Are we satisfied with this form of democracy? Is this the goal we set for during our war of liberation costing the lives of 3 million people?"

In fact democracy should be meant 'liberal democracy' — a political system marked by free and fair elections as well as by the rule of law, a separation of powers and the protection of basic liberties of speech, assembly, religion and property. This 'constitutional liberalism' is not about the procedures for electing government, but about an individual's autonomy and dignity against coercion by state, political parties, society or even by so-called civil society. We need both democracy and constitutional liberalism otherwise we have to be prepared for a politics based on illiberal democracy. Democracy without constitutional liberalism will speak for violence, vengeance, hatred, brutality, confrontation and so on. This is, indeed a dreadful phenomena, a dangerous situation where the hard-earned democracy is not safe. One of the fundamental aims of Bangladesh as enshrined in our preamble is to establish a society where rule of law, fundamental human rights, and freedom will be guaranteed. We can not even ensure our children a safe place worthy of living, a playground free from bombs and fire arms, a seat of learning free from narrow party politics, sexual harassment and most unfortunately rape. Children, our future, have the first call over the nation's resources. If we continue treating them in the same way we are treating them now, we should be prepared for a generation without any form of sensitisation, a generation devoid of our core values, a lost generation.

— Aren't we heading fast for that?

WITH the end of the cold war and the implosion of the Soviet Union, many political leaders and political commentators were convinced that world affairs would henceforth be dictated by a single superpower. The United States, it was argued, would dominate and control global security, global politics, global economics, global information and global culture. For a variety of reasons this has not happened.

### Military Power

While the United States' awesome military might has endowed it with the image of a global supreme of sorts, it has not been able to demonstrate its power in a manner commensurate with its status. Regular forays into Iraqi territory aside, the US has discovered that it cannot really flex its military muscles in the post cold war era. This is partly because of the nature of military conflicts today. Ethnic and sub-ethnic feuds within nation states and regions — which are often prolonged and protracted — are the kind of wars that a global superpower would want to avoid at all costs. Somalia, from which the US beat a hasty re-

by Muhammad Nur Manuty and Chandra Muzaffar

in the wake of the Gulf War. It may have managed to get United Nations Security Council to elect Kofi Annan as the new Secretary-General but the fact remains that all the rest of the Council members rallied behind Boutros-Ghali when he was being pilloried by the US. Similarly, the US was determined to see that the UN report on the Qana massacre would not be made public. But the former UN Secretary-General went ahead and publicised it, albeit in a diluted form. This — and his alleged failure to affect reforms within the UN bureaucracy — may have been the real reason why the US became so antagonistic towards Boutros Ghali.

At the level of the UN General Assembly, the US has found it even more difficult to influence the decision-making process in its favour on certain key issues. Following the Qana massacre, the US and Israel were completely isolated in the General Assembly vote which condemned the latter for its senseless bombardment of a base in Southern Lebanon that had resulted in the death of scores of innocent women and children. On Palestine, the Gen-

Union, East Asia, an economically unified Europe will have the advantage of a solid scientific and technological base built over centuries of intellectual creativity. Besides, Europe's economic and social structures which are far more equitable than what the US possesses, bestows it with the economic resilience that the US lacks.

Indeed, the gross maldistribution of wealth is one of the major weaknesses of the US economy. It is quite conceivable that this concentration of wealth at the elite stratum of society coupled with the relative deprivation of a huge portion of the populace will, in the coming decades, hamper and hinder the US from fulfilling its role as a major competitor in the global market place.

### Cultural Power

In contrast to its economic power, the United States' cultural power appears to be its most formidable weapon at this point in time. The US has utilised its commanding position vis-a-vis the latest and most sophisticated information and communication technologies to reinforce its cultural dominance over the rest of

nomie and social rights has been the subject of much criticism.

To give even a slight hint of a willingness to consider the recognition of Israel at this point in time would be a travesty of justice. The sufferings of the Palestinians are at their nadir. They are being forcibly evicted from their homes. Their lands are being expropriated. They are being denied the right to earn their livelihood. Palestinian unemployment is at one of its highest levels since the occupation of Palestinian and Arab territories. Palestinian freedom fighters continue to be imprisoned. And Palestinian youths continue to be killed by Israeli soldiers.

At the same time, Jewish settlements in Arab Jerusalem and the West Bank continue to expand as never before. The plan to Judaise Jerusalem is being implemented with a vigour and vengeance which is frightening. Indeed, under Benjamin Netanyahu, Zionist arrogance and intransigence have reached a new pinnacle.

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treat, was an expensive adventure that American policy makers and military strategists will take a long time to forget. The catastrophe in Rwanda, rooted to an extent in age-old ethnic animosities, forced the US into the role of a mere bystander. In the forty-three month conflict in Bosnia-Herzegovina and other parts of the former Yugoslavia, the US realised that military prowess had a very limited role. It was through painstaking negotiations rather than through smart bombs, that the fighting was finally brought to an end. The long drawn, often bloody, tussle between Chechnya and the Russian state is yet another example of a conflict where American military might has no role or relevance. There are a number of other post cold war conflicts too which have taken a heavy toll on human lives that just cannot be resolved through sheer firepower — even if it is the firepower of a superpower.

If we explored in depth the four conflict situations mentioned above, it would dawn upon us that the intricacies of local issues enmeshed with the proclivities of local actors would have precluded any quick military solution. The ethnic passions stirred by these feuds would have rendered any simplistic, military-type remedy totally ineffective. In the case of Bosnia-Herzegovina and Chechnya, the US also had to take into account the interests of its new found friend, Russia — which is why it could not afford to throw its weight around as one would expect a superpower to do. Ensuring that the Russian ire is not aroused has become a vital consideration in American foreign policy in the post cold war era. It is, from the US point of view, the only way to maintain its own dominance. This shows that a superpower's perception of its own interests can sometimes limit its military manoeuvres. Ironically, by limiting its military manoeuvres it may unwittingly undermine its long-term credibility as a superpower.

### Economic Power

Indeed, it is perhaps the decline of the US in the sphere of business and economics that has had the greatest impact upon its status as a superpower. While the US remains the world's most important economy and wield immense influence over the World Trade Organisation (WTO), at the global level, and the Asia Pacific Economic Cooperation (APEC) forum, at the regional level, it has had to contend, in the last two decades or so, with other emerging and established centres of economic power. The US huge trade deficit with Japan continues to worry the former while the latter continues to expand its global market — much to the chagrin of the US. The US views China's economic dynamism both as an opportunity and as a threat to its economic dominance. The impressive growth of other Northeast and Southeast Asian economies, while enlarging the scope for US participation in the region's economic development, also promises to alter forever the global economic power balance. As a superpower, the US knows that it is not just the economic buoyancy of North-east and Southeast Asia (East Asia) that it has to reckon with. No less crucial to its power and influence in the long run is the economic consolidation of Europe through the European

### Political Power

If the US has been compelled by an interplay of circumstances and interests to recognise the limits of its military power in the post cold war era, it is partly because of its capacity to direct and influence world affairs — which is the essence of political power — is not as great as many have imagined it to be

eral Assembly — despite US pressures — has continued to endorse the right of the Palestinian people to establish an independent, sovereign state. Similarly, the US received a rebuff from the General Assembly in 1996 when it sought international support for its persistent drive to isolate Cuba.

There is also some evidence to suggest that the United States' political clout over Europe, though still considerable, has begun to decrease especially because Europe is becoming increasingly conscious of its own internal cohesiveness and the importance of a collective European identity. This might be one of the many reasons why, in spite of all its efforts, the US was not able to persuade most European states to join its boycott of Iran. There is also of course the lure of business which often supersedes political and ideological concerns. It is equally significant that the US has also failed to dissuade its NATO ally, Turkey, from forging stronger economic links with Iran.

### Intellectual Power

When we examine American power in the realm of intellectual ideas, a similar pattern emerges. With the end of the cold war, the mainstream US media, US NGOs and a section of the US academic community, have sought to propagate a notion of human rights and democracy which is very much a product of Western liberal tradition with its emphasis upon civil and political freedoms. Though from what we know, no country in the non-Western world has changed its system of government simply because of American pressure or power, there is no denying that civil and political liberties have received a tremendous boost in the post cold war era. This is partly due to the inherent appeal of individual freedoms and political rights as principles of social organisation and public policy to human beings everywhere.

Nonetheless, elements of the American concept of, and approach to, human rights have been vigorously contested by certain governments, citizens groups and intellectuals in the non-Western world. The lopsided emphasis upon civil and political at the expense of eco-

the world. Through cassettes and videos, and computers and the internet, apart from comics and cartoons, and television and cinema, various aspects of American popular culture have begun to penetrate every nook and cranny of the planet. It is through the images and expressions of culture — from music and dance to food and fashion — that the US seems to assert its superior status.

And yet American cultural power is not as overwhelming as it is often made out to be by some of the critics of American cultural imperialism. Studies have shown that whether it is in India or Pakistan or Indonesia or Malaysia, a majority of the young still prefer their own local dramas often in their local language, their own local films, even their own local songs and artists over American fare — even if they get ecstatic over Michael Jackson once in a while and even if a few of them go gunk for a change. In other words, the enduring cultural ties, at the popular level, still remain those wrought by the local cultural milieu.

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### Nonetheless, elements of the American concept of, and approach to, human rights have been vigorously contested by certain governments, citizens groups and intellectuals in the non-Western world.

The lopsided emphasis upon civil and political at the expense of economic and social rights has been the subject of much criticism. To give even a slight hint of a willingness to consider the recognition of Israel at this point in time would be a travesty of justice. The sufferings of the Palestinians are at their nadir. They are being forcibly evicted from their homes. Their lands are being expropriated. They are being denied the right to earn their livelihood. Palestinian unemployment is at one of its highest levels since the occupation of Palestinian and Arab territories. Palestinian freedom fighters continue to be imprisoned. And Palestinian youths continue to be killed by Israeli soldiers.

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This is hardly the time to send the very kind of signal to Tel Aviv which the regime has been waiting for all these years! Instead of welcoming an Israeli

cricket team to our shores, we should be exploring ways and means of strengthening the just and legitimate demands of the Palestinian and Arab people in five crucial areas.

1. The return of all conquered and annexed lands to the Palestinian and Arab people.

2. Israeli and US recognition of an independent, sovereign Palestinian state.

3. Acceptance of East Jerusalem as the capital of a Palestinian state.

4. The return of all Palestinian and Arab refugees from 1948 to a future Palestinian state.

5. The release of all political prisoners in Israeli jails.

These demands which have been part of the Palestinian and Arab struggle against Zionist Israel for decades should be put across in clear lucid language to Washington, in particular by countries which are not in the cockpit of conflict. If Malaysia and certain other countries in Asia and Africa impressed upon Washington the importance of Tel Aviv accepting these demands in the interest of a just and durable peace in West Asia, they would be doing a great service to humanity as a whole. One wonders whether Malaysian and other leaders in the South who are committed to the Palestinian cause have ever raised these issues with high US officials? After all, American and other Western governments are not averse to raising their own human rights concerns — whether it's Myanmar or East Timor — with Malaysian and other Southern governments. Indeed, if all the member states of the United Nations who year in and year out have supported General Assembly resolutions calling for the returned of annexed territories to the Palestinians and Arabs and the establishment of a Palestinian state, are prepared to do all they can to persuade Washington to be even-handed in the Arab-Israeli conflict and to recognise the legitimacy of the Palestinian position, it is not inconceivable that a solution will be found.

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# Frustrated Genocide Judge Gives Notice to Quit

The Rwanda genocide tribunal hearings, being held in Tanzania, have run into fresh trouble. Despite a UN-ordered administrative shake-up, reports Gemini News Service, an outspoken judge has now announced his intention to leave, saying the bureaucracy is impervious to reform. Joakim Goksor writes from Gothenburg, Sweden.

ONE of the judges sitting at the International Criminal Tribunal for Rwanda says he will leave the post early in protest at what he sees as administrative incompetence.

Sweden's Judge Lennart Aspegren, 67, has hit out in the past at problems at the tribunal, which was set up by the United Nations Security Council to try those deemed most responsible for the slaughter of up to a million Tutsis and moderate Hutus in Rwanda in 1994.

Outspoken Aspegren, one of six judges sitting in two panels of three in Arusha, Tanzania, now says that, despite critical UN reports and staff changes, the bureaucracy seems resistant to reform.

He told a Swedish newspaper, Svenska Dagbladet, that he would quit in December — five months before the tribunal's current mandate expires. However, upon reflection, he says he will stay on for a few months, if necessary, to complete the cases he is involved in. This could mean that 1

might stay until the end of my present mandate," he said in southern Sweden, where he is on holiday.

But he will not be seeking reappointment for the next four-year mandate, beginning next May.

Aspegren, formerly a senior Swedish government legal officer and chairman of several official inquiry commissions, said earlier this year: "The [tribunal] administration has been, and is, miserable — beneath contempt, actually."

In mid-July, he was quoted by Svenska Dagbladet as saying: "The tribunal [has] developed into a fraud, both against the UN member states and against almost one million people slaughtered during the genocide in Rwanda."

Officials were unhelpful and did not appear to understand what a court was supposed to do. "The administration is built for something else — for the translators, drivers and security personnel. The work of the judges is viewed as a side activity," added Aspegren.

He has also complained of inexperienced prosecutors being assigned to the tribunal.

Aspegren began his mandate in May 1995, and UN officials are now seeking to appoint six judges to serve from next year until 2003. Four of the six currently sitting in Arusha are thought likely to re-apply. Judge Tafazzal Hossain Khan from Bangladesh is expected to join Aspegren in standing down.

Proceedings in Arusha have been moving very slowly. In an attempt to speed up the process, the UN is to appoint a third panel of three judges, who are to begin work as soon as possible.

The first trial in Arusha began in January 1997. Jean-Paul Akayesu, a former mayor of Taba in Rwanda, was charged with genocide, crimes against humanity and acts of sexual violence against women. The trial was completed in March 1998, but judgement has yet to be made. When it is delivered — probably very soon, according to Aspegren — it will be the first international trial in history to

define the crime of genocide. Another case involving Aspegren is that of ex-interim premier of Rwanda, Jean Kambanda. It has also been completed, following a plea of guilty to six counts of genocide and other crimes entered by the accused at his initial appearance in May. "The sentence in the Kambanda case is expected within the next few months," said Aspegren.

In all, 31 people are being detained under the authority of the Arusha tribunal. The includes five suspects arrested in West Africa in June. The tribunal cannot impose capital punishment, but can hand down life sentences. The Rwandan authorities are holding separate trials in Kigali stemming from the 1994 slaughter.

— Gemini News The writer is a freelance journalist based in Gothenburg who covers international affairs for several publications in Sweden.

GEN. Augusto Pinochet, who ruled Chile as a despot for 17 years, has been arrested in London after Spain asked that he be extradited for the presumed murders of hundreds of Chilean and Spanish citizens, the British authorities announced Saturday.

The Chilean government immediately demanded his release, arguing that he has diplomatic immunity since he sits in the Chilean Senate. But so far the British and Spanish authorities have shrugged off the protests, setting up what promises to be a legal struggle that could have wide implications for the prosecution of alleged human rights violators under international law.

Pinochet, who is 82 and who stepped down as commander in chief of the Chilean military five months ago, was arrested

by the British police on Friday night, little more than a week after he arrived in London for surgery on a herniated disc.

The warrant said the general was wanted for questioning for "crimes of genocide and terrorism that includes murder." British authorities refused to say where Pinochet is being held; nor did they set a date for when he would be questioned.

Ever since he led a violent coup to overthrow Salvador Allende Gossens, the elected Socialist president in 1973, Pinochet has been a political icon throughout Latin America, representing the excesses of a long period of military rule and U.S. support for right-wing strongmen who opposed Communism.

An estimated 3,000 Chileans were shot in the streets or "disappeared" during his rule, and a senior member of his regime

# The Pinochet Episode

by Clifford Krauss

identified by name, said the general's arrest was "a judicial matter, one for the police and the magistrates." But he said "one point that does fall to us, he does not have diplomatic immunity in this country." The spokesman declined any further comment.

An official who spoke on condition of anonymity said Pinochet had been arrested "at the direct, specific request of the Spanish authorities."

Legal experts noted that since the Nuremberg trials after World War II, all countries theoretically have been obliged to take responsibility for crimes against humanity, thereby denying safe haven to promoters of international crimes like genocide.

Spanish lawyers said the request for Pinochet's extradition had been sent to Scotland Yard through Interpol. The request was based on the European Convention on Terrorism, which requires members to help one another in matters related to terrorism.

The initial warrant is based on a single case of the kidnapping and disappearance in 1976 of a Chilean leftist leader, Edgardo Henriquez, 35.

The Spanish judicial official

said that Garzon is planning on Monday to send to British authorities the names of 78 other people of various nationalities who were also kidnapped in Chile and taken to Argentina where they disappeared between 1976 and 1983. He will also seek the general's extradition to Spain.

Garzon has also demanded the extradition of various former Argentina junta rulers, but Argentina has refused to abide by warrants. The focus of his

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However, suspected genocide criminals, once granted amnesties in their own countries, have usually been safe from prosecution when they traveled abroad.

Juan Garces, a Spanish lawyer representing 4,000 victims of the Pinochet regime, said the case against the general was based on international legal principles that there is no immunity for those responsible for crimes against humanity, even if they served as heads of state.

Diane Orentlicher, a law professor and director of the War Crimes Research Office at American University in Washington, said the British and Spanish actions put "teeth into the legal principle" that abusers of human rights are international criminals.

# Landscape Signature Campaign

Collective Effort to Urge the President, Prime Minister and State Minister to Try Those Responsible for the Occurrences of Rape and Sexual Harassment Under the Criminal Judicial System:

Odhikar, a coalition for human rights has carried out a signature campaign calling for the criminal prosecution and trial of those responsible for the incidences of rape and sexual harassment at Jahangir Nagar University. The Organisation has collected the signatures of 395 concerned citizens and sent their appeal to the President, Prime Minister and State Minister on 20 October 1998.

# LAW WATCH

## Protest Against Racism

by Pete Donohue

CARRYING placards with such messages as "Condemn Racism" and "Stop Violence," more than 70 people rallied outside the Kew Gardens courthouse yesterday to protest an alleged bias attack against an Indian-American man in South Ozone Park.

The protesters from a broad coalition of organizations representing Indian, Asian and Caribbean people decried the fact that the three men charged in the Sept. 20 baseball-bat attack on Rishi Maharaj are free on \$20,000 bail.

Organizers from the Asian American Legal Defense and Education Fund and Maharaj's relatives gave a judge a petition with more than 2,000 signatures urging higher bail. "My brother's life is worth more than \$20,000," said Maharaj's sister, Chandra, who was joined at the rally by Borough President Claire Sulman.

The defendants Nuno Martins, 19; Luis Amorim, 22; and Peter DiMarco, 10 appeared in court briefly for a status conference on the case.

Maharaj was walking with two female cousins near a relative's house on 114th St. near 150th Ave., when DiMarco used an ethnic slur and punched Maharaj in the face, police said. According to the police complaint, the two other men then began beating Maharaj on the head with baseball bats.

During the beating, Martins allegedly said, "This is never going to be a neighborhood until you leave," according to the complaint.

Maharaj, relatives said, suffered a broken jaw and broken facial bones. Steel plates had to be inserted in his jaw and his teeth were wired shut. He was hospitalized for about 10 days.

The suspects are charged with attempted murder, gang assault, assault, weapons possession and aggravated harassment. Defense attorney Stephen Singer, who represents DiMarco, insisted his client is not a racist and said the incident was not a bias attack.

"It wasn't a gang assault. It wasn't a gang attack. It wasn't a gang," Singer said.

"It was three boys hanging out after a softball game, and one kid got into a fight with another. Every time people from two different groups have a fight does not make it a racial incident."