

Law and Our Rights

# The Rule of Law

by Anwar Ibrahim

*Our courts of law must, at the same time, be courts of justice. Their judgments must conform not only to strict legal requirements but also to the dictates of fairness and equity. If those judgments seek merely to pander to the needs of legal sophistry at the expense of common sense and fair play, then they are perverse.*

IN as much as there is no law without justice, there is no justice without the rule of law. This concept encapsulates three principles. The first is the predominance of regular law so that the government has no arbitrary authority over the citizen. Secondly, all citizens are equally subject to the ordinary law administered by the ordinary courts. And thirdly, perhaps the most significant, the citizen's personal freedoms are formulated and protected by the ordinary law, rather than by abstract constitutional declarations.

The rule of law is the use of law to curb the misuse or abuse of law-making power by the authorities. Law-makers must fulfil their duty to pass only laws that meet the criterion of justice. For if the laws passed by the legislature are manifestly unjust even to the man in the street, then that would put the rule of law in jeopardy.

One of the hallmarks of a civil society is the creation of entrenched constitutional safeguards for the protection of the people's civil rights and liberties. This is an area which demands an innovative and creative approach, fortified by a sense of moral conviction on the part of legislators. In the pursuit of this, there must always be a sense of balance between upholding the rights of the individual and maintaining public order and security.

Man has a dual nature: he is both his own person and a member of his community. On the one hand, the law must protect the individual from the injustices of the multitude. History has shown how individuals fall prey to mass perversity, their crime being simply a refusal to conform to the beliefs and prejudices of the majority. The religious wars in Europe left such a scar in the psyche of the West that the protection of the conscience of the individual has taken priority over all else.

On the other hand, society being an entity established for the civilized conduct of human affairs, has fundamental rights which are essential for its continued existence. These are rights to maintain law and order, peace and harmony. In this regard, society has the right to defend itself against diabolical minds which see in guarantees of civil liberties opportunities to pursue their vile designs to the detriment of the public. In established democracies, certain individuals use the cloak of individual rights to vent their base desires at the expense of the rights of the majority. The maintenance of the rule

of law hinges on the clear separation of powers between the three branches of government — the legislature, the executive and the judiciary. Inasmuch as parliamentarians are not expected to adjudicate on the laws of a community or country, judges should not take it upon themselves to act as parliamentary draughtsmen or apologists for the executive. As a restraint on the temptation to abuse or misuse power, it is crucial that legal systems be adequately equipped with the necessary checks and balances.

Judges ought to exercise their judicial powers in accordance with the rule of law and

viewed negatively. In tandem with the growing maturity of our society, the people's consciousness and expectations of the moral dimension of justice is greater. Not only must judges display the requisite level of competence and expertise, they must, like Caesar's wife, be above suspicion. Thus, judges must be seen to be absolutely impartial in the adjudication of all cases, be they commercial, civil, criminal or constitutional.

In the case of East Asia, this is essential to bolster the region's image as a place where justice can be readily sought and obtained. This is particu-

ensure that no group will be unduly marginalised. This apparatus must not be limited to mere legal aid to help those who cannot afford legal redress but must extend to proactive assistance to further the cause of justice through the legal process, without fear or favour.

Among contemporary thinkers, John Rawls is probably the most persuasive in expounding the doctrine that justice is the criterion of the worthiness of social institutions. According to him, laws and institutions, no matter how efficient and well-arranged, must be reformed or abolished if they are unjust. Thus, every individual possesses rights founded on justice which are inviolable.

In regard to the pronouncements and decisions of our judges, it is pertinent to remember what Justice Oliver Wendell Holmes said almost 100 years ago: "The law is the witness and external deposit of our moral life. Its history is the history of the moral development of the race." It is, therefore, vital that we leave behind a legacy of just laws if we are to be remembered as being instrumental in building a dynamic and progressive judicial landscape.

Thus, the challenge is not only to ensure that all our laws are manifestly just but also that they be administered justly without regard to a person's wealth or standing in society. There is nothing more tragic than just laws being administered unjustly. It is dangerous to allow the law to be thought of as something quite distinct from justice in the moral sense, or else it would be possible to blatantly commit injustices by purportedly lawful means. Our courts of law must, at the same time, be courts of justice. Their judgments must conform not only to strict legal requirements but also to the dictates of fairness and equity. If those judgments seek merely to pander to the needs of legal sophistry at the expense of common sense and fair play, then they are perverse. Thus, in a critique of the American legal system, Philip K Howard wrote:

Modern law is a game of parsing and logical intrigue. Wherever detailed provisions bend and twist, the observant lawyer will find a place where he can go and violate the spirit of the rules, or get an advantage over others, and do so with complete impunity.

The writer is former Deputy Prime Minister of Malaysia. Courtesy: The Asian Renaissance, 1997



not the rule of men. In so doing, judges must constantly bear in mind the legitimate expectations of the people as to their competency, dedication and impartiality. And independent judiciary is a judiciary committed to the preservation of the rule of law. We do not advocate that such a judiciary, in order to be effective, must necessarily take on an anti-establishment posture. But it must, at the very least, be seen to be able to dispense justice without regard to wealth, power or status. As

Socrates said: "Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially." The growing concern of the public regarding the increasing incidences of judicial indiscretions is a matter to be neither taken lightly nor

larly relevant in an era of deregulation and the explosion of the free market when corporations are steadily encroaching into the spheres of society once considered the preserve of governments, Corporations, with their eyes constantly on the bottom line, are not known to be coy about exercising their power to influence judgments in their favour. In seeking legal redress, the poor and the weak are, in some cases, cowed into submission by the rich and the powerful who are armed to the hilt with the most sophisticated legal weaponry and judicial firepower. Under such circumstances, justice can be elusive if not altogether impossible.

In this regard, paramount importance will be the promotion of social justice via the legal and judicial apparatus to

# A Walk Within Right And Wrong: Some Unresolved Questions

by Masud Hassan Siddique

*The saddest part of the story has been echoed by the CSWs in their deliberations at the conference. They questioned how throwing a body in the river could be termed as justified by the law and the humanity, when a CSW passes away. This has been the practice of ages in this area, a dead body could neither be buried nor burnt (depending on the religion of the deceased) but to be thrown in the river because this body belongs to a person who was a sex worker while alive. Nobody could identify when, how and who had given this verdict but only knew that, this is the way it has to go. None from the administration even tends to listen to the cry of these workers demand for a graveyard.*

I'M not born as a prostitute, rather this society is responsible for that. This was the outburst of the Commercial Sex Workers (CSW) at a conference held for the first time of its kind at Daulatdia brothel recently. The conference, result of enthusiasm and strong willingness towards achieving the rights of this cross section of workers who live only on sex trade, mounted a lot of unresolved questions that has to be addressed by the authority and the civil society at large.

Daulatdia, has strategically become an important place to the traders, tourists and locals, long back in the British colonial period due to the presence of three 'r' communication linkages: road, river and rail. Situated along the river giant Padma, Daulatdia brothel has from that time proved its importance to its valued customers of all class. From a lorry driver to people of the social hierarchy, from a small trader to members of the administration are there in the list of regular customers to the spicy girls.

The present size of the brothel population is no less than one and a half thousand. Managed by mainly elderly brothel leaders commonly called 'khala' the spicy list carries teenagers to mid thirties or until they lose glamour and physical fitness. This indicates that a girl, even before reaching her teen becomes as worth as 'gold', devotes her golden days

Save the Children, Australia (SCA) was the first to introduce among the brothel community, the sense of humanity, sense of motherly attitude and consciousness of the right of a woman and successfully brought out the to be prostitute girls into the broad day light. These girls, the daughters of commercial sex workers of the Daulatdia brothel now started to dream of a better life (not unlike their mothers) as they are being educated in the schools.

It was not an easy task for SCA. They had to fight the local influential, members engaged in this wealthy business from behind the screen and to a great extent the local people who were the prime barriers and were not willing to accept brothel children among their community schools. It took more than six years for SCA to finally have a bite on the back of this multi-million taka business and bring about a change in that social context, where a day's business means a transaction of at least a hundred thousand taka.

SCA in partnership with a local NGO, Karmojibi Kalyan Shangstha (KKS), has been doing a tremendous job inside the brothel in creating awareness among the CSWs of their rights, health related issues specially HIV/AIDS, child and adult education etc. and proved to be one of the best of this kind in the country. The adult education centre remains open from 9.00 AM to 5.00 PM and members of the brothel community are allowed to come at their own time

awareness and strong willingness among the brothel community to continue education facing all odds. They added, among all odds and red eyes of the vested community and even torture and intimidation, the CSWs are united to see that the project in continuing.

SCA also arranged a clinic with the help of Gono Shastha Kendra (GK). A physician and two paramedics attend the clinic every Thursday and provide free medical services. Besides, awareness on HIV/AIDS, training programme for the Community Health Workers (30 elderly khalas volunteered as CHWs and are involved in educating the population on various issues, bring them to the doctor whenever necessary, influences the girl children and the adults to attend schools, etc.) are ongoing.

Non-formal school is the most successful one. The present number of students at the KKS run school is 200, of which 134 are brothel children and the rest from the local community. A teacher at the school pointed that the brothel children had limitations at their intellect level when they first come to school. They thought that they would not be treated properly by the teachers and fellow community children but became easy when found that they were wrong in thinking so. According to the teachers KKS had overcome the social barrier over the last few years and now the upgraded students are accepted in the local schools. The

ing bare foot outside their boundary. Strong punishment and sometimes physical torture comes on them if anyone is found using any type of foot wear outside in the community. The local UP Chairman indicated that he doesn't know of this fact while informed sources suggest that it is finally his office or the local police station who imposes the punishment on revolt.

The Deputy Commissioner of Rajbari was present as the Chief Guest while the Superintendent of Police, TNO of Goalondo and other officials of the district administration were also present on the occasion. The CSWs raised many demands and concerns in front of these officials. They said very clearly that they want to survive as human being, demanded for a graveyard and recognition of their profession. Some of them said that they spend more than half of their earnings to keep the administration and the police satisfied and for their security but in vain. They demanded unconditional suspension of all sorts of oppression against them. One of them was even more straightly pointing to the personalities sitting on the podium and within the audience and said, "show me only one head who do not enjoy share of our blooded earnings." The audience was mute and looked vacant and did not know what to answer.

Monwara Begum (45) led the CSWs to an oath on tears one can really check. They



The Conference of the Commercial Sex Workers is in Progress.

Photo: Save the Children, Australia

## The Saga of Women Agricultural

### Wage Labourers

by Shamsunnahar

We have been celebrating International Women's Day for many years. Women working in factories, industries or in different offices are raising their demands. The struggle is continuing. Women working in all the sectors of the economy have problems. Some of these problems are known, other are not. When it comes to the question of WAGE it is women who will also be paid less. And their works are not recognized by the management. Why? Only because she is a woman.

Like the industrial sector, agriculture also needs wage labourers. Both men and women work as wage labour in the field. The women agricultural wage workers face many problems. But we find that these problems are not discussed in the mainstream discussions. Here we would like to focus on few problems which rural women are facing.

First of all, women agricultural wage labourers suffer from lack of recognition. There is very clear cut discrimination against women in terms of wages. Women are seen only as a 'helping hand' and therefore are paid a nominal price. They are paid less than men for doing the same amount of work. For the understanding of the readers, let's mention few kinds of works which women wage workers are doing. These are: harvesting and collecting potatoes from the field, gathering of rice seedlings, gathering of sugarcane from fields and processing of sugar juice, and post harvest paddy processing works such as winnowing, drying, husking, etc.

The following examples will amply reflect their situation:

**Collecting and harvesting of potatoes from the field.** Surplus farming families need help to collect potatoes from the field. They hire labour to do the job. Both men and women are hired to collect potatoes.

get the country we dreamt of. We are passing the days in lots of problems. I am still struggling hard for survival. I am a divorced woman. I live in my brothers house with three children. As an agricultural wage worker, I work for Gazia Bepari.

I work in the fields from dawn to dusk. I collect potatoes in this particular season. I can pick 75-112 kgs of potatoes in a day. But when it comes to the payment we, the women are treated differently. Men would get Tk 60 with one meal. On the other hand, for the same amount of work I get wage in kind, only 5 kgs of potatoes. I would not have complained if I was given potatoes equivalent to Taka 60. They give potatoes, because prices are low. If I sell the 5 kgs. of potatoes, I will get Taka 12-15 only.

I can tell you that if we compare our work, men and women are doing the same amount of work. We also take the same amount of time to finish, (some times I am faster than a man) but I am paid less. I was a freedom fighter and now I will fight for equal wages.

#### Gathering of rice seedlings

The farming families hire wage labourers for gathering of rice seedlings. The wage of a man labour is based on the time he puts in. Whereas, a woman's wage is determined by the number of bundles commonly known as 'Ati' — she will collect. Woman gets only Taka 15 for 100 ats. On the other hand, a man works from morning to evening and gets Taka 60 plus a meal as his wage. A worker can collect/pick up 200 ats in a day. Women would get only Taka 30 for 200 ats and the men gets Taka 60 even if he collected less amount.

Sonabhanu, a wage labourer commented, a male worker knows that in the end of the day he will get Taka 60 so he does not care about how many ats he collect. He takes rest and pays less attention to his work. On the other hand, women have to work hard, she does not have any time to waste because her wage will depend on the amount of bundles she collects. She questions why there is this discrimination in the wages?

Translated by Natasha Ahmad

## LAW WATCH

### Amnesty Critical of US Rights Record

by Farhan Haq

*The United States was one of only seven countries which opposed the creation of the International Criminal Court during a recorded vote in Rome in July, compared to the 120 nations — including most of America's key allies — which supported it.*

AMNESTY International accused the United States of actively opposing efforts to strengthen human-rights standards worldwide and failing to enforce them to home.

"We are extremely concerned about the destructive international arena," declared Pierre Sane, Secretary-General of the human rights watchdog. Amnesty's recently announced campaign to improve US human rights. As evidence of his charges against Washington, he cited US opposition to the International Criminal Court (ICC), established at a July conference in Rome despite Washington's lobbying against it; the lack of access given to a UN rapporteur, Baqir Waly Nadiyeh, who last year tried to investigate human rights in the United States; and an attempt to block an optional protocol which would raise the worldwide age for military recruitment to 18.

Sane criticised America's domestic human-rights record — noting that the US prison population has tripled since 1980 and also reports of abuse of women and children in prisons, detentions of asylum seekers and a surge in executions.

"How can the United States present or portray itself as the champion of human rights when its own house is not in order?" Sane argued. He criticised Washington's "negative, obstructive role" in enforcing human rights both at home and abroad.

Sane presented detailed Amnesty allegations of rights violations in the United States to the UN General Assembly's Third Committee, which deals with human rights.

Washington's record on dealing with human rights at the United Nations, however, offers little hope of immediate progress in improving the US human rights picture here.

The United States was one of only seven countries which opposed the creation of the International Criminal Court during a recorded vote in Rome in July, compared to the 120 nations — including most of America's key allies — which supported it.

This week, US officials again underscored opposition to the ICC. Ambassador David Scheffer, head of the US delegation at the Rome talks, said Wednesday that "the United States will not sign the (ICC) treaty in its present form, nor is there any prospect of our signing the present treaty text in the future."

Scheffer complained that, under present guidelines, the Court could try US military officials for "mistakenly" several key issues that has rendered the Court "unacceptable" to Washington.

"We fear that, without the United States, the effectiveness of the permanent International Criminal Court will fall far short of its potential," Scheffer warned.

Nor is the ICC the only case where Washington stands largely isolated from its allies on a major human rights question. Similarly, Sane noted, the United States is one of only six countries — along with Yemen, Saudi Arabia, Pakistan, Nigeria and Iran — to have executed children (legally, anyone who committed crimes before the age of 18) in the past decade.

Besides the ICC, he said, the US government has also lobbied behind the scenes against the UN Children's Fund's campaign for an optional protocol to the Convention on the Rights of the Child, which would raise the age of military recruitment from 15 to 18. Washington is doing this even though it has not ratified the Convention on the Rights of the Child.

With the 50th anniversary this year of the UN Declaration on Human Rights focusing attention to many nations' rights records, the United States has reacted defensively to several efforts to look at its performance.

and passes at least twenty-five moons before she is thrown away, could find only frustration is left for her. By the time when she realises, she had lost everything but the last breath to keep herself alive to see her 'daughter of love' on the same 'dirty heaven' as she was in her early days. The love-daughter now sees that her mother's man (even if anyone is married the term 'man' is commonly used in the brothel community) had left them abandoned and she has to feed her mother now with her body to spare.

As a common practice most of the girls have a permanent customer whom they call man. These customers visit their girls/ladies at least once a month, stay with them for few days, have fun and disappear. Most of them are married. Of them, there are service holders posted in the nearby districts/thanas, small traders and lorry drivers. Persons in the district hierarchy and members of law enforcement agencies never tends to be back benchers, rather have permanent girls of their choice, who have to satisfy the bosses whenever they deserve, for the sake of the whole community. Among other things the bosses also loves music, dance, liquor, chicken roast, biryani or the best the khala could offer. No new Romeo is allowed inside the brothel village during their stay and the members of the brothel-security are kept alert of any undue disturbances.

Once they get in anyhow, no girl/lady can ever leave the brothel unless they have proved themselves to be professional ones, they are forced to be professionals. The victim, not a born prostitute, have to face torture of all sorts including physical punishment by their so called rescuer of the same sex unless they satisfy a customer. Morality and humanity does not exist in this society, money is the biggest question to them no matter how and who brings. Daughters, sisters of the CSWs are the first to become victims.

to have a lesson. Lessons include reading and writing Bangla, mathematics, counting, pictorial lessons on use of drugs, human rights, women rights and problems in sex business, a little bit of English, etc.

Answering to a question, Farzana (28) happily said, "I've never seen any alphabet in my life and now I can write my name and address and learnt how to count, I'm grateful to go to KKS school. She can read and write, I never dreamt of that." She added that they are grateful to KKS and specially to Mr. Fakir Abdul Jabbar, Executive Director of KKS, for his bold intervention which made the brothel community conscious about life and their rights.

Teachers informed that 80% of the CSWs are interested in learning because by this time they have started to get fruit of their lessons. Now, the local traders can't cheat them. According to the CSWs most of them are mainly cheated while procuring medicine from the local market. Amena (21) said, "we never knew before that we were cheated by medicines of expired dates. These medicines made us more vulnerable," she added. Besides studies the CSWs are also taught sewing, making potteries and flowers so that they can utilise this expertise and earn some money. The teachers become friendly to the CSWs, listen to their personal stories and confide.

Answering to a question one of the teachers said that during the initial days of the project SCA and KKS had to fight against social barrier from their respective families to make the parents understand that their girls will be doing a humanitarian job for the oppressed and byproduct of this society and that's not a bad thing to do. She said now the whole community had accepted the matter and they don't face difficulties in performing their duties. The positive thing according to the teachers is the

teachers said that they feel great when they see that the brothel children are playing with the community children and it would be difficult to identify any difference among the children. They said, "that's the achievement of the project, we have been waiting for this day for long."

Today a CSW mother can attend the mothers meetings held in the villages and share their problems with other. This is a positive change in the surrounding society (villages) and made a real effort in changing the attitude of the common towards accepting the sex workers as human being and their profession as their livelihood. It is interesting to note that this is a legal profession (by the law) and CSWs have to obtain license from the court before taking sex as a profession while it has been treated as 'illegal' by the government itself. Neither the government nor the civil society had so far taken any initiative to aware the public that this profession has been justified by the law and the protection and rights of the workers in this particular profession are also protected by law as it is in the case of other professions.

The saddest part of the story has been echoed by the CSWs in their deliberations at the conference. They questioned how throwing a body in the river could be termed as justified by the law and the humanity, when a CSW passes away. This has been the practice of ages in this area, a dead body could neither be buried nor burnt (depending on the religion of the deceased) but to be thrown in the river because this body belongs to a person who was a sex worker while alive. Nobody could identify when, how and who had given this verdict but only knew that, this is the way it has to go. None from the administration even tends to listen to the cry of these workers demand for a graveyard.

The second distinct feature of the life of the CSWs is walk-

promised at their top of the voice with hands raised above, "we shall not walk on bare foot any more..... shall not seek permission to go out of the vicinity..... shall from now onwards stop paying tolls..... shall resist oppression of all forms and... shall prevent our children from becoming sex workers." They said that they need freedom of their body, their-time and their money. They said it can help improve the economic condition of the sex workers and in turn ensure better condition for their children.

Off these pledges many questions can be sorted out but they shall resist oppression of all forms and... shall prevent our children from becoming sex workers. They said that they need freedom of their body, their-time and their money. They said it can help improve the economic condition of the sex workers and in turn ensure better condition for their children.

Some of the unresolved questions the implementers of the project are facing are how do they intervene when a child is gone back to the mother after receiving the days lesson? What are the options left in front of them, is it only safe home? Influence of parents is essential for bearing up of a child, but how could going back to a sex worker mother from school make a child perfect? Isn't it appropriate to arrange custodian for these young learners? What civil liberties/human rights will finally be ensured for this cross section of labourers who live on their own earnings but survive on the pity of others? Can a movement be created to lobby for legislation of this trade which is lawful in this country and in many others?

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