

Law and Our Rights

INTERVIEW

"We want to stop the frittering away of our national resources so that Bangladesh does not become another Nigeria"

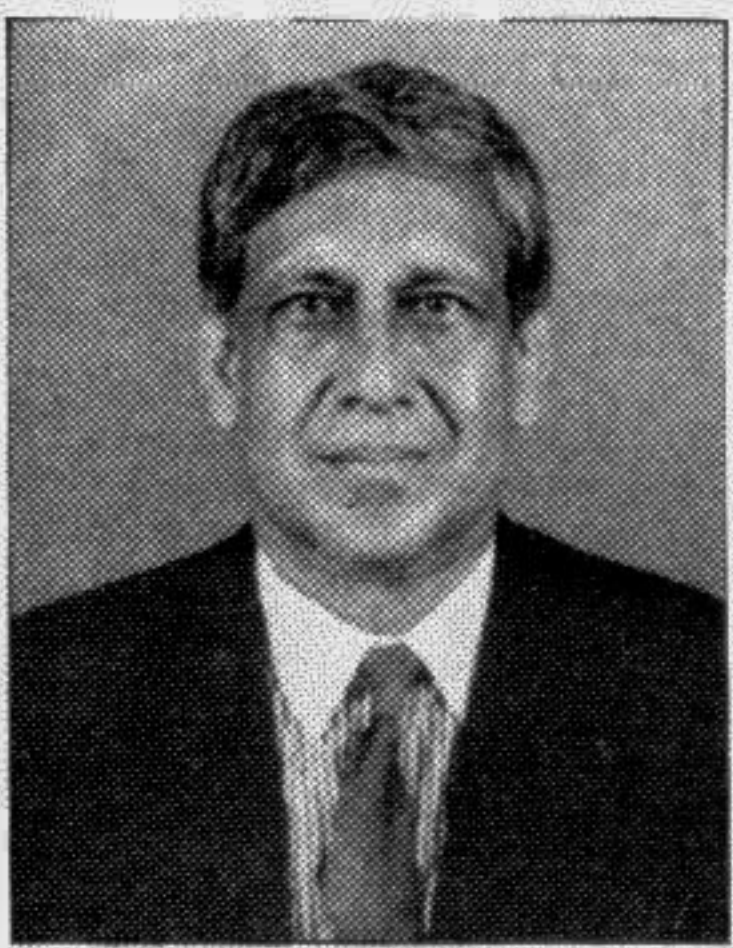
The government decision to lease out the remaining 15 oil and gas blocks out of 23 to foreign exploring companies was challenged in the High Court Division of the Supreme Court. The writ petition was filed on 17 November 1998 in the division bench of the High Court comprising Justice K M Hasan and Justice Muhammad Abdul Quddus.

The High Court on 20 November ordered the government to explain why it should not be directed to evolve and formulate a national strategic policy through the parliament prior to leasing out all the remaining 15 oil and gas blocks including blocks 3,5,6,7 and 8 for which letters of intent have been issued to foreign companies. The division bench after hearing the petitioners' counsels on 17 and 19 November issued the rule nisi which is returnable within two weeks.

Shah Abdul Hannan, Chairman of the Centre for Human rights, Sadek Khan, a newspaper columnist, Amanullah Kabir, President of Bangladesh Federal Union Journalists and Dr Mohammad Abdur Rob, Associate Professor, Department of Geography and Environment, Dhaka University claiming themselves as "public spirited citizens" filed the writ petition.

The petitioners were represented by Dr M Zahir, Barrister Mainul Hossain, Advocate Habibul Islam Bhuiyan, President of Supreme Court Bar Association and Barrister Abdur Razzak. Deputy Attorney General Momtazuddin Ahmed was present in the court on behalf of the government. A H Monjurul Kabir of the Daily Star spoke with Dr M Zahir, Senior Advocate of Bangladesh Supreme Court regarding this crucial writ petition and relevant issues. Excerpts:

Monjurul Kabir (MK): How do you evaluate the present state of Public Interest Litigation (PIL) in Bangladesh?



Dr M Zahir

Dr M Zahir (M2): Public Interest Litigation or PIL has been gradually gaining its ground here in Bangladesh for quite a long time. But finally in the leading case of Dr Mohiuddin Faroque vs Bangladesh (49 DLR AD 1997), the Appellate Division of the Supreme Court unequivocally widened the jurisdiction of the concept and the very idea of the public interest litigation. The court declared: Article 102 (which deals with powers of High Court Division to issue certain orders and direction, etc.) is a mechanism for the enforcement of Fundamental Rights which can be enjoyed by an individual alone insofar as his individual rights are concerned, but which can also be shared by an individual in common with others when the rights pervade and extend to the entire population and territory. Specially interpreting the words "any person aggrieved" meaning only and exclusively individuals and excluding the consideration of people as a collective and consolidated personality will be a stand taken against the constitution (per Mustafa Kamal J delivering The Full Court Judgment).

I particularly want to cite another observation of Justice Mustafa Kamal where he went on saying: "we do not give much importance to the dictionary meaning or punctuation of the words "any person aggrieved." Article 102 of our constitution is not an isolated island standing above or beyond the seal-level of the other provisions of the constitution. It is part of the overall scheme, objectives and purposes of the constitu-

tion. And its interpretation is inextricably linked with the (i) emergence of Bangladesh and framing of its constitution, (ii) the preamble and Article 7 (iii) Fundamental Principles of State Policy, (iv) Fundamental Rights and (v) other provisions of the constitution.

And you know what article 7 says: "All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of the elected representatives." This is the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this constitution that other law shall, to the extent of the inconsistency, be void.

In this connection I also remind you of the message enshrined in article 21 which clearly states: It is the duty of every citizen to observe the constitution and to maintain discipline, to perform public duties and to protect

public property. In my observation the present state of public interest litigation in Bangladesh in the context of some leading judgments of the Supreme Court and the provisions of the constitution is encouraging and people-friendly.

M K: Why on behalf of the petitioners, you along with your senior colleagues challenged the government decision to lease out the remaining 15 oil and gas blocks to foreign exploring companies?

M Z: Our prime concern and anxiety based on different writings and expert opinions as reflected in the media and other societal forums is that if we start leasing out all the oil and gas blocks at a time without forming a national strategic policy for conservation of gas and other mineral resources, it will endanger the very interest of the generation yet to be borne. Bangladesh as a result may face acute gas shortage in future if all the blocks are explored now. For some time we may produce huge gas but we can not consume them now at all. We have no such infrastructural base and support to consume all gas explored at a time which will no doubt hamper the interest of our future generation. Besides according to existing arrangement we have to buy our gas from foreign companies at an international price which would be very costly. So what do we do? We allow them (foreign companies) to export gas to other countries. This is how our national resources will be frittered away, we want to protect the public property. We want to stop the frittering away of our national resources so that Bangladesh does not become another Nigeria.

M K: Are there adequate safeguards in the contracts entered by the Government of Bangladesh with the foreign companies?

M Z: The PSC's which the government is entering with the foreign oil companies do not contain adequate provisions to protect country's interest as is found in Malaysia, Indonesia and in other countries. They retain certain safety provisions for the government which we do not incorporate in our contracts. Even the participation of our concerned state owned corporation in the contract itself in addition to bidding and other process is not ensured here like India and Malaysia. Above all, gas which is our only big natural asset can not be leased out without any discussion in the Parliament. It crystallises the clear lack of transparency on the part of the government. There is a concerned committee in the parliament. That committee should supervise the whole process. A detail discussion on the nitty-gritty of the bidding process can help establishing the desired transparency. A national strategic policy must be formulated on an urgent basis. And it has no alternative.

M K: what is your expectation from the civil society on this particular public interest litigation?

M Z: To protect public property is our constitutional mandate and obligation. Through this piece of PIL we want to defend our public property for our national interest. We have to rise above all narrow interests. I expect sincere support and cooperation from all segments of the society. Creating awareness on public property is one of the prime objectives of this public interest litigation.

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The Anwar Episode: An Analysis

by Chandra Muzaffar

By questioning the bail-out for Mahathir's son, Anwar was telling his boss that he was not prepared to salvage the Mahathir family Anwar's attitude was the antithesis of the iron-clad guarantee he was looking for in a post-Mahathir era.

ONE month after he was sacked from the government and the ruling party, a lot of people are still wondering what was the real reason behind Anwar Ibrahim's expulsion. Is Anwar's low morals, his indulgence in homosexual activities, as alleged by the Prime Minister and UMNO President, Dr Mahathir Mohamad, the real reason? Or, is the former Deputy Prime Minister and UMNO Deputy President, the victim of a high-level conspiracy as Anwar and his supporters maintain?

Mahathir and Anwar through poison-pen letters and whispering campaigns, to his credit, Mahathir ignored these sinister moves and stood by his Deputy.

Then in May 1997, Mahathir sent the clearest signal yet to UMNO, the government and the people that Anwar would be his successor by appointing him Acting UMNO President and Acting Prime Minister when he went off to two months' leave. Anwar's adversaries in the party, some corporate figures who regarded his ascendancy as a threat to their interests and a few individuals in certain public institutions viewed his appointment as a danger sign.

These differences which generated some uneasiness in the market did not, however, cause the split between the Prime Minister and his Deputy-cum-Finance Minister. What exacerbated their relationship was Anwar's initial reluctance to endorse some of the rescue operations of big local corporations hit by the financial crisis. One of these corporations which had accumulated huge debts was Konsortium Perkakapan—a shipping firm associated with Mirzan Mahathir, the Prime Minister's son. There were a couple of other bail-outs too, allegedly linked to corporate figures close to the Prime Minister which Anwar was not enthusiastic about.

Relationship To understand Anwar's dismissal one has to understand the relationship between Mahathir and Anwar. It was Mahathir who brought Anwar into government, in 1982. It was Mahathir who groomed Anwar, accelerated his ascendancy within UMNO and exposed him to a variety of governmental roles until he assumed the mantle of Deputy UMNO President and Deputy Prime Minister. Anwar was indisputably Mahathir's heir-apparent. Though the older man was instrumental in the younger man's meteoric rise, Anwar himself, there was no doubt, was an astute politician with a knack for mass mobilisation and for the intrigues of intra-party manoeuvres. Besides, he was also a gifted orator with tremendous rapport with his followers.

They were more deferminded than ever to stop him at all costs. In June 1997, they circulated a signed document alleging that Anwar had an adulterous relationship with the wife of his Confidential Secretary, on the one hand, and a homosexual relationship with his wife's former driver, on the other. Close aides of the Prime Minister brought both the document and the individuals who had made the allegations to his attention as soon as he returned from leave. The Prime Minister, according to the local media, got the Police to investigate the allegations and in early August 1997, he announced publicly that investigations had revealed that there was no basis to the allegations. Subsequently, a member of the government, in response to a question in the Malaysian Parliament, reiterated that the allegations were baseless and that the two individuals who had levelled the accusations against Anwar had, through sworn statements, repudiated their earlier allegations and were completely penitent.

Approach The foreign media, in a sense, brought to the surface certain differences in approach between Mahathir and Anwar in their handling of the economic crisis. Right from the outset, Mahathir preferred a credit expansionary policy aimed at stimulating the economy and preventing it from sinking into recession. Anwar took the more conventional route and sought to cut back on expenditure and impose a credit squeeze. For Mahathir lowering interest rates was important so that businesses could get back on their feet; for Anwar maintaining a reasonably high interest rate was one way of checking capital flight.

As the rift between Mahathir and Anwar widened, yet another factor began to impact upon their relationship. This was the explosive situation in Indonesia which came to a head in May 1998. Suharto was becoming the principal target of massive street demonstrations that zeroed in upon his long tenure—32 years in power—and the enormous wealth that his family had accumulated during his rule. In the end, popular fury over his nepotism, cronyism and collusion forced Suharto to quit. Opposition political parties, Non-Governmental Organisations (NGOs) and youth and student groups in Malaysia, already critical of the growing involvement of Mahathir's sons in big business, had portrayed Anwar as the Prime Minister's own long stay in power (17 years by July 1998) began to draw parallels between Suharto and Mahathir. Some of them felt that the time had come for Mahathir to retire. This explains why Mahathir became paranoid about the Indonesian situation. It should be emphasised at this point however that there are significant differences between the Suharto and Mahathir leaderships and between Indonesia and Malaysia which some of Mahathir's critics fail to appreciate. Unlike Suharto, Mahathir is a popularly elected

Women and Children in Crisis: Longing for an Exit

At the threshold of the 50th anniversary of the Universal Declaration of Human Rights and as the human kind prepares to leap into the 21st century, the only exit lies in ensuring universal education. Right to education, today, is therefore, the basic human right which needs to be incorporated as a fundamental right of the citizens. Long term effect of this right is the only permanent solution of women repression and child rights abuse.

by Dr Mizanur Rahman

SUBORDINATION of women is the precursor of women's crisis and is a continuing matter in the course of history all over the globe since the inception of patriarchy under which rank and role are defined by gender. Violence against women has been a fundamental feature of patriarchy. Subordination, in earlier periods of history, also led to appropriation by men of women's sexual and reproductive capacity. Wife beating in England was permissible by law and an author points out that man could assert his authority over wife by using a rod no thicker than his thumb. In many cultures masculinity and power are linked to the ability to protect and materially support a family.

Some scholars have tried to establish an indirect relationship between economic factors in general including unemployment situation and family violence and conflicts in particular. A few authors trace an association between violence against women and increasing poverty consequent upon growing landlessness. According to one such author, landlessness has been reducing the importance of female labour which has been forcing the grooms to demand larger amounts of money in the form of dowry. It is assumed that ever-increasing socio-economic changes in the Bangladesh society have been affecting the major institutions including family and the latter, in turn, are interacting with other socio-cultural norms to produce an unfavourable situation where women's problems within families are turning out to be immensely critical. In other words, women's traditional subordinate position in terms of gender inequality, low social and economic status, payment of groom-price during marriage, maltreatment in the hands of husband and or in-laws have been observed in recent years to be increasing into crisis situations for women in marriage in the context of our current socio-economic and cultural changes. These 'crisis' situations are now quite visible in the increasing rates of violence by husbands, divorce, separation, desertion, killing and suicide of female spouses. With some gender and class differences, there is widespread belief in Bengal society that children should be kept under their guardians' control and should not be allowed to marry outside their character which is still pliable. In different ways, boys and girls are seen as vulnerable and in danger of getting 'spoiled'. Writes one researcher: "Bengalis are notably permissive and tolerant towards small children. But older children are commonly made to work and/or to study hard and some form of punishment is considered essential to remember important lessons. Older children almost 30 national statutes relating to children in Bangladesh. Additionally,

women were supposed to act and what women were supposed to be. Much of this historical legacy remains with us today, as law continues to contribute to the social understanding of the appropriate roles and activities of women. Law has a very specific place in the history and politics of the women's rights movement in Bangladesh. Many campaigns have been fought and won to secure legal rights for women. While these strategies have served to improve women's position, they have not fundamentally transformed the reality of women oppression. Efforts at law reform have been translated into measures that have only marginally improved the day to day reality of women's lives. What is needed, therefore, is the development of new understandings and new strategies of engaging with law as a means of mobilisation and resistance. This alternative strat-

the present impasse. In the opinion of the present author, traditional mode of legislative intervention to declare new rights, hitherto non-existent for women and children and making provisions for harsh and cruel punishments to curb and eradicate violations of rights of such vulnerable groups is not the right way to combat the situation. It seems that not only the successive governments in Bangladesh, but also the human rights activists while focusing on particular rights, have all through neglected the most basic right of individuals without which realisation of all other rights seems but impossible. "This, in our opinion, is the right to education. All western countries and non-western countries which have demonstrated high standards of human rights compliance, had initially some or universal education. In each of these countries universal education necessitated the active participation of the state which eventually made school compulsory for all children within a specific age group. The sending of poor children to school was resisted by different categories of people but the state prevailed. The state determined that parents should not have absolute power over their children. The state intervened in the content of education and in the definition of childhood. By the same token, it contributed to the development of a modern society. The government of Bangladesh has proclaimed a lofty programme of 'education for all'. But the extent to which 'education for all' is the result of genuine interest and commitment by the government, and the extent to which it is a ploy to impress donors and the international community is a relevant question to raise in Bangladesh. Writes one expert: "Education for All' has gradually become a pledge without substance, an intention without sincerity, simply — a bluff." This bluff, if it may say so, continues not without significant degree of complexity of international donor agencies and certain development institutions.



Victims of 'Acid-burn'

Photo: Z I Khan

treatment for children is almost completely ignored. One could quite justifiably ask: what is the purpose of enacting progressive laws if they are not implemented? "Perhaps," writes a Western observer, "together with the constitution of the country, the purpose of such laws is to proclaim a symbolic commitment to certain values and provide a positive facade to a westernised Bangladesh elite and to the entire world. It needs not cause society to change and affect the administration of justice." Our dailies abound in reports on women repression. Forms and magnitude of repression have changed over the years. Violence against women, in today's Bangladesh, occur not only within the four walls of the White House, but anywhere and everywhere and in open day-light. Such violence or abuse far transcend 'Clintonian inappropriateness' and loom large within the boundaries of criminal jurisdiction. Forms and degree of child abuse have also 'sophisticated' to the level of horror. Simple mutilation of parts of the body are incidents of the past. Today, children are trafficked not only to meet the demand for domestic servants, camel jockeys or perverted homo and heterosexual desires but also as raw material source for kidneys for the sick-affluent for example. Law is one among a number of important factors in trying to understand the ways in which women have been subordinated. Historically, law has set boundaries of what women can do and cannot do and has had a lot to say about how

eg, in our opinion, might necessitate a revision of emphasis on sectoral rights to guarantee emancipation and empowerment of women. The status of children in Bangladesh, from a human rights perspective, is equally far from being enviable. Child rights violations are so rampant, engrossing and widespread that except a few child rights activists hardly anyone ever notices such violations. Child rights violations seem to have become an accepted practice by the society. Multifarious violation of child rights and abuse of children is generally well documented. Government intervention, though essential, is commendable, has not led to significant improvement of the situation. It is rather interesting to note that successive governments in Bangladesh followed a similar trend of enacting "specialised legislation" for curbing women and children oppression/repression. These legislation generally provide for special tribunals to try the offenders and also provide for very harsh punishments. Criminal jurisprudence has long ago proved the ingenuity and inefficacy of the thesis that cruel and, harsh punishment leads to eradication of criminality. In a society like Bangladesh, where the right of access to justice is not implemented or guaranteed, it is now common belief that "state agents activate the law for those who have money to buy judicial services."

It resembles a conspiracy, deliberate or not, of the ruling elite, representing the interests of the rich and the upper middle class, to keep the nation in the darkness of illiteracy but only now and then, inviting certain provision of civil and political rights to give the people a semblance of democracy, and human rights. Meanwhile, the poor and the exploited, the helpless and the landless are clamouring for an exit. Where is that to be found? At the threshold of the 50th anniversary of the Universal Declaration of Human Rights and as the human kind prepares to leap into the 21st century, the only exit lies in ensuring universal education. Right to education, today, is therefore, the basic human right which needs to be incorporated as a fundamental right of the citizens. Long term effect of this right is the only permanent solution of women repression and child rights abuse. The exit from the stagnation of the nation has been found and identified. Who is going to be the Pied Piper of Hamelin in Bangladesh? Is the government ready for such a role? The writer is Chairman (incharge) of Department of Law, University of Dhaka.

LAW WATCH

50 years of UDHR The British-Bangla Law Week

On the Occasion of the Fifty Years of Universal Declaration of Human Rights (UDHR), the British Council, Bangladesh is arranging the British-Bangla Law Week (29 November-5 December 1998) in Dhaka entitled: Fifty Years of Universal Declaration of Human Right: An Overview of Human Rights The Council is organising the week as part of its commitment and action plan to improve governance, especially in ways that will contribute to enhancing the quality of the legal and judicial institutions and system. It will contribute to the ongoing process of improving the legal and judicial system to overcome various systemic and institutional constraints and develop pro poor and gender sensitive modern laws for effective dispensation of justice and the establishment of human rights practices.

- Objectives:
• Discuss and examine specific laws relating to Human Rights, Convention on the Rights of the Child, Convention on the Elimination of Discrimination Against Women, and other laws.
• Compare Constitution of Bangladesh with Human Rights Treatise
• Discuss application of norms in International Instrument to domestic scenario
• Raising Awareness of modern British Legal System with an emphasis on Human Rights
• Update of Regional Change and Regional comparative analysis on laws relating to Human Rights
• Networking between the British and Bangladesh Legal sectors
• Network between Bangladesh and South Asian Legal Sectors
Activities:
• 7 days Seminar
• One day mock trial representing British Court Practices (this will be held on the 2nd day of the programme.)
• Street Theatre Programme on Violence Against Women. (On the 1st day of the programme)

leader who derives his mandate from a democratically constituted electoral process. Unlike the Suharto family, Mahathir's children have not established monopolies over entire sectors of the economy. Neither corruption nor poverty nor authoritarianism in Malaysia today bears any semblance to the situation in Indonesia under Suharto.

by the fact that Anwar was, all said and done, Mahathir's protégé.

Camouflage But Anwar and his supporters would argue that the bit about sodomy is nothing more than a cheap camouflage. The real reason why Mahathir has gone all out to destroy and denigrate Anwar is because he fears that the latter will not protect his family's business interests after his time. By questioning the bail-out for Mahathir's son, Anwar was telling his boss that he was not prepared to salvage the Mahathir family. For an ageing leader who has witnessed what had happened in South Korea and what is now happening in Indonesia, Anwar's attitude was the antithesis of the iron-clad guarantee he was looking for in a post-Mahathir era.

Conclusion Our analysis has shown that at the root of the expulsion of Anwar from the government and the party is the question of power. Mahathir sensed an attempt to ease him out of power. He responded to the perceived challenge with vigour and without scruples. Anwar felt that Mahathir's power base was weakening. He sought to send a message — and was repulsed. How this power struggle camouflaged by issues of morality and justice will play itself out in the next few weeks is anybody's guess. The writer is the President of the International Movement for a Just World. He is also Professor cum Director of the Centre for Civilisational Dialogue at the University of Malaya, Malaysia.