HE continuity of Enemy

force though the existence of the Act itself is inconsistent with

the spirit and values of the

liberation war of Bangladesh.

The proclamation of In-

dependence on 10th April, 1971

clearly says that all existing

laws (then) inconsistent with

the norms, spirit and idlealogy

of Bangladesh liberation war

shall be void. Though the reflec-tion of this declaration was

found in the 1972 constitution

but this black law was not

abolished. Surprisingly enough

the existence of the Act is in-

consistent not only with the UDHR but also with the

provisions of the constitution

land. After the birth of Pak-

istan on two nation theory, the

rulers used land to oppress the

religious minorities. The pro-

mulgation of enemy property

act gave legal basis to use this

weapon against religious mi-

norities. All democratic parties

and people call it a black law

and promise to abolish it, yet it

has never been done. The atti-

tude of the government in power

is disheartening not only to the

religious minorities but also

the democratic and progressive

Establishment of

Pakistan, People's

Movement and Com-

munal Oppression

on the two nation theory from

the very beginning the rulers

were quick to smash any kind

of democratic movement. They

deliberately used communal

tactics to drive out religious

minorities from their home

land and to suppress all kinds

of movement. To throw the reli-

gious minority people into dif-

ficult economic and social con-

ditions the then Pakistan Gov-

ernment promulgated many

laws and ordinances. Chrono-

logically they are: The East

Bengal (Emergency) Requisition

of Property Act (XIII of 1948),

The East Bengal Evacuees

(Administration of Property)

Act (VIII of 1949), The East Ben-

gal Evacuees (Restoration of

Possession) Act (XXII of 1951),

The East Bengal Evacuees

(Administration of Immovable

Property) Act (XXIV of 1951),

The East Bengal Prevention of

Transfer of Property and Re-

moval of Documents and

Records Act of 1952. The Pak-

istan (Administration of Evac-

uees Property) Act (XII of 1957).

The East Pakistan Disturbed

Persons (Rehabilitation) Ordi-

nance (No 1 of 1964), The De

fence of Pakistan Ordinance

(No. XXIII of 6th September,

1965). The Defence of Pakistan

Rules of 1965, The Enemy Prop-

erty (Custody and Registration)

Order of 1965, The East Pak-

istan Enemy Property (Lands

and Buildings Administration

and Disposal Order of 1966. The

Enemy Property (Continuance

of Emergency Provision) Ordi-

nance No. 1 of 1969. Bangladesh

(Vesting of Property and Assets)

President's (Order No. 29 of

1972). The Enemy Property

(Continuance of Emergency

Provisions) (Repeal) Act (XLV of

1974). The Vested and Non-Res-

(Administration) Act (XLVI of

1974). The vested and Non-Res-

ident (Administration) (Repeal)

Ordinance 1976 The Ordinance,

(No. XCII of 1976). The Ordi-

The Rise of Bangladesh

and the Enemy Property

Act: The Old Wine in

New Bottle

bloody war of Independence the

rise of Bangladesh naturally

After a long struggle and a

nance No. XCIII of 1976.

ident

Property

As Pakistan was established

force of the country.

The main source of production in this part of the world is

in Pakistan days is still in

Property Act promulgated

Dr Mohiuddin Farooque (1954-1997)

# A Tribute to A Green Lawyer

by A H Monjurul Kabir

One ambition which Dr. Mohiuddin Farooque could not live to see was to bring forth the day when the citizens of a country victimised by a development project in another would qualify for redress in the latter's courts. For the colleagues and fellows particularly the youngs of the on going green movement this is a challenge, which they will, no doubt take up and turn in to a reality.

On 2 December, 1997 at 3:51 pm the greenery of Bangladesh lost its soul. The person who turned the concept of 'Public Interest Litigation' (PIL)' into a living reality with the profound commitment to make Bangladesh a better place for the generation yet to be borne, passed away on that day at the National University Hospital of Singapore suffering from acute fungal infection at lungs. A valiant freedom fighter and Bangladesh's most outstanding green lawyer Dr Mahiuddin Farooque dedicated his short spell of life for the cause of environment. He was a very good friend of the Daily Star particularly this 'Law and Our Rights Page'. Infact he was the lone environment proactive lawyer in Bangladesh.

A bright, ever-smiling Advocate of the Supreme Court Dr Mohiuddin Farooque's most valued contribution to this country is no doubt. the establishment of BELA. BELA stands for Bangladesh Environmental Lawyers Association. It is an organisation of lawyers devoted to ensure sound environmental and ecological order in Bangladesh applying legal mechanism as a tool. Through its wide range of activities in promoting the regulatory regime on environment since 1991, BELA has earned the admiration as one of the pioneering public interest environmental advocacy group in the country. It has really developed a track record of proven dedication and success in waging legal battles against creators or contributors of environmental degradation by undertaking research, litigation, awareness creation, legal assistance, advocacy etc. Most importantly under the dynamic leadership of Dr Farooque BELA attained a remarkable success in evolving an environmental jurisprudence which was before his activism, a barren field of knowledge. The following resume of judicial activism initiated by Dr Farooque testifies the above contention:

 Dr Mohiuddin Farooque vs Bangladesh & others. CA No. 24 of 1995, judgment on 25 July, 1996: In this case, the petitioner as Secretary General of BELA, filed the petition. The Appellate Division of the Supreme Court, by a consensus judgment (one main judgment and three additional judgments in agreement and three resolved the question of locus stand in PIL or PIEL in the affirmative. The court in length discussed the issue and the constitutional phrase within the entire scheme of the Constitution and analysed various issues, notions and principles from many countries. Finally, the scope of "any person aggrieved" has been expanded to inter alia, having "sufficient interest" with a caution to bar busy bodies, interlopers and those having oblique motives the right to a healthy environment within the existing environmental guarantees.

2. Dr Mohiuddin Farooque vs Election Commission & others, WP No. 186 of 1994: This case related to public nuisance, encroachment of public properties, destruction of private properties and noise pollution in the name of election campaign. This case was the first judgment in which the desire of the court of mitigate the environmental pollution was written down in a reported judgment (46 DLR).

3. Dr Mohiuddin Farooque vs Bangladesh & others, WP No 92 of 1996 (48 DLR): In this case "right to life" has been expanded by the High Court Division to include everything supportive to an expected normal longevity include right to clean air and water. The petitioner was a potential consumer and attempted to prevent the import of highly radiated assumed milk power.

4. Dr Mohiuddin Farooque vs Bangladesh & others, WP No 1783 of 1994: In this case perhaps for the first time, a wild cat strike by



government doctors was asked to be called off within 24 hours and restore the public health service facilities by the High Court Division. The injunction was complied with and the matter is

now pending. 5. Master Issa N Farooque & others vs. Bangladesh & other: WP No. 278 of 1996: The petitioners are all minors and have filed the petition to prevent trafficking of children from Bangladesh to UAE for their use as camel jockeys and to bring those who are there. The High Court Division directed for a report from the Home Ministry. After consideration of the report, the court issued rule nisi on five ministries asking them why they should not be directed to do as per allegation and prayer of the petition. The matter is pending for final hearing

6. Dr Mohiuddin Farooque vs Bangladesh & others, WP No. 891 of 1994: In this actions against 903 industries have been sought upon direction of relevant statutory authorities. The matter is pending for hearing in the High Court Division.

7. Dr Mohiuddin Farooque vs Bangladesh & others. WP No. 300 of 1995: In this case resort to High Court Division has been made to prevent the vehicular pollution of Dhaka city. Show cause has been issued and the matter is pending for hearing.

In addition to those mentioned above, there are many other cases which are pending for final disposal or are under consideration for legal

A bright student of Dhaka University where he topped in his law degree. Farooque obtained his doctorate in International River Law from the University of Manchester. He authored several books on the subjects he chose to battle. In particular, he spoke up loud and clear for those who lived under the threat of destructive developmental projects. One ambition which Dr. Mohiuddin

Farooque could not live to see was to bring forth the day when the citizens of a country victimised by a development project in another would qualify for redress in the latter's courts. For the colleagues and fellows particularly the youngs of the on going green movement this is a challenge, which they will, no doubt take up and turn in to a reality. And that would be a sincere instance of showing true regard to this gallant freedom fighter who consumed his every single moment to save the precious planet in peril.

## Repeal Enemy (Vested) Property Act for National Interest

by Dr N C Bhowmik

The continuity of Enemy Property Act promulgated in Pakistan days is still in force though the existence of the Act itself is inconsistent with the spirit and values of the liberation war of Bangladesh. The proclamation of Independence on 10th April, 1971 clearly says that all existing laws (then) inconsistent with the norms, spirit and idlealogy of the liberation war of Bangladesh shall be void. Though the reflection of this declaration was found in the 1972 constitution but this black law was not abolished. Surprisingly enough the existence of the Act is inconsistent not only with the UDHR but also with the provisions of the constitution itself.

conveyed the message to the democratic and progressive forces that the communally promulgated Enemy Property Act would not continue. The Mujib Nagar Declaration which speaks to end laws of this kind found reflection in our original constitution of 1972. But it was a classic irony that newly born Bangladesh saw the continuation of two mutually opposed things simultaneously. One a secular democratic constitution and the other the continuance of the Enemy Property Act

though in a new name. In Independent Bangladesh on 26th March of 1972 Bangladesh (Vesting of Property and Assets) President's order No. 29 replaced former Enemy Property Act. In 1974 the Act was practically declared void by promulgating 'The Enemy Property (Continuance of Emergency Provisions) (Repeal) Act XLV. But immediately after words another declaration named the Vested and Non-resident Property (Administration ) Act XL VI of 1974 brought the

above act into force. After the take over the power by Ziaur Rahman Order 92 of 1976 was issued repealing Order 46 of 1974. In 1974 a new oppressive 'Enemy Property' (Continuance of Emergency (Repeal) Provisions) (Amendment) Ordinance (No. 93) 1976 was promulgated. It was given retrospective effect for 23rd March 1974. In 1974 Act, the transfer of vested property was made subject to the consent of the owner. But Ziaur Rahman's Government cancelled the provision and the Government got absolute power to control or administer properties. It was a gross violation of succession law of the minority communities and the successors of migrated religious minorities lost all their rights on vested property. The principle of secularism which is basis to democracy was abolished from the constitution in April 1977. And then it was included in the 5th amendment of the

constitution in 1979. In May 1977 by passing another circular for searching hidden vested property Ziaur Rahman's Government undertook the power to capture the lands of the religious minorities. On July 31, 1984 the then President Ershad made a declaration that no further property would be enlisted and confiscated as enemy property. From 1965 to 1984 Order No. 45 of 1974 of AL Government and Ershad's declaration of 1984 may be considered two steps to reduce the level of oppression. But after the 8th amendment introducing Islam as state religion these went in vain. After the 8th amendment the insecurity of the religious minorities was increased. In 1989, 1990, 1991, 1992 large scale attacks on religious minorities were made and lands were confis-

cated as enemy property. On November 4, 1993 the then BNP Government made

another declaration for scrutiny of the census list of the enemy properties. This declaration was another initiative to use the 'Act' to harass and oppress the religious minorities in Bangladesh. In a changed political situation the present govt. issued two circulars from the ministry of land on November, 14, 1996 the gist of which is

-1. (a) Not to enlist any more property as enemy vested properly. 1. (b) Without prior permission of the land ministry no member of Hindu, Buddhist, Christian communities shall be evicted out. 2. In land survey the land property of religious minorities should be properly assessed.

### Disastrous Consequences of the Act

The sufferings of minorities in Bangladesh have multiple dimensions such as economic, political, constitutional and socio-cultural. Their sufferings have multiplied due to the promulgation of the various black ordinances and laws in the last fifty years during both Pakistan and Bangladesh period.

In Last March 1996 Professor Abul Barkat and Shafiq Uzzaman showed in a seminar that the approximate number of families victimised under the enemy property act. is 10, 48, 390 and the total area of land lost is not less than 10 lakh

A report by Daily Sangbad on 21st March 1977 shows that according to government census 7,02,335 acres of cultivable land and 22,835 dueling houses are enlisted as enemy property Another investigation shows that since 1948, 75% of the land of religious minorities was been usurped, the same has been done on indigenous and tribal peoples' property.

In ALRD seminar four kinds of method are mentioned. They are: (1) Forceful dispossession (2) Possession by govt. or lease (3) Possession but not ownership (4) Always in fear of dispossession. An independent analysis shows that 80% of the religious minorities can not take any remedial steps because of weaker social and religious position. 15% of the rest have lost almost every thing in trying to recover their land. The last 5% could however get lease in exchange of money.

### Exodus of Minority

Migration is the ultimate consequence of black laws since 1948, state communalism, discrimination, persecution and oppression on minorities. The readers will get an accurate scenario of migration from the following statistics.

In 1947 the proposition of the religious minorities was 29.7% of the total population. Before 1971 it was 19.6%, in the 1974 census it was 14.6% and in 1991 it was 11.7%. The average number of family member in Bangladesh of Muslim, Hindu, Buddhist and Christian is 5.7,

5.5, 5.9, 5.4 respectively. The statistics shows that 1 crore 25 lakh people migrated in the Pakistan period and 1 crore in the Bangladesh period-from 1971 to the present. Even government statistics admit that the number is around 50 lakh. The weekly Holiday showed in 1991 that from 1974 to 1991 29 lakh 50 thousand people left the

country. C.C. H.R.B statistics

show that in the last 50 years 2

crore Hindu citizens left the

country. If the Buddhists and

Christians are added it will be 2

crore and 25 lakh.

Movements against the E.P. Act and Political Commitment The whole nation protested

against undemocratic, anti people and arbitrary black laws and ordinances in the Pakistani period in a body. Our glorious liberation war also upheld the promise to abolish all kinds of black laws. Though immediately after liberation war the term 'enemy' was replaced by 'vested' in the post '75 period it became most aggres-sive and oppressive. In 1979 a committee protesting against the Enemy Property Act was formed. The 1990 declaration of the three principal political groups clearly promised to abolish all black laws and to establish the spirit and values of the libertarian war. Before the June Election of 1996 the ruling party (AL) council promised to abolish the Act. Speakers of both the 1991 and the 1996 parliaments clearly said that the Act was black and demanded its abolition. It is notable that the honourable Speakers of the 1991 and the 1996 parliament were BNP and AL candidates respectively. People of the proliberation and progressive patriotic front saw the act and its consequences as against national integrity, human rights, democratic norms and the rule

## Human Rights in Islam

by Dr. Ashequr Rahman Khan

HE word "Human Rights" means the right of a human being, which one enjoys. It indicates that the right to live, A shelter, health care, and to enjoy freedom of movement, speech in own language, religious and cultural events, political rights etc. On the other hand, Islam means peace. Islam is a religion of equality, justice, and humanism. Brotherhood of world community is the motto of Islam.

According to Islam, Man is free. Every one has right to live with dignity. Islam was against slavery. Hazrat Mohammad (SM) created example by giving freedom to his own slaves. In the eye of Islam, all men are equal. Islam does not believe Ashraf and Atraf (Higher and lower caste). The message of Hazrat Mohammad (S) was delivered at 'Biday Hajj' "you are brothers of each other. Do not be cruel." Islam also ensured women rights. At the speech of "Biday Hajj' Prophet said As much rights you have upon your wife, she has also equal rights upon you. Islam also believes religious freedom of all perspective communities. According to the Holy Quran's version, "Lacum Dinakum Waliadin." The essence of it every one has right to perform one's own religion. There is instruction of Prophet. 'Do not pressurize to any other religious followers to be Muslim' During the period of Kholafia Rashedin, right to food was not only one's individuals headache. The program was taken by the state, Baitul Mal was established to procure crops with a view to distributing these to the needy and helpless. 'Zakat' is a provision, which is compulsion to the riches to share a portion of their properties with their poor relatives and neighbour. Here I would like to quote from a speech of Khalifia Omar, "If a dog by the side of the river dies without getting food, due to this failure I would be liable to Allah.'

Freedom of speech was ensured during the rule of "Kholafia Rashedin." Every one would enjoy the right to criticise the state policy. Every one would claim against high officials, even against the Khalifa to the Judicial authority.

The writer is Executive Director of Institute for Law and Development (ILD).

### Code of Medical Ethics Declaration

(1) I solemnly pledge myself to consecrate my life to the service of humanity.

(2) I will give to my teachers the respect and gratitude, which is their due. (3) I will practise my profession with conscience and dignity.

(4) The health of my patient will be my first consideration. (5) I will respect the secrets, which are confided in me. (6) I will maintain, by all means in my Power, the honour and the noble traditions of the medical profession. (7) My colleagues will be my brothers.

(8) I will not permit considerations of religion, nationality. race, party politics or social standing to intervene between my duty and my patient. (9) I will maintain the utmost respect for human life from

the time of conception. (10) Even under threat, I will not use my medical knowledge contrary to the laws of humanity.

I make these Promises solemnly, freely, and upon my hon-

Source: Bangladesh Medical and Dental Council.

# Antidote to Corruption

organisation like Oxfam to Ljoin a crusade against administrative corruption, which is often a political football with different parties bandying vague and sometime even wild charges. As it happened in the hawala cases. media hype and polemics peter out into the courts throwing out the cases after the inevitable delay of months and years. The net result is discrediting of innocent persons in some cases,

T is not usual for a welfare

activities that threaten national security.

militants.

system to be even tinkered with. much less tackled. That is not the type of battle against corruption which the Oxfam society has chosen to join. It has joined forces with the National Campaign for People's Right to Information (NCPRI) seeking accountability at all levels of the administration through spreading awareness of the citizen's right to information regarding decisionmaking. At the grassroots level, the Oxfam society will simultaneously work with the Mazdoor

with the guilty getting away

with it through legal

legerdemain and the frustrated

public feeling that corruption is

too deeply entrenched in the

against diversion of development funds in the Beawar area of southern Rajashthan. It has brought to light specific information that from the panchayat level to the top funds shown as spent on public works are pocketed by touts, officials and politicians. To cite an instance, the sarpanch of Rawatmall panchayat in Ajmer district of Rajashtan had shown

an expenditure of Rs. 56,000 on

Kisan Shakti Sanghathan

(MKSS) which has been cam-

paigning for over eight years

laying link canals to bring irrigation water from the village pond to the farmers' fields. As it happened, the water channels existed only on paper. When the panchayat records were made public at a Jan Sunwayi (public hearing) conducted by the MKSS, the truth was out. There were also instances of refund to the development funds of misappropriated moneys.

Two Journalists Arrested

OMMITTEE to Protect Journalists (CPJ), is protesting the arrests of Mufti Abdul Hye, publisher of the monthly "Jago Mujahid", and Manzur Ahmed, executive editor of the same magazine. On 18

November 1998, plainclothes police officers raided the editorial office of "Jago Mujahid" in

Dhaka. The magazine had published articles encouraging Bangladeshi Muslims to launch an armed

revolution modeled after the Taliban movement in Afghanistan, and had reprinted a newspaper

interview with Osama Bin Laden, the Saudi billionaire accused by the United States of supporting an

international terrorist network. Officers seized the August, September, and October 1998 issues of the

magazine, as well as photographs and wall calendars depicting Taliban guerrillas and other Islamic

(SPA), which allows for the arbitrary arrest and detention of any citizen suspected of engaging in

Police arrested Hye and Ahmed under the broad provisions of Bangladesh's Special Powers Act

Against this background, Ram Jethmalani's action in throwing open the files of his Urban Affairs Ministry at the Centre will stand out for its almost revolutionary significance. The procedure outlined in what are called guidelines for perusal of departmental documents by the public, is fairly straightforward and within the reach of ordinary men and women. A nominal fee of rupees is charged for each document to be persued and the perusal is to be in the presence of an officer of the rank of under secretary. It was said the minister overruled his officials when they suggested a perusal fee of Rs 100 for each document and fixed it at one-tenth of the amount.

More importantly, a time limit of five days has been set for compliance with requests for access to documents. There will be prescribed forms for seeking access to the files, to be submitted to identified nodal officers in the different sections

of the ministry Apparently, the application has to be specific about the file he or she wishes to read, which is not easy in all cases. Since the media, including the newspapers, are often short on fact and long on comment, it can be

G S Bhargava writes from New Delhi difficult to pinpoint the data needed and relate them to Government files. Judged by my own experience 20 years ago in the US in taking advantage of their freedom of the information law, the simplicity can be deceptive. The procedure over there is no cumbersome and time-consuming that it takes

some skill to benefit from it.

As stated earlier, more than the agendas and commitments of the parties in power, the initiative of a single minister is responsible for this veritable revolution in the functioning of the Government. True, the National Agenda for Governance of the ruling coalition has committee itself to a transparent and honest government. So did the Common Minimum Programme of the two United Front Governments in office earlier. The Gujarat Government had also drafted legislation on the subject, with the intention of enacting it into law if it had survived.

Even if the legislation remained in the limbo the citizen's right to know has come into focus and remained there. The Press Council of India under the chairmanship of Justice PB Sawant has not only sentized the usually indifferent media to the importance of the right to information but also circulated a model bill for the purpose. As Justice Swant put it, the barrier to information is the single most cause responsible for corruption in society. "It facilitates clandestine deals. arbitrary decisions, manipulations and embezzlements. Transparency in dealings, with their every detail exposed to the

public, shall go a long way in curtailing corruption in public

In the Bihar fodder scam, for

instance, the animal husbandry department of the State Government had recorded the details of fodder and in some cases animals also, supplied to cattle farms over a period of time. They are by no means official secrets, at least not until Central Bureau of Investigation (CBI) started its inquiry into the matter. Their scrutiny and publication would have perhaps nipped the scam in the bud, saved crores of rupees of public funds from misuse established a healthy precedent for assertion of the people's right information.

As the Rajasthan experience about three years ago showed. more than enlightenment at the top and formal enactment of laws, press from low - by people plagued by corruption and maladministration — spurs the When the MKSS campaign

reached the state capital of Jaipur 1995, the Chief Minister. Bhairon Singh Shekhawat, had to assure State assembly that details of expenditure on development work will be available to the public on payment of a nominal inspection of bureaucracy, expectedly, tried to defeat the decision by creating procedural and other hurdles. Even now, photo copies of document not made available on technical grounds which like power failure ubiquitous. It calls for perseverance and patience on the part of seeker of information.

hearings or Jan Sunwayis in different panchayats where documents like muster rolls, bills and vouchers are produced on demand from the public. The idea is to examine the records in the light of the people's actual experience.

The stumbling block is the die-hard bureaucratic habit of shielding decision making, taking shelter behind the seventy year-old Official Secrets Act promulgated in colonial times. It is said that the official in Jethmalani's Urban Affairs Ministry are already cribbing that throwing open Government records to public scrutiny transgressed rules and hampered smooth functioning of the government. It is also technically violative of the notorious Official Secrets Act of 1923 which remained to be repealed. But Jethmalant has a shining record of battling bureaucratic practices. So the continuance of the law on the statute book need not unduly deter him.

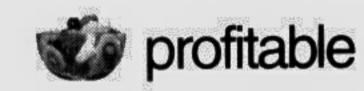
Of course, Jethmalani's present decision is provoked as much by his frustration at not being able to do away with needless curbs on private housebuilding in the urban areas as by an altruistic urge for transparency in governance. Vested interests among law makers, officials and middle men have been blocking his will to amend the urban land ceiling law. Whatever may have prompted the minister to lift the veil of secrecy from decision making in his ministerial domain, it deserves full three cheers

- Mandira

The writer is a well known columnist based in Delhi The MKSS now holds public

## Standard Chartered Savings Accounts

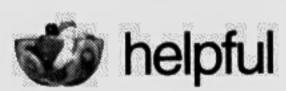
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