Law and Our Rights

"All citizens are equal before law and are entitled to equal protection of law." Article 27 of the Constitution of the People's Republic of Bangladesh

Amnesty International Report 1999

The State of Human Rights in Bangladesh

Scores of political activists were detained without charge or trial under the Special Powers Act (SPA). Torture, including rape, in custody was widespread and led to at least one death. At least 24 people were sentenced to death. No executions were reported.

IN March 1998 the Awami League government of Prime Minister Sheikh Hasina reached an agreement with the main opposition Bangladesh Nationalist Party (BNP) to end its six-month boycott of parliament. The government agreed to review criminal charges pending against BNP activists. Supporters of the ruling and opposition parties clashed frequently during the year in strikes and demonstrations that were often violent.

In the Chittagong Hill Tracts (CHT), steps were taken to implement the peace accord reached by the government and tribal representatives. Throughout February members of the armed opposition group Shanti Bahini (Peace Force) surrendered their weapons in exchange for an amnesty and rehabilitation. In May parliament passed legislation for the establishment of a regional council granting more political autonomy to the area. By the end in the year the last of some 50,000 refugees living in camps in India had been repatriate to the CHT.

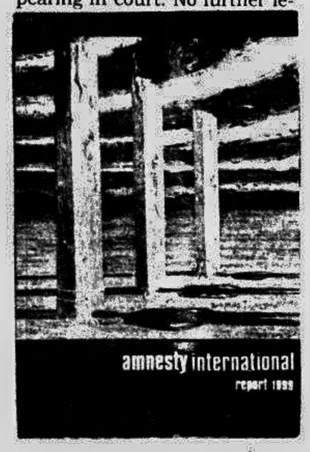
The trial of those accused of killing former President Sheikh Muijibur Rahman and his close relatives in a military coup in 1975 concluded in November: Fifteen people were convicted and sentenced to death by firing squad. Four appealed against the judgement, but their petitions had not been heard by the end of the year. In September, three senior BNP politicians were arrested in connection with the killing of four national leaders inside Dhaka Central Jail in November 1975. In October they were charged in connection with the killings, along with 20 others, including Major Khairuzzaman who had been held for over two years without charge or trial (see Amnesty International Report 1998).

No further steps were taken by the government towards the establishment of a national human rights commission after a draft bill was made public in December 1997.

In October Bangladesh acceded to international human rights instruments, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Covenant on Economic, Social and Cultural Rights.

The SPA, which allows detention without charge or trial for an indefinite period, continued to be used to detain scores of political activists, often during demonstrations. Most were released after several days or weeks. Several people were reportedly arrested at the instigation of politically influential individuals on "false charge. In January, for example, three men were arrested following an altercation with the son of a government minister in a street in Dhaka, the capital. The minister's son threatened to punish the three men and they were later arrested at their homes by police accompanied by relatives of the minister's son. While in custody the officer in charge of the police station reportedly allowed the elder brother of the government minister's son and two other armed men to enter the room where the three men were detained and beat them. In February the three men were released after the Home Minister withdrew the SPA detention order and dropped the charges.

In September the writer Taslima Nasrin returned to Bangladesh after four years of self-imposed exile. Charges of hurting "religious sentiments" brought against her in 1994 (see previous Amnesty International Reports) remained pending. However, calls for her arrest by Islamists were ignored by the authorities. In November she was granted bail after appearing in court. No further legal developments in her case were reported.



Torture in police custody remained widespread. In July a student, Shamim Reza Rubel, was allegedly beaten to death in police custody five hours after begin arrested at his home in Dhaka. According to the autopsy report he suffered a brain hemorrhage. Following an investigation by the Criminal Investigation Department, 13 policemen and a local Awami League leader were charged in connection with his death. A judicial inquiry into the case confirmed that Shamim Reza Rubel's death was not accidental, although the full findings of the commission were not made public by the end of the year.

At least three cases of rape in custody by the security forces were reported, in addition to the rape of a 10-year-old girl by an of-duty policeman in April in Dhaka. In one case, a policeman and another man were arrested for the attempted rape of a 15-year-old girl on the premises of the Chief Metropolitan Magistrate's Court in Dhaka in May. They were later released on bail. There were no reports of any police officer being tried or convicted of rape during the year. The government's appeal against the court decision to acquit four police officers accused of raping Shima Chowdhury in 1996 had not been heard by the end of the year (see Amnesty International Reports 1997 and 1998).

At least 23 men and one woman were sentenced to death for murder. No executions were reported.

Throughout the year Amnesty International expressed concern about torture in police custody and urged the government to take steps to eradicate the practice. In April Amnesty International published a report on children in South Asia appealing to all South Asian governments, including Bangladesh, to take concrete steps to protect children both in custody and in the community and to fully implement the provision of the UN Convention on the Rights of the Child, which Bangladesh ratified in 1990. The organization called on the government to ensure the safety of the writer Taslima Nasrin who was subject to renewed threats from Islamists after she returned to the country. It also urged that the charges against her be dropped.

law watch

The People's Verdict

By Chandra Muzaffar

MOST Malaysians had expected the Kuala Lumpur High Court to find Dato' Seri Anwar Ibrahim guilty of the four charges of obstructing the course of justice — though they were convinced of his innocence. This in itself is a damning indictment of the justice system in Malaysia.

It is understandable why they felt this way. They knew that the allegations of sexual misconduct against Anwar— the investigation of which he was supposed to have obstructed— had already been dismissed as baseless in August 1997 after a police probe. The Prime Minister Dr Mahathir Mohamad himself had declared at that time that the allegations were 'rubbish' and Parliament had been informed of the outcome of the investigation.

And yet, the same baseless allegations were trotted out again in early 1998 as the rift between Mahathir and Anwar widened in the wake of the regional financial crisis. At the root of the rift was Anwar's reluctance to endorse the bail-out of huge corporations owned or controlled by individuals close to the Prime Minister and Tun Daim Zainuddin, the present Finance Minister. The Mahathir-Daim clique and their business cronies were afraid that if Anwar continued to hold office their corporate empires would collapse and their economic power would be extinguished. Besides, Mahathir himself was becoming increasingly unpopular partly because of his handling of the financial crisis. He and his clique feared that a populist leader like Anwar would mount a challenge to his position. Anwar, therefore, had to be eliminated at all costs. The 1997 allegations, now elaborated into a scurrilous poison-pen book was part of the plan. This is also why as soon as Anwar was sacked from the government, the mainstream media went on a rampage publicising lurid details of ludicrous sexual allegations. It was as if the media had already found Anwar guilty before the trial had begun.

It is significant in this regard that even before the trial began, Mahathir declared publicly that if Anwar was not found guilty 'we would be in trouble.' If anything, the actual trial strengthened the belief that there was a conspiracy to destroy Anwar. To start with, he was charged under a law that was already repealed by the Dewan Rakyat (the House of Representatives) and was awaiting similar action by the Dewan Negara (the Senate). The first prosecution witness, like a number of their other witnesses, contradicted themselves so badly that the public began to wonder how the case could have been brought to court in the first place. Later, when the court amended the charges, expunged a huge chunk of the evidence and excluded at least 10 defence witnesses, the public concluded that the trial was a farce. It was further proof that the real purpose of the trial was to destroy Anwar's political career.

Seen in this light, the court verdict yesterday was, in the public's eye, part of an ongoing political conspiracy. In fact, the 6 year jail sentence — longer than what most people had expected — shows that the conspirators want Anwar locked up for at least two general elections so that they can consolidate their position in the event that something untoward happens to the aging, ailing Mahathir Mohamad in the very near future. There were two other related court decisions yesterday which revealed the conspirators' fear of Anwar mobilising the people against the Mahathir regime. One, since the 6 year sentence will begin from the day of the verdict, instead of the day he was incarcerated, it is obvious that Anwar's enemies are determined to keep him out of politics for as long as it is possible. Two, Anwar was once again denied bail for an offence which is bailable. If he is on bail, the conspirators know that Anwar, given his charisma and his command over the masses, will be able to galvanise public sentiments into a popular movement against the Mahathir regime.

Though a grave injustice has been done against an innocent man, the Malaysian public is now more conscious than ever before of what is happening to the country. It has also established yet again that one cannot expect justice from our justice system.

Nonetheless, because the trial and the verdict have heightened people's awareness, there will now be a greater resolve on our part to fight for justice and rooted in the people's hopes and aspirations for a fair, democratic society.

The writer is President of the International Movement for a Just World.

The Human Rights Defenders Summit, 1998

The Paris Declaration

We reaffirm the fact that the realization of all the rights enshrined in the Universal Declaration of Human Rights is the responsibility of everyone, and we call upon private business, multinational companies and international financial institutions to ensure that their strategies and projects contribute to the implementation of civil, cultural, economic political and social rights, do not obstruct the freedom of action of human rights defenders;

THE Paris Declaration was adopted by the Human Rights defenders Summit on 10 December 1998, the 50th anniversary of the Universal Declaration of Human Rights. The Summit, held in Paris at the Palais de Chaillot, was organized jointly by four non-governmental organizations — Amnesty International, the Federation Internationale des Ligues des Droits de l'Homme (International Federation of Human Rights Leagues), France Libertés and ATD Quart-Monde — and brought together 350 human rights defenders from over 100 countries.

We, human rights defenders,

1. Are gathered as a World Summit of human rights defenders on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights at the Palais de Chaillot, a place of symbolic importance where this Declaration was adopted on 10 December 1948 by the Member States of the United Nations;

2. We are committed in our daily lives to make a reality of the high aspirations of the Universal Declaration of Human Rights for all people throughout the world of all the rights guaranteed by the international and regional instruments for the protection of human rights;

3. We insist that human rights are universal, indivisible and inalienable and represent the birthright of all men women and children and the common legacy of humanity which binds us and future generations;

4. We welcome the fact that, in the last fifty years, the increasing number of organizations and individuals who defend human rights has opened up new possibilities for action and considerably strengthened the influence of human rights defenders at national and international levels;

5. We believe that the Universal Declaration of Human Rights represents "a common standard of achievement for all peoples and all nations", and establishes, for the present and the future, principles essential for living in society with respect for human dignity; and that, as such, the Universal Declaration constitutes an indisputable moral and legal reference;

6. We are witnesses to the fact that in the fifty years since the adoption of the Universal Declaration of Human Rights, "disregard and contempt for human rights" remain the everyday reality in which many people continue to live and that human rights violations take on increasingly varied and complex forms, involving a growing number of actors, particularly economic actors, in the context of globalization;

7. We affirm that:

7.1 it is the responsibility of States to ensure the realization of all human rights enshrined in the Universal Declaration of Human Rights and other international and regional human rights instruments,

7.2 human rights are the concern of the international community as recognized in the Vienna Declaration and Plan of Action and it is the responsibility of all in that community, intergovernmental organizations, financial institutions, multinational corporations and private business, to contribute to their realization.

7.3 it is the right of any individual to protect and promote the human rights enshrined in the Universal Declaration of Human Rights and other international and regional human rights instruments, in conformity with them;

8. We denounce the growing disparity between the often dramatic reality of human rights violations in many countries and the rhetorical speeches made by those same States to support their international image;

9. We denounce the attempts by certain States to justify or excuse human rights violations in the name of cultural, religious or historical specificity, or of particular or national security interests; and by misleadingly setting civil and political rights against economic, social and cultural rights and the right to development; or, on the contrary, by denying the value of the latter;

10. We denounce economic and social insecurity, which in its most serious and persistent forms leads to extreme poverty and exclusion, and constitutes a violation of human rights; we stress that those who are subject to conditions of extreme poverty are among the principal victims of the full range of human rights abuses and that the efforts they expend in their daily struggle to stay alive place them among human rights defenders;

11. We denounce the failure of states to address impunity which constitutes one of the main obstacle to the full respect of human rights and which continues to obstruct the work of human rights defenders; we welcome the creation of the International Criminal Court and call upon States to ratify its Statute immediately and to ensure that it functions efficiently and effectively;

In this Spirit

12. We affirm that the realization of all human rights remains today as yesterday, the common aim for which we live, work and act and that we are human rights are respected for all, the peace and security for which we all strive will remain unattainable;

13. We invite all people, individually or collectively, to contribute to the realization of the rights guaranteed by the Universal Declaration of Human Rights and other international and regional instruments, as proclaimed in particular in the Declaration for the protection of human rights defenders adopted by the United Nations;

14. We deplore the fact that the increase in the number and influence of human rights defenders in the world has been accompanied by a development and systematisation of repressive measures and practices used against them;

15. We deplore the fact that in some countries, those systematic measures of repression are such that women and men have no means of promoting and protecting human rights and fundamental freedoms at a national level;

16. We denounce in particular the fact that human rights defenders are a target of those whose regimes and practices they condemn; and that, because of their commitment, they are among the victims of summary executions, enforced disappearances, torture, arbitrary detention, violations of the right to a fair trial, freedom of opinion, expression, association, assembly, demonstration, movement, the right to privacy, the right to employment and employment rights, the right to housing, health, education and culture and that they are increasingly forced into exile or enforced displacement, or to live in inhuman or degrading conditions;

17. We condemn the proliferation of systematic measures and practices used by States to prevent or impede the legitimate work of human rights defenders, including censorship and seizure of publications, defamation, harassment, intimidation, implication in criminal cases, their identification with 'terrorist' groups, restrictions imposed on the creation or registration of associations, the legal and administrative obstacles to the right of access to and dissemination of information, the surveillance and control of access to funding and the use made of such funds, the creation by the authorities of State-controlled non-governmental organizations, reliance on a state of emergency or public order requirements, impunity for the perpetrators of such acts against human rights defenders;

18. We express our solidarity with those whose rights are violated without any recourse to mechanisms for the protection of human rights because of the systematic repression of their rights;

19. We call upon States to fulfill their obligations under international human rights law and to respect, and enforce respect for, the right to freedom of action for human rights defenders, and to this end:

19.1 to fulfill their obligation, in accordance with the Universal Declaration of Human Rights and other international or regional instruments, to which they have freely subscribed, not to impede the free and effective exercise of the right to protect and promote human rights;

19.2 to adopt the necessary measures to guarantee this right and protect those exercising it; in particular by ensuring that their national laws are in conformity with the Universal Declaration of Human Rights and other international and regional human rights instruments;

19.3 and to provide such protection against acts or omissions of the State, as well as against acts of violence and affronts to human dignity perpetrated by armed groups, private groups or individuals;

20. We call upon intergovernmental organizations, international or regional, to protect human rights defenders and to this end, to set up the necessary instruments and mechanisms to guarantee effectively the freedom of action of human rights defenders, and to protect them against all forms of repression; and, in this respect:

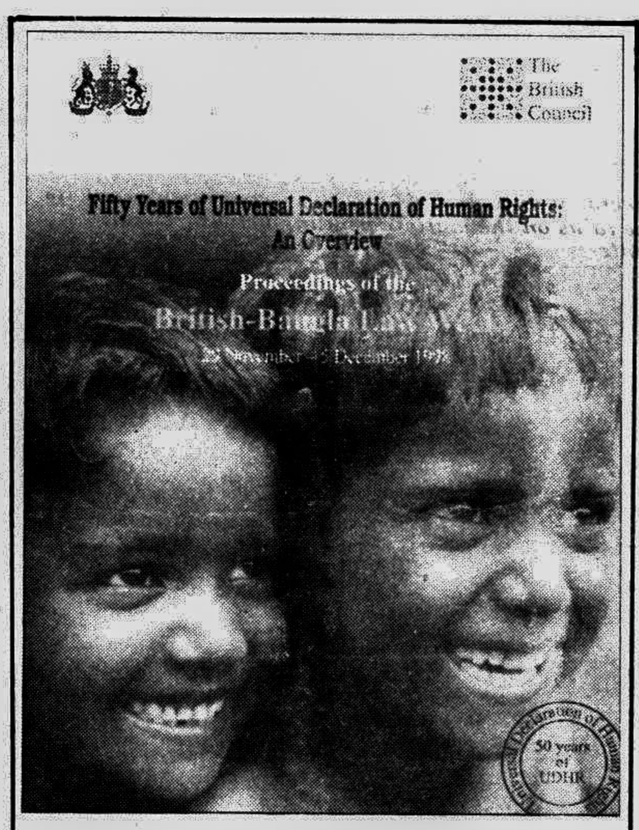
20.1 welcome the United Nations General Assembly's adoption finally on 10 December 1998, of the Declaration for the protection of human rights defenders which has been in preparation for thirteen years;

20.2 call upon States to immediately take the necessary measures at national and international levels to ensure the effective implementation of the rights enunciated in that Declaration;

21. We reaffirm the fact that the realization of all the rights enshrined in the Universal Declaration of Human Rights is the responsibility of everyone, and we call upon private business, multinational companies and international financial institutions to ensure that their strategies and projects contribute to the implementation of civil, cultural, economic political and social rights, do not obstruct the freedom of action of human rights defenders;

22. Finally, we urge men and women of all ages and all organs of society to engage in their daily lives in their communities to respect and promote all rights for all people everywhere, and to join us to make of the high aspirations proclaimed by the Universal Declaration of Human Rights a reality for present and future generations.

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect University Rconignised Human Right and Fundamental freedom only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.



About the Proceedings: The Proceedings is the output of the British-Bangla Law Week (29 November-5 December 1998) organised in commemoration of the 50 years of the Universal Declaration of Human Rights (UDHR) by The British Council Bangladesh and funded by the Foreign and Commonwealth Office (FCO) of the British Government. The Law Week brought together legal experts from Bangladesh, India and the UK to interact and share international experiences on the issues of administration of justice, access to justice, alternative dispute resolution, gender and the law, child rights, law reform, public interest litigation, ombudsman, human rights commission, prisoners' rights and prison reform, refugees and migration.

Judging Judges

By Raju Ramachandran

THE failure of the motion for removal of Justice V Ramanswamy has prompted members of the legal profession to suggest alternatives to the present procedure (incidentally, the Constitution uses the word "impeachment" only in the context of removal of the President of India). A distinction however needs to be made between the need to devise a different mechanism for entertaining and inquiring into complaints against the superior judiciary, and the need to prescribe measures short of removal.

As far as the first aspect is concerned, namely the need for an alternative to the parliamentary method, there is much to be said. The Constitution does not prescribe any detailed procedure. Article 124(4) contemplates removal of a judge on the ground of "proved misbehaviour" or "incapacity" after presentation of an address to the President by each House of Parliament, supported by a majority of the members of each House and a two-thirds majority of those present and voting. Article 124(5) has left it to Parliament to decide on the procedure for presentation of the address and for investigation and proof of such misbehaviour or incapacity.

Strange Mix

It was in 1968, that Parliament enacted the Judges (Inquiry) Act. This Act and the Rules framed under it embody a peculiar mix of political and adjudicatory process .A motion for removal can be initiated either by signatures of 100 Lok Sabha MPs or by both. The Speaker of the Lok Sabha or the Chairman of the Rajya Sabha (as the case may be) has the discretion to admit or reject the motion. Up to this stage the process is political. If the motion is admitted, the adjudicatory process takes over with the appointment of a three-member committee comprising the chief justice or a sitting judge of the Supreme Court, a chief justice of a High Court and a distinguished jurist.

The committee is required to frame definite charges against the judge and give him a reasonable opportunity to defend himself. If the committee exonerates the judge, further parliamentary scrutiny is barred. If it finds the charges against the judge proved, however, this finding remains ineffective unless it is approved by the necessary two-thirds majority of both Houses of Parliament. Thus the political process, which does not come into the picture where there is a finding of "not guilty," gets reintroduced where there is a finding of "guilty."

The initiation of the inquiry procedure depends upon signatures by a substantial section of MPs and in the very nature of things, it is only after considerable publicity in the media that such a stage is reached. This is bound to make the judge complain of a "trial by the press."

Moreover, to expect MPs to conduct themselves like judges (in assessing the existence of *prima facie* case, adequacy of material and so on) before appending their signatures is to ignore the reality. There are, of course, safeguards for the judge at this stage: the Speaker or the Chairman would exercise his judgement to reject the motion. Even after the motion is admitted, there is another sieve: the Inquiry Committee has to scrutinize the material on record with care, in order to frame definite charges and the grounds on which those charges are based. The Inquiry Committee may not even find it fit to frame charges on allegations which have no basis. But by this time the judge concerned would have suffered damage by adverse publicity of a kind which would be irreparable.

Victimized

On the other hand, even when the Inquiry Committee returns a finding of "guilty", political factors would inevitably operate at the time of voting on the report. The parliamentary method of disciplining judges carries two opposite kinds of dangers: upright (but politically unpopular) judges can became victims of vendetta, while crooked (but politically resourceful) judges can escape punishment.

Trial by peers has worked well over the years in a variety of professions. It would be appropriate that judges are also exclusively tried by a body of Judges. An amendment to the Constitution is urgently called for to vest disciplinary jurisdiction over judges in a parliament body like the often-suggested National Judicial Commission. This would make it easier to bring complaints against errant judges to light, without having to collect signatures of members of Parliament. At the same time such a body would be able to ensure that judges are not called upon to answer frivolous or vexatious charges and that such charges do not get unnecessary publicity. The findings of such a body should be final and binding.

However, the suggestion that there should be lesser kinds of punishment for judges like reprimands and censures requires deeper reflection. Under the present scheme a judge of the superior judiciary is removable for "misbehaviour" (apart from the ground of "incapacity" which does not present such difficult problem) and, in any future arrangement also, a judge can be removed only on this ground.

"Misbehaviour" is not defined by the Constitution of the Judges (Inquiry) Act. It cannot be put within the straitjacket of a definition. But one thing seems clear: a judge of the superior judiciary who is found guilty of misbehaviour, cannot continue in office and dispense justice. It would shake the confidence of the public in the administration of justice.

No Grades

The idea of classifying a judge's misbehaviour into "minor" and "major" grades is abhorrent to the idea of justice. The concept of minor penalty for minor misconduct is singularly inappropriate in the context of a judge. An officer can function effectively after receiving a minor punishment like a censure or a stoppage of an increment. But a reprimanded judge loses his legitimacy. Why? Because his job is to sit in judgement over the actions of others.

A judge whose conduct has been found to be lax cannot enforce higher standards in others. That is why stricter standards are expected of a judge occupying a Constitutional office.

The fact that judges are also human only entitles them to have their idiosyncrasies, predilections and philosophies; it does not absolve them of their duty to maintain the highest standards in public and private conduct. And so, a judge accused of "Misbehaviour" either goes on being found guilty or stays on after an honourable vindication: there can be no half-way house. The only conceivable situation where a judge can continue in office with an adverse remark is where his conduct amounts to an "indiscretion" but not "misbehaviour."

The writer is a Senior Advocate of Indian Supreme Court.

ANNOUNCEMENT

Dialogue on Public Interest and the Judiciary

Young Entrepreneurs and Professionals Forum (YEP Forum) in cooperation with The Daily Star and The British Council has arranged a Public Dialogue on 'Public Interest and the Judiciary: Towards the Next Millennium' on 30 June 1999 at the British Council Auditorium. The Program will start at 1700 Hours (Sharp). Eminent Judges, Lawyers, Jurists, Social Activists and Young Professionals will share their experiences and expectations with the audience.

You are most welcome to attend the event. Please register your name through phone (9883161, 885214), fax (863035, 886061, 9554160) or E-mail (dstar@bangla.net, monjurulkabir@usa.net).

We appreciate if you could bring a small piece of write up on the issue with you on that day and drop it with us. We will try to accommodate your valued views in our follow up publication.

We look forward to seeing you!

Notice

Serilising of the extracts from JN Dixit's book *Liberation and Beyond* will resume on June 22, '99. *The Daily Star* regrets the inconvenience to its readers.