

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

A Sense of False Security

by Adilur Rahman Khan

The Public Safety (Special Provision) Act 2000 will bring nothing but nightmares to the ordinary citizens of the country, particularly the political opponents, and this will only increase the number of opposition workers in the custody of police and many more victims of torture.

THE repressive Public Safety (Special Provision) Bill was voted through in the Parliament on 30 January 2000 by members of the Bangladesh Awami League only. This was finally given assent to by the President on 14 February 2000, after the Prime Minister, Foreign Minister and Law Minister paid a visit to the Bangabhaban and parleyed with the President for about an hour. The Prime Minister assured him that the provisions as to bail would be deleted through an ordinance soon after the act would come into force. This, on this assurance, the President assented to the latest, repressive Act. Although the mainstream opposition alliances, human rights organizations and the leading jurists of the country requested the President earlier not to give such assent.

This Act deals with some 'heinous' crimes and ensures 'speedy trial' against the perpetrators. The offenders caught under this Act would be punished with 3 to 14 years of rigorous imprisonment. This gives ample scope to applying the act on political opponents during political protests - street processions, obstruction of roads or compelling the diversion of traffic. Unfortunately, all other possible means to air dissent has been obstructed by the present government. They even have total control over the electronic media.

This new law also treats specific crimes as non-bailable offences and restricts the power of the Tribunals and even the Appellate Court (High Court Division of the Supreme Court) to grant bail. Initially, before its enactment, the cabinet also discussed punishment of the media for publishing 'false reports' against VIPs. Which was in fact intended to violate the right to

information and knowledge, had been erased from the discussion table due to pressure from concerned groups. Nevertheless, the Bill has now become the Law and fundamental human rights have been put again under guillotine.

This trend of introducing repressive laws is nothing new to the people of this country. Whenever the political elite feel threatened, mainly due to their own failure in delivering justice to the common people; when the administration loses its transparency and bad governance becomes the policy of the day, the time to adopt draconian and repressive laws in order to gain protection from the wrath of the masses becomes imminent.

Historically, it has been proven that although governments enact draconian or repressive laws in the name of people's security, ultimately these laws are always used to suppress the legitimate and democratic voices of the common people and the opposition movements.

Although Pakistan inherited some of these draconian laws from the British Raj, no such law was made part of the Bangladesh national legal system since the birth of its Constitution in December 1972. The Second Amendment to the Constitution in 1973, provided the scope for enacting draconian or repressive laws in the name of emergency provisions. The notorious Special Powers Act, 1974 was enacted through the

scope provided by the Second Amendment, which was straight away enforced to suppress the voices of the then opposition groups, who succeeded in waging a campaign against corruption, repression and injustices of the first Bangladesh Awami League government. As a result, thousands of political activists, mostly belonging to the radical left camp, were put behind bars.

There were widespread allegations of custodial deaths and torture by the law-enforcing agencies and by a special paramilitary force, known as Jatiyo Rokhhi Bahini. Top ranking political leaders were killed at that time. Siraj Sikdar, the leader of Shorobhara Party, died on 2nd January 1975, while he was in the custody of the law enforcing agents. As claimed by the opposition, about thirty thousand people, mostly belonging to the radical left camp were killed during this time.

This was only the beginning. The subsequent martial law regimes of Khandakar Mush-taq, Ziaur Rahman and Hussain Muhammad Ershad continued to use the Special Powers Act, 1974 for their own benefits. Thousands of people belonging to opposition groups languished in prisons under this draconian law during their regimes. The downfall of the Ershad regime in December 1990 brought a scope for repealing all repressive laws and putting the country on course for a demo-

cratic order. Unfortunately, this scope did not materialize.

The promulgation of The Suppression of Terrorist Activities Act, 1992, by the Bangladesh Nationalist Party (BNP) government for a period of two years, recreated a sense of insecurity in the minds of the common people, who viewed it as an undemocratic act to suppress the voice of the opposition. The Suppression of Terrorist Activities Act 1992 treated minor and major offences alike. The scale of punishments provided for offences under this Act ranged from 5 years imprisonment to death. Several thousand people suffered under this Act. Thankfully, it died a natural death in 1994, leaving a deep scar in the political history and psyche of the people of Bangladesh.

While in opposition, the present Prime Minister termed The Suppression of Terrorist Activities Act 1992 of BNP as a 'Mini-Martial Law'. She also declared, many a time, that if she came to power, she would scrap the Special Powers Act, 1974 - the possibility of which has already been ruled out after she became the Prime Minister. This has now become more obvious after the present Bangladesh Awami League government introduced another repressive law - the Public Safety (Special Provision) Act, 2000 on 14 February 2000.

Political opponents of the present regime and various human rights groups fear that, as in the past, nothing other than the suppression of voice of the dissidents will happen under this Public Safety (Special Provision) Act, 2000. They fear, will happen in the name of

'public security,' and public bashing will become routine work with the help of corrupt administration, bad governance, and political criminalisation. A case has already been lodged by GRP at Rajshahi under the Public Safety Act against some political opponents, including the Mayor of Rajshahi City Corporation, Mizanur Rahman Minu and 300 others on 17 February 2000.

Therefore, the fear that political opponents will bear the brunt of this latest repressive law is becoming a reality. According to an annual human rights press report submitted at a press conference on 31 December 1999 by Odhakar, a coalition for human rights, approximately 10,000 political workers were apprehended in 1999 alone. Among these workers, several thousand were arrested under the Special Powers Act. Nothing good has come from the enactment of another repressive law.

Instead of amending the age old Penal Code and Criminal Procedure Code and making the justice system cured from corruption, the government is bent on creating new repressive laws, serving a vested interest group. The Public Safety (Special Provision) Act 2000 will bring nothing but nightmares to the ordinary citizens of the country, particularly the political opponents, and this will only increase the number of opposition workers in the custody of police and many more the victims of torture.

With the Special Powers Act still in full force, the introduction of another repressive law can only place the citizens of Bangladesh in double jeopardy.

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Law Watch

Legal Aid for Judges to Sue the Press?

Judges will be provided legal aid from the public purse to meet up cost of suing newspapers, according to a recent plan to be approved by the Lord Chancellor. The new scheme puts judges in the same privileged position as ministers, Whitehall officials and other servants of the Crown.

The new scheme, which significantly strengthens the hand of the Judiciary over media attacks, has been drawn up between senior judges and Lord Irvine of Lairg and will be incorporated into a media guide for judges to be issued by Easter. Judges are increasingly under public attack and feel particularly vulnerable because their position prevents them from answering critics. Some have been reluctant to pursue libel proceedings because of the uncertainty of the outcome and the huge legal fees that might result. There is no legal aid for defamation suit.

The final version has yet to be approved but judges will have to meet strict criteria before they can apply for funds. First they must try to obtain a correction and apology. If they fail to settle the matter amicably, they must consider the likelihood of a successful legal action, the extent of damage done by the publication - it must affect not just the individual judge but the judiciary as a whole - and whether legal action would be in the public interest. Judges will be urged to consider the potential damages of the legal action giving rise to extra publicity.

A spokesman for the Lord Chancellor's Department said that the move was "correcting an anomaly" by which some 2,000 full-time judges did not have the same protection as other public servants. The scheme which is not expected to prompt a rush of judges to the courts, will apply only to the most gross or outrageous defamatory remarks.

Courtesy: The Times, 22 February 2000.

Political Repression in 1999

Ever Shrinking Space for the Opposition

by C R Abrar for Odhikar

The government must provide space to the opposition to voice itself both inside and outside the parliament and respect individuals exercising their rights as enunciated in the constitution. Furthermore, criminalisation of politics and family control over the political institutions have worsened the situation.

RELATIVELY free and fair elections have been one of the major prerequisites for establishing a democratic rule in Bangladesh. However, institutionalization of democracy needs far more than changing government through elections. It requires unwavering commitment on the part of the political leadership to abide by certain rules of the game. In a parliamentary democratic set up, the onus lies with the ruling party to ensure that the organs of the state are administered in conformity with the constitutional provisions and other laws of the land. Here an attempt will be made to assess the performance of the government in upholding the constitutional provisions pertaining to the freedom of movement (art. 35), the freedom of assembly (art. 37) and the freedom of association (art. 38). Needless to say these provisions are very important for the functioning of democracy that by definition recognises the existence of contending views and perspectives. It has a limited objective to indicate the nature of the government's interaction with the political opposition in 1999.

1999 marked a major deterioration in the government's tolerance level of opposition. Time and again it has resorted to measures that have resulted in the sharp curtailment of rights of the opposition political activists. Denial of the right to assembly has been one of the prime features in the government's policy. Throughout the year a number of rallies of major opposition alliances were disrupted by the pro-government elements. On 13th March '99, three separate meetings of three main alliances were disrupted in Barisal. *Bhorer Kagor* (14.3.99) reports that in one in-

cident, the armed cadres looted a store owned by an opposition leader but the police did not intervene though they were posted nearby.

Opposition leaders have come under attack on a number of occasions while holding rallies. In the first half of April, MPs belonging to opposition parties came under attacks when their meetings were disrupted in Durgapur, Hatia and Bhola. On 22nd April '99 another opposition MP from Shaikhupur Abdul Wahab was attacked by the supporters of the ruling party as he began to speak in a meeting organised to mark the inauguration of a police camp. This incident took place before the Home Minister and the Inspector General of Police. Later the Minister prevailed upon the attackers and the MP was freed.

A series of meetings of the dissident Awami League leader Kader Siddiqui, MP were disrupted by the supporters of the ruling party in Tangail and Dhaka. On 29th May '99, Section 14 was imposed as the government backed Students League and Youth League called a meeting at the same venue in Nakla thana where Siddiqui had called one earlier. Police swooped on the supporters of the dissident leader as they prepared the meeting even at an alternative site. Likewise, on 12th July '99, another meeting of Kader Siddiqui, that organised by the Freedom Fighters Coordination Council was disrupted by ruling party's armed cadres. The General Secretary of the Students League publicly announced that his organisation would resist holding of any meeting by Siddiqui. On 24th December '99, a Convention organised by Kader Siddiqui at the Institute of Engineers in

Dhaka was disrupted and attacked by elements belonging to the Students League. The attackers blasted bombs, opened seven rounds of fire and carried away the photo of Sheikh Mujibur Rahman, that was placed in the podium. Dr. Kamal Hossain, who was the chief guest for the occasion, termed the act of attackers as 'state terrorism'.

In several instances peaceful processions of opposition groups came under attack by the police and supporters of the ruling party. On 26th July '99, a procession of the Bangladesh Students Union was intercepted by police when it marched towards the Secretariat to submit a Memorandum to the Home Minister. The procession was attacked by miscreants from behind and a number of students suffered injuries. On 13th September '99, a peaceful human chain of slum dwellers, organised by Gono Forum, was subjected to *lathi-charge* by the police. *Bhorer Kagor* reports that, several armed men in civil dress were also seen near that spot.

As opposition alliances mounted a nation wide campaign against the transshiping agreement with India, the government's response was sharp and heavy-handed. At number of places, opposition rallies were attacked by the supporters of the ruling party. In Narayanganj, where opposi-

tion activists laid a siege of the Deputy Commissioner's office, some 14-20 men sprayed bullets in the rally, killing one and injuring about 50 more (Daily Star 19.8.99). Rallies in Ray Shahabazar in Dhaka and in Barisal also came under armed attack. On 8th November '99, Sadeq Hossain Khoka MP was shot in his head by police when he was leading a pro-hartal procession in city.

1999 has also witnessed an increase in incidents of violence during hartals. As a matter of policy, the Awami League government appeared to have decided to resist hartal at any cost. This has been put into effect by organising anti-hartal rallies and pickets before and during hartal hours, holding of public meetings on hartal days by the ruling party and its front organisations and by not allowing or by resisting pro-hartal pickets before and during hartals. On 15th September '99, police allowed only the opposition MPs to participate in a procession at city's Bijoynagar area, while others were denied. On 19th October '99 after the opposition alliance announced a meeting at Laldighi ground in Chittagong, the ruling party called their own meeting at the same venue. About 100 people were injured in clashes between the supporters of both opposing parties, at that venue.

In the face of widespread criticism about the efficacy of

hartal as political tool the opposition leadership was forced to try out other forms of political protest. Long march by road, train and motor launches was one such option. 'Though this type of programme caused much less hardship to the common citizenry and much less loss to the national economy, even this was resisted by the government and had given a good excuse to the opposition leaders for abandoning such alternative forms of political protest. In early May 1999, BNP announced its programme of road March to north Bengal via Jamuna Bridge. Only two days before the programme, the government imposed a ban on such activities on the grounds of 'public interest, including security and safety of the structure and its surrounding areas' of the bridge. The BNP termed the ban as 'illegal, undemocratic, conspiratorial and aimed to foil the programme'. After intense negotiations the ban was lifted and the programme passed peacefully.

Cutting off road links with the city has been another novel method adopted by the Awami League government in combating major opposition programme in the city. On 11th September '99 when a major opposition party announced a programme to lay siege of the Secretariat to protest the corridor agreement with India and to press home the demand for res-

ignation of the government, the government responded by raiding the opposition political leaders homes, arresting some of them and imposing a ban on processions around the Secretariat. In order to thwart any reinforcement of opposition support from outside the city, this time the government went a step further and laid a siege of the Dhaka city itself. Road links with Aricha, Tangail, Sylhet and Chittagong were severed by placing cement blocks, buses and trucks on the road. Press reports suggest, such an action without prior notice has caused major hardships to common travellers and some of them were subjected to looting. In Tongi, a bus carrying opposition supporters were attacked with stones made by *Bhorer Kagor* (13.9.99) reported that the barricade on the Kanchpur bridge was placed by local union council chairman who recently joined Awami League from BNP.

Several press reports during the reporting period stated that, armed men in civil clothes were visible during opposition programmes. Bengali daily *Sangbad* published a photo on 15th June '99 of a young man brandishing a firearm, and the Daily Star on 8th September '99 printed another photo with the caption 'Who is the other man?' The English daily published yet another photo of a plain-clothesman with arms on 7th

December '99. When affected parties sought redress for violation of rights, they were often subjected to threats and intimidation, sometimes by the law enforcing agencies. During a hartal, an opposition activist Shajal Chowdhury was murdered by anti-hartal elements in the city's Dhanmondi area. Several newspapers reported that the anti-hartal motorcade procession, from where shots were fired that killed Shajal, was led by the ruling party MP, Maqbul Hossain. Shajal Chowdhury's father filed a case with the police naming Maqbul Hossain MP as the number one accused. Since then the family has been subjected to threat and intimidation for withdrawal of the case. Niaz Ahmed, an eye-witness to the incident and brother in law of the deceased, was implicated in a terrorism case.

Similarly, Moni Begum, another victim of police harassment during hartal hours, had to obtain a court order to restrain police raiding her house and arresting her. Begum was disrobed by members of the police force in the Tophkhana area of the city on a hartal day. She later filed a case against seven police personnel.

The ruling party's tactics in dealing with the opposition was brought to a new law by the Mayor of Chittagong when he engineered dumping of a pile of garbage in front of the house of the former Mayor and President of the Chittagong BNP. *Ittefaq* (25.10.99) reported that on 24th October '99 two trucks of the Chittagong City Corporation dumped the garbage in that spot at the small hours on the said day. Earlier, the Mayor Mohi-uddin had threatened that if any of the city corporation's vehicles were attacked during

hartal hours, such a response would be forthcoming. In another incident, the deputy leader of the opposition was informed by the Dhaka Cantonment authorities that 107 of his invitees could not be given permission to join the wedding reception that was hosted by him as necessary security clearance could not be obtained. Needless to say, most of the invitees in the list were political personalities, including seating MPs, belonging to the opposition.

The above incidents amply illustrate how the government has become increasingly intolerant towards political opposition and how it fails to recognise the legitimate rights of the opposition activists and parties. In order to break the current political stalemate there has to be a change in the government's attitude in the regard and the rights of the people should be honoured. The government must provide space to the opposition to voice itself both inside and outside the parliament and respect individuals exercising their rights as enunciated in the constitution. Furthermore, criminalisation of politics and family control over the political institutions have worsened the situation. This has made the entire political system a hostage of a few interested quarters, while the people of the periphery have almost no participation and 'democracy' and human rights are the ultimate victims.

The writer is a member of Odhikar, a coalition for human rights.

It is the fifth and final in a series of human rights reports prepared by Odhikar. The information gathered is based on scanning of several leading national dailies.

The UN Permanent Forum for Indigenous Peoples

So Near, Yet So Far

THE United Nations, meeting between 14 and 23 February 2000, moves one step closer to creating a Permanent Forum to hear voices seldom heard. These voices belong to the indigenous peoples of the planet. It was over 80 years ago that Native American Indians first approached the League of Nations to ventilate the grievances of indigenous peoples. At the dawn of the 21st century, there is little doubt that the conclusions of a seminar held by the United Nations in 1993 still hold true. Indigenous peoples have been and still are victims of racism and racial discrimination. It is evident that relations between States and indigenous peoples should be based upon free and informed consent and cooperation, not merely consultation and participation. More importantly, indigenous peoples should be recognized as proper subjects of international law with their own collective rights.

This great leap forward will take place during the Second Session of the Open Ended Inter-Sessional Ad-hoc Working Group for the establishment of the Permanent Forum to be held in Geneva between the 14 and 23 February 2000.

The Vienna Declaration and Program of Action (VDPA) adopted at the World Conference on Human Rights in 1993 recommended that 'in the framework of such a decade, the establishment of a permanent fo-

rum for indigenous people in the United Nations system should be considered."

The UN General Assembly in its 1995 resolution 50/157 identified the establishment of the Permanent Forum as one of the important objectives of the International Decade of the World's Indigenous Peoples. Accordingly, the UN Commission on Human Rights established the Ad-hoc Working Group on the Permanent Forum in 1998.

Many Governments are allergic to 'indigenous issues' due to historical injustices and atrocities perpetrated on the indigenous peoples. There has been little accountability against abuses on the indigenous people. Indigenous people remain on the periphery of the United Nations system.

The First Session of the United Nations Working Group was held in February 1999. A senior diplomat, Mr. Richard van Rijssens of the Netherlands chaired it. It made substantial progress in identifying the mandate, membership, participation and the level of the Permanent Forum. The governmental delegations of India and the United States, for different reasons, blocked consensus proposals for the establishment of the Permanent Forum. The Chairman, Mr. Richard van Rijssens undertook further consultations with the governments and indigenous peoples delegations during the 17th Session of the United Nations Sub-Commission's Working

Group on Indigenous Populations held in July 1999 to overcome these obstacles. The Report on consultations held by the Chairman released on 16 December 1999 seeks to serve as the basis for negotiation during the Second Session in the United Nations to be held this week.

The First Session reflected the contentious issues. The Government of India raised serious objections to the establishment of the Permanent Forum stating that there were adequate mechanisms within the UN human rights system. New Delhi's diplomats suggested that the UN Secretary General be requested to conduct a study on the existing mechanisms addressing indigenous issues. The UN Secretary General in his report pursuant to the General Assembly resolution 50/157 of 21 December 1995 had stated that 'although there is a noticeable difference in the level of activity among United Nations bodies whose mandates have a bearing on indigenous peoples concerns, there is a growing interest and concern for indigenous issues among the different organisations and departments of the United Nations system. There are now a number of indigenous-related programmes and projects being

implemented and planned by United Nations agencies. However, there exists no mechanism to ensure regular exchange of information between the concerned and interested parties - Governments, the United Nations system and indigenous people - on an ongoing basis. The information provided by the United Nations agencies does not indicate that adequate procedures are already in place to accommodate the effective involvement of indigenous people in the work of the United Nations."

On the final day of the First Session, in a classic filibustering exercise, the Indian diplomats consistently raised procedural questions to kill time and block consensus. It has been recommended that the Permanent Forum's mandate should be modeled on Article 62 and 63 of the United Nations Charter. It is implausible that a Permanent Forum for Indigenous Peoples (IPFP) would deal with conflict resolution issues. The representatives of indigenous peoples recommended that the Permanent Forum should consist of members serving in their individual capacity and that there be an equal number of government representatives and members elected by the indigenous caucus. The mem-

bership of the Forum should reflect the geographical and cultural diversity of the world in an equitable manner. All indigenous peoples representatives/organisations should be able to participate as observers in the Permanent Forum irrespective of whether they have Consultative Status with the United Nations Economic and Social Council (ECOSOC) or not. It has been suggested that the Permanent Forum develop its own Rules of Procedure to establish its relationship with indigenous organisations subject to approval from its parent body. Consultative Status with the ECOSOC has been one of main obstacles for full and effective participation of indigenous groups.

A major recommendation is that the Permanent Forum should be a subsidiary body of the ECOSOC directly reporting to the ECOSOC. The members of the Permanent Forum should have the right to vote. Decisions should preferably be taken by consensus by the members who are elected/selected for one term of four years. Members may be eligible for reelection/reselection once in succession. It has been suggested that in the initial term half the members are elected for four years and the other half are

elected for two years, ensuring an infusion of new members every two years.

Despite consensus on many contentious issues, financial constraints at the United Nations will remain a key obstacle in the establishment of the Permanent Forum and its Secretariat. Member States like the United States who do not pay their dues raise the red herring of the lack of financial resources to block the establishment of the Permanent Forum.

Within the Commission on Human Rights, ad-hoc financial allocations enable the 'Inter-Sessional Working Group on enhancing effectiveness of the mechanisms of the Commission' to hold three sessions within a year. There are separate secretariats for the UNIFEM under UNDP and the Commission on the Status of Women. Indigenous representatives recommended that the Permanent Forum be funded through the regular budget of the United Nations.

Moreover, a United Nations Fund for the Permanent Forum, similar to the United Nations Human Settlement Foundation, should be established to assist the functioning and program of the Permanent Forum including the participation of the observer indigenous representa-

tives.

The Asian government delegations will certainly raise the issue of definition of indigenous peoples, despite the fact that many of them have settled the issue in 1997. The Government of Philippines adopted 'The Indigenous Peoples Act of 1997'. The Malaysian Government has a specific law entitled 'Aboriginal Peoples Act' of 1967, which recognises existence of indigenous peoples. Under Article 161(A) of the Federal Constitution of Malaysia, the peoples of Sabah and Sarawak are recognised as 'natives' or indigenous. The Government of Nepal recognises indigenous peoples in the country and formed a National Committee for the National Year of the World's Indigenous Peoples, 1993 and a National Committee for the United Nations Decade for Indigenous Peoples, 1994-2004. The courts in Japan have recognised the indigenous Ainu. The issue was reiterated by a supplementary resolution to 'The Act for the Promotion of Ainu Culture, Spread of Knowledge relevant to Ainu Traditions and an Educational Campaign' of May 1997. The Government of Bangladesh recognises indigenous peoples through various legislation like the Chittagong Hill Tracts 1900 Regulation (Act 1 of 1900). Act number 12 of 1995 and through correspondence of the Bangladesh National Board of Revenue of 10

March 1980, 9 April 1980, 17 October 1992 and 12 June 1995.

The Government of Bangladesh informed the Special Rapporteur on the 'Study on the Problem of Discrimination against Indigenous Populations'. J. Martinez Cobo that members of tribal or semi-tribal populations are regarded as indigenous 'on account of their descent from the populations which are settled in specified geographical areas of the country.'

The Prime Minister of Bangladesh, Ms Sheikh Hasina Wazed while addressing the Hague Peace Conference on 15 May 1999 stated that 'the problem of the Chittagong Hill Tracts boils down to the right of an indigenous people.' And the constitutionally mandated 'Scheduled Areas and Scheduled Tribes Commission' of India clearly stated in its report on 14 October 1991, much before United Nations started its debate on indigenous peoples, that the Scheduled Tribes are the original inhabitants and internationally they are known as 'indigenous' peoples.

As governmental double-speak rules the roost at the United Nations, indigenous peoples face formidable opposition from State delegates. A Permanent Forum for indigenous peoples like a mirage is tantalizingly near, yet so far.

Courtesy: Human Rights Features