

# 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

## Public Safety Act

# Safety for the Public or the Ruling Party?

by Nurul Kabir

WHILE getting the legislation adopted in the parliament on January 30 this year, the ruling party leaders claimed that the Public Safety (Special Provision) Act would be enforced neutrally, thereby dismissing intense speculation over its intended use to silence political opponents.

"I am confident of neutral application of the PSA," Law, Justice and Parliamentary Affairs Minister Abdul Matin Khasru said in an interview with The Daily Star on February 16 (published on February 20).

Ironically, The Daily Star on February 16 carried a photo-feature that showed how the police had employed PSA to prevent a BNP rally, while allowing an Awami League one to impede traffic movement the previous afternoon.

That was just the beginning. In more than two and a half months since the President assented to the PSA, the police action, or inaction, has followed a similar pattern. Whereas a large number of opposition activists have been put behind bars under the act, identified criminals in the ruling party fold have enjoyed a sort of immunity.

Feni, a south-eastern district of the country, has recently hogged the headlines for the wrong reasons — thanks to the reign of terror unleashed by feuding political camps. According to a local weekly, 56 incidents of extra-judicial killings — of those 21 political — took place in 1999 only.

Under these circumstances, Home Minister Mohammad Nasim, announced in the first week of March that a 'combing operation', aimed at containing the terrorist activities in the district — especially the district headquarters.

"Jainal Hazari (the local MP of the ruling party) has given me his words that he would help contain terrorist activities," the minister reportedly told the district's Law and Order Committee in Feni on March 6 (Prothom Alo, March 7).

But, what is the impression of the local people about Hazari?

"The MP is very influential in the area and people cannot lodge any complaint against him or his men with police station or even with the court," a teacher told The Daily Star on March 16, needless to say, on condition of anonymity. "People here hesitate even to

describe to newsmen the actual situation fearing reprisals later."

A Daily Star field-level investigation revealed that a deputy commissioner who was tough as regards the MP was transferred from Feni.

The message the people got from the home minister's announcement regarding Hazari's commitment was that the MP would either restrain his musclemen himself or would not obstruct, in any way, police action against hoodlums enjoying his patronage.

Feni police, however, began its 'combing operation' by rounding up nine BNP men, including the general secretary of the district BNP and that of its youth front, on March 9. Reportedly, a huge amount of illegal arms were also recovered from the opposition leaders. Cases were lodged against them under various laws including the PSA.

A total of 382 people have reportedly been arrested in the districts in three weeks of the

allegations true, I would ask the boys to surrender."

Hazari was helpful, indeed. He reportedly helped policemen raid a house to arrest the BNP leaders on March 9.

Hazari and his men, a symbol of terrorism to the local people, are now moving freely in Feni, giving a clear message that the PSA is not meant for the ruling party leaders and activists.

Hazari and his men are not the only ones who enjoy immunity against the PSA.

On April 10, hundreds of cars carrying thousands of passengers were stuck for six hours on the busy Dhaka-Narayanganj-Munshiganj road, as some people, led by ruling party legislator Haji Selim, put barricade at the Fatulla point of the road.

They put some trucks across the road and thereby obstructed traffic movement in protest of a robbery at the MP's business firm in the Pagla area under Fatulla thana, a few kilometres off the capital.

Inspector of the Fatulla Police Station Shahidul Islam, suggests otherwise. "Haji Selim got agitated when OC of the Fatulla police requested his men to remove barricade from the road. Reacting to the request, Haji Selim rather asked his men to further tighten the blockade," Prothom Alo quoted from the FIR on April 14. "Later SP of Narayanganj and a DMP high official reached the place to request Haji Selim to clear the road. But Selim told them that the barricade would not be removed until his money is recovered."

Haji Selim was allowed a way out but Kafiluddin, general secretary of the BNP's Savar unit and president of the inter-district truck drivers union, was not.

Kafiluddin was arrested on April 6 on charge of extortion. The next day, his supporters in the union put barricade at Aminbazar, Gabtali and other points of the inter-district highway. On April 12, two cases were filed under PSA with

the PSA that says, "whoever by using illegal force... intentionally causes destruction of or damage to any movable or immovable property belonging to any person, or government or government controlled institution or organisation or authority established under law... shall be punished with imprisonment for a term which may extend to ten years and shall not be less than two years and shall also be liable to fine."

But the government did not file any case against Saiful and his comrades under the PSA. The principal was removed.

In Barisal, ruling party activists ransacked Grameen-Phone sales centre twice on April 15. According to Bhorer Kagoj, a Bangla daily, the AL activists launched the first attack only 15 minutes after the Home and Telecommunication Minister left the town inaugurating the centre.

Why? The Grameen authorities did not invite to the inaugural function some senior AL leaders of

even fired blank shots keeping guns on their shoulders," reported Prothom Alo on April 26. "On April 9 last, the Chief Whip's son reportedly occupied the ground-floor of the building, ousting the tenants with the help of some armed hoodlums. The landlord and his family members who protested against such an illegal act were allegedly beaten up by Sadek and his armed accomplices. They announced that they would convert the ground floor to Sadek's business office, while anyone trying to oppose the idea would be killed."

The acting chief of the Dhanmondi police, Mamunur Rashid, admitted to the Prothom Alo that he was 'aware of Sadek's repressive activities since long. But police could not take any step in this regard as the victims did not lodge any complaint.'

A top ranking police official, however, told the daily that the victims were not filing any complaints out of fear.

The victim eventually filed a written complaint with the Dhanmondi police on April 25, braving the threats issued by Sadek and his men.

As the incident was reported by a section of the print media on April 26, Dhanmondi police arrested from Sadek's apartment three 'hoodlums' the same day. Of the arrested, 'one is accused in a number of murder cases, while the rest are also identified terrorists'.

The police left Sadek behind to threaten Chowdhury and his family members of dire consequences.

"Meantime, the hoodlums arrested on the occasion were seen at the Dhanmondi Police Station talking over mobile phones, while foods were pouring in for them from outside," Bhorer Kagoj reported on April 27.

Sadek's reported actions are punishable under the provisions of the CrPC as well as the PSA. But the sole step the police are reported to have taken so far against him is, they have asked him leave the house by May 10.

In justification of the enactment of the PSA, the government, especially its home minister, repeatedly claimed that a special law was necessary to combat special kinds of crimes. It also tried to dispel the apprehension of partisan application of the law. But the incidents show that the government is practically enforcing the 'special law' in a very special manner.

In justification of the enactment of the PSA, the government, especially its home minister, repeatedly claimed that a special law was necessary to combat special kinds of crimes. It also tried to dispel the apprehension of partisan application of the law. But the incidents show that the government is practically enforcing the 'special law' in a very special manner.

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Have they become angels overnight? Hazari's statement, however, suggests otherwise.

"My boys possess arms. I have told the district's Law and Order Committee that I would ask my boys to surrender the arms after the recovery of weapons held by the BNP activists is over. My boys possess arms for self defence. At times they had to wage war against the BNP terrorists," Hazari told the Jugantar, a Dhaka-based Bangla daily, on March 12.

"I do not see any reason why I should be arrested. There is neither any case against me nor any warrant of arrest," he was also quoted as having said.

Hazari is not ready to allow police to even conduct investigation into any allegation against his boys.

"If the police believe that my boys hold illegal weapons, they have to communicate it to me. In that case I would investigate into the allegations," he told Manabjama, another Bangla daily, on March 13. "If I find the

The MP, who believes that 'a local UP chairman who is also a ruling party leader was behind the robbery', later filed a case against nine persons including the UP chairman the next day.

But, surprisingly, no case was lodged that day against those who put barricade on the road for violation of the PSA. Section 8 of the PSA holds a person/s liable to 3 to 14 years of imprisonment and also fine, if he/they 'by using illegal force or by putting in fear of any kind causes obstruction to traffic movement in any public road, waterway or railway, or compels the driver of any vehicle or vessel to change its normal route'.

In the face of media criticism, however, the police finally filed a case against 'some one hundred men' — more than 70 of them unidentified — two days later. The ruling party legislator Haji Selim, who publicly asked his men to block the road, was not included.

Why was he spared? Was the police unaware of his role? The FIR, prepared by Sub-

Savar police against 14 persons including Kafiluddin. One is for alleged extortion and the other for barricading the road. When the road was barricaded, Kafiluddin was in police custody.

In another incident, a student leader of the ruling party-backed Bangladesh Chhatra League, who led a violent attack on the administrative building of Sir Salimullah Medical College and created panic amongst students and teachers, and the patients and the staff of the Mitford Hospital on March 13, was actually rewarded for his act.

"When the result of the final year examination was published on March 13, candidates who flunked, led by the general secretary of the college union, Saiful Islam, ransacked the college building and forcibly put the office of the principal under lock and key," reported Prothom Alo on April 13. "Saiful Islam who is also a leader of the ruling party's student wing, declared the principal persona non grata."

Islam and his fellows clearly violated section 7(b) of

the locality and also did not entertain a demand for more than a dozen mobile telephone sets free of cost, media reports said.

Is the offence not punishable under the PSA? But the police are yet to arrest anyone in this connection. The GP outlet is still closed.

Many believe that the police would 'never be able to arrest the extortionists' unless Abul Hasanat Abdullah, the chief whip in the parliament who looks after ruling party politics in the Barisal division, permits them to do so.

His son did one better than the father.

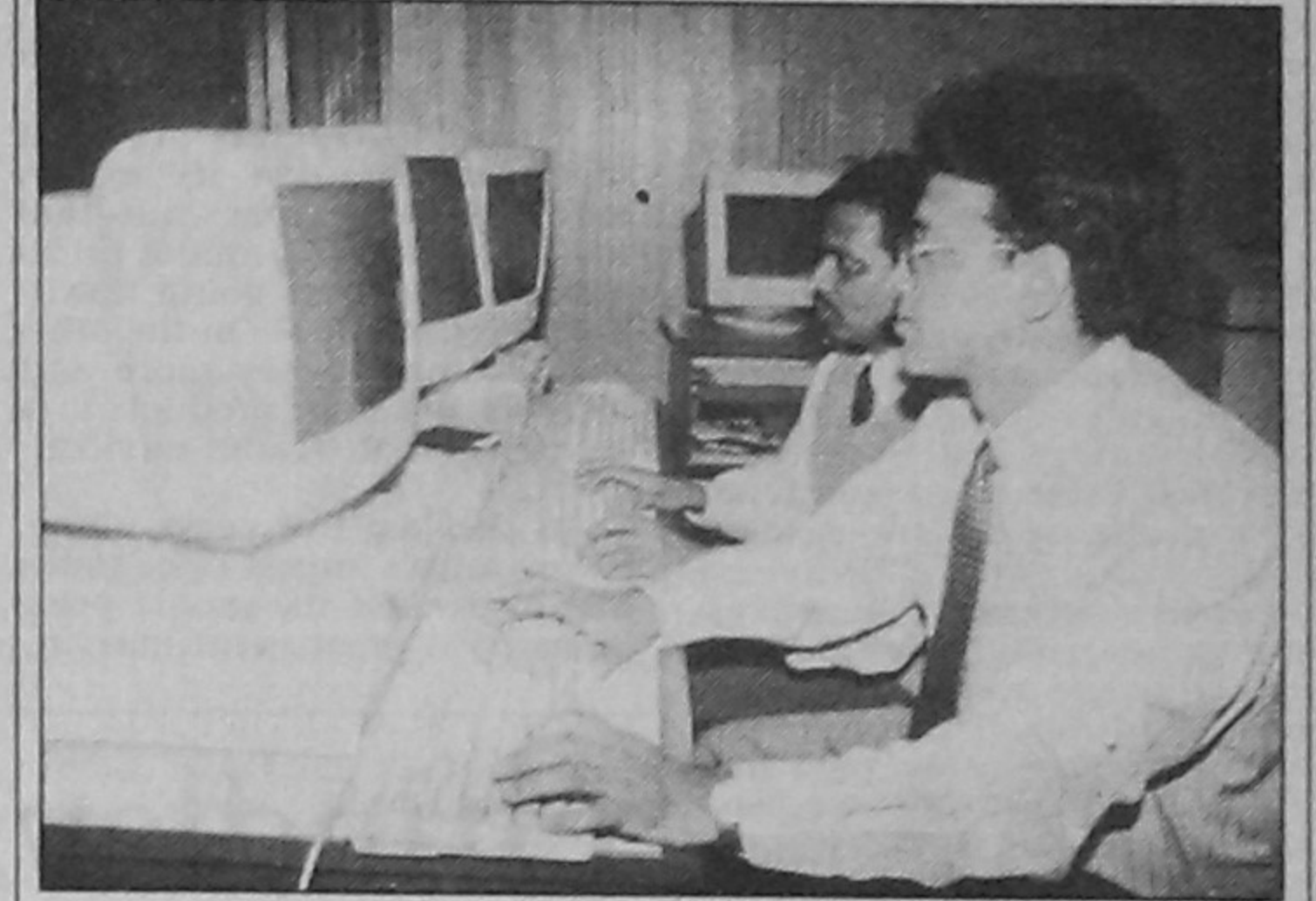
Sadek Abdullah rented the third-floor apartment of a seven-story building at the Kalabagan area in the city in January 1998. When the tenant of the top floor moved out last July, he moved in without bothering the landlord, Mahbul Alam Chowdhury, for his consent. Then, he stopped paying rent.

"Sadek Abdullah physically assaulted the landlord as well as the caretaker of the building when asked to pay rents. He

## Effects of Information Technology and the Law

by Mohammad Monirul Azam

THE Information Technology (IT) is bringing about a new global human civilization—many call it a global village. The advent of personal computer (PC) and the development of online systems and the Internet made this all possible. The Internet (telephone along with a modem a computer connected to web server) can access a world of knowledge and communicate with people around the world.



The information super-highway or the Internet is already breaking down geographical barriers and the century old social, economic, legal and political system. How can we confront the present scenario without legislating a new law?

Bangladesh cannot escape the globalization effect of the IT and to adopt it we need an effective legal environment. Timely and revolutionary legal reforms can create an IT-friendly legal environment, to achieve the maximum benefit of it. Lack of evidence etc need to be reviewed and framed from the perspective of the information-age. This is a real challenge for lawmakers as well as for lawyers of the 21st century. They needed to be updated with latest technology.

Thus legal system should be changed and updated to keep pace with technology. These are recommended to suggest what legal reforms and changes of existing law should be made:

(i) The Copyright Act should be amended to include computer program (software) as literary works. It is a matter of joy that the Copyright Act, 2000 is now on the consideration of the Parliament to meet this purpose. We hope that present session of Parliament will pass this long cherished Act to protect the intellectual property right of the programmer and software development house.

(ii) The Contract Act, 1872 should be updated to cope with the present information age, guaranteeing safety of transactions over the net, money-transfers, warranty as to computer and accessories sales for purchasing etc.

(iii) Computer Crime (Protection) Act should be enacted to check computer related crimes such as hacking, hardware and software piracy (which is protected by Copyright Act), net terrorism, obscenity, violence, pornography over the net and threats to computers like viruses. In USA several laws have been enacted to check computer crime to curb the computer criminals. One such law is the Computer Security Act, 1987. The Cyber Law and Telecommunications Act is also acting as a safeguard in this respect. We need such laws immediately to facilitate and safeguard the users of IT.

(iv) People in most countries agree that they are entitled to the right of privacy and information about themselves. People have the right to access, inspect, review and amend data about themselves kept in an information system. There must be no use of personal information for purposes other than those for which it was gathered without prior consent. Unfortunately in Bangladesh, there is no law to protect individuals from such kind of invasion of privacy. The USA, Privacy Act, 1974 protect the personal information of individuals and freedom of information Act, 1970 gives the right to lookout data concerning individual.

In Bangladesh the IT has become a subject of interest and there are large number of internet users whose interest and privacy should be protected and legislation should be enacted in order to meet the present situation.

## UN to Monitor Harassment of Rights Workers

HUMAN Rights Watch hailed the decision by the United Nations Commission on Human Rights to name an envoy to monitor the treatment of human rights defenders around the world. The group said the decision capped off a "relatively successful" six-week session.

"From Colombia and Cuba to Egypt and Pakistan, human rights activists are being killed, imprisoned and harassed. In several countries, no independent human rights monitoring is even allowed," said Joanna Weschler, UN representative for Human Rights Watch. "It's encouraging that the United Nations has finally taken real action to protect those who are risking their lives for the rights of others." The envoy, to be appointed by Secretary General Kofi Annan for a three-year term, would intervene in cases of harassment of rights monitors and press for implementation of the Declaration on Human Rights Defenders, adopted by the UN General Assembly in December 1998.

Human Rights Watch described the six-week Commission session, which concludes Friday, as "relatively successful," citing Commission action on Russian atrocities in Chechnya, while deploring the Commission's failure to take up a resolution critical of China.

On Tuesday, the Commission criticized "disproportionate and indiscriminate use of Russian military force, including attacks against civilians," called on the Russian government to establish a commission of inquiry and mandated UN envoys on torture, political killings, and violence against women to visit Chechnya. The resolution was approved by a vote of 25 to 7 with 19 abstentions.

"This is the first time the Commission has mustered the political will to criticize abuses committed by a permanent member of the UN Security Council," said Weschler. "It shows that no one is immune from scrutiny."

At the same time, the group lamented the Commission's decision last week not to even consider a resolution criticizing China's human rights performance. A procedural "no-action motion" was adopted by a vote of 22 to 18, with 12 abstentions. "Beijing's leaders have again used their political clout to escape censure for trampling on the rights of their citizens," said Weschler.

# Justice Cannot Prevail with the Judiciary Beholden to Pressure

by Sayyad Mohyeddin

JUSTICE International is a global network of lawyers promoting Rule of Law and International Human Rights Standards through out the world.

Justice International is profoundly concerned by the recent spates of activities of overt interference with the judiciary thereby undermining the Rule of law in Bangladesh.

Justice International has, for some time been monitoring the legal situation in the country and is perturbed to note that despite Constitutional guarantee for the independence of the courts under Article 94(4) certain groups and individuals have seized an opportunity of destroying the image of the judiciary affecting the age old system for the fair dispensation of Justice in the country. This mob-hysteria that is being fostered in violation of both, the principles of Rule of Law and Fundamental Constitutional Guarantee [Art 96(3)] prohibiting public discussion of the conduct of the members of the judiciary will, we fear, have immense adverse impact on the protection of fundamental rights and the continuance of Constitutional Government in Bangladesh.

Justice International further observes with regrets the indolence of the authorities in Bangladesh in their duties to protect the independence of the Judiciary from undue pressure.

Only recently, a Just delegation from Justice International while observing the trial of the deposed Deputy Prime Minister of Malaysia in Kuala Lumpur noted with relief the speedy action by the judiciary there, through the issuance of a 'gag' order restraining all public comments on the matter which was before the court. In Bangladesh, however, the recent avalanche of political activities surrounding the judiciary has manifested in the negation of public confidence in the administration of justice. The Chief Justice of the country, his honour Justice Latifur Rahman has voiced an appropriate warning that "justice will be hampered if politics penetrate into law" but his warning



Intimidating the judiciary

has remained mostly unheeded. Instead, the fury over the exercise of discretion or the lack of it by judges has degenerated into "Lathi demonstration". This and the naming of particular judges of the High Court Division is lamentable. In the case of the Chilian dictator, General Ugarte Pinochet who was alleged to have committed crimes against humanity, the public outrage for justice was evident on streets across Europe and South America but none sought to criticise or bring to disrepute the judiciaries of the States concerned, albeit, certain judicial errors were admitted in the composition of panel of judges in the House of Lords.

Bangladesh cannot live in oblivion. After independence she had fought hard for UN membership and after her entry in 1974 Bangladesh is expected to respect universally recognized norms and judicial practices as well as UN resolutions. In 1995 the General Assembly of the UN adopted resolution 40/146 on UN Basic Principles on the Independence of the Judiciary which regards covert and direct interference with the independence of the judiciary amounting to a violation of the Rule of Law and "invited governments to respect them and to take them into account within the framework of their national legislation and prac-

tices." It will not be in the interest of Bangladesh, as a responsible member state of the UN, to be seen to flout UN Resolution and the fundamentals of Jus Cogens principles of *Ex Juris Jus Non Oritur* and at the same time seek to be an active member of it.

Justice cannot prevail where the judiciary is beholden to pressure whether from another organ of the state or any other non can justice be delivered or interests served through intimidation. The recent public declaration by the Government on Rule of Law and Democracy confirming its commitments to Democratic ideals, appear to have cameo-effect on the cur-

rent realities of the country. Not only visiting foreign dignitaries like President Clinton of U.S.A. who visited Bangladesh two months ago and declined to visit certain places of National significance for fear of security but Bangladeshi citizens also live in constant fear for their lives and belonging from terrorist and extortionist activities which, according to government's own projection, is rampant in the country. The maintenance of public order, law and the removal of this "fear-culture" remain the primary obligations of a government in a democratic society. The yardstick for justice in a democratic society are not political experience but Rule of Law — as Rule of Law is the *conditio sine qua non* for democracy.

It has been alleged in various news dailies in the country that the High Court Division has, for fear or favour, failed to carry out its entrusted duties of dispensing justice impartially and fairly. The requirement for impartial dispensation of justice is a constituent part of the Rule of Law and a *jus cogens* principle of customary international law. The International court of Justice in the case of Nicaragua (1977) ruled that this obligation on nation states to ensure an impartial dispensation of justice constitutes a rule of Customary International Law. This principle has since been incorporated into Article 3 (Common to all 4) Geneva Conventions which stipulates that "at any time and in any place whatsoever, sentence and execution trial affording the guarantees recognised as indispensable in civilised societies". In the present scenario there is an apparent lack of respect for such internationally recognised norms and practices, the Rule of *sub* justice, and prohibition against

trial by media. But it must remain a high expectation and of immense interest to every one in the country that Justice must be seen to be done. Only adherence to the Rule of Law can facilitate the necessary ventilation for public outrage against crimes while also ensuring a fair process for the accused. But unless the polarity of public exposure and politicization of the judiciary is given a firm check, it will set a bad precedent and mark a black day in the history of Rule of Law.

However, given the magnitude of the issues coupled with the alleged apparent inability of the existing institution to resolve the "raging controversy" under the current framework, the National Assembly, that is, representatives of the people should in their legislative capacity work out an appropriate mechanism for the resolution of such issues of both constitutional and national importance, as was in the establishment of the Supreme Constitutional Council of Iran after a stalemate resulting from the 1989 conflict between the Council of Guardians and Parliament. In the United Kingdom where there is no written Constitution, the established practice is for Parliament to resolve through legislative measure any potential or actual conflict of Constitutional nature. In Bangladesh, the present crisis should be addressed rationally under the existing system. The matter in the first instance should have been referred to the Supreme Judicial Council as enshrined under Article 96(3) of the Constitution of the country and not expose it to public criticism/comments and or bring it to disrepute. In the event that this constitutional issue remains unresolved, consideration should then be given for referring it to the people's representatives in Parliament, but not allowed to be resolved through street agitation. Thus a democratic approach be adopted through consensus and not through confrontation as the victor or victim in the final analysis will be the nation.

The author is Director, Justice International

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