

# 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

## Rule of Law and Bangladesh in International Jurisdiction

by Barrister Sayyad Mohy Eddeen

THE Coalition for International Criminal Court on 16th May, 2000 organised a two day long seminar on "International Criminal Court and Ratification by Bangladesh". The rationale behind an International Criminal Court is the "pursuit for justice". All nation states have their own municipal criminal justice system through which social ill misdemeanor or criminal acts and conducts are adjudicated and justice dispensed but none so at an international forum.

Bangladesh, in spite of much constitutional interruptions, today proudly makes its commitment to Rule of Law known. Like many other states Bangladesh too, in the recent past suffered from war crimes and crimes against humanity. The present regime has made the loudest cry for justice and has for the past four years painstakingly left no stone unturned in its pursuit for retribution for past wrongs. But, except for the International War Crimes Tribunal for Rwanda and the Balkan States, the international community has no permanent platform or mechanism to provide redress or dispense justice where municipal courts are either unable or unwilling domestically to provide justice against egregious crimes.

The recent international outcry surrounding the trial of General Pinochet of Chile, brought home once again the sad reality that crimes against humanity can be perpetrated against people by its own political leaders who escape punishment under municipal immunity. This paradigm of justice for some and impunity for others undermines the doctrine of "equality before the law" that is otherwise much cherished in national and international Bill of Rights but without appreciation of their teleological attributes. Hence, Constitutional guarantee alone cannot safe-

guard Fundamental Rights without effective and independent enforcement mechanism. For example, in October 1999, 20 Egyptian intellectuals from the Medical Syndicate, Journalist Syndicate as well as lawyers, professors and economists were hailed into Military Tribunal having to defend against allegation of crimes that are not known in the Egyptian Criminal Code. In January 2000, Judge Elizabeth Lawson Q.C. and I were on a commission to observe these trials at the Heykstep Military base, 40 km outside Cairo. We found them to be "political trials" as the allegations against the accused concerned their attempts to participate in their respective professional syndicates' election; a civic right otherwise guaranteed under Article 56 of the Egyptian Constitution and Article 22 of the International Convention on Civil and Political Rights. When we interviewed four members of the Jurist Council of the Supreme Constitutional Court of Egypt, it transpired that since the referrals of these civilians from civil court were made by the head of the executive, the Military President of Egypt, the denial of due process or even a right of appeal or review from the tribunal's determination by a higher court was not available within the municipal legal system. This is in spite of the stipulation in Article 72 of the Egyptian Constitution, which requires that all sentences "shall be passed and executed in the name of the people". Undoubtedly, only the established judiciary, which enjoys the confidence of the people, can claim to enjoy such privilege, not the Military that dispenses summary justice. The imposition and execution of death sentences on political opponents by the military tribunal without procedural safeguards as recognised in civilised society can be described as itself amounting to "crimen falsi, an unworthy action

against the laws of nations.

By comparison, Turkey which has a constitution adopted by its Military in 1980 also created "State Security Court" that has jurisdiction to try civilians. But because Turkey has ratified an International Convention, the European Convention of Human Rights, we were successful in our efforts to hold Turkey to its Convention obligation and in the case of Ocalan had it remove military personnel from the Bench at the State Security Court. Subsequently, in September 1999 during the trials of Kaya Huda and Abdurrahman Dillipak at the State Security Court in Malaya and Istanbul I observed a marked improvement in the trial procedure.

In the three major continents of Africa, America and Europe there are regional Human Rights Conventions. Asia has neither a convention nor the possibility of one being adopted in the foreseeable future, for many of its bigger States are vehemently opposed to any mechanism that would expose their Human Rights records. India, for example, is constantly at war with its Minorities in Kashmir, Assam and Punjab. The authorities there have displayed an astonishing tendency to overlook at atrocities where Christian families are burnt alive in Bihar, or Muslims are killed in Bombay or Assamese women are subjected to indiscriminate shooting and rape by security forces in the name of containing insurgencies. The Chief Justice of Gauthi Mr. Rama Krishna in an interview with us in February 1998 lamented on the difficulties the judiciary experience in the enforcement of fundamental rights. Both, in Kashmir and the North Eastern States even after issuance of a *Habeas Corpus* order by the court the military detaining authority persistently decline to comply, and where they do, it is

only after the suspect has been killed in their custody. On the other hand, the Indian National Human Rights Commission itself has acknowledged its statutory incapacity to investigate extra-judicial killings, involuntary disappearances, arbitrary arrests, torture, rape and other forms of cruel and inhuman punishment by Indian armed forces and their surrogates. Besides, section 6 of the Armed Forces Act 1958 that protects the security forces from prosecution also run contrary to the UN Code of Conduct for Law Enforcement Officials which prohibits "the intentional lethal use of firearms except where strictly unavoidable in order to preserve life".

At home, though our problems have not yet reached such crises levels the incomprehensible controversy regarding the role of Rule of Law in our style of democracy is a growing concern for many sections of the society. The judiciary, the Custodian of our Constitution with authority to enforce our basic rights has been subjected to an onslaught of overt interference in the administration of justice which is seemingly unending.

The enforceability of Rule of Law in international context is therefore imperative for the protection of Human Rights and enforcement of International Law. Through the application of International Rule of Law wide spread massacres and indiscriminate killings can be made justiciable even where domestic courts are unable or unwilling. In its absence, defenseless Cambodian people perished under the wrath of their leader without recourse to justice. In its absence other communities have been annihilated and displaced in Asia, Africa, Middle East and beyond. It was only after the attempted annihilation of the *Tutsis* of Rwanda that the International Community was compelled to set up the International Criminal Tribunal for Rwanda. This by

comparison was considered by many as a belated but important step in the field of international criminal justice system. A similar *ad hoc* tribunal has also been set up to try crimes committed during the Balkan wars. But the *ad hoc* nature of these tribunals provide no effective deterrent to would be perpetrators of atrocities nor assurance that in every act of inhumanity by men against men whether of the same tribes, nationality or ethnic origin will always be subject of adjudication and retribution obtained for the victims and justice will be seen to be done.

In the face of the daunting experiences our judiciary is currently subjected to, it is truly frightening to imagine that there will be no guarantee of justice being obtained where citizen of this country whether subjected to egregious and other heinous crimes as we are witnessed in other parts of the world, such as Algeria, Bosnia, Checheniya, Kashmir and Cambodia.

The call for the establishment of a permanent International Criminal Court and its statute that empower it has therefore come at a time when such a legal platform is needed to secure justice for all. The doctrine of complementarity in the Rome Statute ensures that the ICC will only be able to initiate investigation or proceeding where the national systems themselves do not investigate or prosecute. This therefore clearly safeguards the question of national sovereignty or undue interference. In fact, under Article 18 of the Statute the ICC prosecutor is required to notify all states that would normally exercise jurisdiction, of the intention to proceed with the investigation. Where the concerned State informs the ICC that it is dealing with the issue domestically, investigation or prosecution by the ICC prosecutor will then be deferred. In

September 1999, the government of Bangladesh took a brave step to vote in favour of the adoption of the Rome Statute for the creation of a permanent International Criminal Court. She has shown foresightedness, unlike her SAARC neighbors, most of who either abstained or voted against the adoption. Bangladesh being the first South Asian Nation to be a signatory to the ICC Statute proves, if at all needed, that Bangladesh is an Independent Sovereign state and is capable of playing a constructive role in international affairs.

But to have the ICC set up and running 60 state signatories to the Rome Statute need now to ratify and or incorporate it into their respective national legal system depending whether it is a Monist or Dualist System. The United Kingdom government has already taken the necessary steps and it is expected that the Bill will be debated in Parliament by this summer. Several other members of the European Union have lined up to ratify the statute. In Asia, Bangladesh should strive to score a capote against others by demonstrating its foresightedness in ratifying the Rome Statute at its earliest. Global peace cannot be achieved without international Rule of law and international justice cannot prevail in absence of an effective international justice system capable of redressing acts of crimes that most concern the international community.

A positive step by Bangladesh will therefore crystallize her role in the world arena and her commitment for the promotion of Rule of Law and Human Rights Standards.

The author is Director, Justice International. He was a guest discussant at the seminar "International Criminal Court and Ratification by Bangladesh".

## Religious Intolerance in Bangladesh

by Odhikar's Research Team

Bangladesh has not hit the international headlines for demolishing mosques/temples, or for the enactment of any oppressive law. So the question arises, is there any communalism or fanaticism in Bangladesh?

COMMUNALISM is one of the negative factors to achieve democracy. Every democratic country claims itself to be a secular state where equality and equity reigns. Bangladesh is no exception to this.

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The Position of the State and the Constitution of Bangladesh

Unfortunately, the state plays a role of a silent bystander in confronting human rights violations by such religious fanatics. In a country where almost 80% of the people live below the poverty line and where a large majority are illiterate, the often harsh religious interpretations of religious texts and the practice of so-called Fatwa is accepted without much question or protest. Here, vested interested groups - belonging to the rural and religious elites - use religion as a tool to gain power and achieve their objectives. Their main targets are women from rural areas and those working in NGOs in such areas.

Article 27 of the Constitution of Bangladesh states, "All citizens are equal before law and are entitled equal protection of law". This "equality before law" remains only in the book of law, as the reality is far more different from the legal provisions. One example is the (Enemy) Vested and Non-Resident Property Act, 1974. Despite repeated appeals to the Government for a reform or an amendment to that the government is yet to bring about any change. In reality, people belong to different religions are suffering due to the oppressive provision of this Act. The right title of minorities is always in an uncertain position. The state machinery has turned a deaf ear to their pleas and appeals, as a result more and more violations/encroachments are taking place. In districts like Rajshahi, Barisal and Jessore, the encroaching in to lands through forging land document of indigenous and minority has become a common and profitable practice. Because of the deaf ear of the state regarding such matters, those belonging to minority communities are quickly losing their sense of belonging and even after the mass exodus of the 1947 Partition, people - mostly of the Hindu community - are leaving the country.

Is not that the state machinery is not being informed. Even if they are, they hardly take any interest in such matter. Some times, even the protectors of citizens - law enforcing agencies - are involved in such vandalism as damaging idols or temples of minorities. Such cases have occurred in the Chittagong Hill Tracts region where Army officers have broken into Buddhist temples and smashed artefacts. Article 41 of the Constitution of Bangladesh provides for "Freedom of Religion", where it has been clearly mentioned under Article 41(1)(b), "Every religious community or denomination has the right to establish, maintain and manage its religious institutions".

Three case studies show that some quarters have violated these provisions and the state has remained nonchalant about those.

**Case Study - 1**  
A group of armed miscreants broke up a Kalm Mandir and damaged an idol of Goddess Kall at Sonagazi Thana (Prothom Alo Feb. 11).

**Case Study - 2**  
An Inspector of Police was accused of damaging an idol of the Hindu religion at Panchagarh. He was accused of beating the Temple Priests and damaging an idol of goddess Kall. (Prothom Alo-Feb. 13).

**Case Study - 3**  
Ahmediya Community - Brothers against Brothers.  
The tradition of religious

tolerance was cruelly mocked. In October last year, when six members of the Ahmediya Community died of bomb blast inside their Community Mosque in Khulna where they went to say Jumma prayer. Though, the news jolted the whole nation, there were hardly any effort on the part of the Government to identify and nab the offenders. On the other hand, the government in a bid to divert the attention accused the Opposition by opening a new front for political tension.

One may ask, as they are one of the communities of Islam, why are they subjected to the wrath of fanatics? The Ahmediyas are sects of Muslims who have a slightly different religious view than what Sunni school of Muslims have. When they publicised their views, all hell broke loose and a group of extremists raised their protest in a medieval manner. The incident of planting bomb in the Khulna Ahmediya Mosque was another in the series.

The Ahmediya community had unjustly been targeted by the vested interest groups and there, the Constitutional provision of Freedom of Association and Freedom of Religion were amply violated.

Even in certain areas, people, under the influence of religious fanaticism, prevented Ahmediyas harvesting crops from their own field or forced Ahmediyas out of their native village, only because, they belonged to a "different" Community. (Prothom Alo-Apr-26)

The Article 28(3) of the Constitution of Bangladesh firmly states, "No citizen shall on grounds only of religion, race, caste...be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution". Yet, this provision has not protected the hapless members of Ahmediya Community of three villages of Brahmanbaria. Their lands were encroached, their crops were grabbed, and even fanatics did not allow Ahmediyas to stay at their ancestral property. Their security to life was at a stake. (Prothom Alo - April 26)

Apart from that, the Ahle Hadis community has also been faced by severe violations by the Law Enforcing Agency. In Khulna, the members of the law Enforcing Agency arrested a member of the Ahle Hadis group on publication of a book containing their religious beliefs. (Prothom Alo -Feb 6). People must condemn such acts and the State should take proper steps against such religious oppression and vandalism.

**The Oppressed Indigenous:**  
Apart from the sporadic assault on the minorities, the Indigenous people also suffer from both social / religious discrimination and oppression.

Article 28(3) of the Constitution states, "no citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort or admission to any educational institution." Further to this, Article 28(2) says, "no citizen shall on the grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of any employment or office in the service of the republic." A certain sort of discrimination works in the Public Service where the minorities can hardly acquire key- posts. The government education policy towards the indigenous people of Bangladesh is not very satisfactory either.

Bangladesh has a history of religious tolerance. During 71, people of Bangladesh fought against the violation of human rights and they fought against inhumanity. Apart from the Muslims of Bangladesh, the minorities were the cause of wrath of the Pakistanis as they belonged to other religion, but we managed to break all the religious and social differences. Such high tradition of tolerance and indiscriminate should not be demolished only for actions of vested interest group. The Government should take steps to prevent such heinous act of vandalism in the name of religion or religious practice. They should also amend and reform the oppressive laws that curb the rights of all the minorities. It is the duty of all citizens of Bangladesh to ensure that the state of Bangladesh remains non-communal and that acts of religious intolerance and communalism are dealt with justice.

Odhikar - a coalition for Human Rights

## The World Conference on Racism A Case of the Pot Calling the Kettle Black

THE United Nations convened the First Preparatory Meeting of the Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Geneva in the first week of May 2000. Although, the word 'racism' spontaneously conjures up the image of discrimination by whites against non-whites, there is no society that can claim that it is free from the scourge of racism.

Afro-Asian countries focus their attention on stereotype notions of racism such as the enslavement of Afro-Americans, the Nazi holocaust, and the attitudes and practices of misperceived superiority of Western countries, their policies and practices of colonialism and expansionism, and institutional discrimination.

Racism and anti-Semitism is undoubtedly manifested more explicitly in the West, but this does not preclude the existence of racism in Asia, Africa and Latin America as defined in Article 1 of United Nations International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Article 1 defines racism as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

Minorities in Asia face the same discrimination that they face in the West. The Koreans in Japan have no right to hold public positions, be it a job in the government services or an elected post in a local municipality, solely because of their Korean ethnic origin. Until 1993, approximately, 700,000 Koreans who were born brought up and educated in Japan were required to give fingerprints like criminals to the Japanese law enforcement authorities.

The Chinese in Indonesia face similar discrimination in public life. Until earlier this year, the ethnic Chinese minority in Indonesia could not celebrate their traditional Chinese New Year publicly. Curbs on the teaching of Chinese in schools or its usage in the public domain continue to exist.

Although many national constitutions prohibit racial discrimination, there is a yawning gap between rhetoric and reality. Despite ensuring Affirmative Action in the Constitution, India remains the paragon of the subtle racial discrimination that prevails amongst societies in Asia. India often describes the caste system as unique to its historical process. But, the caste system originates from 'Varna', which literally means "color". The untouchables in the caste system, better known as 'dalits', continue to face serious discrimi-

nation including mass rape and organized massacres by upper caste Hindus. Likewise, they are banned from entering many Hindu religious places. The enactment of the 1989 Scheduled Castes and Scheduled Tribes (Prevention) Act has been of little help due to poor enforcement.

About 3 million Burakus who are considered "outcasts" by ethnic Japanese because of their traditional professions like butchering continue to face similar societal discrimination.

The contempt of the Chinese Han majority for minorities like the Tibetans, Uighurs, Mongolians and other national minorities whom they perceive as "barbarians, dirty, primitive and backward" is well known. Even the last Shangri-La of the world, Bhutan, expelled 90,000 Nepalese on the basis of their ethnicity in the 1990s.

The situation of indigenous peoples across Asia is alarming. The hill tribes of Thailand such as the Akhas, Lahus, Lisus, Hmongs and Karens are barred from participation in the political process although their ancestors have been residing in the territory of Thailand for more than 200 years. Only half of the estimated 500,000 to 600,000 members of the hill tribes in Northern Thailand possess official documentation that enlists them as citizens or places them on the record as being eligible for future citizenship. The rest lack adequate documentation and are denied access to education and health care. They can not own land and are not subject to labour laws, including minimum wage requirements. Because of their lack of nationality they are extremely vulnerable to exploitation, solely because of the vehicle for access to fundamental rights such as access to protection and access to expression as person (s), both under the Thai law and international human rights.

About 20 million Adivasis in India continue to be harassed under the Criminal Tribes Act of 1871 that identifies all persons belonging to a tribe as criminals. The Government of British India passed the Criminal Tribes Act to bring the rebellious aborigines in inaccessible areas under its control. The Government of India notified them in 1952 but contrary to the existing legal right of an Indian, a member of the denotified tribe has to prove his innocence rather than the prosecution having to establish his guilt. Although, India's National Human Rights Commission formed an Advisory Committee in May 1998 on this issue, the recommendations are yet to be accepted by the Government. According to the Armed Forces Special Powers Act in Assam, Tripura, Manipur and Nagaland, non-commissioned officers belonging to the Indian security forces are em-



Rohingyas: Living with the trauma of racial repression

powered to kill indigenous peoples with impunity under the guise of maintaining law and order.

Indigenous peoples in Indonesia and Bangladesh have been victims of government sponsored transmigrations policies and serious human rights abuses. This forced demographic change across Indonesia, Bangladesh and China constitute the most serious human rights abuse against indigenous and minority communities.

Asian countries often raise a big mounded about treatment meted out to illegal immigrants

in the West. But, the Middle East and the East Asian Tiger economies have nothing to write home as migrants in these regions are subjected to serious abuses without a modicum of judicial scrutiny. Approximately 50 illegal migrant workers died in *Semangih* Immigration Detention Centre of Malaysia between 1993-1995.

When *Tenaganita*, a women's organization based in Kuala Lumpur, took up their cases, the head of *Tenaganita* was arrested and is facing prosecution. Racial discrimination is not a new phenomenon in Asia. In

1959, Indonesia introduced two regulations that irrevocably changed the course of lives of thousands of Chinese expatriates. First, in an attempt to loosen the grip of the Chinese on the rural economy, President Sukarno banned aliens, mainly ethnic Chinese, from engaging in retail trade in rural areas of the country.

Second, the Chinese were prohibited from maintaining residences in rural West Java. These racist measures of President Sukarno forced evacuation of thousands of Chinese to ghettos in major towns and cities. African countries also exer-

cised their own racial demagoguery against Asians in the 1960s and 1970s. Thousands of Asians, mostly from the Indian Sub-Continent, were driven out of East and Central Africa through a host of racist policies. After decolonization, thousands of Asians were denied nationality in Tanzania, Kenya, Uganda, Malawi and Zambia. They were stripped of government jobs through enactment of laws, which were the main instruments to localise or Africanize the key areas of economic and government activity. The Kenya Immigration Act of 1967 stipulated that all non-citizen employees were liable to be asked to obtain work permits in order to continue their employment. The Trade Licensing Acts of Kenya, Uganda and Zambia included two major provisions that affected non-citizen businessmen. The Acts reserved certain areas - the non-scheduled or non-prescribed areas, which in effect include all areas outside the main shopping centres or a few large cities.

The most vulnerable people, whether the aborigines in Australia, Native Americans and Afro-Asians in the United States of America, Maoris in New Zealand, Tibetans in China, the Adivasis in India or the Bushmen of Kalahari, continue to be victims of racial discrimination, xenophobia and domination. As the domination of one group by another increases on the basis of "race, colour, descent, or national or ethnic origin" in neo-colonial countries, the societal slur called racism, seems to be a disquieting discovery in Asia and Africa.

International human rights standards, adopted and proclaimed by the United Nations are applicable to all member States of the United Nations and not only to a pre-selected number of countries and situations. The ratification of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) by 157 member States of the UN, out of which the majority are from Asia, Africa, and Latin America, indicates that racial discrimination is a global problem manifested in variety of ways. Even if racial discrimination is to be viewed exclusively in the colonial context, colonialism is no longer a monopoly of the West.

It is evident that when Australia threatens to review its adherence to the International Convention on Elimination of Racial Discrimination, the concluding observations of the UN Committee have struck home. Asian governments would do well not to be like the Australian ostrich with its head in the sand, but use the run up to this World Conference On Racism to do some introspection on manifestations of racism in each of their own societies.

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