

# Fatwa and the High Court

Bangladesh has been fortunate to get a lead from the judiciary. It is the ultimate protector of its citizens. By going as far as they can go, the judges have shown the way to our nation.

ON New Year's Day a Division Bench of the High Court Division of the Supreme Court of Bangladesh comprising Justice Mohammad Ghulam Rabbani and Justice Najmun Ara Sultana, the first woman judge in the country, declared any fatwa issued from an unauthorised source is illegal and made a punishable offence by the Parliament immediately. Whereas the civil society by and large welcomed the judgment voices started rising from those who have made it a practice to pronounce fatwa in season and out of season.

There are some remarkable features of the judgement. The judges issued a *suo moto* (of its own volition) rule. This landmark judgment was triggered by a report in a Bengali daily which reported an incident of illegal fatwa in Naogaon and the district demanded from the justice authority as to why his inaction would not be violative of Section 7 of the Muslim Family Laws Ordinance. According to the report a woman named Shahida, wife of Saiful of Naogaon was forced to marry her cousin because her marriage was supposed to have been dissolved on the pronouncement of the word *talaq* by her husband. She was forced to undergo a *hilla* marriage in order to remarry her husband, with whom she was living all the time. Later Saiful refused to accept Shahida and sent her to her paternal home.

The famous lawyer Dr Kamal Hossain, appearing on behalf of the intervenor submitted that fatwa was an open challenge to the fundamental rights whereas the young lawyer Ms Tania Amir pointed out that instant fatwa is

punishable offence under section 508 of the penal code. Well-known Barrister Amir-ul-Islam supported the point of view of both.

What is a fatwa? Fatwa is defined as a legal opinion of a lawful authority and the only authority is the court of law. Thus frequent use of fatwa especially in the rural areas is prone to great abuse. The judges strongly recommended enactment of legislation by the Parliament that will penalise the unauthorised practice of issuing illegal fatwa.

Going a step further the judges have found that Madrassah education is defective and as short term measure they recommended the study of Muslim Family Laws Ordinance in all the schools including the Madrassahs. The judges have suggested that during Juma prayers the Imams should include Muslim Family Laws Ordinance and bring out the salient points. In a landmark decision the judges have recommended a uniform system of education.

This historic judgment is bound to have far-reaching repercussion on the nation as a whole. It has challenged the civil society to sit up and face its responsibilities towards the underprivileged, the weak and the vulnerable. It specially demands of the society that it protects the rights of women, who are at the bottom end of the scale in economic and social development. The judges chal-

lenged the obscurantists to face the opprobrium of the civil society.

As events have unfolded the fatwabazs have not hesitated to react. Through their spokesmen Mufti Amini and Sheikhul Hadis they have pronounced the two judges 'Murtaad'. They have launched a vicious campaign against the judges. It is a matter for the authorities to ponder whether the two fatwabazs have

The Awami League has a long history of struggle for establishing secularism in what is Bangladesh. That struggle coincides with the history of the Awami League. In the early days of Pakistan the Awami League fought for joint electorate and won.

Of the four pillars on which the sovereign state of Bangladesh was founded, secularism was supposed to be the most

inseparable part of our existence. Bangabandhu Sheikh Mujibur Rahman had incorporated secularism as one of the pillars of the state. By so doing he reflected the national will. If we want to honour our motherland and the role of the Father of the Nation, we must place secularism where it belongs in our Constitution.

The two judges have laid great stress on secular education and as a long-term measure have advocated unified education. The fact that obscurantists have a free run is mainly because of illiteracy and two systems of education. I may illustrate my point with the example of Turkey. Ninety-nine per cent of the Turkish population are Muslims. The Turks are deeply religious although they abhor any showing off. Following the defeat and dismemberment of the Ottoman Empire after the First World War, the Turks under the leadership of Mustafa Kemal Ataturk fought their war of independence and drove the enemy away. The proximity of Europe had a profound influence on Turkey and Ataturk undertook sweeping reforms, which transformed the society. The main pillar of his reforms was secularism. It meant the state and religion must remain separate. Turks very rightly and proudly proclaim that they have shed more blood for Islam than any other Muslim people. Based on their unhappy past riddled with fatwas from so-called religious zealots, Ataturk totally banned Turbas and similar religious

## The Horizon This Week

Arshad-uz Zaman



transgressed the limits and criminal proceedings are called for.

By their very important verdict the judges have attempted to banish fatwa, which is a bane of our rural society. By using the case at Naogaon the judges have made observations of a most sweeping kind. They have challenged the politicians to enact legislation to deal with the matter of fatwa. So far we do not see any movement from the political parties. I would venture to suggest that it is the ruling party, the Awami League, from whom the nation is expecting a lead in this matter. If we analyse the judgment we find that its contents are secular in character.

important one. Since the assassination of the Father of the Nation Bangabandhu Sheikh Mujibur Rahman and his family and close associates in 1975, successive governments have mauled the Constitution to a point that it is almost unrecognisable. It is the same old Pakistani game. The Pakistanis played with the religious sentiments of the people in order to earn cheap popularity. As history has proved again and again, the so-called Islamic card fails to produce any electoral benefit. Why is it that Jamaat-e-Islami and other so-called Islamist parties fare so poorly at the polls?

It is time to pronounce loud and clear that secularism is an



All health information to keep you up to date

### Before the doctor comes

What are sprains and strains? A sprain is an injury to the soft tissues around a joint, causing swelling, pain and bruising. A strain is an injury to a muscle or tendon causing pain, swelling and stiffness. Sprains and strains are often caused by physical exercise and sport, or may result from ordinary daily activity. Whatever their cause, sprains and strains can lead to discomfort and inconvenience.



### How can sprains and strains be treated?

There's a simple formula for treating sprains and strains. It's called RICE. This stands for a combination of Rest, Ice, Compression and Elevation. Together, these help to reduce the swelling and bruising while the injury recovers.

- REST**  
Rest the injured leg or arm, to help prevent further damage.
- ICE**  
Apply an ice pack (or cold water on a cloth) to the injured area, for the first 24 hours after the injury has occurred.
- COMPRESSION**  
Apply a bandage to support the injured area.
- ELEVATION**  
Raising the injured area encourages blood circulation and helps to reduce swelling. With a sprained ankle for example, lie on a sofa with the injured limb resting on one of the arms.

Tomorrow: Beware and other tips

# Tough Days for New Mr Commonwealth

ALMOST the first act Don McKinnon found himself performing as soon as he became Commonwealth Secretary-General was to meet a prime minister and his cabinet while they were being held hostage by gunmen in their own parliament.

The prime minister was Mahendra Chaudhry of Fiji. McKinnon, the longest serving foreign minister of New Zealand, had taken on his new job on 1 April, 2000, barely eight weeks earlier.

It was not the most encouraging start for a man whose main political task is to further good governance and democracy among the 54 member-countries of the Commonwealth.

And it would get worse. Within two weeks the prime minister of Solomon Islands was being seized by rebels.

For the future, events in the United States were set to cast a cloud. If the so-called 'leaders of the free world' were to make such a monumental mess of their own presidential elections, it was going to prove that much more difficult to carry out election observer group exercises in the Commonwealth and elsewhere.

At the very moment the counting and recounting was going on in Florida state, Commonwealth observer groups were at work in Tanzania and Trinidad and Tobago.

Indians were quick to point out that their country has been successfully holding the biggest elections in the world ever since independence in 1947 and many Africans were suggesting that developing countries should be sending observer groups to the US for a change.

On the other hand, the Commonwealth has, on the whole, a good record in this field which could be enhanced, for certainly American observer groups are unlikely to carry much credibility in developing countries any more.

The firmer Commonwealth stand against autocratic excesses, which dates back to the 1995 summit in Auckland, New Zealand when Nigeria was suspended for its execution of Ken Saro-Wiwa and eight others, was put to the test in 2000.

Nigeria is back in full membership, but now Pakistan is suspended because of its reversion to military rule.

Last May the bizarre incarceration of Chaudhry in Fiji by failed businessmen George Speight led to a military takeover and an imposed prime minister, Laisenia Qarase.

Commonwealth reaction was swift. The watchdog body, the eight-member Commonwealth Ministerial Action Group (CMAG) decreed 12 days later that the country should be suspended. Speight was eventually arrested and charged with treason, but unrest in the country was widespread and Indian Fijians were harassed and assaulted.

The ethnic divide seemed wider than ever. Chaudhry had been the first

Turbulence in Zimbabwe, civil war in Sierra Leone, the violent overthrow of prime ministers in Fiji and the Solomons the Commonwealth's programme of improving the quality of democracy ran into political setbacks in 2000. On the other side of the balance sheet, there was progress in focussing world attention on the problems faced by small states.

by Derek Ingram

ethnic Indian to be elected prime minister. He had lasted a year and now the carefully worked out constitution of 1997, which had given democratic rights to all Fiji citizens, was being discarded.

In the Solomons, the long-standing divide was between the people of the main island, Guadalcanal, and neighbouring Malaita. Violence had broken out in 1998. In January 2000 a peace accord brokered by the Commonwealth collapsed.

Months of fighting led to the seizure for a few days of Prime Minister Bartholemew Ulufa'alu and the governor general. Ulufa'alu resigned and a successor was elected by a meeting of parliament held aboard an Australian warship. CMAG sent a peace mission.

After a failed ceasefire and talks in a New Zealand warship the parties assembled in Townsville, Queensland, where Australian mediators presided over a settlement on 14 October, 2000. With parliament still in business, the Solomons escaped Commonwealth suspension.

In Pakistan, former prime minister Nawaz Sharif was jailed for life. McKinnon tried in August to talk army leader General Pervez Musharraf into speeding a return of civilian rule. The Commonwealth had given him two years from the time of the coup. That will be October this year, but Musharraf planned timetable is for 2002.

The formula of excluding military rulers 'from the councils of the Commonwealth' that is, from all official Commonwealth meetings while allowing their countries to remain in

membership meant that the break was with the government and not with the people. The work of non-governmental organisations in such countries went on as usual.

Last year the Organisation of African Unity, which had embraced many military rulers and often had a military chairman even at one time Idi Amin of Uganda now also said it would no longer allow army regimes to be members. The Organisation of American States is expected to follow.

When McKinnon addressed the Millennium Summit in New York in September last he urged the United Nations to suspend leaders who overthrow democratically elected governments. He said that although the principle of democracy upheld by the Commonwealth may not be itself put food on the table or provide education it was fundamental to a society that wanted to progress.

The Commonwealth, however, faced a major challenge to its credibility in 2000 as a result of a worsening situation in Zimbabwe where the crisis over land reform led to serious human rights violations and flouting of court rulings by the government of President Robert Mugabe.

The 1995 guidelines did not empower the Commonwealth to intervene in such domestic crises and an attempt to strengthen them in 1999 had been passed back by the leaders for further consideration.

The Commonwealth did send an observer group for the Zimbabwe elections in June, 2000. It was highly critical of intimidation and other aspects of the

poll.

But the result that produced a 57-strong opposition changed the political face of what had been virtually a one-party state. Commonwealth countries surrounding Zimbabwe became increasingly critical of Mugabe, fearing he was risking the stability of the whole Southern Africa region as well as deterring investment.

South African President Thabo Mbeki, currently playing the extra role of chairperson of the Commonwealth for two years, and President Olusegun Obasanjo of Nigeria pleaded with Mugabe in November to change his approach, but as Zimbabwe's economy slipped he remained deaf to their appeals.

Many Commonwealth leaders were also increasingly concerned at the war in the Congo in which three member countries were involved on opposing sides Zimbabwe, Namibia and Uganda.

The Commonwealth role in another member country at war, Sierra Leone, was largely confined to police and post-conflict reconciliation, but the UN force there was made up mostly of Commonwealth troops.

Britain sent a separate contingent which won praise for halting the rebels' attempt to take over the capital, Freetown, for a second time, while drawing fire from the Nigerian UN commander for not becoming part of the UN force.

Small states became the focus of increasing Commonwealth attention. At the finance ministers' meeting in Malta many of them rounded on the Organization of Economic Cooperation

and Development (OECD) for threatening economic sanctions in July 2001 if they did not change their tax systems to comply with its standards.

Offshore financial centres tax havens were the trouble. Ministers defended the right of sovereign nations to determine their own tax policies. This month Prime Minister Owen Arthur presides over a meeting in Barbados between the Commonwealth and the OECD to thrash out the problem.

Persistent Commonwealth attempts to sensitise the World Bank to the problems of small states paid off when the first annual Small States Forum, sponsored by the Commonwealth and the Bank, took place in Prague in September, 2000.

An example of Commonwealth small states cooperation came in the same month when 15 countries sent experts to the Seychelles to study the success of a school improvement programme there that is said to have produced a mini-revolution in teamwork, openness and professional sharing that embraces distance education and open learning.

The death of Pierre Trudeau, Canadian prime minister in the '70s, recalled the major role he had played in reshaping the Commonwealth along with people like Tanzania's late Julius Nyerere and Singapore's Lee Kuan Yew. Such giant figures are thinner on the ground now, world-wide as well as Commonwealth-wide.

Now, a group of 10 heads of government, led by President Mbeki, are attempting another reshaping of the Commonwealth by carrying out a two-year High Level Review. They will present their report at the next summit in Brisbane in October this year.

The emphasis will be on the young because, as McKinnon pointed out at a Commonwealth Youth Parliament in Manchester, Britain, 60 per cent of the population of the Commonwealth are under 30.

He appealed to Commonwealth leaders to build confidence in the democratic process because "there is cynicism about politicians and doubt about the possibilities of achieving change through the mechanism of democratic politics...Very often that cynicism is greater among younger people..."

At the front of most minds was the threat of AIDS. It is estimated that 60 per cent of AIDS cases worldwide have occurred in Commonwealth countries.

To help fight the pandemic a new grouping of health professional organisations in the Commonwealth was formed in July, 2000 to promote and monitor the actions of Commonwealth governments.

As ever, and almost unnoticed, the Commonwealth is a body of renewal, all the time adding new activities and new dimensions to its work.

GEMINI NEWS  
The author, Gemini founder-editor, has been writing on Commonwealth affairs for more than 30 years.

# The Indigenous Approach

CYNICS say Bangladesh has become a burial ground of many rural development projects. Sadly speaking, this grim statement has some truth attached to it. Out of sheer frustration, many concerned and committed intellectuals are pointing ever more forcefully towards grueling inactions and inappropriate actions by the development practitioners, specifically when it comes to the rural poor.

For instance, even though micro-credit projects have in fact given the lead for secular education. Education is the foundation of all progress and education of different varieties only leads to confusion within the nation. Bangladesh has been fortunate to get a lead from the judiciary. It is the ultimate protector of its citizens. By going as far as they can go, the judges have shown the way to our nation.

The publication of the book "Atmakamasangthane Grameen Projukti" which means the village-based technology for self-employment, is a bold initiative by its writer Musharraf Hossain Bhuiyan to provide the rural poor with the needed information through which they can strive for self-reliance. The raw materials for the technologies compiled, and in many cases modified, invented and adapted, are easily available in village context. These technologies are environment friendly and are simple and affordable. The major issues discussed in the book are i) rural technology, ii) youth resources and iii) unemployment and self-employment, and iv) the characteristics of rural based appropriate and sustainable technologies.

The specific subjects dealt in the book are water pollution, disaster preparedness, use of chemical fertilizer, insecticides and pesticides, various methods of water treatment, tube-well sinking and re-sinking, arsenic pollution of water, community latrine-cum-biogas, and the list goes on. Currently, the government of Bangladesh has realised that basic literacy is not enough to solve the problems of the masses. To make literacy meaningful and its applications sustainable, it has to be linked with the practical problems and issues of life. Above all, it must also contribute to the increase of income of the people through acquisition of skills. However, experience suggests that the income generating skills being provided at present are well as to solve the problems of the NGOs and the future, are largely confined to the traditional skills like poultry, fisheries, embroidery etc. The government is now in the process of

BOOK REVIEW  
**Atmakamasangthane Grameen Projukti (Village-based Technology for Self-employment)**  
Author: Musharraf Hossain Bhuiyan  
Publisher: Techno Dia, 24 Azimpur Road, Ground Floor, Dhaka 1205, Tel#8614487 Pages: 320 Price: Tk 350



arriving at an agreement with external financing and support agencies to implement a nationwide programme, which is known as post-literacy and continuing education programme. This programme will progressively be extended to all the thanas in Bangladesh.

The Directorate of Non-Formal Education (DNFE) along with a few selected NGOs are now trying to identify a viable and replicable model to this end. Some of the basic features of the programme is that it will be implemented through village-based centres. The centres will be run by trained facilitators and supervisor-cum-resource persons. The training on various skills will be provided by thana administration, as well as any other private or NGO training provider available in a given area. This book could be useful to the resource persons and training providers who will provide skills training to a large number of target learners. These target learners will be the neoliterate who have completed basic literacy programme implemented by district administration as well as NGOs. Above all this book could provide the sparks for creating a 'technology-induced' post-literacy and continuing education model with a far-reaching social and economic impact. Indeed the timing of publication of this book could

not be any better. The book addresses each topic systematically and scientifically. Given the complexity of the subjects it may not be possible for the neo-literate to directly read, understand and apply the technologies mentioned in the book. The technologies mentioned in the book, therefore, have to be transferred either by facilitators, supervisors, or external trainers. To make this happen, a technical committee could be set up by the Directorate of Non-Formal Education with assistance of its TSSW (Technical Services Support Wing). The general terms of reference of this technical committee will be to evaluate the feasibility of technologies provided and assess its relevance in connection with the market demands. Based on these two major factors the technical committee will select a number of technologies. A core group of trainers at the national level could also be created at a later stage with responsibility of transferring the technology to the trainers who will be directly providing training to the learners at the post-literacy and continuing education centres at the grassroots. Other agencies like Department of Social Services, NGOs, LGED etc could also derive benefits from this book. The reviewer is an Institutional Development Consultant

# Garfield



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