'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

The Father of the Nation Portrait Preservation and Exhibition Act 2001

A Denial of Citizens' Constitutional Freedom of Expression

By A. H. Monjurul Kabir

authorities, auditoriums, HE Government of libraries, educational institutions, Bangladesh missions abroad and any other organisations to be included under rules

to be set down by the govern-

Bangladesh has added a

new weapon to its

existing arsenals of laws, which

can be used to silence critics,

prevent scrutiny of their

actions and thereby impede

culture of tolerance. Last week

(January 24, 2001) President

Justice Shahabuddin Ahmed

assented to a bill passed by the

House of the Nation on 18

January making exhibition of

Bangabandhu's portrait

mandatory in all government

offices and educational

institutions. Most importantly,

the Act, passed within 17

minutes of its introduction in

the House, also penalises

making derogatory and harsh

remarks, written or verbal, on

Father of the Nation. It is

difficult to state whether this

sweeping piece of defamation

law can protect the most

prominent political figure of

Bangladesh from abusive

languages. But, it can, at least,

hinder people's right to

legitimate criticism.

Furthermore, a right to sue in

defamation for the reputation

of the Bangabandhu could

easily be abused and might

prevent free and open debate

Like the Public safety Act

2000, the Act is also open to

political abuse and manipula-

tion for its very nature. In many

countries, laws are enacted to

protect the 'reputation' of public

ministries, dead people and

even flags. Such prevalence of

defamation laws, is, in fact,

unduly restrict public debate

about matters of public con-

cern. The frequent abuse of

such laws by individuals in

positions of authority also

transpires the real motive

behind their enactment. Defa-

mation proceedings are also

used to cover up shady activi-

ties in high places, shield public

figures from legitimate criti-

cism, and to suppress debate on

important issues such as mili-

tary spending. The Father of the

Nation Portrait Preservation

and Exhibition Act 2001, many

feared, is going to be a

Bangladeshi contribution to

The Content

According to the Act, the

term 'Father of the Nation'

means, "the architect of Bangla-

desh, and as recognised by the

section 34 (b) of the Constitu-

tion Fourth Amendment Act

Section 3 makes it mandatory

the government registered

the preceding decades

a third country.

ing such return.

Sheikh Muiibur Rahman."

that sordid trend.

about historical events.

Section 5 (1) asserts " If any officer concerned violates the provision intentionally, s/he will deem to have committed a cognisable offence under the law, and will be awarded three months of imprisonment, or Tk. 10 thousand financial penalty or the both." Section 5 (2) adds that anyone obstructing an officer concerned from discharging his duty in this regard will also be deemed to have committed the crime and will be awarded the same punishment.

Section 4 states "None will make any offensive remark or derogatory statement, in either oral and written form, against the father of the Nation." Section 5 (3) then reminds, "If any one violates this provision, s/he will be deemed to have committed a cognisable offence and will be awarded maximum three months of imprisonment, or Tk. 10 thousand financial penalty or the both.

The Act does not define the term 'offensive remarks' or 'derogatory statements'. This is, indeed, very dangerous aspect of the newly enacted defamation law. This will, no doubt, expose it to blatant abuse. The unfortunate experiences from identical vagueness of other existing laws provide the basis for such strong assumption.

Ulterior Motive?

According to Dewan Farid Gazi, an Awami League lawmaker from a Sylhet constituency who initiated and moved the private member's bill in the House, "the aim of the bill is to stop any act of disregard for Father of the Nation Bangabandhu Shiekh Mujibur Rahman". Incidentally Mr. Gazi had a questionable track record of loyalty towards his leader Bangabandhu. He joined the cabinet of Khandaker Mushtaq Ahmed just after the brutal assassination of Bangabandhu in August 1975. His credibility in the mainstream Awami League was further dampened when he had formed Awami League (Gazi) in 1976 under Political Party Provisions introduced by the then President General Ziaur Rahman.

Amidst oppositions' continu-(Act No. II of 1975) the Father of ing boycott, the Act was swiftly the Nation Bangabandhu passed without any discussion. Many consider the initiative as 'a desperate attempt of a controto preserve and exhibit the versial lawmaker to score politportrait of Sheikh Mujibur ical dividend and draw the must overcome. Rahman in all the government attention of the party chairperand semi-government offices, son Prime Minister Sheikh autonomous organisations, head and branch offices of all

\ LOBAL trotting fugitives are not new entrants into the

world of outlaws. They have been in existence from time

immemorial. Sophistication achieved in the trans-national

communication system and a sharp increase in the flux of people

from one country to another, are however, accountable for the

spiral escalation in the number of such moonlight flitters during

jurisdiction only in respect to crimes committed within the territo-

rial boundary of that country. This hindrance against assumption

of extra-territorial jurisdiction, sometimes pave ways for cunning

border-jumper to thwart the name of law by finding a safe-haven in

No rational society, where sanity prevails, can grant impunity to

such cross-country delinquents and hence there exists, within the

framework of law, both Municipal as well International, adequate

appliances, which, if put on the right gear, often enable a country to

secure the return of persons guilty of offences in the country seek-

Concerned Laws

of bringing him back to face the legal consequences is a complex

one, in which several branches of jurisprudence claim their role.

Extradition law is, undoubtedly, the best known antidote to deflect

the contrivance of the "on-the-run" renegades. Nationality, Immi-

gration and Refugee Laws are rather recent, yet prolific develop-

ments in this field, while the law of Rendition is a twin of Extradi-

What Intrepol Really is?

status and the role of the International Criminal Police Organiza-

tion (INTERPOL) should be elucidated with undistorted precision,

Nations Organization. Truly speaking, it in not even a treaty based

body and does have no power to do anything, which would be tanta-

mount to transgression into the internal affairs of a sovereign

country. There is hardly any country where Interpol stands on any

statutory basis. It enjoys no more power than a private detective

body does. Newspaper reports to the effect that certain fugitives

were arrested by Interpol in the USA, has no foundation whatso-

Interpol's prime area of activities is confined, essentially, to the

supplying of information to the affiliated police forces. Having said

Interpol, contrary to general belief, is not an arm of the United

so that the myths surrounding this body, can be dispelled.

ever as Interpol possess no such power.

Before embarking upon a discussion on the concerned laws, the

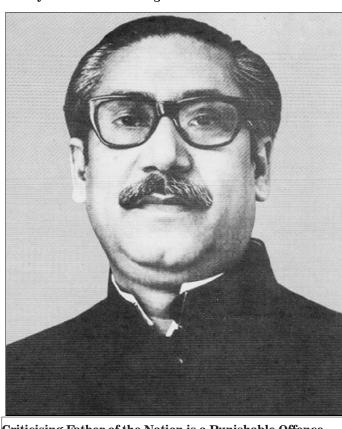
When a fugitive flees to another sovereign territory, the process

With a few exceptions, court in a given country can assume

Validity

Freedom of thought and conscience and the right of every citizen to freedom of speech and expression and freedom of the press is guaranteed in Article 39 of the Constitution of Bangladesh. As usual the framers of the constitution impose certain limitations on this significant fundamental human rights in the form of reasonable restrictions imposed by law in the interests of the security of the state, friendly relation with foreign

 ${\bf Doubtful\ Constitutional} \quad \hbox{in the\ House.\ The\ absence\ of\ the}$ opposition MPs and the thin presence of the ruling party lawmakers made the moral ground even worse. The law is not formulated with sufficient precision. The lack of the definition of some crucial terms including 'offensive remarks' and 'derogatory statements' turns the enactment into a dangerous one. What pressing social need the Act will serve is also not clear. Whether criticising a political leader in a democracy an offence penalised by fine and imprisonment is a



Criticising Father of the Nation is a Punishable Offence

states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

It is apparent that any such interference must be prescribed by law. This implies \bar{that} the law accessible and formulated with sufficient precision to enable the citizen to regulate his conduct. Second, the interference must pursue one of the legitimate aims listed in Article 39(2). Third the interference must be necessary. This implies that it serves a pressing social need, that the reasons given to justify it are relevant and sufficient and that the interference is proportionate to the legitimate aim pursued. This is a strict test, present a high standard which any interference

'The Father of the Nation Portrait Preservation and Exhibition Act 2001' was passed hastily without any discussion fundamental question of the day. That can not be a reasonable restriction on the constitutional guarantee for freedom of expression, to say the least. Whether the House of the

Nation can curtail a constitutional guarantee in the way it did in this case should be left for the decision of the Supreme Court of Bangladesh. But we can resort to our supreme law of the land for our understanding. Article 7 (2) declares, "... if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void." Article 26 pronounces. " The state shall not make any law inconsistent with any provisions of this part, and any law so made shall, to the extent of such inconsistency, be void." A citation from the First Amendment to the US Constitution may be of practical significance, "Congress shall make no law respecting an prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances." American judges even do not accept the argument that public confidence in their authority and in the fair administration of justice will necessarily be shaken by hostile comment.

International Human Rights Standards and State Obligation

Freedom of expression and the free flow of information, including free and open debate regarding matters of public interest, even when this involves criticism of individuals, are of crucial importance in a democratic society, for the personal development, dignity and fulfilment of every individual, as well as for the progress and welfare of society, and the enjoyment of other human rights and fundamental freedoms. Relevant provisions of the Universal Declaration of Human Rights (Article 19), the International Covenant on Civil and Political Rights (Article 19), the African Charter on Human and Peoples' Rights (Article 9) the American Convention on Human Rights (Article 13) and the European Convention on Human Rights and Fundamental Freedoms (Article 10), as well as provisions in national constitutions unequivocally endorse this position in clear terms. Article 29 of the Universal Declaration of Human Rights provides, "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." Providing punishment for making offensive remarks or derogatory statements (which are not defined in the Act), whether oral or written is inconsistent with international practices and standards.

In August 2000, ARTICLE 19, Global Campaign for Free Expression, published 'Defining Defamation: Principles on Freedom of Expression and Protection of Reputation'. It sets out legal standards, which establish an appropriate balance between the human right to freedom of expression and the need to protect individual reputations. The Principles are based on international law and standards, evolving state practice (as reflected, inter alia, in national laws and judgments of

establishment of religion, or national courts), and the general principles of law recognised by the community of nations. They are the product of a process overseen by ARTICLE 19, which included a number of national and international seminars and workshops. The Principle 2 states, "(b) Defamation laws cannot be justified if their purpose or effect is to protect individuals against harm to a reputation which they do not have or do not merit, or to protect the 'reputations' of entities other than those which have the right to sue and to be sued. In particular, defamation laws cannot be justified if their purpose or effect is to:

prevent legitimate criticism of officials or the exposure of official wrongdoing or corruption;

protect the 'reputation' of objects, such as State or religious symbols, flags or national insignia;

protect the 'reputation' of the State or nation, as

iv. enable individuals to sue on behalf of persons who

allow individuals to sue on behalf of a group, which does not, itself, have status to

© Defamation laws also cannot be justified on the basis that they serve to protect interests other than reputation, where those interests, even if they may justify certain restrictions on freedom of expression, are better served by laws specifically designed for that purpose. In particular, defamation laws cannot be justified on the grounds that they help maintain public order, national security, or friendly relations with foreign States or govern-

A more precise legal standard is articulated in Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR). Under that article, everyone shall have the right to hold opinions without interference; everyone shall have freedom of expression too. Surprisingly Bangladesh acceded to the ICCPR in 2000. It undertakes to take necessary steps, in accordance with its constitutional processes and with the provisions of the present covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the ICCPR. The promulgation of the Father of the Nation Portrait Preservation and Exhibition Act 2001 demonstrates Bangladesh's action to the contrary. It also violates Ban-gladesh's obligation towards international law.

A Historic Mistake?

Securing Return of Fugitives from Abroad

By Shamsuddin Choudhury Manik

Extradition and Randition

Extradition was originally conceived in the womb of Customary International Law. But when the foetus was subsequently aborted by it's biological mother, the Municipal Constitutional Law substituted International Law as the surrogate mother. Hence, it is the Municipal Constitutional, rather than the International Law. which is the primary source of Extradition, although treaty aspects, associated with Extradition, remain subject matters of Public International Law.

Extradition, as matter of norm, but certainly not as a rule of thumb, pre-reckons the existence of a treaty between the states concerned, though absence of such a treaty may not necessarily be non-starter to invoke the process, for there are provisions in other jurisdictions similar to those contained in section 4 of our Extradition Act 1974, and Section 3 and 15 of the British Act of 1989, which allow dispensation from treaty requirement at the discretion of the State. Roger S. Clark in his tretise "The influence of Nuremberg Trial on the Development of International Law" expressed that some states offered Extradition under statutory regime without any treaty basis.

Although it is natural for the extradition law to be different in different countries, they are by and large, similar in material respects. Generally the concerned municipal law includes a list of extraditable offences. Relevant treaties also often cites extraditable offences, in which case, according to the English decision in WP Norm Vs Federal Republic of Germany, the treaty list prevails. The doctrine of double criminality applies in most instances. Extradition apply to pre-trial, under trial and post conviction cases. Nationality of the offender is often irrelevant.

Volumous Case Laws have emerged over the decades on the subject in the UK, USA, etc. They are, for obvious reasons, regarded as persuasive authorities by the Courts in the member states of the Commonwealth and beyond.

The International Court of Justice in Libva-Vs-The USA. expressed concern at Libya's failure to surrender those guilty of Lockerbie air disaster. Rendition, a twin of Extradition is a relic from the imperial days, which survived the decline of colonial era through the agreement arrived at by 20 Commonwealth Law Ministers in 1965-66. The scheme so adopted, was updated in 1990 with the nomenclature "Commonwealth Scheme For the Rendition of Fugitive Offenders 1990". The said scheme envisaged surrender of fugitives by one member of the Commonwealth to another without any formal treaty structure. Article 17 of the scheme imposes an obligation on the member countries to give effect to the provisions of the said scheme through their municipal legislation. Fugitive Offenders Act 1967 was enacted in Britain to implement the scheme provisions which contemplated no formal treaty structure, in surrendering fugitives to designated Commonwealth Countries. (Bangladesh was so designated vide an Order-in-Council called Fugitive Offenders (Designated Commonwealth Countries 1975, S.I. 1975 No. 1213). When the said UK Act was substituted by the Extradition Act 1989, the previous "non-treaty" provision for Commonwealth members was preserved.

Those members of the Commonwealth which failed to toe the British line and do refuse to surrender fugitives to Commonwealth members in the pretext of the absence of bilateral treaty, are patently in breach of what they agreed to do by unanimously subscribing to the said Commonwealth Scheme. In a recent case our High Court Division followed the Commonwealth Scheme (Abdal Abedin Vs. State, Cr. Mis. Case)

Political Offence, Persecution and Other **Restrictive Covenants**

A number of strings are normally attached to extradition process as a safety valve against autocratic, authoritarian abuse.

"Offence of Political Nature", which concept heralded it's maiden appearance from the debris of the French Revolution, is possibly the most uphill stumbling block. The preferred judicial view in the USA, The UK and the Old Commonwealth is that whether an offence is of political nature or not should be determined by having regards to all the appertaining and inextricable facts and circumstances in any given case, with required flexibility. Global recognition to this idea stemmed from the English decision in Re-Castioni, which, though enunciated that an offence committed for a private motive is not a political offence, nevertheless refrained from clothing the phrase with a precise definition.

In the face of escalated incidents of terrorist killing and Kindered offences, the Courts in the UK, USA, Old Commonwealth and Europe as a whole have signalled even a more restrictive approach to the phrase.

In re-Munier it was held that murder in political disturbance by an anarchist was not a political offence.

The House of Lords observation in the cases of Shtraks Vs. Govt of Israel, Cheng Vs. Governor of Pentonville Prison, to the effect that an offence committed in political context does not, ipso facto, make it an offence of political nature, has been hailed universally. The British Law Lords felt inclined to look at the motive of the requesting state, saying "If the Central Government stands apart and is concerned only to enforce the Criminal Law, the Crime, whatever the motive of the fugitive, would lack the element of political conflict and would not be a political offence".

Rejection of the plea of state Immunity in Pionchet case divulges that fanciful omnibus plea of "political offence" would also be thrown out of board. In a couple of other cases, which originated following request from Indian government, the English Courts refused to accept the plea of "political offence". In no event can this plea be available to killers of non-political persons.

The change of attitude of the European Legislators is reflected in the UK's Suppression of Terrorism Act 1978 and reciprocal legislation by EU members. Under these enactments it is no longer possible by a murderer or a murderer or a terrorist to rely on the "political offence" plea when another EU member seeks surrender.

Legislative schemes and case laws of many countries including those of the old Commonwealth, Europe and the USA, forbids surrender to a state where the judicial institution do not conform to a civilized standard, where the judiciary is not independent, where

ANATOMY OF PARLIAMENT-II

The Law Making Process and the Role

of the Parliamentarians

Bill and Law: Each and every Act of Parliament starts its journey by being a Bill before the House of Parliament (Article 80, Constitution of Bangladesh). The Parliamentary Rules of Procedure define a Bill as a motion for making a law. The Constitution defines law as any Act, Ordinance, Order, Rule, Regulation, Bye Law, Notification or other legal instruments, and any custom or usage, having the force of law in Bangladesh.

Bills having been through the various stages become Acts of Parliament subject to the assent of the President. The Parliament does not engage in making Ordinances, Orders, Rules and similar

Types of Bills: There are two types of Bills that may be introduced

in the Parliament namely, Private Members' Bills and Government Bills. While Government Bills originate from respective Ministries, Private Members' Bills are the result of initiatives of private Formulation of Bills: The process of initiation of a Government Bill

begins with the drafting of a Bill by the concerned Ministry. For example, if a proposed Bill relates to food, it is the Ministry of Food and Agriculture that drafts the Bill. The concerned Ministry sends the draft Bill to the Ministry of Law, Justice and Parliamen tary Affairs for vetting following which the draft Bill is sent to the Cabinet for approval. After the Cabinet approves a draft Bill it is then sent back to the concerned Ministry.

The Placing of Bills before the House: The procedure for placing of Private Members' Bills varies from that of Government Bills. Upon receiving Cabinet approval the concerned Ministry

proceeds to place the Government Bill in the Orders of the Day by giving the Secretary of the Parliament 7 days' notice of the intention of introducing the Bill. The Speaker can, however, allow a motion to be made at a notice shorter than 7 days. The notice is accompanied by two copies of the Bill and a statement of object and reasons. If the Bill is one, which requires prior recommenda-tion of the President under the Constitution, the notice contains a certificate from the Minister stating that the Bill has been recom mended by the President for introduction.

Private members, desirous to introduce a Bill, give the Secretary of the Parliament 15 days' notice accompanied by three copies of the proposed Bill and a statement of object and reasons. If the Bill requires the recommendation of the President, the notice is accompanied by a copy of such recommendation.

Secretary of the Parliament has to publish the Bill in the Gazette at the earliest along with a statement of object and reasons. Motions for Consideration and Referral of Bills: After the publication of a Bill in the Gazette, it is ready for consideration by the

Publication of Bills: Once a Bill is introduced in the House, the

House. The member introducing the Bill may make any one of the following motions with regard to his/her Bill: a. that it be taken into consideration by the House either imme-

diately or on some future date specified in the motion; or,

b. that it be referred to a Standing; or,

c. that it be referred to a Select Committee; or,

d. that it be circulated for the purpose of eliciting opinion on it

However, such motion can only be made after the members have



bring any objection to the motion if they so desire. Such objection prevails unless the Speaker, in the exercise of his power, allows the motion to be made.

When the Bill is circulated on a motion for eliciting opinion and opinion is received thereon, the member introducing the Bill may seek the referral of the Bill to a Standing or Select Committee. The Speaker may, however, allow a motion to be made for consideration of the Bill without referring it to the Standing or Select

Persons Competent to Move for Consideration and Referral of Bills : The member-in-charge, for example, a Minister dealing with a government Bill, is primarily responsible for introducing that Bill in the House. If the member-in-charge is unable to move the motion at any stage subsequent to the introduction, the Speaker approves the authorisation of any other member by the member-

Discussion of Principles of Bills: The principles and the general provisions of the Bill may be discussed on the day on which any motion for consideration or referral is made or any subsequent day to which the discussion thereon is postponed. However, details of the Bill are not discussed any more than is necessary to explain the principles. At this stage no amendments to the Bill may be moved.

Debate over Bills: Debates over Bills take place in two phases: Firstly, members can engage in debates over Bills that have not

been referred to the Standing or Select Committees. Where they have been so referred, members may argue on the report of the Committees on such Bills. In such case, debates are only confined to the consideration of the report of the Committees.

Secondly, when a Bill is placed for passing, debates are confined to the submission of arguments, without going into details either in support of the Bill or for rejecting it.

Moving Amendments to Bills: When a motion that a Bill may be taken into consideration is carried, any member, called upon by the Speaker, may propose an amendment to the Bill. A member moving an amendment must give three days' notice of the proposed amendment. Otherwise any other member may object to the moving of the amendment which prevails unless the Speaker allows the amendment to be moved at a shorter notice.

Placing of Bills for Passing: There are two ways of placing a Bill for

Firstly, when a motion that a Bill may be taken into consideration is carried, a member in charge may move for the passing of a Bill, if there is no amendment to it.

Secondly, where the Bill has undergone amendments, any member may object to a motion being made, on the same day, that the Bill as amended be passed. This objection prevails unless the Speaker rules otherwise and allows the motion to be made. Where the objection prevails, a motion that the Bill, as amended, be passed may be made on a subsequent day.

Voting on the Passing of Bills: Members present and voting pass a Bill, other than a Bill to amend the Constitution, only if it receives a simple majority of votes. In case of a Bill to amend the Constitution, it requires the votes of two-third of the total number of Members of Parliament.

Authentication of Bills and Correction of Errors: Errors in Bills passed by the House are to be corrected by the Speaker. Such Bills, so passed, are signed and authenticated by the Speaker, before $\,$

sending them to the President for assent. Presentation of Bills to the President: When a Bill is passed by the

Parliament it is presented to the President for assent

Assent of the President to Bills: On receiving the Bill, the President assents to it within fifteen days of its presentation.

Reconsideration of Bills Returned by the President: Except in the case of Money Bills, all other Bills may be sent back to the Parliament by the President with a message requesting the reconsideration of the Bill or any portion thereof. If the President so returns the Bill, the Parliament considers it together with the President's message. A Bill so returned is to be voted by a simple majority of the total number of members. If the Bill is then passed again it is sent back to the President for assent. The President has to assent to it within seven days of its presentation and if he fails to do so, he is deemed to have assented to it. If the President does not sent back a Bill for reconsideration, it is presumed to have

that, however it must be empasised that Interpol does, without encroaching upon the sovereignty of the host country, and without super imposing itself upon law therein, in the same manner in which a private detective body does lawfully operate, can and does play an axiomatic role by tracing and monitoring activities of the fugitives and by sending crucial information to the police of the requesting country, without any pretentious assumption of