



## Do the Afghans support the Taliban or Bin Laden ?

ANNE E. BRODSKY

On Sept. 11 many Americans received phone calls and e-mail messages from family and friends asking if they were okay. I received those e-mails as well, including one from RAWA, an Afghan humanitarian and women's organization that works in Pakistan and Afghanistan against the effects of the Taliban and the fundamentalist oppression.

RAWA's e-mail to me was the same kind of frantic message I have written to the women of RAWA numerous times over the years, when I would hear news of yet another Taliban atrocity committed against the Afghan people or of terrorist attacks by fundamentalists in Pakistan, and I'd wonder if they and their loved ones were safe. Just a month ago I was in Pakistan, talking with scores of Afghan refugees in refugee camps and urban communities. Of the hundreds of Afghans I spoke with no one supports the Taliban, the fundamentalist faction that controls Afghanistan by violence, threats and terror. No one supports Osama bin Laden or his non-Afghan followers who exploit Afghan soil and bring world condemnation and sanctions to a country in dire need of humanitarian assistance. And neither, by their reports, do the vast majority of Afghans - people held captive in Afghanistan, with no resources to leave and nowhere to flee as all neighboring countries close their borders to the largest refugee population in the world.



In the United States we now have our own experience of terror and fear, but I cannot forget the voices of the Afghan women, children and men as they told me of 23 years under war and violence and now fundamentalist oppression - of the massacres; the destruction of their homes; the kidnapping, torture and disappearance of their husbands and fathers and brothers; the rapes and forced marriages of their young daughters; the acts of daily terror and violence to enforce edicts that keep women under house arrest - unable to go to school, work, be seen or heard in public.

Now we have more in common with the Afghan people and others around the world who are victims of terrorism, fear and human rights abuses on a daily basis. I am hoping that this will give us empathy and bring us together against a common enemy, rather than tearing us further apart.

Hatred, fear and blame are the calling cards of terrorists. If we give in to this, they have won. I am deeply afraid that our fear and the clamor for retribution will mean that in the future I will again be the one sending the frantic e-mail, wondering about the safety of my Afghan friends, only this time the actions of my own government will be the reason.

The writer is an assistant professor of psychology and women's studies at the University of Maryland, Baltimore County. She contributed this comment to The Washington Post.

## Ensuring people's right to vote: A comparative context

ERSHADUL ALAM

THE will of the people shall be the basis of the authority of government, which shall be expressed in periodic and genuine elections held by secret vote. In the words of Professor Harold Laski, "Rights are those conditions of social life without which no man can seek, in general, to be himself at his best." But we were denied our political, fundamental and basic human right for about twenty years since our birth as an independent nation. Right to vote is a natural birth right of every free citizen and are so fundamental and basis to the very existence of a civilized society that can never be abrogated needless to say that right to vote is a basic requirement for the success of democracy. The legislative power of the republic is vested with the legislators elected through direct voting. The right to vote is guaranteed in our country irrespective of sex, color, creed, religion etc. The women's right to vote developed from the concept of equal right. Since then women are playing a vital role in strengthening democracy. It is the inalienable right of the people of a free country.

### International jurisprudence

Article 21 of the Universal Declaration of Human Rights guaranteed the political rights of the people. It declares that everyone has the right to take part in the government of his country, directly or through freely chosen representatives. The American Convention on Human Rights (ACHR) also guaranteed this political right in article 23 (1). In this article the right to vote is derived from the free expression of the will of the people. This right is as enunciated in the ACHR shall be, by universal and equal suffrage and by secret ballot. The right to vote is also guaranteed in the African Charter on Human and People's Rights in article 13. The Indian Constitution of 1950, recognized the right to vote in article 16. Article 326 of that Constitution says that the election to the House of the People and to the Legislative Assembly of every state shall be on the basis of adult suffrage. The Constitution of Pakistan was adopted on 12 April 1973. This constitution contains a detailed bill of rights. In article 51 (1) of the Pakistani Constitution it is said that the National Assembly shall consist of (two hundred and seven Muslim) members to be elected by direct vote and in accordance with law. Our constitution, which was adopted on the basis of democracy, guarantees this right. Our constitution in article 29 (1), "There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic." Article 29 (2) says, "No citizen shall, on grounds only of religion, race, caste, sex or place or birth, be ineligible for, or discriminate against in respect of, any employment or office in the service of the republic." Article 122 (1) says, "The election to the parliament shall be on the basis of adult franchise." The Convention on the Elimination of All Forms of Discrimination against Women places special importance on the participation of women in the public life of their countries. The convention obliges states parties in constitutions or legislation to take appropriate steps to ensure that women, on the basis of equality with men, enjoy the rights to vote in all elections and referendums, and to be elected. Despite this recognition in many countries women continue to experience difficulties in exercising this right. Some factors impede these rights to vote or be elected. Women frequently have less access than men to information about candidates and about party political platforms and voting procedures, information which governments and political parties have failed to provide.

The adult franchise is provided in the Korean Constitution. In this Constitution the age limit to exercise this right is seventeen. It describes the rights to vote in the like manner. All citizens who have reached the age of 17 have the right to elect and be elected, irrespective of sex, race, occupation, length of residence, property status, education, party affiliation, political views and religion. Citizens serving in the armed forces also have the right to elect and to be elected ("Article 52 of the Socialist Constitution of the Democratic People's Republic of Korea, 1972"). This article also says, "Anyone who has been disenfranchised by a court decision and insane persons do not have the right to elect or to be elected." The right to franchise is some how different in the constitution of the Philippines. The Philippines

Constitution says, "Suffrage may be exercised by all citizen of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election.

In our country, though the right to vote is recognized, many eligible people cannot exercise their franchise due to false voter lists. The disadvantage of using defective voters' lists will become evident on the day of election. Hundreds of thousands of voters could not exercise their rights to franchise. It is found at the time of election that, many people who voted in the last election cannot find their names in the voter lists. And some where it is found that the minority voters are eliminated from the voters' lists. But in contrast, many fictitious voters are enlisted. For a fair election genuine voters' lists are a must. Besides this, the neutrality of the other functionaries of the state is



Campaign for a free and fair election

also necessary. The role of media in this regard is very important. The opposition had no access to the electronic media viz., radio, television before the incorporation of the concept of caretaker government in our constitution.

### Electoral system: Trends and issues

All the political parties must have the access to media. The neutral coverage on television and radio during the campaign period helps making an election free, fair and impartial truly on the basis of "representation." Elections are a common feature of democratic governments, but electoral systems and results differ greatly from country to country, and from one period of a nation's history to another. The electoral system in many countries involve many variations on the themes of simple plural elections, as in Britain, and proportional representation, the norm for most of the western world. In many countries, elections are held under a wide variety of franchise laws. Australia recognized the universal adult suffrage with a minimum age of 21 in 1902. The voting age was reduced to 18 in 1973. The process of election is a very technical matter involving a large number of people and is the first step to institutionalize democracy. Observation of the entire electoral process by neutral, reputed observers, both domestic and international, facilitate in making election free, fair and transparent. In our country before the election of 1991, almost all the previous elections were rigged and were marked by violence, intimidation, booth capturing, ballot stuffing, political interference, vote buying and manipulation of results. Under the existing election laws permission to election observers are granted under

Article 29 (c) of the Representation of the People Order, 1972 which states: "The presiding officer shall, subject to such instructions as the commission may give in this behalf, regulate the number of electors to be admitted to the polling station at a time and exclude from the polling station all other persons except: a) any person on duty in connection to the election, b) the contesting candidates, their election agents and polling agent; and c) such other persons as may be specifically permitted by the Returning Officer.

For democratically elected government free and impartial elections on the basis of adult suffrage is a pre-condition. In this way, rule of law visualizes a democratically elected government. It seems that under the Indian Constitution the rights to vote and the right to stand as a candidate at an election is not a civil right but a statutory right and is subject to the limitation laid down in the statute. A voter in India may be disqualified on the ground of commission of a crime or a corrupt or illegal practice. A person can be convicted of an offence, which are specified in the election law and if he is found guilty, can be disqualified from voting at any election for 6 years. Fair and independent election is regarded as a fundamental right of every citizen.

### Perspective Bangladesh

Article 7 of the Constitution of Bangladesh vests all power of the Republic with the people of Bangladesh. Democracy is one of our Fundamental Principles of state policy. It is ensured in our Constitution that democracy and human rights shall be established. Article 11 of the Constitution explains the term democratic process further, "The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured." Any person shall be entitled to be enrolled on the electoral roll for a constituency delimited the purpose election to parliament, if he is a citizen of Bangladesh of not less than eighteen years of age. So the observance of such a political rights is indicative of a state's real progress and development.

With a view to ensuring free, fair and impartial elections, the constitution establishes the election commission. This election commission is instituted as an impartial and autonomous body, free from all political and executive interference and influence. The Election Commission is a national body constituted to conduct and supervise elections. The tenure of the Chief Election Commissioner is free from the interference of the executive. He can be removed only by the same procedure as laid down for the removal of a judge of the Supreme Court. Besides our constitution and the laws relating to elections, our Penal Code also has some provisions on election. Chapter IXA of the Bangladesh Penal Code describes the offences relating to elections. Section 171 B of the code says that the electoral rights means the rights of a person to stand or not to stand as, or to withdraw from being, a candidate or to vote or to refrain from voting in an election. Principle of free and fair elections is an essential postulate of democracy and democracy is a part of the basic structure of our constitution. Our political leaders stand in the election ostensibly for political purpose. But how far our political rights are established? This ubiquitous question is always in the minds of the people who exercise their right to vote. Right to vote is the first and foremost right of a citizen of the state. "Right to vote" "Adult suffrage", "Franchise" are very well known term. Notwithstanding the nomenclature, the main aim of right to vote is to establish democracy in the country and to create a path to establish other rights of the people.

We are witnessing outstanding development in the democratization process. The fifth parliament elections were held in unique circumstances. The election institution of Bangladesh was said to have been totally destroyed under the autocratic rule of deposed president HM Ershad and violence and intimidation of voters became synonymous with the election process. Civil liberties and human rights have remained elusive for the ordinary citizen, even after long years of struggle for democracy and public participation in governance. The next election is very crucial for democracy; the voters should make the right choice by exercising their right to vote.

Ershadul Alam is a student of law, University of Dhaka.

## Star LAW report



## "Impounding a passport is violative of fundamental right"

Appellate Division, (Civil Jurisdiction)

The Supreme Court of Bangladesh

Civil Appeal No. 123 of 2000

Hussain Muhammad Ershad ... Appellant

Vs

Bangladesh and others ... Respondents

Before Mr. Justice Latifur Rahman CJ, Mr. Justice

Bimalendu Bikash Roy Choudhury, Mr. Justice A.M.

Mahmudur Rahman, Mr. Justice Mahmudul Amin

Choudhury.

Judgement: 16 August 2000

**Latifur Rahman CJ:** I have gone through the judgement of my learned brother A.M Mahmudur Rahman, J and the supplement thereto written by my learned brother B.R Roy Choudhury, J agree with them.

**Bimalendu Bikash Roy Choudhury J:** I have had the advantage of reading the judgement in draft of my learned brother A.M Mahmudur Rahman, J. I agree with his conclusion but I like to add a few words as to the applicability of Article 13 of the Universal Declaration of Human Rights to the right of an individual to travel beyond the border of his state.

True it is that the Universal Human Rights norms, whether given in the Universal Declaration or in the Covenants, are not directly enforceable in national courts. But if their provisions are incorporated into the domestic law, they are enforceable in national courts. The local laws, both constitutional and statutory, are not always in consonance with the norms contained in the international human rights instruments. The national courts should not, feel, straightforward ignore the international obligations, which a country undertakes. If the domestic laws are not clear enough or there is nothing therein the national courts should draw upon the principles incorporated in the international instruments. But in the cases where the domestic laws are clear and inconsistent with the international obligations of the state concerned, the national courts will be obliged to respect the national laws, but shall draw the attention of the law makers to such inconsistencies. In the instant case the universal norms of freedom respecting rights of leaving the country and returning have been recognised in Article 36 of our Constitution. Therefore there is full application of article 13 of the Universal Declaration of Human Rights to the facts of this case.

**A.M Mahmudur Rahman J:** This appeal by leave is directed against the judgement dated 14 June, 2000 rejecting the Writ Petition No. 3159 of 2000 summarily. The appellant, an ex-President of the People's Republic of Bangladesh and an elected Member of the Parliament of the Jatiya Party ticket, filed the writ-petition against the order dated 05.06.2000 of taking and/or impounding his passport at Zia International Airport by respondent No. 4, the Assistant Superintendent of Police (Immigration) stating that he had a angiogram and angioplasty in King Faisal Specialized Hospital and Research Centre in Saudi Arabia before going for treatment in London and when he was going to London by British Airways on 05.06.2000 for medical check up in London Clinic, London, he was stopped from going abroad and his passport was seized by respondent No. 4 and for seizure of the passport he gave a receipt wherein it was stated that by order dated 01.06.2000 the Ministry of Home Affairs of the Peoples Republic of Bangladesh stopped the appellant to leave Bangladesh but neither the said order nor any order passed under Bangladesh Passport Order, 1973 was served upon him. He stated further that earlier his passport was also impounded on 03.11.99 when he was going to China at the invitation of Chairman of the Communist Party and he filed Writ Petition No. 4259 of 1999 challenging that order of impounding his passport and the High Court Division issued a rule nisi which was made absolute on contest on 01.03.2000 declaring the order of seizure of the passport as illegal, malafide and without lawful authority and the High Court Division ordered the respondents to return the passport to the appellant

within 2 weeks. But respondent No. 1 without returning his passport as directed by the High Court Division filed a provisional application for leave to appeal against that judgement and order and prayed for staying operation of the same but this Division on 20.04.2000 refused the prayer. But thereafter regular leave petition was filed by the government and the judgment of the High Court Division reached its finality. It is further stated that as the respondent government did not return the passport the appellant filed Contempt Petition No. 28 of 2000 against the respondents. However, on return of the passport on 15.05.2000 by the government the contempt petition was not pressed.

The appellant challenged the order dated 05.06.2000 of impounding of the passport before the writ bench on the grounds of violation of fundamental right as guaranteed under Article 31 and 36 of the Constitution as well on the ground of violation of Universal Declaration of Human Rights as recognised under Article 13 of the Universal Declaration of Human Rights and also on violation of principle of natural justice and on malafide. The High Court Division was wrong in holding that the writ petition was not maintainable as petitioner did not avail himself of the alternative remedy as provided in the Passport Order.

The leave was granted to consider as to whether the High Court Division was wrong in not holding that seizure/impounding of the passport was violative of Article 31 and 36 of the Constitution, whether the order made by respondent is in conformity with the provision of Article 7(4) of Bangladesh Passport Order, 1973 and sustainable in law and whether the High Court Division was wrong in holding that the writ petition was not maintainable as petitioner did not avail himself of the alternative remedy as provided in the Passport Order.

Mr. Rafiqul Huq, learned Advocate for the appellant submitted that the High Court Division acted illegally in rejecting the writ petition in limine in that the whole object of stopping the appellant from leaving Bangladesh was violative of his fundamental right as guaranteed under Article 36 of the Constitution to the detriment of his health. Secondly, as the writ petition was filed under Article 102(1) and (2)(a) (i) read with Article 44 of the Constitution for enforcement of his fundamental right the question of alternative remedy does not arise. In this regard he also submitted that where the passport seized on the basis of order passed by the Secretary, Ministry of Home Affairs was not shown or served by the respondent No. 4 upon the appellant there was no scope to file appeal as contemplated under Article 10 of the Passport Order, 1973 and no question of availing alternative remedy arises. He further submitted that the High Court Division not only failed to consider that the passport was impounded on an illegal order passed by an authorised person but as well came to a wrong finding that the reason for impounding the passport fits in with the provisions of the Bangladesh Passport Order without considering that the impounded action was taken in violation of mandatory requirements of Article 7(4) of the Bangladesh Passport Order, 1973 which mandates recording in writing a brief statement of the reason for impounding the passport and as such the impounded judgment and order is liable to be set aside. He also submitted that the passport of the appellant was taken away without giving any opportunity of personal hearing in violation of the principle of natural justice and where in gross violation of the principle of natural justice an order passed malafide is challenged in writ jurisdiction the writ petitioner need not exhaust the alternative remedy in that a malafide order itself is without jurisdiction. Mr. Huq urged that in this instant case the High Court Division in exercise of its writ jurisdiction not only is required to declare the order of impounding of passport illegal but as well to direct the government to allow the appellant to leave the country for his medical treatment as guaranteed in Article 36 of the Constitution.

Mr. Mahbubul Alam, learned Additional Attorney-General in repelling the submissions of Mr. Huq, on the other hands, submitted that sub-article (2) of Article 7 of Bangladesh Passport Order, 1973 empowers the Passport Authority to impound a passport and in the instant case, the passport having been impounded under the provision of said Order, the order was not violative of Article 31 and 36 of the Constitution in as much as the order was passed in exercise of the power under clause (c) of sub-article (2) of Article 7 of the Bangladesh Passport Order, 1973 in the interest of sovereignty or security of the country or in public interest the authority is not required to state any

reason for impounding a passport. He further submitted that as Article 10 of the Passport Order provides for an alternative remedy by way of appeal against the order impounding the passport the writ petition was not competent without exhausting the alternative remedy and the High Court Division rightly held that the writ petition is not maintainable.

Article 36 of the Constitution of the People's Republic of Bangladesh reads:

"Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to move freely throughout Bangladesh, to reside and settle in any place therein and to leave and re-enter Bangladesh."

No doubt for the right guaranteed in Article 36 a citizen can freely move throughout Bangladesh and to leave and re-enter Bangladesh. But that right is not an absolute one and is subject to reasonable restriction imposed by law. Bangladesh Passport Order, 1973 certainly is a law and Article 7 (2) (c) of the Bangladesh Passport Order, 1973 empowers a Passport Authority to impound or cause to be impounded or revoke a passport if it deems it necessary to do so in the interest of sovereignty, integrity or security of Bangladesh, or in the public interest. A Passport Authority according to Article 2 (d) of the Order means an officer or authority empowered under rules made under the Bangladesh Passport Order, 1973 to issue passports or travel documents. Secretary, Ministry of Home Affairs is a Passport Authority within the meaning of 2(d) of the Bangladesh Passport Order, 1973.

In the instant case the passport of the appellant was seized by the respondent No. 4 on the basis of an order passed by the Secretary, Ministry of Home Affairs. Article 7 (4) of the Bangladesh Passport Order mandates that the passport authority impounding a passport under clause (2) of Article 7 shall record in writing brief statement of the reasons for the order and shall furnish a copy of the same to the passport holder. From the order of the learned Judges of the High Court Division we are unable to find out any finding that the order of the Secretary of the Ministry of Home Affairs indicated any of the grounds for impounding the passport as contemplated in clause (c) of sub-article (2) of Article 7 of the Bangladesh Passport Order, 1973. Such finding obviously was not given and could not be given inasmuch as the order of the Secretary, Ministry of Home Affairs which is the basis of impounding of the passport was neither shown to the appellant nor to the High Court Division. It is also not denied by the respondent that the passport of the appellant was also earlier impounded as stated above and the same was returned in view of the decision of the High Court Division made in another writ petition and on filing contempt petition as noticed above.

In these backgrounds it is seen that the respondent hurriedly hastened again to impound the passport imposing restriction on free movement of the appellant from Bangladesh for his treatment in England and to re-enter Bangladesh after such treatment in violation of his fundamental