LAW & our rights
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"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*
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RIGHTS *monitor*

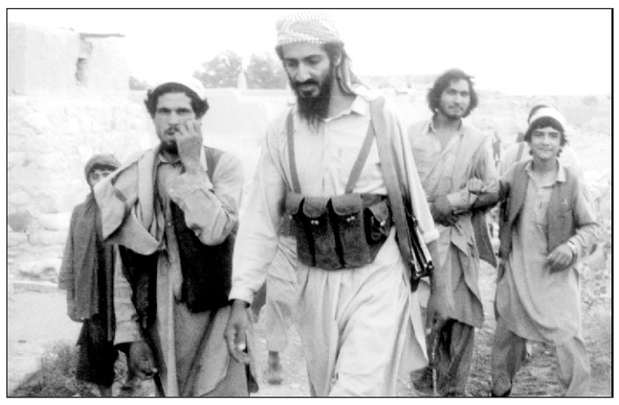
Do the Afghans support the Taleban or Bin Laden ?

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 Taleban 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 Taleban 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 Taleban, 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.

We now 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.

LAW *vision*

Are Governmental decisions irrevocable?

DR M A FAZAL

THIS question arose in *Shamsu Mia and Others v The Government of Bangladesh* [Star Law Report, 16th September 2001). In this case the cancellations of the allotment of the rehabilitation plots by the authorities were challenged in judicial review in 12 constitutional writ petitions. Homestead lands belonging to the petitioners were acquired by the government. Subsequently, rehabilitation plots were allotted in their favour by the appropriate authorities (by the Assistant Commissioner of Settlement). However, the Ministry of Housing and Public Authorities wanted these plots for the construction of 500 flats for government officials and took steps to cancel the allotments after the possession of the plots was transferred to the original land owners. The government argued that the allotment and transfer of possession were obtained by fraud committed by certain officials in collusion with the petitioners. Furthermore, disputed questions of fact were involved in these cases. The government opposed judicial review of the cancellations on these grounds.

The High Court Division of the Supreme Court conceded that the petitioners were the landowners whose land was acquired by the government and consequently they became entitled to the rehabilitation plots. Although the question of fraud and corruption was still subject to investigation by the Bureau of Anti-Corruption, the Court (somewhat prematurely?) accepted the government's argument that the allotments had been obtained by fraud and declined judicial review. The Court relied on a statement of Denning LJ in *Lazarus Estates Ltd v Beasley* [1965] 1 QB 702 to the effect that 'no judgment of a court nor an order of a Minister can be allowed to stand if it has been obtained by fraud'. This statement was not made in the context of administrative law. There is very little judicial authority to support it in the law of judicial control of governmental actions except in immigration law. Immigration is a sensitive issue in the United Kingdom and that is also reflected in judicial pronouncements. Thus in one case, the House of Lords demanded that an immigrant had a positive duty to disclose all material facts, otherwise he is guilty of deception [*R v Home Secretary, ex p Zamir* (1980) AC 930]. However, in a later case the House of Lords retracted from this position [*R v Home Secretary, ex p Khawaja* (1984) AC 74]. These pronouncements with regard to fraud are therefore judicial aberrations rather than the norm in judicial review of governmental actions.

The question is: What is the appropriate principle of judicial control where a public authority, having made a decision and thereby conferred a right or a benefit on private individuals, wishes to change that decision and withdraw the right or the benefit?

Appropriate Principle of Judicial Intervention

A) Promissory Estoppel

The English courts recognised that permitting the public authorities to retrace their steps might be unfair for the private parties. For instance, a builder obtains planning permission and builds properties on the basis of the permission. He then finds that the planning authorities have changed their minds, withdrawn their planning permission and have demanded that the buildings be demolished. The builder might have spent vast sums of money having relied on the planning permission. He would be faced with immense financial loss in these circumstances. For this reason the court applied the principle of promissory estoppel in public law (see, for instance, *Robertson v Minister of Pensions* (1949) 1 KB 227). However, very soon the court found that there are serious objections to the application of promissory estoppel (which might be appropriate in private law of contract) in the sphere of public law. Now the English courts have definitely rejected promissory estoppel against public bodies. There are several objections to the application of promissory estoppel to governmental actions.

B) Jurisdictional Principle and *Res judicata*

In 1972, this author articulated the proposition that while private law estoppels have no place in public law, there is a public law principle, which binds public authorities. In the same work, he termed it as the 'jurisdictional principle' which was stated as follows:

"If the officials of the public authority, in giving the advice or assurance, act *intra vires*, that advice or assurance becomes a formal decision which is valid and irrevocable. Such a decision is binding on all public authorities…just as it is binding on the private parties. Such a decision cannot be revoked or re-opened by any authority, not even by the courts except on the jurisdictional principle (i.e. *ultra vires*)…or if the relevant statute authorises re-opening…"

[M A Fazal, "Reliability of Official Acts and Advice" (1972) Public Law at pp. 44-45, now reproduced in M A Fazal's Judicial Control of Administrative Action in India, Pakistan and Bangladesh at pp. 624-647].

This formulation was based on the following statement of Vaisey J in *Re 56 Denton Road* (1952) 2 All ER 799 at 802:

"Where Parliament confers on a body…the duty of deciding or determining any question, the deciding and determining of which affects the rights of the subject, such decision or determination made and communicated in terms which are not expressly preliminary or provisional is final and conclusive and cannot, in the absence of express statutory power or the consent of the parties or persons affected be altered or withdrawn by that body."

"In other words, (i) if the public authority had jurisdiction over the subject matter of the action/decision in question; (ii) if the official had acted on the matter within the scope of his authority; and (iii) the action/decision affected the rights of particular individuals, then the action/decision is binding on the basis of the *res judicata* principle in the absence of statutory provisions to the contrary. This analysis has prevailed with English courts generally (See M A Fazal, Judicial Control, op cit. 650-657), the leading decision of the House of Lords on the point being *Thrasyvoulou v Secretary of State for the Environment* (1990) 1 All ER 65 (HL).

Returning to the question raised in *Shamsu Mia and Others v The Government of Bangladesh*

To what extent would the jurisdictional principle permit the re-opening of governmental decision on the ground of fraud? It is submitted that the answer to this question was provided by Mr Justice Vaisey in *Re 56 Denton Road* (1952) 2 All ER at p. 802:

"How does the evidence of the defendants affect the position? If it were discovered within a reasonable time that a 'determination' had been reported by some order on the part of an official of the defendants which had never, in fact, been made, or that there has been some mistake or misconception on which I could find that the document did not accord with the facts which is purported to record, the position might have been different."

In other words, in such a situation the decision in question could be re-opened but not otherwise. In this case, the authorities were not permitted to alter a decision classifying a dwelling as a total loss for the purpose of compensation to repair a war-damaged property.

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LAW *watch*

Apply the law of war in an anti-terror war, too

ADAM ROBERTS

Any military action forming part of the response to the terrorist acts of September 11 has to be conducted in accord with the law of war. The unusual and ruthless character of some of the coalition's adversaries will pose problems for, but should not prevent, observance of the rules by the coalition. The laws governing conduct in armed conflict are immensely detailed and contained in a bewildering variety of sources. However, their basic content is simple: Prisoners of war are to be protected, the wounded and sick must be cared for, humanitarian and peacekeeping personnel must be respected, and the use of chemical weapons is prohibited, as also are other means and methods of warfare that cause unnecessary suffering. Military targets must be attacked in such a manner as to keep civilian casualties and damage to a minimum.

Any military confrontation resulting from the events of September 11 will have aspects far removed from what is envisaged in the laws of war. This is because of four factors relating to the nature of the opposition:

1. Treaties on the laws of war, including the four 1949 Geneva Conventions, are based on the idea that an international armed conflict is between states, whereas in the present crisis at least one important entity, Qaida, does not have the characteristics of a state.

2. One basis for observance of the laws of war has been reciprocity: Both sides can gain by respecting the rules. However, in this case there is little prospect of some of the coalition's adversaries observing internationally agreed rules of restraint. Forces in Afghanistan or elsewhere may violate basic rules in a provocative and inhuman way, executing coalition prisoners or conducting new terrorist attacks in coalition countries.

3. A basic principle of the law is that attacks should be directed against the adversary's military forces, rather than against civilians. However, in the case of a terrorist movement there are no defined military forces that are clearly distinguished from civilians. Some U.S. or coalition attacks on terrorist targets are likely to be against apparently civilian objects and people. Some captured enemy personnel may not qualify for prisoner-of-war status, although they must still be treated humanely.

4. The principle of proportionality has been frequently mentioned in the current crisis, but its application presents particular problems. For example, insofar as it refers to the proportionality of a response to a grievance, there is obvious difficulty in using the attacks of September 11 as any kind of reference point for discussing the character or scale of coalition action.

These factors suggest that application of the law will be difficult, not that it is unimportant. Conflicts in which a principal adversary is a nonstate group, often labeled "terrorist," are nothing new. There has been a tendency in such cases for intervening forces to ignore basic legal restraints. This issue arose, for example, in the Israeli invasion of Lebanon in 1982, the U.S. mine-laying operations in Nicaraguan waters in 1984, and the various UN-authorized operations in Somalia from 1992 to 1995.

The Gulf coalition sought to observe the law not because of any guarantee of reciprocity but because such conduct was important to the maintenance of internal discipline and domestic and international support. Similar conclusions were drawn from the 1999 Kosovo war. In the present crisis, the policy of the U.S. armed forces, like that of some other states, is likely to be governed by a simple principle codified in the Standing Rules of Engagement issued by the U.S. Joint Chiefs of Staff on October 1, 1994: "U.S. forces will always comply with the Law of Armed Conflict. However, not all situations involving the use of force are armed conflicts under international law … "

If the operations are seen as the West versus Islam, or a wanton slaughter of innocents, then new recruits to terrorism would be found, the impressive coalition of countries would fall apart and the solid domestic support within NATO states would erode. In short, observance of legal and prudential limitations remains a key element in the professional conduct of military operations.

Adam Roberts, Professor of International Relations at Oxford University, is co-editor, with Richard Guelff, of "Documents on the Laws of War."

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 Chowdhury.
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 B Roy Choudhury, J I 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, I feel, straightway 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 angio-plastic 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, 32, 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 by the impugned judgment and order summarily dismissed the writ petition.

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 Bangladesh Passport Order, 1973.

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 impugned 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 impugned 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. Mahbubey 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 is 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 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 Art. 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 right as guaranteed under Article 36 of the Constitution. For such acts on the part of the respondent we are left to no other alternative but to observe that not only the order of impounding the passport of the appellant was tainted with mala fide motive and was not an act of fair play but also benefit of any reason to enable the appellant to avail of remedy as provided in Article 10 of the Passport Order, 1973 to the deprevation of his right to life in getting treatment of his heart ailment. This view of ours finds support in the case of Government of Bangladesh Vs. Zeenat Hossain 1 BLC (AD) 89. The submission of the learned Additional Attorney-General that the passport was impounded in the interest of sovereignty, integrity or security of Bangladesh or in the public interest can not be accepted in that his submission rests on point of law.

In the case of State Vs. MM Rahmatullah, this Division expressed its opinion on Article 7 (2) of the Bangladesh Passport Order, 1973 that apprehension on the part of the authority seizing the passport that the holder of the passport will not return to Bangladesh, if he is allowed to leave the country was not a ground for impounding of a passport of a citizen who wants to leave the country for medical check up and treatment. Right to travel abroad is a fundamental right as conceived under Article 36 of our Constitution. Supreme Court of India has taken a similar view in the case of Satwant Singh Vs. D. Ramarathnam, Assistant Passport Officer, New Delhi and others, AIR 1967 (SC) 1836 wherein it has been observed that withdrawal of a passport given to an individual violates Articles 21 and 14 of Indian Constitution.

Although in the Passport Order there is no positive words requiring that the citizen whose passport is impounded shall be given an opportunity of being heard, yet, principle of audi alterem partem mandates that no one shall be condemned unheard. The power conferred under Article 7 (2) of the Passport Order to impound a passport is violative of fundamental right guaranteed under Article 36 of the Constitution and rules of natural justice is applicable in such a case inasmuch as it seriously interferes with the constitutional right of the holder of a passport to go abroad in restricting him to leave and re-enter Bangladesh.

Mr. Huq on principle of natural justice cited the decision in the case of Province of Sind Vs. Public at Large PLD 1988 (SC) 138 wherein a Sharia Appellate Bench on reference to Article 203-D of the Constitution of Pakistan, 1973 observed that any provision of law where under some one can be harmed or condemned without affording an opportunity of defence against said act is against Quranic commands as supplemented and interpreted by the Sunnah of the Holy prophet. Article 13 of the Universal Declaration of Human Rights reads:

"1. Every one has the right to freedom of movement and residence within the borders of each State. 2. Everyone has the right to leave any country, including his own, and to return to his country."

With regard to submission resting on Article 13 of the Universal Declaration of Human Rights we are of the opinion that such right is in the International Covenant and not a part of Municipal Law. Therefore it has no binding force for Article 36 provides complete answer. There might be a case where power to impound a passport might be frustrated if a hearing could be given to the holder of a passport before impounding the passport and such plea might be pleaded for excluding the principle of audi alterem partem. The order of impounding of the passport of the appellant in this case obviously has been passed on the basis of the order of the Secretary, Ministry of Home Affairs and nothing could be shown to us to indicate that there was any chance to frustrate impounding of the passport by the appellant. The appellant having not been supplied with the copy of the order recording reasons therefore restricting the appellant from leaving the country certainly is violative of Article 7(4) of the Bangladesh Passport Order and as such the appellant had no opportunity to take a decision to avail of the alternative remedy by way of appeal as provided in Article 10 of the Passport Order, 1973. For such, violation the order of impounding a passport can not be held to be lawfully made. Withholding the order of the Secretary, Ministry of Home Affairs also is indicative of mala fide. Therefore, there is no reason to defeat the writ petition on the ground of doctrine of exhaustion.

Right to move the High Court Division in accordance with clause (1) of Article 102 for the enforcement of fundamental right conferred by this part is also a fundamental right under Article 44 of the Constitution. Where a person moves the High Court Division under Article 102(1) of the Constitution for enforcement of his fundamental right the writ petitioner is not required to avail of the alternative remedy before any other forum, in the present case before the appellate authority as contemplated under Article 10 of the Bangladesh Passport Order. It may be pointed out that proviso to Article 10 does not provide for any appeal against any order made by the Government and the order of the Secretary is the order of the Government and in that case no appeal shall lie as contemplated in proviso to Article 10 of the Order and the writ petition is quite competent. We, therefore, are of the opinion that the High Court Division was wrong to observe:

"We agree with the learned Additional Attorney-General that the reason for impounding the petitioner's passport fits with the provisions of the Passport Order as quoted above." This observation of the High Court Division seems to us is totally unfounded in law and misconceived. For the reasons stated above, we allow the appeal and set aside the judgment and order of the High Court Division. The respondents are hereby directed to return the passport to the appellant immediately. There will be no order as to costs.