The Daily Star
DHAKA SUNDAY JANUARY 20, 2002

Anti-Terror campaign cloaking human rights abuse

New global HRW survey finds crackdown on civil liberties

THE willingness of most Western governments to tolerate abuses by friendly governments in the Middle East and North Africa has tended to undermine the growth of a human rights culture there. The problems include the West's failure to rein in Israeli abuses against Palestinians, and its apparent disregard for grave civilian suffering caused by sanctions against Iraq.

The anti-terror campaign led by the United States is inspiring opportunistic attacks on civil liberties around the world, Human Rights Watch (HRW) warned in its annual global survey released Friday. At the same time, the campaign offers a chance to focus attention on the denial of human rights and democracy in the Middle East and Central Asia, where authoritarian governments have left millions of people with a choice between extremist politics and no politics. Many of these authoritarian governments cling to power without challenge from Western governments.

The 670-page Human Rights Watch World Report 2002 includes summaries of human rights events in 2001 in 66 countries, as well as analyses of U.S. and European foreign policy, refugee issues, international justice, corporate social responsibility, and the weapons trade.

Some countries, such as Russia, Uzbekistan, and Egypt, are using the war on terror to justify abusive military campaigns or crackdowns on domestic political opponents. In the United States and Western Europe, measures designed to combat terrorism are threatening long-held human rights principles.

"Terrorists believe that anything goes in the name of their cause," said Kenneth Roth, Executive Director of Human Rights Watch. "The fight against terror must not buy into that logic. Human rights principles must not be compromised in the name of any cause."

The anti-terrorism campaign will not succeed if it is conducted merely as a struggle against a particularly ruthless set of criminals, Roth said. To defeat the fundamental amorality of terrorism requires a firm grounding in international human rights.

"The fight against terror must reaffirm the principle that no civilian should ever be deliberately killed or abused," said Roth. "But for too many countries, the anti-terror mantra has provided a new reason to ignore human rights."

On Afghanistan, Roth said that the demise of the Taliban regime created an opportunity for positive change. But he urged that the international community devote real resources to bringing perpetrators to justice for past crimes. Establishing the rule of law will be essential for ending the cycle of atrocities in Afghanistan.

Roth said that Human Rights Watch had not yet conducted an on-the-ground investigation of civilian deaths in the U.S. bombing campaign in Afghanistan, but that serious questions had been raised by reports of civilian casualties.

Human Rights Watch does not generally take a position on whether particular wars should be fought, but does urge strict respect for international humanitarian law in the conduct of any war. Human Rights Watch urged the U.S. military to be more forthcoming about civilian casualties in Afghanistan.

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Roth also said that new restrictions on civil liberties in the United States, such as the proposed military commissions, could compromise the U.S. government's ability to criticize human rights violations in other countries.

"Imagine the U.S. condemning military tribunals set up by a tin-pot tyrant to get rid of his political enemies," said Roth. "That kind of criticism can have real sting. But now it will ring with hypocrisyif the Pentagon does not narrow President Bush's order on military commissions with appropriate guidelines." Anti-terror legislation in many Western European countries would have a similar effect on their abilities to provide international leadership on human rights, Roth said.

"The fight against terror isn't just a matter of security," said Roth. "It's a matter of values."

The willingness of most Western governments to tolerate abuses by friendly governments in the Middle East and North Africa has tended to undermine the growth of a human rights culture there, Roth noted. The problems include the West's failure to rein in Israeli abuses against Palestinians, and its apparent disregard for grave civilian suffering caused by sanctions against Iraq.

"In societies where basic freedoms flourish, citizens can press their government to respond to grievances," said Roth. "But in Saudi Arabia and other countries where Osama bin Laden strikes a chord of resentment, governments prohibit political debate. As the option of peaceful political change is closed off, the voices of non-violent dissent are frequently upstaged by advocates of violent opposition."

Human Rights Watch is an international human rights monitoring organisation based in New York. It accepts no financial support from any government.

Trafficking of women and children: A human rights crisis

RUKHSANA GAZI AND ZIAUL HAQUE CHOWDHURY

TRAFFICKING is a violation of human rights, and has various consequences at the individual, family, community, and country levels. It can be argued that trafficking is part of a continuum of sexual exploitation that perpetuates and continually reinforces the subordinate status of women. Trafficked people work under conditions, which are hazardous to their mental and physical health. Nevertheless, there were no specific reports on the health consequences of trafficking, although a number of problems were quoted repeatedly. Perhaps, because of the link between trafficking and the sex industry, the singular most frequently reported health consequence was the role of trafficking in HIV-associated epidemics. Children and women are also trafficked for purposes other than commercial sex such as forced labour, organ trade, and camel jockey. Victims of trafficking are at increased risk of HIV infection because of their exposure to forced sex and perhaps the potential initiation into substance misuse, including contact with intravenous drug users.

The Bangla equivalent of the word 'trafficking' is pachar. Pachar has a mild connotation, which means transfer from one place to another. So the Bangla phrase nari o shishu pachar means illegal transfer of women and children from one place to another. Trafficking, which is a serious problem and is considered a violation of human rights, is yet to be internalized emotionally by society at large in Bangladesh and in other South Asian countries. It is yet to be emotionally internalized regarding what happens when an adolescent girl is abducted and taken to a brothel, threatened, beaten, and raped. Eventually she can become ill which may sometimes result in death. The crux of the issue is that the civil society in Bangladesh is yet to internalize the mind-set that trafficking and flesh trade is as bad as hatta (murder), dharshan (rape), or chhintai (mugging). When one hears or reads news about trafficking, it does not create the same reaction as other criminal activities such as, rape, murder, or mugging, create. The definitions used by international organizations tend to focus on gender, age, reason for trafficking, and the issues of coercion and violence that are often associated with trafficking.

The statistics

Although, there is no reliable estimate of women and children who have been trafficked from Bangladesh to other countries, it has been estimated that 200-400 young women and children are smuggled every month from Bangladesh, and most of them end up in prostitution. Other estimates show that about five lakh Bangladeshi women and children work in brothels in India and Pakistan. The causes and consequences of trafficking in Bangladesh cannot be understood in isolation from its historical, cultural, geographical and socioeconomic perspectives, and the present condition of women. On both sides of the border between Bangladesh and India, there are many 'enclaves', which are pockets of land surrounded by the neighbouring countries. Research has shown that these enclaves have been used as recruitment and collection sites by traffickers. During recurrent natural disasters in Bangladesh, lack of shelter for girls is a great problem. All these factors make people vulnerable and an easy target of traffickers.

Causes

Causes and factors related to trafficking are multiple and complicated. These factors are embedded within the socioeconomic structure of the country, and require an in-depth analysis. However, the factors can be categorized into two groups: 'push' factors, 'pull factors'. In the 'push factors' there are certain conditions in the environment of the 'sending' communities or countries that ensure a supply of people for trafficking. These factors include low employment opportunities, low social status of women, economic and social vulnerability of women and children, urbanization, migration, etc. The second group refers to the set of 'pull' factors that support the demand for trafficking activities. These include wage employment and bonded labour, labour migration and prostitution. Traffickers adopt different strategies and tricks to allure and enroll young children and women (and their families) into the trafficking process. The traffickers usually use different routes at different times to avoid the police and members of other law-enforcing agencies.

Although the police rescue many women and children but what happens to them is largely unknown. Often the rescue processes are violent, aggressive, and 'male dominated.' Sometimes the minors are sent either to state-run remand homes or to an NGO shelter. Most are unable to go back to their home because of a whole series of problems, and when they are released, they are again at risk of being picked up by the traffickers. 'Repatriation' means voluntary return to the country of origin of the person subjected to trafficking across international frontiers. The minors without any choice; have to return back to their place of origin, but an adult woman can choose to stay in the country if she so wishes. The choice of women is never considered.

Both government and NGOs have been working in combating trafficking in Bangladesh. through raising awareness, advocacy, research, networking, rescue, repatriation, and rehabilitation.

Global dimension

In recent years, the trafficking of women and children has already acquired a global dimension. Trafficking was an important agenda of the Ninth Summit of heads of governments of the SARRC countries held in the Maldives in 1997. Trafficking is a human rights issue with important ramifications in the areas of health, law- enforcement and socioeconomic development in general. Poverty, attitude toward women and deeply-entrenched gender discrimination, unemployment, cultural norms about marriage, well-organized national and international networks of traffickers, and weak law-enforcement are the critical factors relating to trafficking of women and children in Bangladesh.

Given the regional nature of trafficking and its international implications, reports on the nature, magnitude, trends, and forms of trafficking in the SAARC countries are needed. A uniform plan of action on the issue of trafficking of women and children involving the governments and NGOs of the region needs to be developed, so that a coordinated approach toward the conviction of traffickers is possible. This regional approach of establishing cross-regional teams and resource centres implies the development of a legal framework that ensures arrest, conviction, and extradition of traffickers, and that also enables prosecution of traffickers and abusers even when crimes are committed in foreign soil.

LAW *lexicon*

Exploring writ of Habeas Corpus

JUSTICE S K SINHA

THE expression "Habeas Corpus" is Latin, means "that you have the body". It takes its name from the characteristic words it contained when the process and records of the English courts were written in Latin. There are several writs of Habeas Corpus, each of them being used for particular purpose. One of the most important applications is "Habeas Corpus ad subjiciendum". It means the remedy provided for a person illegally deprived of his liberty (Bouvier's Law Dictionary). When the term Habeas Corpus was used without further addition, it generally meant in this sense. The term was used in the Constitution of the United States. "The privilege of the writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." (Article I Section 9, Constitution of the USA).

This is a high prerogative writ which was the offspring of the common law but its benefits and securities were enlarged and guarded by the Habeas Corpus Act of Charles II, the general provisions of which are adopted by recognition or by express legislation. In the language of Blackstone, "This is a high prerogative writ and therefore, by the common law, issues out of the Kings Bench by a fiat from the Chief Justice, or any other of the Judges, running into all parts of the King's dominions, for the King is at all times entitled to have an account why the liberty of any of its subjects is restrained, wherever that restraint may be inflicted." (6 Beng. L.R 392).

The date of the origin of the writ of Habeas Corpus cannot be ascertained. Traces of its existence are found in the year Book 48, Ed. III, 22 and it appears to have been familiar to, and well understood by, the Judges in the reign of Henry VI.

Habeas Corpus is a remedy for a person deprived of his liberty. It is addressed to him who detains another in custody and commands him to produce the body, with the day and cause of his caption and detention, and to do, submit to, and receive whatever the Judge or the court shall consider in the behalf. It is essentially a writ of inquiry and on matters in which the state itself is concerned, in aid of right and liberty. The writ was directed to the person in whose custody the detenu is detained and required the body of the detenu alleged to be unlawfully held in custody or restrained of his liberty to be brought before the court that appropriate judgment may be rendered upon a judicial inquiry into the alleged unlawful restraint. Relief from illegal imprisonment by a Habeas Corpus petition was not creature of statute and the origin and history of the writ are lost in antiquity. There are ample evidence that it was in use before the day of Magna Carta and came to us as a part of our inheritance from the mother country and exists as a part of the common law of the several states. (Bouvier's Law Dictionary).

The writ of Habeas Corpus was originally issueable out of the court of King's Bench and out of the court of Chancery but in very early days, the court of common pleas and Exchequer had claimed the right to issue the writ in protection of their own officers and suitors and this practice had been gradually extended to other cases. In the 17th century, the Habeas Corpus Act, 1640 recognised the right and duty of the court of common pleas to order the writ to issue. Subsequently the Habeas Corpus Act 1679 was enacted empowering to move and obtain Habeas Corpus out of the High Court of Chancery or Court of Exchequer or out of the court of King's Bench or common pleas or either of them. The said Act further provided that the Lord Chancellor or any one of His Magistry's Justices might grant a Habeas Corpus in vacation, and imposed heavy penalties upon any judge who wrongfully refused to entertain the application. (1928) A.C. 459.

The Supreme Court in India had been created by Letters Patent granted on 26 December 1800 AD that had exercised the power to issue the common law writ of Habeas Corpus. The Parliament passed the Indian High Courts Act 1861, authorising the establishment of High Courts at (1) Fort William in Bengal (2) Madras and (3) Bombay for the respective presidencies. Section 9 of the Indian High Courts Act, the Letters Patent issued under the Act on 26th June 1862 and the subsequent Letters Patent issued on 28th December 1865, it is manifest that the High Courts were given the same jurisdiction, power and authority which the Supreme Courts possessed. Section 81 of the Code of Criminal Procedure, 1872 empowered the British subjects who were detained in custody and who considered such detention illegal, to apply the High Court for an order directing the person detaining him to bring him before the court to abide such order as might be made by it. This section empowered the High Court to issue such orders throughout the territories over which it had jurisdiction. Section 82 prohibited the High Courts issuing a writ of Habeas Corpus beyond the Presidency Towns. The Criminal Procedure Code 1872 was repealed by the Code of Criminal Procedure, 1875. In section 148 of the Code of Criminal Procedure Act 1875 (Act 10 of 1875), the High Court of Fort William in Bengal, Madras and Bombay were empowered to issue directions of the nature of Habeas Corpus for the purposes mentioned in the section, were taken away and the High Courts were given legislative authority to frame rules to regulate the procedure. The Criminal Procedure Code of 1898 repealed the Code of 1882 but reproduced section 491 as it stood in the Code of 1882.

The legislature of 1872 and 1875 (Act 10 of 1872 and Act 10 of 1875) intended to take away altogether the High Court's power to issue the writ of Habeas Corpus in the Mufassil areas for any purpose and in the Presidency Towns limited powers were given for the purposes indicated in section 148 of the Code of 1875 and recourse should not be had to the old prerogative writs. By section 30 of the Criminal Law Amendment Act 1923, clauses (a) and (b) of section 491 (1) of the Code of 1898 were altered. The effect of the amendment of section 491 by section 30 of the Criminal Law Amendment Act, 1923, is that any of the High Court can now give direction of the nature of Habeas Corpus throughout whole of its criminal appellate jurisdiction. Previously, it was ordinary Original Civil. Jurisdiction which has been altered by way of such amendment. The Act of 1923 also did away with the distinction between European subjects and British Indian subjects. The Indian High Courts Act, 1861, authorised the legislature to take away powers which the High Courts obtained as successor of the Supreme Courts. In exercise of those powers, the legislature has taken away the power to issue the prerogative writ of Habeas Corpus in matters contemplated by section 491. (AIR 1939 Mad 120 FB, approved by the Privy Council, in AIR 1945 PC 156).

Scope and power of Habeas Corpus

After the amendment in 1923, the right to obtain a direction in the nature of a Habeas Corpus has become a statutory right and it was not open to any party to ask for writ of Habeas Corpus as a matter of common law in England. (AIR 1927 Cal 496, approved by the Privy Council in AIR 1945 P.C. 156 and AIR 1939 Mad 120 FB). The position that emerges now is that it is open to any person to claim the writ of Habeas Corpus on the grounds recognised under section 491 but can not claim such right on the ground recognised by common law. The common law right to obtain writ as existed became a statutory right and a part of the statutory right has become a part of the fundamental right guaranteed in part III of Constitution of Bangladesh. After the Constitution of Bangladesh came into force in 1972, wherever a detenu claims to be released from illegal or improper detention, he can claim his fundamental right guaranteed by Articles 27, 31, 33 and 36 as the case may be, of the Constitution of the Bangladesh. For a Bangladeshi, there are two remedies open to a person whose right of freedom has been infringed i.e. he may move the High Court Division under Article 102 of the Constitution or he may make an application under section 491 of the Code of Criminal Procedure. The only difference under said two remedies is that in case of application under section 491, a stranger can apply for the release of the detenu detained improperly or illegally or the High Court Division itself can act suo moto in view of the expression used in sub-section (1) of section 491 that "Whenever it think fit" which postulates that if it appears to the High Court Division to take appropriate action against an improper or illegal detention of any detenu, it can pass appropriate orders. A third party may also apply on behalf of the detenu but in case of an application under Article 102 of the Constitution, only the aggrieved person in entitled to make the application.

As regard invoking of the fundamental right guaranteed in Part III of the Constitution in an application under section 491 of the Code of Criminal Procedure, it would have been open to a detenu to challenge the law under which he has been detained, was invalid and illegal. The validity of the law might also have been challenged or the mandatory provisions of law under which he has been detained, had not been complied with. The right to challenge the validity of the law that it contravenes the fundamental right of the detenu, has accrued only after the Constitution came into force. So, in my view a detenu while challenging the illegal or improper order of detention, he may invoke his fundamental rights guaranteed in part III of the Constitution. Gazendragadkar J, in the case of Makhan Singh vs State of Punjab, AIR 1964 SC 381, held "If S.491 is treated as standing by itself and apart from the provisions of the Constitution, the plea raised by thew detenues cannot be entertained in the proceedings taken under that section, it is only when proceedings taken under he said section are dealt with not only in the light of S.491 and of the rights which were available to the citizens before 1950, but when they are considered also in the light of the fundamental rights guaranteed by the constitution that relevant plea can be raised." These views have been accepted by our High Court Division in the case of Sri Kripa Shindu Hazra vs The State, 30 DLR 103.

The position as stands now is that a detenu's right to challenge the legality or propriety of his detention which was available to him under section 491(1) (b) of the Code prior to Constitution in operation, has been enlarged by the fundamental rights guaranteed to him by the constitution and thus, whenever he relies upon his fundamental rights in his application, he is in fact invoking the said rights. The proceedings of a writ of Habeas Corpus under section 491 inevitably partake of the character of proceedings taken for enforcing the fundamental right. This is why, the High Court Division in the case of Sri Kripa Sindu Hazra (Supra) and in the case of Syeda Razia Begum, 40 DLR 210 held that the scope of section 491 is not hedged by the constitutional limitation and in that way its scope is wider than the constitutional provision. I find no reason to depart from the said views. Similarly when a detenu moves a petition on the ground that the order of detention was malafide, the exercise of a power malafide is wholly outside the scope of the law conferring the power and the same can also be challenged on an application under section 491.

S K Sinha is a Judge of the Supreme Court of Bangladesh. This article was first published in the Bangladesh Legal Decisions.In the next episode, the writer will examine the custody of minors in the light of writ of habeas corpus

RIGHTS *corner*

Cambodia: Commune elections

JOE SAUNDERS

ONCE again the world's attention is turning to Cambodia as the troubled country gears up for its third election since 1993. This time, it's the turn of ordinary people throughout the countryside to run for office --Feb. 3 will see the first local, or "commune" elections to be held since before the Khmer Rouge took over in 1975, and the first ever that can lay any claim to being democratic. But despite the relative stability of the past two years, a recent trip to the country confirmed that the worst fears of Cambodia-watchers are being realized:

Political intimidation, violence and murder are on the rise as polling day draws near.

When the U.N. Human Rights Special Representative Peter Leuprecht visited Cambodia in November 2001, Prime Minister Hun Sen responded with a call for nonviolence in the run up to the elections and a pledge to repeat that call 15 times before election day. This week, in the wake of increased election-related violence, he reiterated his call. The prime minister's statements are welcome, but clearly not enough.

The political climate looked much better a year ago. After years of delay, in January 2001 the government finally adopted a law to establish commune elections. When Cambodians head to the polls next month they will be voting for new leaders of the country's 1,621 communes (groupings of four to seven villages), who to date have been appointees of the ruling Cambodian People's Party. Cambodian democracy advocates were frustrated that the final version of the election law established an electoral system based not on individual candidacy but on party affiliation and party lists. This, they felt, exacerbated traditional problems of political party patronage and inter-party conflict. Nonetheless, they were pleased that elections were finally in sight.

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As voter registration got underway in July 2001, there were reports of an intimidation campaign by the CPP, with local party officials allegedly pressuring people to sign loyalty oaths, threatening opposition candidates and trying to buy-off voters. Similar complaints have continued to surface through to the official campaign period.

Worse still, reports of violence and threats against opposition candidates started coming in thick and fast, with little evidence of government efforts to identify let alone prosecute the perpetrators. Opposition party signboards were torn down and many activists were told by their local authorities that if they continued to support the opposition their security could not be guaranteed. In November two candidates and an opposition activist were murdered, and in December there were three more killings. Just earlier this month, four opposition memberstwo of them female council candidateswere shot and killed within three days. In total, at least fifteen opposition candidates and activists have now been killed since the start of 2001. Human-rights groups fear the violence and intimidation tactics will intensify once the official election campaign, which kicks off today, is underway.

The mechanisms put in place by the government to deal with violations have so far proved woefully inadequate. The National Election Committee and its local level sub-commissions have not once exercised their considerable powers to punish perpetrators of electoral abuses, despite hundreds of reports flooding in. The Central Security Office for the Defense of the Elections has been similarly ineffective, its occasional declarations failing to ensure the safety of opposition candidates and supporters.

It's not surprising that Cambodian human-rights activists doubt the sincerity of the government's declarations. Ending political violence and intimidation may not be as easy as closing karaoke bars, as Hun Sen did unilaterally last November, but there's little doubt that should the government genuinely wish for a clean election, it could achieve itor at least come close.

The CPP needs badly to win these elections. After 20 years of controlling the government, the CPP faces the possibility that it may lose the next national elections, scheduled for 2003. This situation would be no more acceptable to the CPP than it was in the U.N.-sponsored elections of 1993, when the royalist Funcinpec party took the lead role in a fragile coalition governmentonly for the CPP to seize back near control in the coup of July 1997.

The current commune chiefs are political appointees of the ruling party, and many have been in place since the fall of the Khmer Rouge in 1979.

Before candidate registration took place in November 2001, local authorities began surveying the voters to find out which commune chiefs were particularly disliked, and many of these either failed to make the party's candidate lists, or were placed far down the order of preference. The commune elections therefore will be an important test of whether the CPP is able to maintain its influence at the local level, which in turn will affect the strength of its national network.

With no sign that the government is yet taking serious steps to end the violence, it is now up to the international community to exert strong pressure. Donor countries that support Cambodian development projects should demand concrete action from national and local authorities in investigating violations and punishing those responsible. The donors should call for access to the broadcast media for all political parties during the campaign period beginning this week, including airing of candidate discussions on national TV and radio. Access to the media, which is dominated by the CPP, is a critical problem for opposition parties.

Donors should continue to support the work of independent Cambodian election monitoring organizations and international observers to monitor and report on the election period and any post-election violence and reprisals. The Cambodian government needs to send a strong message to its citizens that this time around, they can vote for the party of their choice without fear, that their choice will be secret and that the final results will accurately reflect the will of the Cambodian people.

Mr. Saunders, the deputy Asia director at Human Rights Watch, visited Cambodia in December 2001.