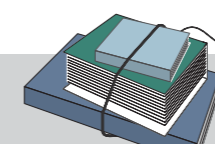




REVIEWING the views



RIGHTS corner



Post-election violence
Attack against religious minorities
or a serious law and order problem?

MARTIJN SNIJ

OVER the last couple of months the newspapers have been writing a lot about violence against religious minorities in Bangladesh.

Looking at the history of Bangladesh and its people, I get the impression that it has always been quite a tolerant society and that during the Liberation War Bangladeshis fought together, irrespective of whether one was Muslim or Hindu.

The problem lies with the enforcement of the law. The system of law enforcement and the law enforcers themselves (police, public prosecutors and the judiciary), generally speaking, seem to be incapable of creating an environment of law and order in this country.

elements continued with their practices as the new government scrambled to establish its new administration. Is this kind of violence politically motivated? Or indeed religiously motivated? Or is it just economically and criminally motivated? These seem to be important questions to ask.

That said, I don't think the motives really matter in determining whether we're dealing with human rights violations or not. Does a crime have to be labeled "religiously motivated" to become a human rights violation? Or can an economically motivated crime also be considered a human rights violation? The answer depends very much on the definition of a human rights violation.

I, a bideshi, got confused, reading and talking about this violence against religious minorities issue. I was expecting to clearly find gross human rights violations, but as just pointed out, the reality is not that simple. The deeper I

dig into this subject, the more complex and murky the situation seems to be. Yes, I came across a lot of violent incidents indeed, and allegedly, the Hindu minorities were affected. But hard facts pointing towards a systematic pattern of violence against Hindus seem to be scarce.

This takes us back to the law and order-problem briefly mentioned before. In my opinion the laws in Bangladesh are fairly good (the notable exceptions are Section 54 of the Code of Criminal Procedure and the Special Powers Act the so-called "Black Laws").



"Not only in the cases of violence against minorities, but everywhere across the spectrum of Bangladeshi society the law and order situation is not good."

Not only in the cases of violence against minorities, but everywhere across the spectrum of Bangladeshi society the law and order situation is not good. This is a very serious shortcoming not only of the current government, but also of all the previous governments.

Martijn Snij, a lawyer from The Netherlands, visited Bangladesh for a research on the state of minorities.

violence in general. Poverty is at the root of corruption and corruption in the law enforcement agencies definitely does not contribute to establishing proper rule of law.

When I read the papers and the reports from human rights organizations, I could think that the situation of minorities in Bangladesh since the October 1, 2001 elections is very alarming. But keeping the widespread "general" violence in mind, the story the papers write and the human rights organizations report might not be the whole story.

The situation could be that ordinary criminals, or mastans, took advantage of the power-vacuum right after the elections and committed crimes without fear of prosecution.

LAW lexicon



Exploring writ of Habeas Corpus
Custody of minors

Justice S K Sinha

THE High Courts Act 1861 empowered the High Courts established under the Act to make its own rules. Moreover, the High Courts were conferred to make rules under section 491 (2) of the Code in matters of the Writ of Habeas Corpus.

In respect of minor where an offence has been alleged to have committed by somebody relating to the said minor, there is no specific law in our country allowing the detention of the minor into custody for the minor is not an accused and could not, therefore, be arrested and detained.

An unlawful detention of a minor from the legal guardian is equivalent to an unlawful imprisonment of the minor. The availability of other remedy under the Guardian and Wards Act 1890, for obtaining the custody of the minor is not a ground for refusing an application under section 491 by the guardians of the minor who are entitled to have their custody.

of the minor alone which is the paramount consideration, while determining the proper custody of the minor, the High Courts carry with its widest discretionary powers in exercise of the control over the proceedings and pass appropriate orders for the custody of the said minor in favour of the guardian.

But where there is subsisting order of a court of competent declaring a person to be fit and proper person to exercise guardianship over minor, the retention by that person legally appointed, of the custody of the minor can not be called illegal or improper and the procedure by way of writ of Habeas Corpus under section 491 Cr.PC should not be exercised by the High Court Division.

In case of a detention either in private or public custody of a person who is a sui-juris there is distinctive principle of law in trying with such matter by the High Court Division. The case present little difficulty because the said detention can be challenged by the victim or anybody else on his behalf.

"We can understand that these are difficult matters to decide before evidence is recorded at the trial and on top of it there is always the human consideration which overtakes strictly legal standards when a victim refuses to go with her parents at the times even after persuasion by the court itself.

The powers of High Court Division that whenever a person is illegally or improperly detained in public or private custody, if it thinks fit, directs that such person be set at liberty is sufficiently wide. This right can be invoked by any person under it. Unless this power has been expressly taken away by a competent piece of legislation, as was done earlier suspending the operation by section 10 of the Restriction and Detention Ordinance, 1944 (III of 1944), the High Court Division, has power to issue writ of Habeas Corpus directing the authority detaining a detenu is illegal and improper.

S K Sinha is a Judge of the Supreme Court of Bangladesh. This article was first published in the Bangladesh Legal Decisions.

LAW vision



Constitutionality of quota
in public services

MD. REZAUL KARIM

EQUALITY of all persons is one of the most important fundamental rights in a constitution. Discrimination on any ground is not generally permitted. Discrimination can only be made to maintain equality which is termed "positive discrimination".

Constitutional provision

In Article 27 of Bangladesh Constitution, equality of all persons has been ensured. In Article 29 (1) & (2) equality of all persons in public services has been ensured and in article 29 (3) (a) the state has been empowered to make provision in favour of any "backward section" of citizens for the purpose of ensuring their adequate representation in the service of the Republic without providing any meaning or criteria of backward section.

Reservation in India and Pakistan's Constitution

In article 14 of Indian Constitution general provision of equality has been provided. Article 16 of the Constitution provides equality of opportunity in public services while 16 (4) provides for reservation for "backward class" without providing any definition of the term.

Article 27 of the Pakistan Constitution provides safeguards against discrimination in services while its first proviso provides for reservation of post belonging to "any class or area" to secure their adequate representation in services of Pakistan which shall not extend twenty years from the commencing day.

Equality and reservation

As reservation is made to maintain equality so it should be stopped when equality is gained. Reservation must not affect the basic principle of equality. Regarding this Mahmudul Islam in his book "Constitutional Law of Bangladesh", has commented "reservation is an exception to the guarantee of article 29 (1) and (2) and it should not be interpreted or given effect to in such a manner as to nullify the guarantee of article 29 (1) and (2)".

Backward Section

Under article 29 (3) (a) of Bangladesh Constitution reservation can be made for "backward section". The corresponding term in Indian Constitution is "backward class" the expressions have not been defined in these Constitutions.

In India the opinions of judges and framers of the Constitution are taken into consideration for terming any class backward. In this regard judge, E. S. Venkataramiah in Indira Sawhney V. Union of India, AIR, 1993, has commented, "An examination of the question in the background of Indian social context shows that the expression "backward classes" used in the Constitution referred only to those who were born in particular caste, or who belonged to particular races or tribes or religious minorities which were backward.

To head off mass migrations
set a global minimum wage

MICHAEL ARDON

The fact that globalization is widening the gap between the rich North and the poor South, and is increasing poverty in many developing countries, is used to discredit the very idea of globalization. This is confused thinking.

The term "globalization" is generally understood to mean the trend to enable a free flow of goods and capital by removing national and regional barriers. Such a definition is misleading, because it leaves out one of the most important elements of a truly competitive global economy - the free flow of work forces.

Globalization, as practiced today, is based on fundamentally contradictory elements: a free flow of goods and capital, coupled with a ban on the free flow of work forces from country to country.

The basic paradox of the current ideology of globalization is that without the freedom of laborers to work anywhere, free competition and the rule of market forces in the global economy are mere fictions.

What is more, most of the negative results of globalization, as it is now practiced, originate from this restriction on the free flow of work forces.

But of course the North cannot afford to lift all restrictions on immigration, in the world as it is today. That would result in migration to the rich countries by hundreds of millions of poor laborers.

There is no rapid solution to the inherent contradiction between restricted immigration and globalization. The only long-term solution lies in bridging the gap between the per capita incomes in the rich and poor countries.

Only when this income gap is narrowed will a global free flow of labor be possible without massive migration.

People do not tend to leave their homelands for a differential increase in income. Language, cultural and social barriers, the high costs of migration and of finding alternative living quarters, all this tends to discourage people from leaving home unless they have to.

Given the choice between \$20 a day at home and \$40 a day in a distant developed country, most people will choose to stay at home. Not so, though, if the choice is between staying at home hungry on \$1 a day and emigrating to a developed country where a minimum wage and social benefits are secured.

A reasonable gap in incomes between South and North that would minimize the drive to emigrate would have two positive results:

A 20-fold increase in wages in the South would eliminate hunger and extreme poverty for billions of people, and would simultaneously eliminate the global dangers that result from these conditions.

Foreign capital would continue to flow to the South, even if the ratio of labor costs between South and North were 1-to-2 instead of 1-to-40.

But by what mechanism could such a substantial narrowing of the gap be achieved? One of the options is a comprehensive global minimum wage.

The minimum wage might initially be only slightly higher than the present low wages in some developing countries, so as not to disrupt their economies, but it would be increased annually. Ultimately it should reach 40 to 50 percent of the average minimum wage in the industrialized nations.

Compliance with such a minimum wage might be achieved by a ban on imports from countries that fail to adopt it.

In the aftermath of Sept. 11, the time has come to realize that a deluxe globalization for the rich, without globalization of the labor force, is not sustainable, and that until some equity is attained between poor and rich countries, no true globalization will be achieved.

Furthermore, if the gap between the two worlds is not narrowed, the poor countries will continue to breed forces that endanger the very existence of our civilization.

The writer, a professor of chemistry at The Hebrew University in Jerusalem, contributed this comment to the International Herald Tribune.

"backward section" in Bangladesh Constitution.

Identification of backward section

How the issue of identification of 'backward section of citizen should be dealt with. Will there be any particular method of identification or should it vary from state to state, region to region or from urban to rural society. The answers will have to be dealt with keeping in mind the generalities of the situation and not with problems or situations of a peripheral nature which are peculiar to a particular state, district or region.

Creamy layer in backward section

Now question arises whether everybody of a "backward section" is entitled to the benefit of reservation or some 'forward section' people of the same section has to be excluded. In this regard in India many developments have taken place during the last ten years. Indian Supreme Court in various decisions has said that care should be taken that forward classes do not exist in the backward class list.

Reservation and efficiency in administration

Now question comes whether reservation extends to the appointment of inefficient people in the administration depriving the meritorious peoples of the country. Indian Supreme Court in several decisions has said that care has to be taken that reservation does not adversely affect efficiency in administration. In a case the Indian Supreme Court has said, if the state proposes to provide reservation on the ground of inadequate representation of certain backward classes in services, if it is considered by the appropriate authority that such reservation will adversely affect the administration then reservation is not permissible.

PARC for abolition of quota

In a report in "The Daily Star" of 28 October, 2000 which headed "PARC for Abolition of Quota in Govt. Service" said, 'the Public Administration Reforms Commission has strongly recommended abolition of quota system in government services blaming the system inefficient and non-functioning. The local and international experts now call Bangladesh Civil Service an inefficient service. It added that quota system had caused an obstacle to meritorious people to enter civil service which is entrusted with responsibilities of performing wide and complicated work.'

At last it can be said that it is high time to look into the provisions of Bangladesh Constitution concerning reservation for a "backward section". For whom the term "backward section" was meant is to be identified. Steps to be taken to exclude "creamy layer" in a backward section. Care has to be taken that efficiency in administration is not violated in providing reservation. A balance has to be maintained between reservation and equality of all persons. If these steps are not taken, a gross injustice to the meritorious people of this country and to the people at large will continue.

Mr. Rezaul Karim is a student of L.L.M. University of Dhaka.