



## HUMAN RIGHTS *analysis*



## RIGHTS *column*



# Police brutality at Shamsunnahar Hall The slaughter of constitutional liberty and human rights

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**"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." - Article 11 of the Constitution of Bangladesh**

THE barbaric attacks on the students, teachers and journalists at the Dhaka University campus left the citizenry of Bangladesh virtually dumbfounded. It, in fact, raises a very basic question: Does the Constitution of Bangladesh, the supreme law of the land, recognise human rights and fundamental freedom at all? The nocturnal police raid on female dormitory Shamsunnahar Hall indicates the answer in the negative. The subsequent governmental inaction to redress the violations promptly or passive support in different forms for the then ill-famous Vice Chancellor and his associates confirm this deplorable assertion.

### The fact not fiction!

Police in a midnight swoop on 24 July 2002 stormed into a female residential hall of Dhaka University (DU) and brutally beat up hundreds of students that set in motion a chain of protests and violent incidents throughout the week (25-31 July). During the one-and-a-half-hour long unprecedented action that started at around 1:30am and ran through 3:00am, police in riot gear dragged and pulled students from their bed of the Shamsunnahar Hall, and beat up and abused them, according to witnesses.

The policemen also took 18 students to the Ramna Police Station at dawn. They were released at noon in presence of the hall provost. However, they have been asked to appear before court. More than 50 students sustained wounds in the police atrocities. Many students had their dresses ripped while being dragged by the policemen. Besides physical torture, the police also verbally abused the female students, some of the victims said (The Daily Star 25 July 2002).

Police also assaulted about 50 protesting students, seven journalists and five university teachers in the subsequent days of protests. The cadres of the JCD, the student wing of the ruling BNP, also joined the police against the general students' movement. They abused and threatened several protesting students.

### Meaningless constitutional guarantees

For realisation of the aim mentioned in the preamble and some of the fundamental principles of the state policy, Part III of the Constitution of Bangladesh provides for a catalogue of rights as fundamental, which the state is mandated to guarantee for its citizenry. The Shamsunnahar Hall episode exposes once again the inherent weakness of the enforcement mechanism without which the rights are meaningless, futile paper exercise. It also shows their attitude of patent disregard towards civil liberties and human rights of the commoners.

### Article 31. Right to protection of law

To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. The students of Dhaka University were deprived of the right to protection of

law. The female students of the Shamsunnahar Hall were not treated in accordance with law. Actions detrimental to the, liberty, body, reputation and property of students were taken.

### Article 32. Protection of right to life and personal liberty

No person shall be deprived of life or personal liberty save in accordance with law. Personal liberty of the students (especially those who were arrested without any specific

### Article 43. Protection of home and correspondence

Every citizen shall have the right, subject to any reasonable restrictions imposed by law in the interests of the security of the State, public order, public morality or public health-

(a) to be secured in his home against entry, search and seizure; and (b) to the privacy of his correspondence and other means of communication. It is needless to corroborate here that the privacy of the female students was blatantly violated. They were exposed to ruthless entry, search and abuse. The words and behaviour of the Police also violated flagrantly the provisions of the Police Act and the Police Manual.

### International human rights obligations

In 2000 Bangladesh acceded to the International Covenant on Civil and Political Rights (ICCPR) considered by the human rights experts as the most influential human rights mechanism of the UN. Through this ratification Bangladesh has undertaken to respect and to ensure all individuals within its territory and subject to its jurisdiction civil and political rights in areas that comprise, among others:

Non-discrimination in the application of the Covenant and the availability of remedies to persons whose rights or freedoms have been violated (Article 2);

Equal enjoyment of civil and political rights by men and women (Article 3);

The right to life (Article 6);

Prohibition of torture, inhuman or degrading treatment or punishment (Article 7);

The right to liberty and security, and the conditions of arrest and

trial (Article 9);

Humane conditions of detention (Article 10);

Equality before courts and tribunals, the right to be presumed innocent until proven guilty, minimum guarantees for persons charged, review of convictions, and compensation for miscarriage of justice (Article 14);

The right to privacy and protection against attacks on the honour and the reputation of the person (Article 17);

Freedom of opinion and expression (Article 19);

Prohibition of war propaganda and advocacy of national, racial or religious hatred (Article 20);

The right of peaceful assembly (Article 21);

The right to freedom of association (Article 22);

The rights of children and their protection (Article 24).

Clearly, most of the provisions of the ICCPR were overtly violated by the law enforcers and the DU administration. The government seems to be unaware of their international treaty obligations. This is, indeed, extremely

### Resignation is the first step

The Vice Chancellor and the Proctor of the University of Dhaka resigned from their respective position. It helps sooth the situation to a great extent. However, this is not enough. The people who masterminded the plan and those who enforced the plan must be brought to the book. The Judicial Investigation Commission should neutrally investigate the whole episode and recommend adequate stern measures to put a stop to such heinous incident.

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Is peaceful protest illegal in Bangladesh?

PHOTO: STAR

charge) was curtailed.

### Article 36. Freedom of movement

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. Freedom of movement was flatly denied to the students, teachers and the journalists to curb the peaceful protests against the uncivilised treatment of the police and the administration.

### Article 37. Freedom of assembly

Every citizen shall have the right to assemble and to participate in public meetings and processions peacefully and without arms, subject to any reasonable restrictions imposed by law in the interests of public order health. The very right to assemble and to participate in public meetings and processions peacefully for a just cause was literally snatched away from the general students during the movement.

### Article 39. Freedom of thought and conscience, and of speech

(1) Freedom of thought and conscience is guaranteed. (2) Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence- (a) the right of every citizen of freedom of speech and expression; and (b) freedom of the press, are guaranteed. The journalists were severely beaten up by the police for their objective reporting on the police atrocities at a female dormitory and subsequent development. They were also obstructed while discharging professional responsibilities. The authority failed to guarantee the security of the journalists.

# Let us learn to "Resign" and say "No" when situation demands

MAZNU-NUL HUQ

IT is not for the first time or second time but as if from time immemorial this always happens in Bangladesh. Dark days swoop on us even when there are all ingredients for brighter days. We like very much to squabble on things, which are of no value when real opportunity goes by unnoticed. Dhaka varsity has again come into the limelight. Not for any brilliant academic feat or scientific discovery which is its main objective but, as before, making a tangle of everything. Varsity has been pushed unnecessarily into a quagmire of no-return.

situation was too difficult to control so speedily. This desperate situation frustrated him so much that he took his own life by jumping from the top of a building. No one asked him to do so. But he could not tolerate the intolerable. In India whenever there is a grievous railway accident we usually find that concerned minister resigns. How a minister who is sitting hundreds of miles away be responsible in such cases? It is his morality that decides. During Rajib Gandhi's regime his foreign secretary resigned simply because the prime minister in a public meeting made some adverse comments about him which the PM could do privately. This insult was enough to lead his



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First of all, why on earth, the police were called in and then why they were allowed to enter into a female Hall at dead of night especially when majority of police comprised male persons. Was it necessary at all when there were so many dignified teachers nearby to sort out the problem? And look how the girl students were treated -- they were dragged down, beaten and abused in the filthiest language. One girl student complained, -- "They (police) did everything to us except rape." What an ignominious scene to imagine. What a shame! Why do police make such excesses very often in similar cases when firm but polite handling would have sufficed? Is it their own action of indiscipline or an act of superior order? If I cannot command my own people properly then I, in command, should be held responsible at first. Then again why there is attack on journalists? This time or any time this kind of atrocity has very often been perpetrated. Why? Are they enemy of the state? We, the commoners, have a right to know what is happening in any country and these journalists give us the information -- biased or unbiased, true or false. But then slowly but surely truth unfolds before us.

Once US President John F Kennedy said: "There is a negative desire of not utilising the bitter criticism published in newspapers in our daily works. Perhaps we do not like it and earnestly hope that nothing like this be printed. Probably we are not at all in support of such criticism. In spite of all these there is no denying the fact that in a free society we cannot accomplish anything properly had there been no pro-active newspaper." And how a newspaper can run without a journalist. Should we club them down because they want us to know what is happening in and around?

Not long before an Indian minister resigned because there were some allegations against him. He did not wait for the result of any enquiry. Formal enquiry was held and he was absolved from the charges. Then he came back to his post with more trust and confidence reposed in him by the people. A few years back law and order deteriorated in New York City. Mayor did his best to contain but situation did not improve to a standard. In tears Mayor resigned shouldering all the responsibility for failure. There was no enquiry. No one asked him to leave. It is his conscience that dictates. That is a difference between a man and no-man.

In the past, an earthquake devastated a city (Kobe) in Japan. Electricity, telephone, water connection etc had broken down and on top of it human life and living were in a shambles. For days the engineer in charge tried hard to make things better. But

resignation.

Here I put on record some excerpts from a letter of early retirement from an Indian secretary. He sought early retirement more particularly due to continual vilification since the Ayodhya debacle. He wrote as far back as in 1993 "In the past few weeks I have seen several reports in the Press which have cast aspersions on my work. I had expected that the government would set the record straight and contradict these reports, particularly since they pertain to major decisions consciously taken by the government. I believe that a person holding the sensitive and important position of Union Home Secretary should have the full confidence of the government so that he may function effectively. I therefore propose to seek premature retirement from the service..." And last but not the least I most respectfully name Mr Khaled Shams (Bangladesh), erstwhile CSP, who planned to resign while he was an additional secretary because he had some difference of opinion with the then president. Subsequently due to intervention from his senior colleagues, he retired from the civil service.

The above examples amply show how a person of dignity and self-respect should behave in some adverse and inexplicable situation. But unfortunately for us the Dhaka University Vice-chancellor bothered least when hundreds of his students were abused, mauled and even some girl students were thrown behind bars. Many students were on fast unto death. Many journalists had been clubbed and barred from their professional duties. Even his esteemed colleagues had not been spared. Still then the VC was waiting for the enquiry-result. Though it was not necessary to prove whether he was at fault or not for his resignation. Instead, he was making contradictory statements.

The VC should have resigned in protest because some shameful, atrocious and most unfortunate incidents happened in his varsity where he was the leader. And leadership demands that the head of the institute should own the responsibility. It is up to the Chancellor to accept or not. And then he resigned because he was so ordered. Thus he lost his face and dignity. He could have resigned earlier on his own to show that he was greater than his throne.

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## LAW *views*

# Islam and pluralism

ASGHAR ALI ENGINEER



TODAY'S world is fast becoming pluralist with variety of religions, languages and cultures in one country particularly due to fast developing processes of modernization, liberalisation and globalisation. Also, feudal socio-economic and socio-political structures have either crumbled or crumbling very fast in the third world also of course with certain exceptions. In the past there was no concept of civil society at all and the state was all powerful. The subjects people did not enjoy any rights, they had to discharge only duties towards the state.

The modern democratic state, on the other hand, has to concede well defined rights to the citizens. The civil society has its own autonomy in a democratic set up and the notion of human rights has acquired great significance.

The notion of human rights is quite fundamental to a society which is pluralistic. All religious, linguistic and cultural groups should enjoy well defined rights and should not live at the mercy of the state or the majority community. Thus it will be seen that the notion of civil society is very fundamental to the modern pluralist society. It is unfortunate that the Islamic world is yet to cope up with the notion of civil society. Here it is important to examine, from theological perspective, what is attitude of Islam towards pluralism? Does Islam approve of pluralism or promotes a monolithic society? Also, when we talk of pluralism, are we referring to political pluralism or religious and cultural pluralism? As far as this paper goes we are referring to religious and cultural pluralism though political pluralism has its own impor-

ance, it is very seminal for religious and cultural pluralism.

### Religious pluralism

If one goes by the Qur'anic pronouncements Islam not only accepts the legitimacy of religious pluralism but considers it quite central to its system of beliefs. There are very clear statements to this effect. First we will refer to the verse 5:48 in this respect. The verse goes as follows: "Unto every one of you We have appointed a (different) law and way of life. And if Allah had so willed, He could surely have made you all one single community; but (He willed it otherwise) in order to test you by means of what He has given you. Vie, then, with one another in doing good works! Unto Allah you all must return; and then He will make you truly understand all that on which you were wont to differ." This is very seminal statement in favour of religious and legal pluralism which Muslims, specially the Muslim regimes, have not considered seriously. Many classical as well as modern commentators have commented on this significant verse. The most significant and operative part of this verse is "Unto every one of you We appointed a (different) law and way of life. The term 'every one of you' obviously denotes different communities. Every community - obviously religious or religio-cultural community - has its own law (shir'atan) and its own way of life (minhaj) and it attains its spiritual growth in keeping with this law and way of life of its own. The term shir'ah or shari'ah signifies, literally, "the way to a watering place" and in the Qur'an to denote a system of law necessary for a community's social and spiritual welfare. The term minhaj on the other hand, denotes an 'open road' that is a way of life.

Thus it will be seen that the prophets of Allah sent to different communities (ummah) gave laws and indicated way of life to their people in keeping with their genius and that which could ensure their spiritual and material growth. This is further emphasised in the next part of the verse i.e. "And if Allah had so willed, He could surely have made you all one single community". It was not difficult for Allah to make entire mankind one community. But Allah graced us with pluralism as it adds richness and variety to life. Each community has its own unique way of life, its own customs and tradition, its

own law. But these laws or way of life should be such as to ensure growth and enriching of life, howsoever different and unique they might be. Allah does not want to impose one law on all and creates communities rather than community.

Allah has created different communities on purpose: to try and test human beings in what has been given to them (i.e. different scriptures, laws and ways of life). And that test is to live in peace and harmony with each other which is the will of Allah. The differences of laws and ways of life should not become cause of disharmony and differences. What is desirable for human beings is to live with these differences and vie with one another in good deeds. In the last part of the verse Allah says that unto Him all will return and it is He who "will make you truly understand all that on which you were wont to differ." Thus it is not for human beings to decide for themselves who is right and who is wrong. It will lead to disturbances and breach of peace. Thus it should be left to Allah to decide when they return unto Him.

### Inclusive approach

This verse has also another important dimension. It leads to what some scholars like Shah Waliullah and Maulana Abul Kalam Azad from India have described as the concept of wahdat-e-Din i.e. unity of religion. The earlier part of this verse (5:48) says, "And We have revealed to thee the Book with the truth, verifying that which is before it of the Book and a guardian (muhayman) over it." This is also very significant pronouncement and most modern in its approach. The Qur'an has thus come to vouchsafe for what was revealed earlier to different communities through their prophets. The shari'ah, the law and the way of life may be different as we have discussed above, but the essence of all religions - Din - is the same. All religions are based on the revelation from Allah. The Qur'an has come to be guardian of earlier truth revealed through other scriptures. This is inclusive approach and is very vital for acceptance of the 'religious other'. The laws, the ways of life, may differ and yet din, the divine essence, the divine truth, is the same. It is reflected in all religions, in all spiritual traditions and we humans have no right to reject the 'other' as illegitimate, much less, false.

Thus it is our human ego which rejects the religious other and not the falsity of other faith traditions. The Qur'an has named several prophets and the list of prophets in the Qur'an is illustrative, not exhaustive.

The Qur'anic pluralism finds different expressions in different places. The Qur'an does not maintain that there could be only one way of prayer to Allah. There could be more than one. Thus the Qur'an says: "For each community there is direction in which it turns, so vie with one another in good works." (2:148). All religious communities, however, submit to God and pray to Him. The Qur'an conveys that the direction of the prayer, whatever its symbolic value for a religious community, does not represent the essence of the prayer or faith. This is further corroborated by the Qur'an in the verse 2:177. This verse also makes a very significant statement: "It is not righteousness that you turn your faces towards the East and the West, but righteousness is the one who believes in Allah, and the Last Day, and the angels and the Book and the prophets, and gives away wealth out of love for Him to the near of kin and the orphans and the needy and the wayfarer and to those who ask and to set slaves free and keeps up prayer and pays the poor rate, and the performers of their promise when they make a promise, and the patient in distress and affliction and in the time of conflict; and these are they who keep their duty."

Thus the above verse proves beyond any doubt that the real aim of the Qur'an is to produce an ideal human person who is virtuous, is sensitive to others suffering and hence spends of his wealth on the needy, on setting slaves free, taking care of orphans, is true to his word and is patient in times of distress and conflict. And only such persons are truly muttaqun i.e. God conscious and keepers of their duty to Allah. This verse too, needless to say, lends great support to the basic premise of religious pluralism by de-emphasising a particular way of prayer and extolling the importance of human conduct and sensitivity to others suffering and ones own steadfastness in the face of calamities and afflictions.

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