

HUMAN RIGHTS analysis

The Indo-Bangladesh border Where life is in permanent fear

ELLINOR ZEINO-MAHMALAT

BANGLADESH shares more than 4000 kilometers of borderline with India and only a bit more than 280 kilometers of borderline with Myanmar (Burma). Due to the fact that Bangladesh is mainly surrounded by India, the relationship with India is a crucial and oftentimes delicate issue for Bangladesh's foreign policies.

The Indo-Bangladeshi border is insecure and lacks demarcation

Bangladeshi people living close to the border have to face constant danger and fear.

In the last two months (July and August 2002), eight Bangladeshi nationals have been killed by the Indian Border Security Force (BSF) in the south-western region of Bangladesh. From 1st January to 31st July 2002, 68 Bangladeshi civilians have been killed. Most of them were shot by the BSF, while some were killed by Indian terrorists who penetrated into Bangladesh. Many more have been harassed and injured.

To this day, India has not been able to prevent their BSF from attacking local people.

Flag meetings between the BSF and the Bangladeshi Rifles (BDR) to discuss border security issues have not shown any progress yet. Abduction and killing by the BSF and Indian terrorists continue while the BDR keeps complaining about these incidents.

Indian terrorists are able to intrude into Bangladeshi border areas with the help of the BSF in order to loot cattle and crops. Local people who have to cultivate their lands and catch fish along the border to maintain their livelihood, live in permanent fear of being harassed or killed. Thus, a vast tract of land along the Indo-Bangladesh border remains uncultivated due to the fear of Indian hooligans or to the harassment and abduction by the BSF.

On the political level, disagreements about border demarcations between India and Bangladesh have not been solved. The Mujib-Indira Agreement of 1974 on land border demarcation has not been fully implemented by India yet, whereas Bangladesh ratified the agreement in 1975, soon after it was signed. According to the agreement, Bangladesh transferred the enclave of Berubari to India in exchange for a lease in perpetuity of the Tinbigha corridor to connect it with the Bangladeshi enclaves of Dahagram and Angorpota in India. After 25 years, India partially implemented this agreement by allowing the right of passage through Tinbigha, yet without the agreed lease in perpetuity.

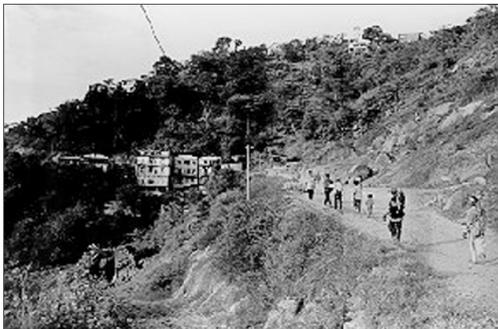
In the end of August 2002, the Indian External Affairs Minister Yashwant Sinha on an official two-day visit in Dhaka, assured that New Delhi would fully ratify the Mujib-Indira agreement and demarcate the remaining 6.5 km borderline. Furthermore, both sides agreed on ensuring "zero killing" on the border for the next three to six months at least.

Yet, the number of killings during the past weeks reveals another reality

At present, 111 Indian enclaves and 51 Bangladeshi enclaves remain in the neighboring country. While Bangladesh is in possession of 3000 acres of Indian land, India possesses 3500 acres of Bangladesh's land. The question of access to enclaves or of the exchange of enclaves still has to be discussed. Other disagreements, like the dispute over the New Talpatty Island in Bangladesh, which is claimed by India, and the dispute over New Muhurie remain. Furthermore, time and again disputes occur about the zero line, 150 yards within the zero line are considered to be no man's land. Indians who

grow tea along the zero line violate the border agreement by doing so.

In the middle of April 2001, another diplomatic crisis between India and Bangladesh arose when the Bangladesh Rifles (BDR) shot dead 16 BSF men in Roumari, inside Bangladesh's territory. The BSF attacked BDR outposts there on 18 April 2001 in order to take revenge on the retaking of Pyrdiwah by the BDR. Three days before, Pyrdiwah, a Bangladeshi border village on the Meghalaya border, was peacefully retaken by the BDR. In the



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village of Pyrdiwah, which has been under Indian occupation, India had set up a border observation post and was showing a highly armed presence.

In fact, this incident deteriorated the already disturbed relationship between India and Bangladesh. While the Indian media claimed the involvement of the Pakistan Inter Services Intelligence (ISI), although the government of Bangladesh repeatedly termed this allegation as a baseless propaganda, Bangladesh considered the attack of the BSF as a form of India's superiority complex. From the Bangladeshi point of view, India showed once again a big brotherly attitude towards its smaller neighbors.

The economic aspects of border conflict

Recently, a new gas field was found in the CHT. The gas and oil exploration, as well in the Bay of Bengal, may cause a conflict of interest with India and

Burma. India, Bangladesh and Burma still have not come to terms concerning the sea boundary shared by all of them. However, Bangladesh needs peace and cooperation in the region in order to profit from the oil and gas resources. In addition, Nepal and Bhutan are willing to expand trade with Bangladesh and to make greater use of Bangladesh's port facilities. Nepal and Bhutan are separated from Bangladesh by Indian territory. So they depend on India in order to increase trade relations with Bangladesh.

Bangladesh's huge annual trade deficit of nearly three billion US dollars deteriorates its bilateral relations with India. This trade imbalance is not only due to formal, but also to informal imports like smuggling. While Bangladesh opened its market by liberalizing the trade, India raised non-tariff barriers against Bangladeshi exports. In the last Indo-Bangladeshi trade talks in April 2002, Bangladesh tried to get duty free access to the Indian market of 191 products in 25 categories. In the end of August of this year, the Indian External Affairs Minister Sinha eventually promised to implement duty free access of 40 items in 16 categories for Bangladesh's export. However, most of these items are either not produced in Bangladesh or are not sufficient for trade. Thus, Bangladesh does not obtain a real advantage.

Furthermore, the rising number of trans-border crimes like smuggling and human trafficking gives reasons for concern. Because of Bangladesh's strategic location at the Bay of Bengal, the country has become an important point for traffickers. The amount of smuggling between India and Bangladesh is even considered to be higher than the official trade. There also exist cross-border criminal rings that collaborate with each other by providing shelter to criminals, buying, selling and renting small arms, and smuggling contraband items.

The smuggling of small arms and drugs, as well as women and child trafficking, may threaten Bangladesh's domestic security. Indian smuggled phenidyl syrup, for instance, a cheap substitute for alcohol, facilitates drug addiction among teenagers who cannot afford to buy costly drugs. Regarding human trafficking, it is said to say that about 300,000 Bangladeshi children are forced to work in Indian brothels. It must also be mentioned that, due to the criminalization of politics, there is a demand for smuggled arms by members of the leading political parties. Especially Indian-made arms are popular, since they are quite cheap. Local people living in these border areas and the hill dwellers of the CHT suffer from the trans-border crime. They are harassed and victimized by criminals, rebels fleeing from India or Burma, gun smugglers and drug dealers.

Generally, the frontiers are areas, which tend to be crossed by smugglers, criminals, infiltrators and terrorists. It is therefore the duty of both countries to maintain the security of the border area. **There seems to be no end to the tensions at the Indo-Bangladesh border. Neither India nor Bangladesh has managed to grant border security. The continuing killings and attacks of the Indian BSF run counter to the goal of "zero killings" that India and Bangladesh agreed upon in August this year.**

Civilians living in the vicinity of the border suffer the most. Still, they have to face the danger of being harassed, mugged or killed day by day. Tensions along the borderline serve neither India's nor Bangladesh's interest. The delicate situation affects official cross-border trade, traveling and domestic security on both sides. Hence, both India and Bangladesh would profit from a stable and tension-free atmosphere at the border and from good neighbourly relations.

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RIGHTS column



No More Discrimination

SALMA ALI

I, along with my colleagues and other lawyers, media men and people from all walks of life, was waiting anxiously in the crowded courtroom surrounded by heavy contingent of security personnel. The day was September 30, 2002, Monday, Place: Gaibandha District and Sessions Judge's Court. The presiding Judge Mr AKM Anwar pronounced judgement in the sensational Trisha Murder Case at 10.45 a.m. Three alleged criminals (aged 19-20) had been sentenced to death by the court for harrying 10-year old Sadia Sultana Trisha to death. The culprits used to tease her on her way to and from school. Their repressive attitude went on unabated and at last in mid-July this year Trisha jumped into a roadside pond and drowned in an attempt to save herself from the chasing killers. This tragic death of ill-fated 10-year girl Trisha touched the hearts of common people and created a great sensation among them throughout the country. Finally, the offenders received capital punishment as per the popular demand.

Article 28(4) of Bangladesh Constitution lays down that the state must make special provisions for ensuring the welfare of the women and children and for the advancement of backward section of citizens. Again, under the fabrication of Article 25(b), Universal Declaration of Human Rights, everyone at childhood is entitled to special care and treatment, and every child is entitled to enjoy social security whether born of wedlock or not. In addition to these, UN Convention on the Rights of Child enjoins duties on the State for sound upbringing of psychosocial and personal security of all children and the state has to ensure for all children the opportunity to enjoy their rights to develop their mental faculty. The Convention enjoins principally the ways that adults and governments must adopt to protect the children, support their health, education



and development. It also includes the right to have a home and enough food to eat and the right to protection from abuse and neglect. The Convention also provides that children and young people have the right to participate and the right to freely express themselves. Therefore, there is no scope for discrimination between boys and girls.

But records show that girls remained neglected, unexpected in the family and unwanted in the societal context since pre-historical era. Once upon a time, girls were buried alive, the helpless trouble-torn mother of the child used to kill her infant girl child by applying salts. Even today in the new millennium, many infant girls are found in the dustbin dead or alive. One of such children was taken to safe refuge of its mother with the assistance of Bangladesh National Women Lawyers' Association. Of course, children and young people throughout the world, especially in the LDCs, still experience far too many hardships in their everyday lives. The lives of many are shattered by extreme poverty and discrimination in terms of facilities and social protection. Girls in Bangladesh are brought-up in a discriminatory environment in the family which is not conducive to proper physical and mental growth.

Different countries, including Bangladesh, UN agencies, international organisations, child rights forums and other national organizations including Bangladesh National Women Lawyers Association are working relentlessly for the protection of the rights of the children. In spite of that there is no significant progress for the betterment and well being of the female children who constitute a large portion of the population. We have not virtually taken yet any step to ensure the birth registration of a child after it is born. As a result, a large number of children without address and unidentified ages are trafficked within the territory and across the border. The same reasons complicate their rescue, release and repatriation even if someone is willing to initiate those. Even if they are rescued and repatriated, their reintegration in the society and family becomes much more complicated. In most of the cases, we, who work for the establishment of the rights of female children, get shocked for the liability and responsibility of these gross failures although every citizen has the right to live and move in his/her own country as laid down in Article 13(b) of the UDHR.

Prostitution is an immoral act and this act is degrading and inhumane for a human being that can be realized by none but the sufferer. Our field survey shows that more than 75 per cent of the girls working in different brothels of the country are under the age of 18 years. In this field also we faced difficulties to work due to absence of birth registration and lack of proper steps from the government in this regard. In a statistical data, it is found that 95 per cent among the girls trafficked in are under the age of 18 years and 25 per cent of them are between the ages of 7 to 12. The World Summit for Children in 1990 inspired worldwide support for meeting the needs of children. At the 1990 Summit, governments pledged to give every child a better life and promising future. They signed the World Declaration on the survival, protection and development of children and a Plan of Action for implementing the World Declaration. The Summit also outlined the areas of children's lives most in need of attention during the next decade including poverty, health, nutrition and education.

"Children Rights Week" began to be observed from the last 29th September throughout the country with an appeal to all to help establish children's rights and groom them as worthy citizens to face the challenges of the 21st century. The week has been conceded with 'World Child Day' that was observed on the 30th September this year. Like other countries in the world, this day had also been observed in our country in a befitting manner. Different government and non-government organizations that work with and for the children observed this day with great festivity. Now, the question is will the conditions of female children be changed if all programmes and activities are confined within the policy declaration of the state without any effective steps towards their implementation? What will happen if people from all walks of life in the country do not come forward and stand beside these female children? Can these malpractices be allowed to go unchallenged? We steadfastly say 'No'. So, let's all come forward, irrespective of any partisan belief, caste, religion and gender, to work together for the female children for the sake of us, for the society and for the future of the country. Let's stop negligence to end and eliminate all forms of discrimination against female children and establish equality of rights as enunciated in the Constitution. The disposal of the Trisha Murder Case within the quickest possible time (within two and a half months of the occurrence) gives new zeal and confidence to fight against the perpetrators.

But at the same time we also have to uphold the problems for which political and social commitments are necessary. We hope the judgement in the Trisha murder case will put a long-lasting effect into the mind of the public and the culprits will think twice before attacking the girl children. Now people are going to think that none is given a blank cheque and everyone committing heinous crime will be brought before justice. We also hope, with this judgement people's faith in the judiciary that was lost once will be reinstated.

Salma Ali is a human rights activist and Executive Director of Bangladesh National Women Lawyers Association.

COURT corridor



Politicization of graft cases

MD. ANISUR RAHMAN

SIXTY graft cases had been filed against the present Prime Minister Begum Khaleda Zia, Syed Eskander Mirza, Tareq Rahman and other cabinet ministers during the previous government. The cases were filed by the Anti Corruption Bureau for misuse of taka 15 hundred crores. Charge sheets were given against the cases but no one is disposed of finally. Most of them are withdrawn by the present government. The withdrawal of the graft cases initiated after the government took over the office. The Anti Corruption Bureau brought a charge against the present Prime Minister for misuse of taka 187 crores in purchasing of Airbus. But this case was stayed by the court after she became Prime Minister. There were 4 graft cases against Air vice Marshal Altaf Hossain, present Minister for Home Affairs. He used to present in the court after being a minister of the cabinet. But all the cases against him were withdrawn by the government (Daily Sanbad, 21 August). The government also withdrew graft charge against the former speaker of the Parliament Sheikh Razzak Ali. The case was filed by the District Anti-corruption office in 1997. He was exempted from the charge as the public prosecutor submitted to the court necessary documents showing governments intention not to press the charge against him, which is scheduled to be heard on September 1, this year. But the two other accused of the case will face the trial for the same offence. (Daily Star, 7 August)

The shameless tradition

It becomes almost a tradition that the ruling party has withdrawn the cases against their activists saying that it was politically motivated. The above mentioned cases were also withdrawn for the same cause. It is hard to understand how the government decided the cases as politically motivated. It is the duty of the court to decide the fate of a case. If the government decides the destiny of a case then the necessity of the court becomes doubtful.

Procedure of withdrawal

The graft case is a criminal case by nature. After an allegation is made against anyone, the Anti Corruption Bureau starts investigation of the charge and filed the chargesheet if it is found that corruption is committed. But how is such charge withdrawn? The anti-corruption laws that regulate the corruption charges are The Prevention of Corruption Act 1947, The Criminal Law Amendment Act, 1958, The Anti-Corruption Act 1957, The Criminal Law Amendment Rule 1977, The Anti-corruption (Tribunal) Ordinance 1960. None of them, however, deals with the withdrawal of the graft charge.

Section 494 of the Code of Criminal Procedure 1898 deals with the withdrawal of a criminal case. The section states that any public prosecutor may, with the consent of the court before the judgement is pronounced, withdraw any charge against any person with certain formalities. Under this provision a criminal case can be withdrawn before or after the framing of the charge with the consent of the court. If the withdrawal is made before the formation of the charge, the accused shall be discharged in respect of such charge and if it is made after the formation of the charge he shall be acquitted from the offence, as per the proviso of the section. Public prosecutors are directly appointed by the government who is loyal to the party and also acts as per the direction of the government. So the withdrawal of the criminal case is merely an executive order of the government to the public prosecutor. But the application of withdrawal must have some reasonable grounds and the intention of the government has to be bona fide.

Judicial precedent

If the government decides on the basis of the record of the case as well as

find it too weak and instruct the public prosecutor to withdraw it, the court may refuse the government application if it found mala fide intention on the part of the government (Md. Habibur Rahman Vs Mosfiqur Rahman, 31(1979) DLR, AD, 135). In the case of Syed Matiur Rahman Vs State, 35 (1983) DLR, AD, 327, it was revealed that "The court is to exercise its function judicially before giving such consent. It also implies that the court will exercise the materials on which the government has withdrawn a case. The court is to see that it was not mala fide or made for collateral purpose when specific charge is supported by the allegation." Therefore, withdrawal of graft case merely on political ground is not the reasonable cause as well as bona fide intention of the government. So, the court shouldn't consent to withdraw it under the section.

Violation of the Constitution principles

Such act of the government is clearly making discrimination in exhausting the constitutional rights. In the last instances it can be found that only the former speaker was exempted from the charge. But the other two accused were remaining to face the trial for the same offence. Article 27 of the Constitution guaranteed the equality before law and equal protection of law for all citizen of the country. Equality before law means that among equals law shall be equal and shall be equally administered. No body will enjoy any privileges by dint of his birth, profession or political affiliation. Equal protection of law means that all persons in like circumstances shall be treated alike and no discrimination shall be made in confirmation of privileges or imposition of liability. Equality before law is involved in enforcement of law while equal protection of law involved in validity of law. This articles more than others firmly embodies the concept of rule of law, the establishment of which is one of the prime objectives of constitution. (Islam, Mahmudul, Constitutional law of Bangladesh, at page 104).

In the case of Bangladesh Retired Government Employees Welfare Association VS Bangladesh, 46 (1994) DLR, 426, it was observed by the Appellate Division that a legislative enactment or a government action can not be knocked down as unconstitutional even if it results in inequity or even shocking to the conscience unless such action is violative of any provision of the constitution or law or that inequality or unconscionable effect can not be rectified by the court by applying article 27 of the Constitution. In the administration of law, if the action of the government is found to have been taken in disregard of the policy laid down by law or it produces a discriminatory effect in violation of any provision of law, the action may be struck down not only as ultra vires but as an act violative of the article 27 of the Constitution. Every activity of the government contains public elements and it must therefore be informed with reason and guided by public interest. The act of the government would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and void. Thus if the government has taken an action mala fide it would be in contravention with Article 27 of the Constitution as well as against the public policy and would be void.

Stigma of being the most corrupt country

Bangladesh topped the list as the corrupt country as per the report of the Transparency International. Corruption has swooped on every sphere of life. Even some ruling party MPs are allegedly indulged in corruption. Against the backdrop of rampant corruption, the Prime Minister vows to combat with this social device. But the withdrawal of these graft cases make her promise questionable. If the cases were filed politically let the court to decide the fate of the cases. The action of the government creates distrust of the integrity of the court.

LAW news



SC ruling on temples has wide ramifications

RAKESH BHATNAGAR

THE recent judgment, liberating Hindu religious institutions from the stranglehold of Brahmins, who had the prerogative of performing rituals in the sanctum sanctorum of temples, has wide ramifications. Henceforth, all Hindus, irrespective of their caste, class or birth, can do the job provided they are well-versed with the Vedas and shastras.

The religion's sanctity must not be compromised. There would not be any "reservation" in this field of super speciality. In other words, the judgment, delivered by Justices S Rajendra Babu and Doraiswamy Raju, has sought to break the monopoly of Brahmins over performing puja.

As long as anyone qualified to perform the puja in a manner conducive and appropriate to the worship of the particular deity, is appointed as 'Santhikaran' (Pujan) regardless of his pedigree based on caste, no valid or legally justifiable grievance can be made in a court of law, the ruling said.

Therefore, if traditionally or conventionally, in any temple, all along a Brahmin alone was conducting pujas or performing the job of 'santhikaran', it



might not be because a person other than the Brahmin was prohibited from doing so. It might be because others were not in a position and, "as a matter of fact, were prohibited from learning, reciting or mastering Vedic literature, rites or performance of rituals and wearing sacred thread by getting initiated into the order".

Even while dismissing the challenge to an amendment in Article 25 which authorised the state to intervene in the management of certain temples, the trend-setting judgment says the apex court had acknowledged the "changes undergone in the social and religious outlook of the Hindu community as well as the fundamental change as a result of the message and the promise made in Article 17".

Notably, Article 17 abolishes "untouchability". Any one abetting, inciting or practising "untouchability" in any form can be sentenced to a rigorous jail term. It is a non-bailable offence. Similarly, in a case involving Kashi Vishwanath temple, the court noted that the Constitution's aim is to establish an egalitarian social order proscribing any discrimination on grounds of religion, race, caste sect or sex alone.

Source: Times News Network, New Delhi.