

## HUMAN RIGHTS *analysis*

# Whither human rights

SHAHDEEN MALIK

ONE can toy with words. So can one with human rights. The choice of word "whither" in the title of this write-up is deliberate; though one wishes that those "similar sounding words" one had to memorise in the long gone student's days could be better utilised by using the word "wither", instead. In fact in the context of our present human rights, another similar sounding word "wither" would perhaps be more apt.

Emile Bronte's Withering Heights, needless to say, was about different aspects and dimensions of life, nothing to do with conventional human rights. The dictionary meaning of "wither" is "to move swiftly, or with force". Human rights need not move with force, but "swiftly" would not hurt. What hurts is that it is not moving at all.

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On a charitable view, it is not moving on two fronts. Recent governments, both the present and past ones, have received hefty amounts from the venerable UNDP to do the groundwork towards the establishment of a national human rights commission. This groundwork has been continuing for more than 7 or so years now. Surely governments find a lot of ground to cover if the issue is the establishment of a national human rights commission. Covering grounds have included commissioning of reports, arranging seminars and workshops and 'exchange of views'. Scores of these and, more importantly, even more foreign trips for those who have been doing the ground work. These trips, I am told, have taken them far and wide.

And then there had been drafts of the proposed human rights commission. At the initial stages, it seems on hindsight now, we were naïve. We enthusiastically participated in the formulation of these drafts for a national human rights commission law. We assumed that the government meant what it said. Now we realise that had there been an international award for "reinventing the wheel", our governments would surely have been a formidable contender. As if a national human rights commission is an unknown category which has to be analysed, dissected, measured, diagnosed and so forth, with blissful ignorance of the fact that National Human Rights Commissions have been established and working in scores of countries around the world. There is whole UN machinery to facilitate the setting up of human rights commissions in member countries. Our governments have been exploring these for so long now that it is almost nauseating. But then if you are at the helm of governments or ministries, particularly the ones of our local variety, you are apt at not being nauseated by anything, except each and everything that your political opponent does or, more recently, says.

Appropriately, the current government is also making those occasional "hissing" --- we are about to set up a national human rights commission; just wait a few more days, etc., etc. These pronouncements are increasingly sounding more threatening than reassuring. Those of us who had their ears perked up for real and concrete announcements for so long are now inclined to be sceptical and even alarmed at the prospect of the government's actually and finally doing something. One can not but doubt whether the commission would undermine human rights rather than foster human rights.

One also wonders whether the ground work towards the establishment of a national human rights commission for such a long period has actually put the commission in permafrost, to be rescued sometime in the next millennium when all the climatic changes would finally turn the permafrost into something more hospitable. This 10th December, the human rights day, subjected our ears to the usual, and now familiar, hissings about the impending creation of the national human rights commission. We shall eagerly wait for the repeat performance on the 10th December, next year.

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Our 'not moving' has acquired a bizarre connotation, concededly, on a different front in recent days.



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We have finally entered the age of "collateral damage". If I remember correctly, the term was first coined during the first gulf war. Civilian deaths and destruction were "collateral damage" and more appropriately so if the damage was done by the good Americans. Civilian deaths and destruction in other parts of the world, done by others, are often tantamount to "war crimes."

Now in these fashionable times of "collateral damage", one did wonder how we, the poor Bangladeshis, would have the good fortune of causing "collateral damage" to others. We do have a few MiG 29s, though the government is now saying that these are no good. It did, though, make us feel good when we purchased these MiGs at very chic costs. Those purchases made us feel good. I suppose these MiGs and frigates (which is also no longer fashionable according to the current government who, understandably, wants to buy new "assets") could cause "collateral damage". But the problem was to find

someone to whom we could cause this "collateral damage". That seemed problematic; unless we tagged along with good Uncle Sam in one of his "collateral damage" causing drives. The bottom line, however, was that all these seemed too far fetched. Thank God, not anymore.

Something we do fastidiously. We keep count. The number of deaths in the current drive by the "joint forces" is being counted by a number of organisations as well as the media. These deaths are surely "collateral damage", since nothing is happening after the death. "Collateral damage" is a marvellous new expression; much better than self-defence or justifiable use of force to subdue unco-operating enemy or opponents. In self defence one has to justify the force used; in conventional legal understanding, the force used can not exceed the force against which one is defending oneself. "Collateral damage" absolves one from these petty bickering about legal niceties.

When you engage the fighting machine (the armed forces), it is in the nature of this machine to cause "collateral damage". So "collateral damage" is being caused. We have entered the fashionable age and we now have to learn to shrug our shoulders and say, "so what?" After all, a few hundred criminals have been arrested and others have fled the country or are in hiding. The number of arrests is approaching 6,000 and mounting. One can, in keeping with this new fastidiousness, wait and see how many of these thousands, who have been arrested, are brought to trial, convicted and punished, i.e., count those numbers.

I would hazard a guess and suggest that not even 600 of these approximately 6,000 so far arrested would actually be convicted and punished for any crime. About 40 deaths so far for the possible 600 convictions translate into 1 death for every 15 convictions or so. Bravo!

In the process, we surely have thrown the baby out with the bathwater. Can there be more appropriate times to talk about human rights? Surely not and, hence, the end of the story, with, however, a humble suggestion lets scrap Article 35(5) of the Constitution "No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment" and be at least honest about how we go about governing ourselves.

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## LAW news

# Malaysia: Womb wars

SELVI GOPAL

The trauma of incest, difficult in itself to overcome, becomes all the more unbearable if the victim of such a heinous crime becomes pregnant with a child of the perpetrator. In Malaysia, where cases of incest and child sexual abuse seem to be on the increase, the government is worried that there may be a link between these crimes and the phenomenon of dumping unwanted babies. In a recent bid to tackle the issue, the government has suggested a radical solution. According to an official announcement, the country's penal code may be amended to allow victims of incest and rape to undergo abortion. Such a measure, if implemented, would be radical in this Muslim country where abortion is still illegal. The Health Ministry's Parliamentary Secretary, S Sothianathan, recently announced that the government was in the process of getting feedback from religious bodies in the country before amending the abortion law. Religious views are important in this Muslim nation because Islam equates abortion with taking a life. Yet, this anti-abortion stand is not unanimous. Some Muslims believe that abortions can be performed if the pregnancy endangers the mother's life. Although abortion is considered evil even if it is done to save the life of the mother, some Muslim scholars say that saving the mature life (that is the mother's) is of greater significance as the mother has people dependent on her. However, when victims of sex crimes opt for abortion, they are not condoned. On the political front, Sothianathan stressed that the government is not condoning abortion but making an exception for certain cases. Progressive organisations working on issues of health have applauded the Health Ministry's announcement.

The Malaysian Medical Council (MMC) for instance has taken this opportunity to propose that the government consider an abortion act similar to the one in the United Kingdom. It wants the government to look beyond the victims of sex offences when amending abortion laws. The MMC says abortion laws should consider the mental and physical health of the woman, whether the foetus is severely deformed, whether the mother's severe mental or physical handicap renders her incapable of caring for the baby, and cases where pregnancy amongst married couples is caused by contraception failure. Currently the law states that "whoever voluntarily causes a woman to miscarry shall, if such miscarriages are not caused in good faith for the purpose of saving the life of the woman, be guilty of an offence." There are, however, exceptions to the law. An abortion can be carried out if a private medical practitioner is of the opinion that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or injury to her mental or physical health. Given the wide-ranging scope of this provision, abortion laws, in practice, are fairly liberal. Using this legal provision, abortions are performed on a regular basis at private clinics and hospitals. Yet these abortions are considered illegal, as most of the women seeking the procedure at such venues would not be entertained at government hospitals where the law is strictly followed. Although the law doesn't openly state that abortions are legal, the provisions are open to interpretation. The provision permitting the doctor to establish whether or not a woman is in a proper state of mind to have a baby allows plenty of leeway to deal with a range of situations.

Says a local doctor who did not want to be named, "Our present abortion laws state that one has to take the mental health of the mother into consideration and that itself is very liberal if one knows how to interpret the law." He adds that a single woman can opt for an abortion if she feels that having the child will make her a social outcast or can affect her mental health. However the doctor acknowledges that the law only lays down the framework, and that the provisions are not clearly defined until tested in the court of law. Now the government through its own initiative is considering amending the law in order to deal with the rising social problems in the country. Although the government is still a long way from amending the law, one thing is for sure: women who are not ready to have a child will still seek illegal abortions at clinics and private hospitals. Their needs have not been considered, so they will have to utilise the ambiguity of the present laws - by claiming mental instability, and with the hope that the doctors will stand by them. As for victims of sexual abuse, for the present, the authorities will give them the morning-after-pill to prevent pregnancy. Until the proposed amendment is enacted, the right to abortion will remain a sought-after goal.

Source: WFS

## LAW views

# Who will preserve civil liberty?

M HARUNUR RASHID

PERHAPS the most vital issue in the Modern State is what we mean by the freedom of the citizen, and what measures must be accepted in order to preserve this freedom. The relation of law to liberty is obviously a very close one, since law may be used either as an instrument of tyranny, as has frequently been used in many ages and societies, or it may be used as a means of giving effect to those basic freedoms which in a democratic society are regarded as an essential part of the good life. In such a society it is not enough that the law should merely confer security upon the citizen in his person and property. A citizen must be free to express his opinions without restraint and to associate with his fellow citizens; he must be free to come and go as he pleases and to seek employment of such kind as he wishes; he must be entitled to enjoy the benefits of what has come to be known as the Rule of Law; and he must be relieved of basic insecurities due to want and misfortune. All such questions raise legal problems of great complexity within the framework of the modern Welfare State.

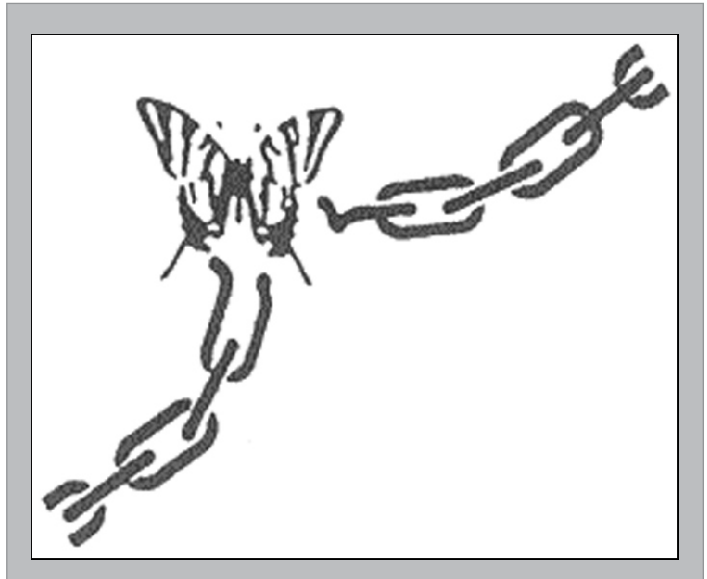
Bangladesh Constitution known as unique constitution for its basic feature has a built-in mechanism to protect freedoms and civil liberties to some extent. This is one of the precise reason why the constitution was described 'AUTOCHTHONOUS' in character by former Chief Justice Badrul Haider Chowdhury in his celebrated judgment of historical 8th Amendment case which repealed article 100 of our constitution which was amended and original article was revived.

The fundamental rights guaranteed by the constitution have been clearly embodied in part III of our constitution in article 26 to 44. Some of the fundamental rights are subject to limitation and some are unlimited in nature. For example, freedom of thought and conscience, and of speech are subject to limitation while freedom of assembly and freedom of association as mentioned in article 37 & 38 respectively are not subject to limitation. Article 44 of our constitution is the safeguard of fundamental rights chapter and it has in fact given the authority to the Highest Court of the country for enforcement of fundamental rights. Article 44 of our constitution runs as follows:-

"44(1): The right to move the High Court Division in accordance with clause (1) of article 102, for the enforcement of the rights conferred by this part is guaranteed.

(2) Without prejudice to the powers of the High Court Division under article 102, Parliament may by law empower any other court, within the local limits of its jurisdiction, to exercise all or any of those powers."

By exercising the rights given to the citizen in the article quoted above the citizen of the country can move to the Supreme Court of Bangladesh for filing writ petition under article 102 of the constitution. The legal community knows that the writ jurisdiction of the Supreme Court has recently been extended to public interest litigation and social litigation too and that has in fact given more strong arm to our Supreme Court to protect citizens rights in the country. In a country like ours where democratic culture has not been developed as yet, where the political community is busy in creating unnecessary controversy in respect of many of the settled issues and more so the political community as a whole are in the habit of misinterpreting the constitution in order to justify their actions. This, to my understanding, mostly happens because of the attitudinal difference we have towards each other. The people at large are not interested to hear all those from the politicians these days. Enough is enough. We must accept the reality and if we do not do it, we



will be denying a truth. We all know that the raison detre of this country was parliamentary democracy and if we can not establish wholesome parliamentary culture we can not expect that parliament democracy will be institutionalised over night. We must believe and practise democracy as a way of life, we must show respect to differing views and must strive for protecting and promoting citizens rights.

In a State of political jeopardy and political debauchery the Supreme Court of Bangladesh is the last resort of the people of this country to take shelter to protect their fundamental rights. In a country of constitutional supremacy, if the Supreme Court can not for any reason protect the fundamental rights or implement its directives, it will be failing its constitutional obligation and oath bound duty as well.

In the recent times there have been conspicuous attempts to reform the legal system as a whole and the criminal law in particular by defining more strictly the precise offences of which an accused person can be convicted and by strengthening the role of the defence in criminal cases.

Despite these changes, a fundamental distinction remains. In the west the open society recognizes basic individual freedoms which are maintainable against the State itself, and independent judiciary exists to uphold and enforce these freedoms and that is the spirit and scheme of article 44 of our constitution. It also echoes the supremacy of the constitution as embodied in article 7. It is the constitution which is the supreme law of the land and the judiciary is to preserve and protect civil liberties and freedoms of citizen within the legal bound of our constitution and that is what is called essence of democracy.

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## RIGHTS corner

# Disabled commuters are victims of neglect in Bangladesh

GEORZINA MOUTUSI SORKAR

ASHRAFUN Nahar Mishti commutes to office on a wheelchair. From her Mohammadpur residence she rides on the chair to a nearby bus stop, where she waits for a bus. Most often that not the physically disabled woman is ignored by the buses that run on the route.

So, most days of the week she has no other way but to make expensive and tedious rickshaw rides to her office at Shahbagh. Thus she spends an average of 50 taka a day on transportation, nearly a third of her income. "Buses stop and go. But few of them will allow me in," says Mishti as she prepares to make another long rickshaw ride that also carries her wheelchair.

"Bus conductors don't like disabled people like me," says Mishti with a wry smile darkening her already sweaty face. "Sometimes they will openly express their anger against us," she says. She pays more than others for the rickshaw ride because she is unable to walk. The rickshawpullers take advantage of her physical fault.

Mishti was born a healthy child. She was growing merrily until she reached 15. That was the time when she one day fell down from the roof edge of a two-storied building. She survived with broken legs. And since then she has been on a wheelchair.

Bangladesh has thousands of people who are either mentally or physically retarded. The retarded or disabled people face myriad of problems in or outside their families. Transportation is one of the main problems for those who need to travel to work. Mishti is one of them. So, she was highly glad after reading a recent newspaper report that disabled commuters will have exclusive seats on state-run buses.

"This is something better than having nothing at all," observes Mishti, a 35-year-old woman. "However, the society should demonstrate more care and sympathy to us."

In Bangladesh, even the normal people don't get everything they need. There are problems of overcrowding everywhere in buses, trains and motor launches. The difficulties get compounded for the disabled. The disabled people need help from others while they are travelling.

Consider the case of Ishaque Miah, a dwarf. Miah is so small in size that he can't climb into a bus by himself. "I need someone else to help me get into a bus," says Miah standing at a bus stop in Dhaka. "But not always I get someone to help me. Bus workers don't help at all", he complains. So, Miah thinks that reserving bus seats for disabled commuters is not enough. It is just one step forward in meeting one of the many problems that the disabled commuters face.

"During the peak hours even the normal people find it hard to jostle into a bus. People like me can't at all make into a bus at those hours," says Miah. The worst of all is that Miah and many disabled people like him don't know if they have any commuters' rights at all.

In Bangladesh, at least 10 percent of the 130 million people are retarded mentally or physically. Most of the disabled people, however, live in rural areas and take to begging. Those who live in the cities and work in offices, however, face the problem of transportation acutely.

In a recent announcement, Prime Minister Begum Khaleda Zia said seats

on buses, trains and motor launches will be kept reserved for disabled commuters. In line with the announcement, Communications Minister Nazmul Huda launched a programme of keeping commuter seats reserved for disabled people. In April this year, he opened the facilities in BRTC and Nirapad buses.

Animesh Tuj, a disabled commuter, says keeping seats reserved for the retarded people is not just enough. "It's important for us to reach those



seats," he says adding, "Most often than not disabled commuters can't make way through the crowds of normal people." For example, he said, the doors of buses or trains are not suitable for the disabled commuters. In cases of motor launches, it is even more difficult to board one of them.

Tuj and some other disabled people like him say it will also be good if they can travel without paying any fare. "It is because most of the disabled people can't afford transport fares," he says.

Leena Parveen Chowdhury, a disabled worker at Helen Keller International, suggests that authorities use microphones to let blind people know whether the bus stops are. Blind people can't find the ticket counters or the bus stops, she says. The authorities should also display fare and route charts for the benefit of the deaf. "And the transport workers must be trained about how to deal with the disabled passengers," she says.

Bangladesh Baptist Sangha runs a school for disabled girls. Blind girls like Khurshida, Morzina and Jamila read in this school. And one of them complains: "While trying to help us into buses some bus workers would deliberately touch sensitive parts of our bodies. That is really humiliating." She concludes that safe journey by disabled children like us is a far cry in Bangladesh.

Wasir Rahman Tammy, policy analyst at an organisation working with the disabled says, "The doors of the public transports have to have sliding stairs for the benefit of the disabled people." In trains, guards should help the disabled to be aboard. And finally, it is important to make the normal people aware about the rights of the disabled. There should be more public sympathy for the plight of the disabled.

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