



HUMAN RIGHTS monitor



RIGHTS corner



What ails the country's aborigines?

KOWSAR JAHAN

Alfred Swaren, an aborigine in his 50s, was killed before he could harvest paddy from his cropland. The miscreants looted his crops, ransacked his house, set fire to it and raped women and a child. The violence was no isolated incident. The ethnic tribal people at remote Bhimpur village in Madhabpur upazila are often subjected to such attacks. On August 18, 2002, armed goons, allegedly hired by a local zotdar, started harvesting paddy grown by Swaren. They chopped him to death on the spot as he and his men resisted them.

This way hoodlums of local zotdars grab lands, loot crops, ransack houses, torture and even kill the aborigines. Grabbing, loot, ransack, torture and killing are the common plights of the aborigines of Bhimpur.

The aborigines of Bhimpur have been suffering since the British colonial rule. The British rulers deprived the aborigines of their rights to lands by formulating discriminatory laws. Non-aborigines, landlords, zotdars and merchants being patronised by the British government also used to exploit and torture the aborigines.

The aborigines, however, tried to resist. They staged rebellions like Aborigine Rebellion (1770-73), Khashi Rebellion (1783), Ganzam Rebellion (1798), Khandeshar Rebellion (1808), Santal Rebellion (1855-56) and Munda Rebellion (1857). But these protests could not bring any good to them. Rather, these rebellions brought more predicaments to the aborigines. Even after the country's independence in 1971, no government really moved to change their conditions, nor formulated necessary laws to protect their rights to lands.

The history of deprivation of the aborigines is long. They suffered at each turn of history like British-introduced Permanent Settlement Act, division of India on the basis of two-nation theory, different racial riots, tri-division movement, Indo-Pak war. Many of the aborigines became landless during political and social changes brought about by these historical landmarks.

After 1947, vast tracts of land of the aborigines were illegally grabbed. Their lands were grabbed either through false documents or recording those as vested property. Non-aborigines captured the lands of aborigines by faking official documents. Besides, the aborigines who left the country during various movements or revolts did not get back their lands after they had returned.

It happened since there was lack of adequate laws in the country to protect the rights of the aborigines. Still, adequate laws are yet to be formulated. The lone act (S.A. Anti-act 1950, clause 97) is not enough to protect the rights of the aborigines. Now, some 85 per cent people of about 15 lakh aborigines in country's north-western region are landless. The number of the landless aborigines was only 20-25 per cent before division of India in 1947.

The aborigines can easily be cheated because of their simplicity, poverty and illiteracy. Since they are poor and helpless, unscrupulous people take advantage. But when the buyers make official documents for the purchased lands, they make official documents for more lands than they buy. But the aborigines are too insecure and insolvent to go to court.

Lobaybattala is an aborigine-colonised village at Godagari upazila in Rajshahi district. Most of its people are day-labourers. They have little lands to cultivate. Literacy rate is very low there, because their children hardly go to school.

"When we go to cultivate our lands our forefathers left for us, we are told that the lands have been sold off to the non-aborigines. But we don't know when and to whom the lands are sold" laments one of the aborigines.

Above all the government needs to come up with massive initiatives to make the aborigines literate. Because the aborigines become dependent on others in these matters and fall victims to cheats due to their illiteracy and lack of knowledge about land law, selling and purchasing of lands, handing over of lands and paying of tax.

-NewsNetwork

International law and mistreatment of Iraqi inmates

BARRISTER HARUN UR RASHID

The brutal, blatant and wanton abuses and torture of Iraqi prisoners of war are a blot on human civilisation. They demonstrate the depraved mental make-up of US and British soldiers in treating the Iraqi inmates. They are unabashedly shameful, shocking and grossly contravene rules of international law.

From legal aspects, there are four issues that are involved.

- Who are the occupying powers in Iraq?
- Who are the prisoners of war?
- What are the rules of international law in respect to prisoners of war?
- What is the legal definition of "Torture" under international law?

Let us briefly examine all these issues in the following paragraphs.

Occupying Powers in Iraq

Although US-Britain invaded Iraq without UN approval, the UN Security Council subsequently recognised the removal of the Saddam Hussein regime as a fait accompli. The Council recognised the reality on the ground and adopted two Security Council resolutions last year to give legal status to the US and British forces in Iraq.

The resolution 1483 of the Council recognised the US-Britain as "Occupying Powers" in Iraq. The other resolution was 1511, adopted last October, that provided legitimacy to the US-led stabilisation force in Iraq. However, at no point of time, the UN Security Council created a UN multinational peacekeeping or peacemaking force with the famous "blue helmets" in Iraq.

Occupying power has a legal connotation under the 1949 Geneva Convention on Armed Conflicts. The occupying power is the one that invades and occupies a sovereign country. Article 4 of all the 1949 Geneva Conventions provides the definition of the occupying power and states as follows:

"Persons protected by the Convention are those who at a given moment and in any manner whatsoever, find themselves in case of a conflict or occupation, in the hands of a party to the conflict or occupying power of which they are not nationals."

Accordingly, the US and Britain are considered as the occupying powers in Iraq. Likewise, since 1967 Israel has been the occupying power of Palestinian lands (West Bank and Gaza Strip). The Britain and US have a responsibility to fulfill in the occupied territory. The legal obligations are onerous and are subject to the supervision of the Geneva-based International Committee of Red Cross (ICRC).

Who are Prisoners of war?

The Third Geneva Convention is applicable to the prisoners of war. This Convention lists the categories of persons who are to be considered as prisoners of war. Ordinarily such status is granted to members of forces that surrender to the victorious party.

In 1971, Pakistani armed personnel who surrendered in Dhaka on 16th December were given the status of prisoners of war. The prisoners of war are to be looked after humanely because the personnel of armed forces fight for their country under orders of the political and military leaders. They do not fight for any personal benefit. They are not criminals or thugs or terrorists and their status is different from these categories of individuals.

The fundamental difference between army personnel and Al-Quada terrorists is that while the former fight under orders of the authority of states, the latter do not fight or represent any state. Terrorists are "non-state entities" and are widely believed to spread over 60 countries. The "terrorists" captured from Afghanistan by the US after the fall of the Taliban regime were not accorded the status of prisoners of war by the US in the military base of Guantanamo Bay in Cuba. They are described as "enemy combatants" by the US.

The treatment of Iraqi inmates is a different ball game from that of inmates of Guantanamo Bay. The US and Britain are the occupying powers in Iraq and they are legally obliged to treat Iraqi captives as prisoners of war who are to be scrupulously treated under the Third Geneva Convention.

Rules of Treatment for Prisoners of War under the 1949 Third Geneva Convention

Defeated or captured Iraqi army personnel are to be given the status of



prisoners of war. The rules of the Third Geneva Convention are to be strictly followed in treating them in captivity. Some of the salient features of the treatment of prisoners of war under the Convention are given below:

- Prisoners of war should be kept in safety zones. The zones must be clean and be suitable for human habitation.
- Adequate clothing and other basic facilities must be provided. Food must of such quantity and quality to ensure good health of the prisoners of war.
- Prisoners of war must be treated with personal dignity. Hardships and sufferings must not be caused to prisoners of war.
- Prisoners of war must be given a monthly allowance by occupying powers and if they work in camps, they must be paid.
- Prisoners of war are entitled to receive visits from representatives of the ICRC. They are entitled to receive letters and cards from their relatives.
- At all time prisoners of war must be treated humanely.

The US and Britain are legally obliged to adhere to the above rules of the Convention toward Iraqi prisoners of war. The images printed in the media of the Iraqi prisoners show humiliation, indignity, and suffering of Iraqi inmates at the hands of some US and British soldiers. In particular the treatment meted out to Iraqis by some US soldiers is sadistic, brutal and barbaric. The fact is that such cruel behaviour by a section of US soldiers defies human comprehension and conscience. It speaks of a gross failure of chain of command from the Pentagon in respect of compliance of the core provisions of the Third Geneva Convention.

Definition of torture under international law

One of the most important instruments on human rights is the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It came into force in 1987. The Convention is an additional safety valve for prisoners of war.

The provisions of the 1984 Convention derive from the inherent dignity of the human person and are consistent with Article 5 of the 1948 Universal Declaration of Human Rights and Article 7 of the 1966 International Covenant on Civil and Political Rights, both of which provide that no one should be subjected to torture, or to cruel, inhuman or degrading treatment or punishment.

Let us at present examine only two Articles of the 1984 Convention that

are relevant for our purpose.

The expression "Torture" has been defined in Article 1 of the 1984 Convention and it states in part as follows: "The term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession."

Article 2 of the Convention provides: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political stability or any other public emergency, may be invoked as a justification of torture."

The two provisions make it abundantly clear that not only torture but also other cruel or inhuman or degrading treatment or punishment is not legally permissible and each state party shall take effective legislative, administrative and judicial or other measures to prevent acts of torture in any territory under its jurisdiction. All acts of torture are to be considered offences under criminal law and this applies not only to the person who inflicts torture but also to any person who is involved in complicity in torture.

Some of the graphic pictures of Iraqi inmates from the Abu Ghraib prison in Baghdad in the media display acts of deliberate physical and mental suffering, (e.g. using dogs to threaten and attack a naked male Iraqi prisoner or a female US soldier smiling cockily at the camera as she points out at a group standing naked Iraqi prisoners). These would arguably be considered as torture.

Both the US and Britain are signatories to the UN Convention of Torture. They failed to comply with the provisions of the 1984 Torture Convention. Furthermore one of the stated justifications of Iraqi war was to remove the tyranny of Saddam Hussein. For Iraqi inmates and for majority of Iraqi people, one brutal regime has gone and another similar regime has come into place in Iraq led by the US.

Concluding remarks

It may be easily argued that the pictures released in the media until the time of writing are in breach of both the 1949 Geneva Conventions and the 1984 Torture Convention. The soldiers who have committed such gross abuse and torture are punishable under national and international law. Since the US has withdrawn from the jurisdiction of the International Criminal Court, the suspected culprits will not face trial by international judges, if national trials do not meet international standards of justice.

Furthermore, it is impossible to discuss the serious violations of international law without having some regard to the environment within which such breaches occurred. The word "environment" here is not only intended to convey the atmosphere that have been created in the minds of the US British soldiers about Iraq's complicity in the September 11 attacks but also is designed to perceive Iraqi inmates as inferior human beings. Under such circumstances, Iraqi prisoners have been subjected to torture, inhuman treatment.

Many international law experts believe that the UN should deplore both the US and Britain for their callous regard of their commitment to protect human rights of Iraqi inmates under international law. Failure to protect human rights of Iraqis brings to my mind what the Greek philosopher of sixth century BC Anacharsis wrote: "Laws are like cobwebs, strong enough to detain only the weak and too weak to hold the strong".

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LAW in-depth

Protection of women under international instruments

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UN Secretary General Kofi Annan says "violence against women is perhaps the most shameful human rights violation, and it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it is continues, we cannot claim to be making real progress towards equality, development, and peace." According to Amnesty International at least one out of every three women has been beaten, coerced into sex, or abused in her lifetime. More than 60 million

women are 'missing' from the world to day as a result of sex-selective abortions and female infanticide. Every year, millions of women are raped by parents, relatives, friends and strangers, by employers and colleagues, soldiers and members of armed groups (Amnesty International magazine, Issue 124, 2004). For these reasons the international community has been increasingly concerned about the situation of women. Several instruments have been promulgated for advancement and protection of the rights of women in many areas, such as employment (Convention Concerning Equal

Remuneration for Men and Women Workers for Work of Equal Value), education (Convention Against Discrimination in Education) and political participation (Convention on the Political Rights of Women). Discrimination on the basis of sex has been observed (Declaration on the Elimination of Discrimination Against Women) and condemned (e.g., in CEDAW, Article 2 provides: "States Parties condemn discrimination against women in all its forms, [and] aggress to pursue ... a policy of eliminating discrimination against women..."). Nonetheless, while these instruments recognised women's human rights, they have not been interpreted and enforced in a manner consistent with the vigorous protection of women that they mandate. Reanda, a feminist scholar, says "Although the principle of equality between the sexes has been enshrined in the basic human rights instruments, in practice the interpretation and implementation of these instruments has fallen far short of ensuring their full applicability to women as an oppressed and vulnerable social group." Despite the aspirations of current instruments, the development of remedies for women subjected to sex-based human rights violations is incomplete.

The international concern for protecting women against discrimination has its modern roots in the Charter of the United Nations and the Universal Declaration of Human Rights (UDHR). The U.N. Charter lists among its purposes the achievement of "international co-operation in ... promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion"; [Article 1(3)]. This language is repeated in Article 55, under which the United Nations is obliged to promote universal respect for non-discrimination, and relied upon in Article 56, which expressly obligates members to act in furtherance of the purposes of the Article 55. The UDHR in kind accords certain rights to men and women equally: "Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race,

colour, sex...." (Article 2). Article 5 provides: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The Declaration further proclaims that "all are entitled equal protection of the law" (Article 7). This non-discrimination and the requirement of the equality propounded in the UDHR are staunchly supported and repeated in subsequent human rights documents, e.g., the International Convention on Civil and Political Rights.

Significantly, the UDHR not only urges the recognition of human rights but expects nations to provide a remedy when those rights have been denied. When an individual is victim of human rights violations, that person has a "right to an effective remedy by the competent national tribunals" responsible for protecting those rights (Article 8). The UDHR likewise requires access to foreign courts when domestic conditions merit it, i.e., when the individual is unable to avail himself or herself of governmental protection- by asserting that every individual is entitled to seek legal remedy, without qualification as Article 6 provides: Everyone has the right to recognition everywhere as a person before the law. Once it happens that an individual suffering human rights violations has no legal recourse in her or his own country, that person has the right "to seek and enjoy" asylum elsewhere (Article 14(1)).

The problem of sex discrimination was recognised by these instruments, and the first major instrument to focus exclusively on the issue- the Declaration on Elimination of Discrimination against Women (DEDAW) - was built upon their foundation. Drawing from basic principles generated by the U.N. Charter, the UDHR, and other human rights instruments, DEDAW calls for "all appropriate measures" to be taken "to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women." (Article 2). Guarantees of equal legal capacity, equal civil rights, and women's suffrage, among others, are prescribed (Article 4, and 6).

Since DEDAW was non-binding and as such could not require nations to provide remedies to human rights violations against women, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was enacted to put into effect the measure necessary to extirpate sex discrimination. CEDAW not only provides for women's legal equality (Article 15(2)), but also requires states "to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women" (Article 2, and 5). CEDAW also requires that states "establish legal protection of the rights of women and ensure through competent national tribunals and other tribunals and other public institutions the effective protection of women against any act of discrimination" (Article 2).

CEDAW, like the UDHR that inspires it, mandates access to remedies in foreign courts and provides for a right to asylum. CEDAW defines sex discrimination as any sex-based distinction "which has the effect or purposes" of detracting from women's "human rights and fundamental freedoms." The full definition of sex discrimination in CEDAW encompasses "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field": Article 1. Persecution of women, which by definition involves "a threat to [their] life or freedom" obviously detracts from women's human rights and fundamental freedoms. Persecution of women is therefore sex discrimination within the meaning of CEDAW and is accordingly prohibited. Discrimination against women and the persecution of women-are kindred human rights violations; the victims of sex-based persecution should be entitled to seek asylum under international law as expressed in these agreements.

Moreover, the Rome Statute of International Criminal Court (1998) states that the following

acts are war crimes: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and certain other forms of sexual violence of comparable severity. If these acts are knowingly committed as a part of widespread or systematic attack on a civilian population, they constitute crimes against humanity (Article 7). In 2000 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transitional Organised Crime, require states to protect the victims of trafficking.

In practice women are discriminated and persecuted because of women, because of their sex and gender. Moreover, women are not only discriminated within family, they are also discriminated by the State and society as well. In Pakistan if adultery allegation could be proved against women then according to 'Sharia Law' the punishment would be 'stone to death'. As a result in 'Islam and Shah' case the House of Lords of UK held that women in Pakistan, against whom the false adultery allegation was given, were discriminated and unprotected by the State, and as a result their human rights has been violated, i.e. life to live, not to be tortured. In Iran, during Khomeini's rule women were punished if they denied wearing 'Hejab'. Most recently, in Afghanistan, during the rule of Taliban, women were asked not to work. These are all examples of discrimination against women.

International Instrument's main aim is- the signatory state party should take all appropriate measures to ensure the full application of the International Human Rights Conventions and Declaration. But from the experience, we have seen in many occasions, states itself breaches the Human Rights Conventions. Therefore, press, media and all of us should work as 'watch dog' for the full effectiveness of the International Human Rights Instruments.

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