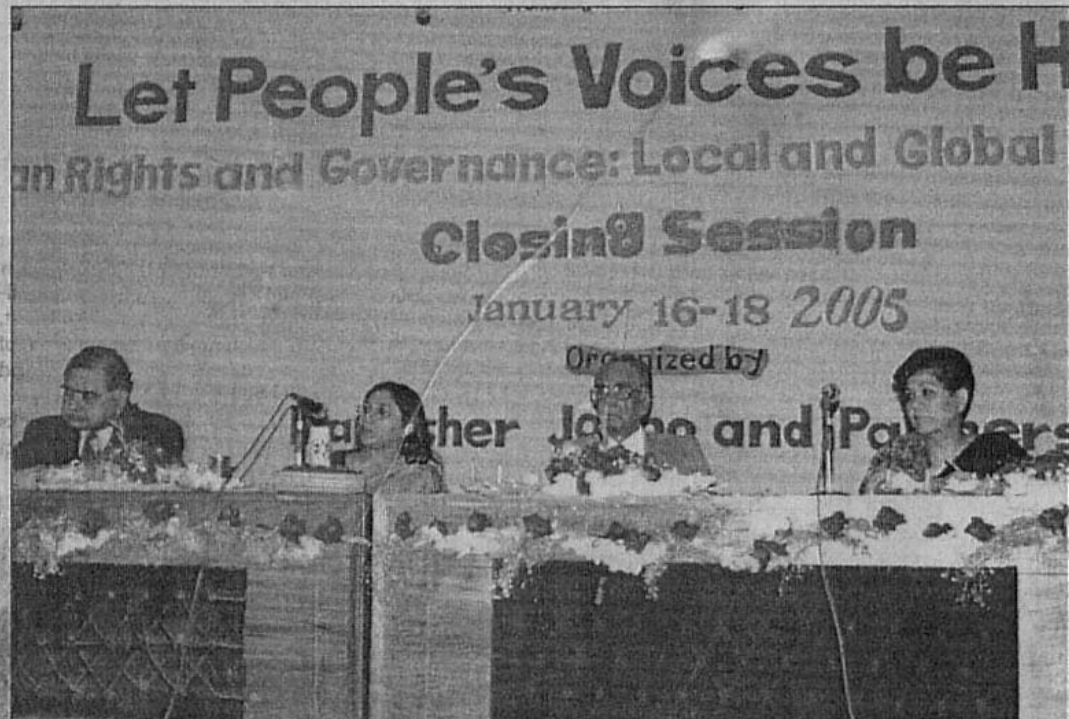


## LAW event

LET PEOPLE'S VOICES BE HEARD

## Conference on human rights and governance: local and global perspectives



SHAILA SHAHID

THE effort aims to facilitating the process of giving voice to the voiceless and also try to build consensus in the society. Let people's voices be heard- by asserting the slogan Manusher jonno-an initiative for promoting human rights and good governance, along with its 61 partners organised the conference on "Human rights and Governance: Local and Global perspective", that was held from January 16th to 18th at Bangladesh Institute of Administrative Management (BIAM), Dhaka.

UN special rapporteur on freedom of religion and belief and internationally renowned human rights activist Asma Jahangir was presented at the inaugural session as guest speaker. Dr. Hameeda Hossain, chairperson of Manusher Jonno, chaired the inaugural session. Law, Justice and Parliamentary Affairs Minister Barrister Moudud Ahmed was the chief guest of the occasion. Among the special guest's prominent economist professor Rehman Sobhan, Head of DFID-Bangladesh David Wood and country director, CARE, Bangladesh Steve Wallace were present at the inaugural session.

Asma Jahangir, a founding member of the Human Rights Commission of Pakistan, stressed the need for ensuring independence of the judiciary and said if an independent judiciary is in place, only then a government with strong political will can address law and order problems. She called for coordinated initiatives by the South Asian human rights organisations at national and regional levels to protect human rights in the region. In this regard, she called to appoint human right officers in the SAARC Secretariat to deal with the human right issues in this region. Hameeda Hossain, chairperson of Manusher Jonno, echoed Asma's views and said impact of extra-judicial deaths on the law and order may not be good in the long run. Economist Professor Rehman Sobhan said justice and law have become marketable commodities in Bangladesh, and only so-called elite class can afford those.

Law, Justice and Parliamentary Affairs Minister Moudud Ahmed, said in his speech that all the preconditions to ensuring good governance are prevailing in Bangladesh. "A democratic system, a democratically elected parliament, an independent judiciary and a free press are all there providing a favourable condition to ensuring good governance in the country. Now the question is how to improve the quality of governance," he explained.

Shaheen Anam, team leader, Manusher Jonno, presented the keynote paper. Steve Wallace, country director of CARE Bangladesh, David Wood, head of DFID, Bangladesh, and Manusher Jonno partner representative Nasima Begum also spoke at the opening of the conference. Speakers called for the empowerment of poor and marginalised people, who have been so far deprived of their human and social rights. An exhibition of publication, posters and other materials related to human rights and governance was also organised on the sideline of the three-day conference.

The second day of the conference held a total of six sessions including 'Human Rights: Local and Global Perspectives', 'Violence against Women', 'Rights of Marginalised People', 'Child Workers Rights' and 'Electoral Rights'.

Addressing the first plenary of the conference on human rights Asma Jahangir, asked the human rights activists of Bangladesh to submit evidences of genocide during the country's Liberation War in 1971 to the United Nations, so that they could take legal steps against the war criminals. "I found documents on genocide on Rwanda and other countries in the UN archives, but not any on Bangladesh's Liberation War". She stressed the need for making the activities of criminal courts more transparent and accountable to improve the human rights scenario.

Advocate Sara Hossain and advocate Shahdeen Malik spoke at the plenary while Shirin Huq of DANIDA was presented as chairperson. Advocate Sara urged the human rights activists and members of civil societies of the SAARC countries to take coordinated initiatives to prevent extra-judicial killings. Advocate Shadhin Malik stressed the need for ensuring independence of the judiciary and said only an independent judiciary could improve the human rights situation of the country and, thereby, improve the law and order situation.

Gender specialist Dr. Maleka Begum presented the keynote paper on the workshop on "Violence against women". She illustrated and explained different forms of torture and violence against women and also argued women to strongly protest the mentality of this patriarchal society. Monira Rahman of Acid survivors foundation and Dr. Firdous Azim from Naripokko were the panelists of the workshop.

Speakers at the session on child rights said people have to uphold the rights of children. Human rights and advocacy director of BRAC, Afsan Chowdhury, said that in the development activities NGOs have a tendency to please the government, but thereby the programmes fail, as government's traditional machineries are not pro-child and pro-development. Child neurologist Dr

Naila Khan, head of Shishu Bikash Kendra of Bangladesh Shishu Hospital, said that the government, instead of ensuring free reproductive health service for women, has introduced community clinics for women, which indicates commercialisation of the service sector. UM Habibunnesa, head of the justice and violence programme of Save the Children UK, said that 3,634 children were arrested by the police as offenders in 2004. Dr Muhammad Ibrahim, executive director of the Centre for Mass Education and Science, moderated the session.

Professor Ahmed Kamal moderated another workshop on 'Rights of Marginalised People' where Khushi Kabir and Dr Nafisur Rahman spoke. Suriya Haq of the Fulki moderated the workshop on 'Rights of Working People in Formal and Non-formal Areas' and Enayeturrah Khan, editor of the New Age, Shirin Akhter of Kormojibi Nari, Sultan Mahmud of the BILS and Pratima Paul of the Bangladesh Institute of Development Studies held the discussion. Dr Shirin Sharmeen Chowdhury placed a keynote on 'Electoral Rights' where Munira Khan of the FEMA, Dr Nazmul Ahsan Kalimullah of Janipop, Rokeya Kabir of the BNPS, AHM Noman of the CCHRB and Sharmin Mursheed of the Brotee took part in the discussions.

The third day of the conference also held six parallel workshops. Renowned women and human rights activist Farida Akhter, of UBINIG presented her keynote paper on the session of "Civil society activism: Media and role of state for good governance". She expressed her great concern on media's role in generating activism and to make it effective. She emphasised that whether civil society activism includes or reflects the voice of poor, marginalised mass people like farmers, day labourer or grass-roots level women. The editor of the daily Prothom Alo Mr. Matir Rahman also expressed the need for a strong and accountable news media. Professor Abdullah Abu Sayeed of Bishwa Shahitya Kendra and Aroma Dutta of Prip trust also spoke at the workshop.

Another workshop titled "Role of international institutions to promote good governance: country perspective" was moderated by Mr. Mahfuz Anam, the editor of The Daily Star. Dr. Atiur Rahman, chairperson of Unnayan Shamunnay presented the keynote paper. Professor MM Akash of Dhaka university, Dr. Rushidan Islam Rahman, of Bangladesh institute of development studies spoke at the conference, while Zakir Shahin, from Krisoker Saar (Farmers' Voice), a tinny research institute expressed the need for changing our attitude from donor funded project culture to life long program approach. Dr. Anannya Raihan from CPD also presented his paper on the workshop of "Corporate Governance: social accountability" and country director Nasreen Huq of Action Aid moderated the session.

Former chief justice Muhammad Habibur Rahman addressed as the chief guest of the concluding session of the conference. He stressed that we ought to have asked for the report when the first incident of death occurred. That would make the law and order more cautious". Noted lawyer Dr Kamal Hossain and Rokia A Rahman, president of Women Entrepreneurs Association attended the function as special guests. Shaheen Anam, Team Leader of Manusher Jonno, was in the chair. Dr Kamal Hossain expressed his frustration over the prevailing law and order situation and said no case is taken at any police station without consultation. Shaheen Anam, team leader of MJ expressed that their efforts would be fruitful if they could be able to bring some changes in the society. She thanked all concerned for making the conference a success.

The three-day session concluded by presenting a set of recommendations. According to the recommendations, there should be no extra judicial killing without trial, freedom of judiciary and the government's willingness are enough to curb crime. Poverty reduction strategic paper (PRSP) and Millennium Development Goal (MDG) should be taken into account while formulating government rules in establishing good governance and human rights. The role of the attorney general as an independent public prosecutor is vital to keep the judiciary above controversy. Competent people should be appointed judge in the higher court. Articles 33 and 35 of the constitution should be upheld to function criminal procedure. More women should be included in economic activities. The government should bring transparency and dynamism in its administrative affairs to curb corruption. Proactive media are a must to create public awareness and bridge existing divisions among the civil society.

Good governance is basically a mechanisms by which people uses to voice their concerns and interests, work-out their differences, exercise their legal rights and meet their obligations. Thus the conference attempted to bring all the mass people and civil society in one umbrella by upholding the vision of human rights and justice. Hence access to justice and the voices of the poorest and most vulnerable need to be reflected in all policy making body of the Government. Only then we would be able to create space for people to live in peace and harmony.

The author is working as Law Desk Assistant of The Daily Star

## LAW opinion

## Universal jurisdiction under international law

BARRISTER HARUN UR RASHID

THE application of universal jurisdiction of a crime under international law has come again into full play when an Afghan citizen, Faryadi Sarwar Zardad, known as "Commander Zardad" now living temporarily in Britain, has been charged in a British Court. The charges against him include conspiracy to torture perpetrated in Afghanistan between 1992 and 1996. This is the first time that an alleged torturer has been prosecuted in one jurisdiction (Britain) for offences said to have carried out in another (Afghanistan).

Ordinarily, a state exercises criminal jurisdiction over persons in two cases:

- (a) Over crimes committed in its territory (known as territorial jurisdiction) or
- (b) Over crimes overseas if the person happens to be its citizen (known as national jurisdiction).

This implies that if a crime is committed in Britain by a person or if a crime is committed abroad by a British citizen, the alleged offender will be liable to be charged in Britain. So also in the case of Bangladesh. If a crime is committed in Bangladesh by a person including a foreigner or if a Bangladeshi citizen commits a crime abroad, Bangladesh has the right to prosecute the alleged offender under Bangladesh Criminal Code.

## Universal jurisdiction and globalisation of crimes

In the case cited above in Britain, it is noted that the alleged crime of torture has not been committed in Britain (It took place in Afghanistan) nor is the person a British citizen.

(The alleged offender is an Afghan citizen, temporarily living in Britain), yet he has to face the British Court for his alleged commission of conspiracy to torture because it is a crime of universal jurisdiction.

It means that under universal jurisdiction, a state may exercise its power to prosecute an alleged offender, irrespective of the fact whether or not the universal crime has occurred or not in its territory. It is a jurisdiction, often called globalisation of crimes.

Torture has been categorized as one of the crimes of universal jurisdiction under the 1984 UN Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (came into effect in 1987). Under Article 5 of the Convention, torture has been listed as a crime of universal jurisdiction. This implies that each state-party shall take measures, as

may be necessary, to establish its jurisdiction over such offences in cases where the alleged offender is present in the territory under its jurisdiction.

Britain ratified the 1984 UN Convention on Torture in 1988 and thereafter passed an enabling law to enforce the provisions of the Convention. Therefore any offender who allegedly committed torture in Britain or elsewhere after Britain ratified and enacted the law will be accountable to his crimes. Under British law, any prosecution for alleged crime of torture committed abroad requires authorization from the Attorney General.

## The 1998 Pinochet case

This is not for the first time that Britain has exercised its powers under universal jurisdiction. In 1998, former President of Chile, General Augusto Pinochet came to Britain for medical treatment. He thought he was safe in Britain, but little did he realise that he could be arrested for his past-alleged crimes of torture.

In October 1998, Spain (Spanish judge Baltasar Garzon issued the order of extradition) asked for Pinochet's extradition to Spain to face for alleged crime of torture on Spanish citizens in Chile during his 17-year iron fist rule from 1973-1990. Pinochet was arrested in Britain under orders of the Home Secretary (Home Minister).

There was a legal challenge before the British Court by Pinochet claiming his immunity from prosecution. It legal proceedings went before the highest court in Britain, the House of Lords. Seven Law Lords, the largest bench, held that Pinochet was not immune from prosecution and therefore could be charged for torture that was committed after 1988. Later Pinochet was released in March, 2000, after 16-month detention, on medical grounds of unfitness to stand trial (he was then 84 years of age).

Human rights activists all around the world called Pinochet's arrest the most important case in international law since the Nuremberg trials of German Nazi leaders in 1946. The case has demonstrated that former heads of state are not safe abroad if they have committed crimes of universal jurisdiction.

## Other crimes listed as universal jurisdiction

Other universal crimes include genocide, war crimes, crimes against humanity, crime against peace (unprovoked armed attack), piracy, slavery, illicit trafficking in drugs, hijacking, and taking of hostages.

In 1961, Adolf Eichmann, a German Nazi, who was accused of committing genocide



innocent Jews in Germany and Poland, was kidnapped by Israel's secret agents from Argentina. Israel exercised its universal jurisdiction and put him to trial. Later he was convicted and sentenced to death. The issue of kidnapping of Eichmann from Argentina was considered a separate legal issue between Israel and Argentina as it grossly violated the territorial sovereignty of Argentina.

It is strongly argued in some quarters that if Dr. Henry Kissinger, the former US Secretary of State during the time of the Bangladesh War of Liberation in 1971, visits Bangladesh, he could be arrested for his alleged complicity in genocide and crimes against humanity by Pakistani army on the people of Bangladesh.

## International vs state trial

Both international and universal crimes have global reach. This implies that each state party to the relevant international conventions or international legal tribunal is empowered to put on trial an alleged offender for commission of or complicity in crimes of universal jurisdiction. A trial may be held by an international tribunal, such as the International Criminal Court at The Hague, (the Rome Treaty came into effect from July 2002) or a state can exercise its jurisdiction under universal jurisdiction.

The course of remedy is the same, that is no offender of universal crime should go unpunished, but the forums could be different. For

example, former President of Yugoslavia, Milosevic is being tried since 2002 at the Ad-hoc International Criminal Tribunal at The Hague for his commission or complicity in genocide or crimes against humanity on Kosovo Muslim population. It is reported recently that the Cambodian Mixed Tribunal in Phnom Penh will put on trial persons who are accused of commission of genocide on innocent Cambodians during the Khmer Rouge rule (1975-78).

## Conclusion

The universal jurisdiction of crimes is a deterrent for dictators not to commit universal crimes of genocide or torture. In future, the offenders will think more carefully about their travel plans abroad. Curtailing their ability to move freely represents a victory for the human rights movement.

Human rights law has always been an area of high ideals and incremental gains. It has taken almost 50 years (since the 1948 UN Universal Declaration of Human Rights) to arrest Pinochet or Milosevic for facing justice. The joke that "the man who kills another goes to prison, the man who kills 20 goes to an insane asylum but the man who kills tens of thousands of people goes to Geneva for peace negotiations" is not current any more. This is no small feat for protection of human rights.

The author is former Bangladesh Ambassador to the UN, Geneva.

## FACT file

## Congo: Help the healing beg in



PHOTO: AMNESTY INTERNATIONAL

Armed groups in eastern Democratic Republic of the Congo (DRC) have raped tens of thousands of women, in systematic attacks marked by extreme brutality.

The survivors of rape have long-term and sometimes fatal injuries and illnesses. Most women who have been raped suffer nightmares and flashbacks. Abandonment by husbands and discrimination by communities, because of the stigma attached to rape, leave them displaced, destitute and isolated.

After years of warfare, the health care system in the east is in ruins. Yet despite peace agreements and an improving security situation in many areas, no coordinated effort has been made to begin the rehabilitation

of hospitals and health centres. Local women's and human rights organizations have responded with compassionate and positive initiatives, but are wholly unsupported by the government.

The lack of any comprehensive national and international response means that many thousands of rape survivors are receiving no assistance at all. Many continue to die needlessly because of this indifference. The DRC government and international community must act quickly to establish decent health care programmes for survivors of rape and other human rights abuses.

Source: Amnesty International.

## HUMAN RIGHTS monitor

## Sudan suspects should go to global court



PHOTO: AMNESTY INTERNATIONAL

U.N. Secretary-General Kofi Annan said that the most "logical place" to prosecute suspects of atrocities in Sudan's Darfur region was the International Criminal Court, a tribunal opposed by the United States.

The United States is waiting for a U.N. commission report this month on human rights violations and whether genocide occurred in Darfur to see what action may be required. "And I am sure that at the end of the day, when these people are identified, action will need to be taken. They need to be held accountable so that we don't give the impression that impunity is allowed to stand," Annan said.

"And the most logical place for them to be put on trial would be at the ICC (International Criminal Court)," he told reporters. Pro-government militia, at times armed by Khartoum, are blamed for killings, rape and pillaging in Darfur. Some 1.8 million villagers have been made homeless in a fight over power and resources. Rebels opposing the government have looted relief trucks and attacked police stations.

The 15-member Security Council has few alternatives to referring the issue to the Hague-based court, with Russia and China opposing targeted sanctions, which the United States has advocated.

A proper trial in Sudan is unlikely and Europeans will oppose an ad hoc court, such as for the former Yugoslavia and Rwanda.

Source: Reuters

## LAW week

## 50 injured as Bangla Bhai's men clash with police

At least 50 people, including eight policemen, were injured in clashes between police and Bangla Bhai-led Jagrata Muslim Janata Bangladesh (JMB) at Bhabaniganj in Bagmara.

Reinforcements from the Rapid Action Battalion (Rab), the Rajshahi police line and three neighbouring police stations were involved in the clashes, which ensued after police foiled a JMB attempt to organise a procession in protest against the lynching of three JMB men.

Police rounded up 64 JMB cadres for clashing with police, but did not detain any of the leaders who led the attacks. Since being barred for the first time by law enforcement agencies, JMB men have started gathering arms and recruiting armed cadres from different parts of the country, sources said.

Some 30 persons were also injured in the bomb attack. Nine of them were admitted to RMCH with splinter wounds to their bodies, including their heads, faces, and eyes. *The Daily Star, January 25.*

## Legal safety net for women

Domestic violence, especially spousal abuse, can decline significantly if the government launches an effective awareness campaign and establishes a strong legal framework, according to human rights experts. The government should also ensure a legal safety net for women to stop spousal abuse which is rampant in the country, they said.

According to a survey report by the Bangladesh National Women Lawyers Association (BNWLA), 155 women were killed by their husbands and another 35 women tortured last year. But the number of cases filed is far less - only five for torture and 60 for murder.

The Oxfam, an international non-government organisation, in a research found that 47 percent of women fall victim to physical abuse in their homes. While it is commonly believed that economic dependency makes women vulnerable to abuses, the Oxfam found that 32 percent of working women are abused.

"The government is not working actively to stop domestic violence, fearing that such steps might affect the election results," said Sultana Kamal, president of Ain O Shalish Kendra. *The Daily Star, January 25.*

## Chaos at Sylhet over HC judge's ticket row

Railway employees stopped Dhaka-bound inter-city train Parabat for three hours at Sylhet station and ransacked six compartments of the train after police arrested the station manager for not providing tickets as demanded by an additional judge of the High Court.

Station Manager Nurul Islam apologised for his failure to provide tickets but Justice Miftah Uddin Chowdhury ordered the officer-in-charge (OC) of Kotwali Police Station to arrest him.

Train service resumed as the agitated employees lifted the barricade after the station manager's release on bail. But many passengers in the meantime went back home cancelling their journey amid the chaos at the station and uncertainty over the train communication. *The Daily Star, January 27.*

## Kibria, 4 AL men killed in grenade attacks

Former finance minister Shah AMS Kibria and four other Awami League (AL) activists were killed in a grenade attack in Habiganj. About 70 others were injured in the grisly attack, similar to the August 21 carnage on Sheikh Hasina's rally in the capital last year that had claimed 23 lives and left several hundred wounded.

The four other dead were identified as Kibria's nephew Shah Manjurul Huda, 40, and AL activists Siddique Ali, 35, and Abdur Rahim, 50, of Bongaon village and Abul Hossain of Shayestaganj. The AL called a countrywide dawn-to-dusk hartal for tomorrow protesting the attack. Kibria died on the way to Dhaka and doctors at Birdem Hospital declared him dead at about 12:30am, soon after he was taken to the hospital. Kibria spoke as the chief guest at the meeting organised by Laskarpur Union unit of AL. *Prothom Alo, January 28.*

## Corresponding with the Law Desk

Please send your mails, queries, and opinions to: Law Desk, The Daily Star 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, fax 8125155; email <dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net>