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"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-*Article 27 of the Constitution of the People's Republic of Bangladesh*

The Daily Star

LAW*vision*

Public's Right to Information

BARRISTER HARUN UR RASHID

BANGLADESH people have the right to information as part of the rights to live in a democratic society. To exercise this right citizens must be able to gather information at home and abroad.

As consequence to the right of information, citizens have four broad rights, such as they must find it possible to publish or relate otherwise the information thus acquired without prior restraint or censorship by government, they must be free to declare or print without fear of punishment, they must possess the means of using or acquiring implements of publication, and they should have freedom to distribute and disseminate without obstruction by government or by their fellow citizens.

Freedom to speak and write about public issues is as important to the life of democratic government as is heart to the human body. In fact, this privilege is the heart of accountability of government. If that heart is weakened, the result is death, so said American Justice Black in 1940 in the case of Milk Wagon Drivers Union vs Meadowmoor Dairies.

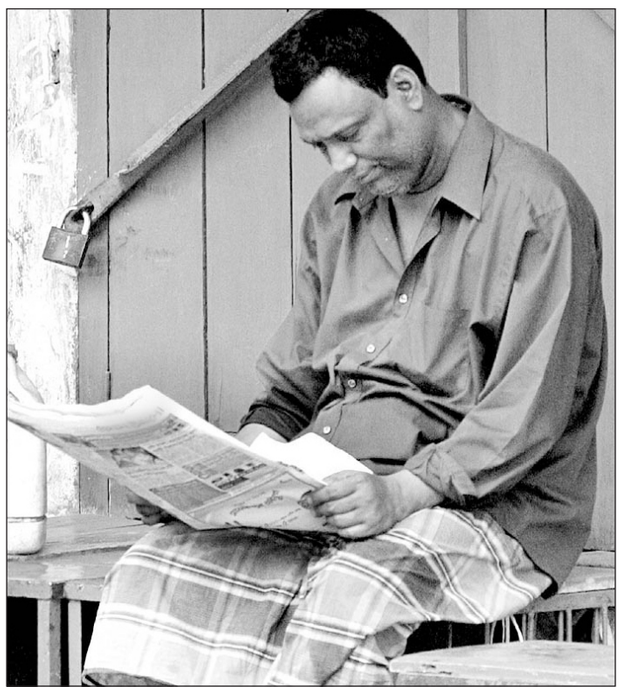
Another American Judge Felix Frankfurter in 1941 in the case of *Bridges vs California,* ruled that "because freedom of public expression alone assures the unfolding of truth, it is indispensable to the democratic process." What the Judge implied that unfolding truth emanates from the right to information.

The origin and evolution of the idea that the public has the right to information have less to do with constitutional history than with the taxpayer's right to information how government spends their money in running the country.

The right to information is a clear sign of the desire for knowledge. The demand for openness is a clear sign of democratic pressure. Through history the demand has had to be conceded partially and bit by bit. Successive Kings were forced by this means to concede the right to information, first to the feudal lords, and then to the gentry, the merchants and later to public in order to stave off the revolts against their power.

Later the struggle to secure the admission of the press to the House of Commons and bring about the publication of Hansard reflected the demand of the voters the right to information what their MPs were doing in their name in the Parliament. The members of the American Society of Newspaper Editors, as citizens, partake and share in this right to information in their own names and as editors, reporters and writers they act, besides, as agents of other citizens whose right to information they invoke.

The development of parliamentary democracy, universal education and the growth of the mass media have all increased the range of public understanding through right to information about government, industry and have in turn reinforced democracy.



While the public has the right to information, it is acknowledged that there are certain matters which are subject to secrecy. The argument of secrecy is basic and runs like this. Every country is vulnerable to external attack and internal subversion and its defence requires it to prepare plans against these possibilities. Thus preparations must be kept behind the tightest veil of secrecy. The logic of this argument is reasonable and few will challenge it.

But having said that, the limits of secrecy have to be carefully defined to avoid a situation in which any and every action of government is justified by reference to security. Every dictator in history has always found that an appeal to security is a simplest way to win public acquiescence for his tyranny or dictatorship.

It is common knowledge that strong armed forces that are built up to resist foreign aggression could then be used to suppress discontent arising from legitimate demands for human rights at home. Similarly, an internal security apparatus is established in the guise of defending a free society and then becomes an instrument for eroding freedom in the society it is intended to defend. There is always the risk that internal security measures could be abused to deal with political opponents and critics of government.

All these distortions of security can themselves be concealed behind the very veil of secrecy which the needs of security are supposed to justify. The balance between freedom including the right to information and security poses difficulty in democracy.

In the US, former Senator and Vice President Walter Mondale was a member of a Committee to inquire into the conduct of the security services during the Nixon administration and his report is illuminating as to how secrecy has been abused. He wrote in the report:

" There was massive invasion of privacy. For years FBI and CIA illegally tapped phones and engaged in other forms of electronic surveillance. The FBI and CIA both opened the private of American citizens. The mail of people such as Kennedy was opened. The law did not matter." The US has now made a serious effort to open up discussion of the proper limits of secrecy in a democratic society.

Freedom of Information legislation is a key to implement the right to information. Sensitive to growing political pressures for governmental openness, almost all Western democratic countries have enacted Freedom of Information laws. India did it in 2003.

Bangladesh is a democratic country and Article 11 of the Bangladesh Constitution makes it clear. Consistent with the democratic principles, it is suggested that Bangladesh Parliament may enact the Freedom of Information legislation to provide the public the right to information in any matter in governmental activities.

The sooner the law is enacted, the better will be the country's image for its transparency and accountability. Secrecy is the great enemy of democracy and the right to information is to safeguard basic liberties in a democratic country.

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

LAW *alter views*

HARTAL

When a political right violates some of the fundamental rights

MD. ZAHIDUL ISLAM

THEORETICALLY in every normative society there exist some ways and styles to demonstrate grievances collectively. These ways and styles differ from system to system, depending upon the status of the society, upon the differences of the mode of governances. Hartal is such a way to protest in the Indian subcontinent. Unfortunately, the hartal, which once emerged to ventilate grievances to the rulers or government or to the concerned authority regarding the democratic rights and the legitimate claims, has now turned to an absolute political weapon used sometimes to gain even a petty political interest. Now, it appears to be a great part of our political culture. As it proves a completely political issue, we cannot reasonably expect that the nation will come to a single unique decision whether hartal should exist any more in our political culture. Whatever be the decision, one must pay an earnest thought on the hartal issue since day by day it is becoming not only a matter coercive for the common public but also a thing undoubtedly baneful for the national state.

Historical background of hartal

Protestation is nothing new in the Indian society and history tells us many events where there were agitations for articulating different types of demands. Influenced by European trade unionist movements, the industrial workers of India had been observing occasional strike or dharmaghat from the first quarter of the twentieth century. This industrial strike or dharmaghat was conveniently extended to the political arena and took the name hartal.

Hartal is originally a Gujarati expression, which signifies closing down of shops and warehouses with the object of realising a demand. Essentially a mercantile practice, it acquires political significance in the 1920s and 1930s when MK Gandhi institutionalises it by organising a series of anti-British general strikes by the name 'hartal'. After that hartal becomes a way to protest in whole Indian sub-continent. In today's India it is popularly known as *'bundh'.* In Bangladesh, hartal is a constitutionally recognised political method for articulating political demand.

A glimpse of hartals in our history

During the period between the 1920s and 1950s, there were so many hartals called against the British rule.

From the 1960s, political activists were increasingly organising hartal, which by then appeared to them to be a stronger political weapon. There had been hartal for days together on the eve of the Bangladesh War of Liberation. Indeed, politics of hartal had played decisive role in mobilising people on behalf of the Liberation War.

Hartal becomes a very frequently used political tool for agitations from the 1980s. In the face of recurring hartal, called mostly on the issue of legality, the regime of Hussain Mohammad Ershad (1982- 1991) collapsed. The government of Khaleda Zia put under tremedous pressure by the calling of relentless hartal by Awami League led opposition. Similarly, the government of Sheikh Hasina was also not free from the politics of hartal. And the present government is facing hartals now and then.

Why for fundamental rights

A hartal, when called upon for the greater public interest, does not raise any question of fundamental rights of the citizens or economic loss of the nation. Because, public then spontaneously suffer the financial or others losses to make a hartal successful. For example, the hartals called for against the British or the then Pakistani rule in East Pakistan (Bangladesh) were to meet the 'political demand', which was actually the overwhelming public demand of a society or community.

But after the independence, the words 'political demand' encounters the usage of the same in narrow sense. Different political parties begin to resort hartal to meet their political demand signifying the demand of a particular political party, not of the whole community. So, the other members of the community or the parties against the hartal usually raise the questions of their fundamental rights to be violated and financial loss to be suffered by the observance of hartal. Hence, there comes the question to stop hartal, a political right, allegedly denying some other civil and fundamental rights of the citizens.

Hartal in the eye of law

However, call for hartal per se is not illegal; rather, it is a historically recognised democratic right. Indeed, where an act is meant to be nothing but an expression of protest such an act cannot be said to violate the fundamental rights of the citizens. The calling for hartal, not accompanied by any threat, will be only an expression guaranteed as a fundamental right under the Constitution. And, therefore, any political organisation may call 'hartal' by extending invitation to the public in general or to a particular class or group of people.

Certainly, the freedoms as enunciated in the constitutional provisions cannot to be construed as a license for illegality or incitement to violence and crime. Hence, any attempt to enforce it or ensure that the hartal is observed makes the call illegal, resulting in interference with the individual right. At the same time, any kind of provocation, instigation, intervention and aggression by anti-hartal activists to foil the hartal is also unlawful. In a word, hartal, as a democratic right, should be observed as well as should be allowed to be observed peacefully without resorting to any illegal activities. *(Khondoker Modarresh Elahi Vs The Govt of Bangladesh).*

Actual scenario of hartals today

The actual scenario hartals today is that during hartal citizens are prevented from attending to their avocations and the traders are prevented from keeping open their shops or from carrying on their business activities. Also, the workers are prevented from attending to work in the factories and other manufacturing establishments leading to loss in production causing nations loss. And after every hartal, with our painful eyes and heartbreaking sighs, we have to see in the newspapers the pictures of wanton acts of vandalism like destruction of government and private properties, transport vehicles, private cars and three wheelers as well as rickshaws. These illegal acts in the name of hartal cannot be recognised as political rights protected by the Constitution.

In this respect, High Court of Kerala, in the case of *Bharat Kumar Palicha and another Vs State of Kerala and others,* held that the calling for and holding of *bundh* (hartal) by political party or organisation involves a threat expressed or implied to citizen not to carry on his activities or to practise his avocation on the day of bundh. It violates the fundamental rights of the citizens. The Supreme Court of India by its judgement reported in AIR 1998 (Supreme Court) 1984 upheld the judgement saying there was no right to call or impose bundh which interfere with the fundamental rights of freedoms of citizen in addition to causing loss in many ways.

What to do

Hartal should not be banned enacting law, because it will be a futile exercise for some practical reasons. In fact, it must be allowed to be exercised in the greater context of the nation as a whole for political and social development in democratic culture. What is necessary is to ensure that it is not resorted to unless a genuine cause for the welfare and greater interest of the people, failure to the government to respond to the demands or grievances raised by common public or by the opposition, and overwhelming public support in favour of hartal are present.

Another point is that the rights of assembly, meeting and processions, which nurture the right to call hartal, are not absolute, but rather regulated by law. Reasonable restrictions may be imposed in observance of hartal in the interest of public order. Again, when a call for hartal is accompanied by threat, it amounts to intimidation, for which any aggrieved person or party may take legal action against the caller for hartal under the ordinary law of the land. Besides, citizens, who think their fundamental rights are encountering threat due to hartal, can take the resort of article 44(1) and 102 of the Constitution to have their fundamental rights protected, and can thus restrict destructive mood of hartals to some extent.

Concluding remarks

Most important thing, therefore, is that our political parties have to be self-motivated that except a grave cause they will never indulge a hartal causing so much of sufferings to the national life. Hopefully, in the recent time we see there has been an auspicious start to the way of civilised political culture. Human wall, human chain, silent procession or procession with black scarf on faces, burning the party or organisation flags, burning effigy of the person being protested, arrangement for music on streets where protesters sing those songs containing fighting spirit, staging drama or play in public places, public assembly in the premises of Shaheed Minar are symbols signifying that our political culture is taking a positive turn. We, therefore, can expect that all concerned will realise that hartal in the way it is exercised now-a- days can never be a way to protest the activities of government or other organisations in a democratic and civilised society.

The author is a legal researcher currently working for ERGO Legal Counsels, Dhaka.

RIGHT*column*

DARFUR

UK urged to back International Criminal Court investigation

Minority Rights Group International (MRG) has called upon the UK government to use the UN Security Council to refer war crimes and crimes against humanity in Darfur to the International Criminal Court (ICC) in The Hague. Reports have indicated that the UK is considering supporting US preferences, which may include a form of ad hoc tribunal such as those used for Rwanda and former Yugoslavia, given long-standing US opposition to the ICC. MRG states that such a move would undermine the role of the ICC as the world's permanent international criminal tribunal, a role that it was expressly designed and empowered to undertake under the Rome Statute.

Director of MRG, stated: "The first act the UK Government and other members of the Security Council should now take is to resolve that the situation in Sudan be referred to the Prosecutor at the International Criminal Court in accordance with the report recommendation".

The UN Commission stated that it "strongly recommends that the Security Council immediately refer the situation of Darfur to the ICC, pursuant to article 13(b) of the ICC Statute...serious violations of international human rights law and humanitarian law by all parties are continuing. The prosecution by the ICC of persons allegedly responsible for the most serious crimes in Darfur would contribute to the restoration of peace in the region". The Commission clearly established that the Government of the Sudan and the Janjaweed are responsible for violations amounting to crimes under international law. In particular, the Commission found that Government forces and militias conducted indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement, throughout Darfur.

MRG criticised the US for its position on Darfur, which it considers contradictory. The US called the situation genocide as early as July 2004 and consistently called on the UN to act decisively. However, it now seems prepared to block one of the few potentially effective courses of action that have been proposed so far, the prompt prosecution by the ICC of those accused of planning and perpetrating war crimes and crimes against humanity in Darfur. According to MRG, such a move could have real effect in bringing the crisis in Darfur to an end and as a deterrent against further atrocities in the region. British envoy to the UN, Sir Emyr Jones-Parry, has stated that the ICC is 'tailor-made' to try the crimes detailed in the UN report.

"The UN Security Council has responsibility for dealing with the situation in Darfur, and as members of that body the US and the UK governments should now accept the findings of the Commission ", stated Lattimer.

Source: Minority Rights Group.

RIGHT*column*

IRAN

No more empty promises no more child executions

On 19 January 2005, Iranian authorities executed Iman Farokhi for allegedly committing a crime when he was 17 years old. The same day, an Iranian governmental delegation in Geneva stated that Iran does not execute children under the age of 18.

The Government of Iran has a history of stating that it does not execute child offenders, but the facts tell a different story.

Since 1990, 11 child offenders have been executed. Currently there are at least 30 others awaiting execution. Among them are Ali, Sattar, Vahid and Mohammad T, all children under the age of 18.

Iran is already a party to international conventions that prohibit child executions, and for the last three years Iranian authorities have been considering legislation that would prohibit the use of the death penalty for offences committed by persons under the age of 18. It is time for Iran to make good on its international promises and stop child executions.

Source: Amnesty International.