



LAW opinion

"IN GOD WE TRUST, BUT DON'T LET GOD LOOSE!"

Freedom to profess and propagate religion

BARRISTER NASER ALAM

Can the Republic be a democracy, without guaranteeing fundamental human rights and ensuring effective participation by the people through their elected representatives? No. Can a law subordinate to the constitution be passed to override the Fundamental Principles of State Policy? No. Can a legislative framework validly exist in contravention of the Fundamental Rights guaranteed under the constitution? No. Is "equal protection of law" only limited to police and judicial protection? No. Can a law sustain a call for democracy and constitutionality if a "protection of law" is discriminatorily withdrawn or unjustifiably restricted? No. Can the legislature "gag" the electoral rights of the aspirants of votes and voters on the issue of "religious belief"? No. Can "freedom of the press" be withdrawn on the ground of "religious propaganda" to enlist voters? Mostly no. Is propagating "religion" for getting voter's response against securing "the rule of law" pledge under the constitution? No. With so many negative attributes, a recent demand has been made to "criminalise" religious propaganda in seeking the attention of the electorates.

something as part of one's normal behaviour) or "propagate" (to spread an idea, a belief, knowledge etc more widely) is a constitutional guarantee. Such guarantee has its historical base in religion and not on secularism. This guarantee has been expressed in the constitution in most unequivocal terms than for example right to property or freedom of profession or occupation, or even freedom of speech and expression.

However, if public order and morality necessitates, state can impose "some restrictions of temporary nature", but cannot

I wonder whether there is a pressing "public order and morality" need to introduce a perpetual "anti-religious-propaganda law" as demanded recently by some political corners. What is needed, on the contrary, is a practice and consensus denouncing "all" forms of discrimination and inequality, including the recent gross injustice done to a particular religious sect. More fundamentally, shall the constitution, representing the wish of the people, adopt a state policy of discrimination in the process of electing the people's representatives? The answer

cratic society, what has gone wrong with religious propaganda? A close examination will reveal that "rule of law" is a fundamental aspiration of all religion. If citizens wish to exercise their electoral rights based on a religious call for democratic values, equality and rule of law, a free and democratic mind cannot comprehend the demand for "criminalisation" of such a call.

The current demand, well publicised through the participation of constitutional gurus, falls foul of this fundamental guarantee. It tends to replace the consti-

tries, religion is at the heart of politics, so as globalisation, and secularism. They do not go hand-in-hand in many aspects, but co-exist. This co-existence is a fundamental democratic value and has become an international norm. One may wonder how far this democratic principle has been prominent in the thinking of the parties who demanded withdrawal of a fundamental constitutional guarantee.

In a country where nearly all of the population, of all faith, practices religion, why should it be so "criminal" to seek vote on religious principles? The recent demand to criminalise such propaganda ponders one to think whether religion is an exception to "morality" and "public order" under Article 41. I did not find it; hope someone can document it, if it exists. Does the demand not entail so many fundamental changes to the constitutional guarantee of equality and freedom of speech and expression? In this context, I wonder where does the Article 39 exceptions engage properly and legitimately.

Ours is a progressive thinking society and a call to impose restrictions on electorate's choice is regressive, an insult on democracy and the sacredness of our cherished constitution. I also strongly feel that multi-culturalism has been seriously undermined by this most egregious demand. Not very long ago, the current Honourable leader of the opposition in the Parliament, stated "Once the Muslim Scholars had kindled the torch of knowledge when the entire world plunged into the darkness of ignorance and superstition", and also called upon the "Ulema-Mashaekhs" (an incomprehensible term for me) to come forward to send messages or shall I say give "dawah" to the people against corruption. I wonder whether that call was a call towards political scoring and in turn to get sympathy votes of some voters! Now, it is totally irreconcilable that a renewed demand has been made against banking on voters based on religious propaganda. The country has been blessed by the religious teachings of other faiths. In such circumstances, two aspects are crucial here; firstly, the inherent inconsistency in the approach towards "freedom of expression", and secondly, the delimitation of the legal scope of religious propaganda. I am not sure how the government will deal with this, but my call would be outright rejection of this "demand" for the sake of constitutional propriety.

The author is a Barrister at law, writes from Paris.



deny the rights in perpetuity; otherwise it would be equivalent to deleting the effect of Article 41 of the constitution and go against many other provisions. The addition of "Subject to law" in Article 41 has to be understood to its proper spirit. Curiously, Article 41 does not say, "subject to any restrictions imposed by law", as stated in other provisions. However, the higher judiciary and the scholars may interpret the differences inherent in these terms, a minimum standard pledged by the state cannot go to the extent of permanent denial of rights to "profess, practise and propagate any religion". In fact, it is a fundamental spirit of the constitution to strive to achieve a better standard of fundamental rights. Moreover, freedom to profess and propagate religion is a 'protection of law' guaranteed under the constitution. This protection cannot be withdrawn altogether, but limited restrictions can be applied only under the mandate of the consti-

shall always be in the negative in all cases, not selectively negative!

Our Fundamental Principles of State Policy guarantees fundamental human rights and freedom and "effective participation" by the people. This principle has to be applied by the state in making laws in the republic. I wonder whether the travaux preparatoire of the constitution rejected the possible nexus between freedom of religious propagation and effective participation and engagement of the people through such propagation. An effective participation underscores the need for freedom in participation. Freedom in participation is intrinsic to the freedom of thought and conscience. For example, legal or political conscience building on contemporary jurisprudence on corruption, economy, and warfare has impacted on how people form their electoral opinion, and vote. If such is permissible in a demo-

cratic essentially with a 'choice of political ideology', which is against the principle of democratic values and practices in a civilised society.

This demand also curiously surfaces the issue of 'constitutional ideologies' in democratic participation, which in turn engages one's mind on "discrimination and equality". In some modern democracies, equality of participation of all beliefs are allowed, be it religious or grounded on environment, and even animal rights. A belief system is not contradictory to the constitutional exercise of electoral rights. All political ideologies, be it secular, religious or other should compete in a modern democracy and it is the people who should in turn decide what they think is more suitable to their needs of governance. This is how modern democracies thrive, and shall be allowed to thrive. In the past people indeed rejected 'theocracies', and gradually established democracies. In some eastern and western coun-

RIGHTS investigation

UNITED KINGDOM

Proposed anti-terrorism measures threaten fundamental rights

Counter-terrorism measures presented by Prime Minister Tony Blair, coupled with some proposal for special anti-terrorism courts, are deeply worrying, said Human Rights Watch. Some of the measures under discussion appear to be in outright breach of the U.K.'s human rights obligations and others are so ill-defined and overbroad that they risk criminalizing valid forms of dissent and undermining freedom of religion, said the group.

The proposed measures include the deportation of foreigners deemed "extremist" to places where they might be at risk of torture; a new offence criminalizing speech that amounts to "indirect incitement," including speech that justifies or glorifies terrorism; extended time periods for pre-trial detention without charge; and the closure of places of worship used to "foment extremism." A proposal is also under consideration to establish special anti-terrorism courts with some proceedings held in secret, court-appointed advocates to represent a suspect, and no access to evidence by the suspect.

"The U.K. government must protect the public from acts of terrorism," said Holly Cartner, executive director of Human Rights Watch's Europe and Central Asia division. "But the government assumes that the public and the courts will readily accept measures that could implicate the U.K. in torture, arbitrary detention, unfair trials, and stripping people of their right to voice dissenting opinions and practice their religion. The authorities are grasping at straws, instead of setting a rational and effective course that provides security and protects rights at the same time." Deporting a person to risk of torture violates U.K. and international law. The prohibition is absolute and permits no exceptions, even on national security grounds. The government has said it will seek "diplomatic assurances" from governments in countries where torture is practiced to effect such transfers.

In a June 23 letter to Prime Minister Blair, Human Rights Watch warned that experience has shown that diplomatic assurances from regimes where torture is routine do not provide an effective safeguard against such abuse. Blair has said that, "should legal obstacles arise," he will seek to amend the U.K. Human Rights Act to accommodate such transfers.

The proposed measures also call for the criminalization of some forms of speech, including "justifying or glorifying terrorism" and the expres-

sion of "extreme views that are in conflict with the U.K.'s culture of tolerance," whether uttered or penned in the U.K. or abroad. The government has proposed that persons within the U.K. would be subject to deportation for such a speech offense and those seeking access to the country would be excluded from entry if their speech was deemed to pose a threat to national security, public order, or the U.K.'s relations with a third country. Such vague definitions of prohibited speech raise serious concerns that the measure is overbroad and could criminalize valid dissent. Moreover, the absence of a geographical limit would make it extremely difficult to draw a link between offending speech and any violence suspected of having resulted from it outside the U.K.

The proposal to establish special anti-terrorism courts raises

based on secret evidence, with little access to effective counsel harken back to the Belmarsh debacle. These proposals implicate the freedom to manifest one's religion or beliefs in worship, practice, or teaching. The U.K. government can only impose limits on such rights in very narrow circumstances prescribed by international law. Collective punishment is not only illegal, but also particularly divisive in the current climate. The government should take into consideration the profoundly negative impact that such measures could have on the affected communities. "The punishment of an entire community is not the answer. If there is evidence that a person has committed a crime, specific charges should be brought against him or her," said Cartner. "The closure of mosques or



serious concerns about the erosion of fundamental fair trial standards, including access to counsel and evidence, and arbitrary detention. Security-cleared "special advocates" could hear evidence against the accused in closed hearings, but would not be able to reveal any of that evidence to the accused or to his or her chosen counsel. A single judge would decide whether and how long a person could be held in preventive detention without charge or trial based on the evidence. "The U.K. government has already been brought to book for its indefinite detention regime," said Cartner. "Secret hearings,

other houses of worship could be perceived as labeling an entire community as somehow involved in terrorism. This is hardly the way to inspire confidence in certain communities, the Muslim community in particular." A consultation paper on the deportation and exclusion measures is currently open for public review and comment. Draft proposals reflecting all the measures are scheduled to be presented to parliament in September.

Source: Human Rights Watch.

LAW event

Enact National legislation for protecting refugees

SHAILA SHAHID

Media' in the city.

BANGLADESH should adopt national legislation for the protection of asylum seekers and refugees. This will enable to handle the problem in more humane and effective ways and enhance country's image in terms of implementation of obligations promised through signing and ratification of different human rights instruments.

Enactment of a law in Jatiya Sangsad regarding the refugee issue is a need of the hour though Bangladesh has not yet signed the International Refugee Convention 1951. The opinion came from a workshop on 'Refugee Rights and Role of the Media' organised on August 18, 2005 at a city hotel by the United Nations High Commissioner for Refugees (UNHCR).

UNHCR Representative to Bangladesh Christopher Beng Cha Lee criticised the government for not signing the 1951 UN Convention on the status of refugees to protect basic human rights of the refugees in the country. "The government does not allow us to make arrangements for minimum standard houses for Rohingya refugees, education of their children, plantation in their camps and teaching them Bangla language that they speak," he said at a workshop on 'Refugees' Rights and Role of

"Politicians don't have time to listen to us, it is a shame for the country," he added. Bangladesh government should understand the UNHCR is also working to change the situation in Myanmar and that Rohingyas will not be here permanently. So it should not take the issue politically, Lee insisted. At the inaugural session, in his welcome speech, he urged all to be aware of the refugee issue.

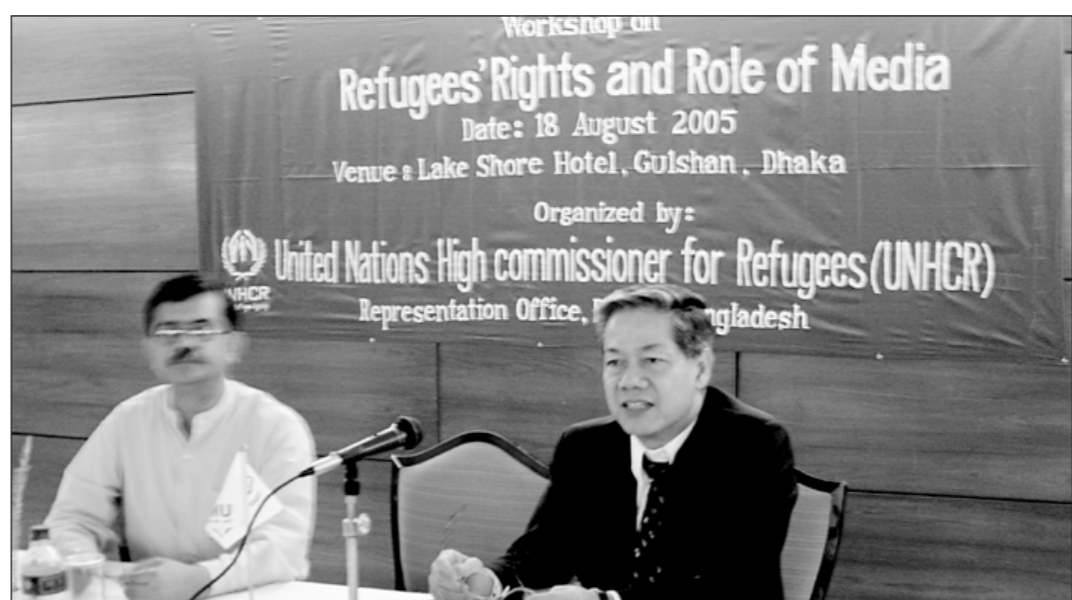
He said, "The refugee crisis often arise from political reasons, but humanity should be considered above all limitations and obstacles."

He, however, said the UN organisation faces challenge in every country as it works with those who are not nationals of that particular country.

Naim Ahmed, an advocate of the Supreme Court and expert on the issue, insisted on signing the Refugee Convention 1951.

He said, "None can rule out the possibility of facing the refugee problem, as Bangladesh is now facing it with the Rohingyas." "So if we become a signatory to the Convention it will help us protecting our interests", Naim said adding, "After signing, everything related to refugee crisis become an international liability and the burden shared with the world usually becomes lighter."

Naim described in detail the ins



and outs of the 1951 Convention with special focus on Bangladesh perspective in his presentation, "The Refugee Convention and Adoption of National Legislation on Refugees: Bangladesh Perspective." Before signing the Convention, Bangladesh can introduce a separate law regarding management and other matters related to refugees.

The Jatiya Sangsad should pass the law to save the country's interest as, often seen in global examples, the smaller or weaker states have to face enormous pressure from the stronger neighbours in this regard, Naim opined.

Advocate Naim Ahmed of the Supreme Court said though Bangladesh did not sign the UN Convention on refugees, it could not stop Rohingya migration to it. "Unidentified Rohingyas coming in large number to the country are likely to cause more social or economic problems, by spreading out across the country," he said. If Bangladesh signs the convention, there will be a legal framework to identify if they are economic migrants, criminals or refugees. The international community will also come forward to help solve the problems, he pointed out. Bangladesh might face pressure from stronger neighbours in the absence of any legal framework on refugee issues, he thought.

Dr CR Abrar, executive director of Refugee and Migratory Movement

Research Unit, regretted that the civil society in the country is indifferent to protection of refugees' rights.

He recalled that during the Liberation War, a large number of Bangladeshis took shelter in a neighbouring country.

He called upon journalists to write reports on refugee issues on humanitarian and legal grounds.

UNHCR National Protection Officer Uttam Kumar Das also spoke at the workshop attended by 12 journalists from newspapers and the electronic media. There are now about 20,500 Rohingya refugees at two camps in Cox's Bazar and many more unregistered ones are spread across the southeast border districts of the country.

LAW Desk

LAW week

Tough anti-terror steps must to protect image

Head of EC Delegation Ambassador Esko Kentschynskyj and British High Commissioner Anwar Choudhury in separate meetings with Foreign Minister M Morshed Khan said Bangladesh has to take the terrorism issue seriously to protect its trade, investment and image abroad. "It has to be taken seriously," Kentschynskyj told reporters after his farewell call on Morshed at the minister's office. He however appreciated the government steps taken so far to deal with the post-August 17 situation. "We're encouraged by the steps taken by the government and we hope trade relations between the European Union (EU) and Bangladesh will continue the same way as it was in the past," he said. Asked about any negative impact on Bangladesh's image after the blasts, he expressed the hope appropriate measures to arrest and punish the culprits would restore confidence of the EU and others in Bangladesh.

The European Union diplomat also expressed the hope Bangladesh would continue enjoying good trade relations with its largest export market, the EU. UNB, Dhaka, August 29.

4 Rab men jailed for robbing cattle trader

A Dhaka court sentenced four members of Rapid Action Battalion (Rab) and their two sources to five years rigorous imprisonment (RI) for robbing a cattle trader of Tk 7.8 lakh. The convicts are Sergeants Atiqur Rahman and Waliullah, Assistant Sub-inspector (ASI) Rafiqul Islam, constable Khorshed Alam and their two sources Mofizur Rahman alias Babul and Masud Mridha. The convicts were accused of robbing a cattle trader in the Mirpur area of the city on March 23.

All the convicts except Masud Mridha were present during the delivery of the verdict.

Metropolitan Magistrate Mohammad Towfiqul Alam of the Speedy Trial Court-4 handed down the sentence. The court also fined Tk 5,000 each, in default they will have to serve 30 more days of RI. The complainant will be returned Tk 2,45,500 recovered from Waliullah and Tk 10,000 from Khorshed after disposal of the appeal, if the convicts file, the court said. Complainant Ratan Ali, who was present in the court, expressed his satisfaction over the verdict. The Daily Star, August 30.

Rules of Mustaque, Sayem, Zia unlawful, declares HC

In a historic verdict, the High Court declared the fifth amendment to the constitution illegal, meaning the rules of Khandker Mushtaque Ahmed, Abu Sadaat Mohammad Sayem, and Maj General Ziaur Rahman from August 15, 1975 to April 9, 1979 were unlawful. The

Militant forces, absence of rule of law threat to human rights

Growth of militant forces, absence of rule of law, extrajudicial killings and impunity to criminals are posing a great threat to human rights in the country. Moreover, repression on religious minorities and violation of the constitution in the running of state affairs are damaging the country's image abroad. This was the unanimous view of speakers at different sessions of a two-day convention titled "Unity against Terrorism" that began in the city. Leader of the Opposition Sheikh Hasina spoke at the inaugural session of the convention.

Presenting the keynote paper at a session on "Terrorism: An environment without justice", Prof Borhanuddin Khan Jahangir said a secular republic is being butchered systematically to create a religion-based state. He said law enforcers are killing people without trial, which is not acceptable in a democratic society. Zealots are preparing themselves to turn the country into a theocratic state with active support from the BNP-led coalition government, he mentioned.

AL presidium member Suranjit Sengupta said those who believe in a theocratic state cannot uphold the spirit of the country's constitution. Criminals are getting indemnity undermining rule of law professed by the constitution, he added. Chaired by justice KM Sobhan, the session was also addressed by economist Dr Atiur Rahman, Prof Harun-ur-Rashid and Dr Rashid-e-Mahbub. The Daily Star, August 31.

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