



RIGHTS investigation

Guaranteeing the rights of the slum dwellers

MD. ZAHIDUL ISLAM

If you have ever been to passport office of Agargaon or adjacent areas, surely you have noticed a slum near the passport office. It is familiar to most of the people as Agargaon Old Market Basti or Passport Office Basti. It covers almost one and half acres of land sheltering about two hundred families -- more than one thousand uprooted, displaced helpless people. These people have been living here for more than 25 years. Most of them took shelter here after they had lost their homestead and

running various valid jobs. Some of them are small shop-owners on the road adjacent to the Basti, some of them day labourers, rickshaw-pullers as well as garment workers. In fact, through their consistent effort, they all have been struggling to lead a good life. This write-up is, however, not just to state their life struggle, but to focus on the most grave situation awaiting for those slum dwellers. They are again going to be uprooted or displaced from their shelters. And it is very ironical that this time they are going to be displaced not by river erosion, flood or drought, but by the human authorities. Yes, the government is

abovementioned story seems quite pertinent. More than one year ago the inhabitants of the said slum came to know from a reliable source that Housing and Public Works Department of Bangladesh Government has decided to evict the slum dwellers. On query they obtained two letters one requiring deployment of police force and the other requiring the cutting of electricity line. The letters also indicated that the slum dwellers would be evicted and all the structures therein and belongings of the residents will be bulldozed.

After obtaining the letters, Nurul Islam Mistry and Parveen Akhter, on behalf of the residents of the slum approached Bangladesh Legal Aid and Services Trust (BLAST) and Ain O Salish Kendra (ASK) for legal aid. Considering the nature of the public cause and state of the slum dwellers BLAST and ASK came to give legal assistance to them so that their fundamental human rights are not violated.

On 26.09.2004 BLAST and ASK jointly filed a writ petition before a vacation bench invoking the Article 102 of the Constitution which was registered as Writ Petition No.5588/2004. After motion hearing the vacation bench stayed the eviction order, and ordered the authority not to disturb the dwellers for next three months, although the slum was partly evicted before the stay order. However, after the order the authority stopped the eviction process. The slum dwellers then took a sigh of relief that they were now under the protection of legal arms.

Following this High Court order the slum dwellers have passed the last one year with a hope that better days would come. But unfortunately no better days have ultimately come for them. Conversely, the legal arms have refused to protect their rights.

The fact is that on 29th August 2005, after full-length hearing, the learned Judges of the High Court Division delivered the judgment discharging the Rule and directing the respondents to start the eviction process after 30th September 2005, and thereby vacated the stay. Thereafter the petitioners preferred a Provisional Civil Petition For Leave to Appeal along with stay application against the said judgment which has also been refused. Eventually it goes that now there remain no obstacles before government to evict them any time after 30th September 2005.

However, while writing this I have not got any copy of the judgment as it is yet to be signed. So, it is not possible to see on which grounds the Honourable Court has refused the Rule. Hence, as an alternative means I talked to the petitioners of the case from where I learned some arguments on behalf of eviction of the slum, submitted by government parties. According to government assertion, huts shown by the petitioners as slums are actually so many shops remaining on the government acquired land from where various illegal and unauthorised businesses are run in the shadow of slums. So, in fact, they are illegal occupiers of government land. And these illegal occupiers, involved in illegal activities, need to be evicted to keep law and order situation under control. Furthermore, they are threat to safety and security of the VVIP participating in the upcoming SAARC conference. In a word, government tries to prove that the slum is not really a slum but a place for conducting illegal and subversive activities.

Whatever may be government's arguments, it is clear like daylight that Agargaon Basti is a slum recognised by the government itself, as various programmes e.g. informal education programme, primary health care and family planning programme, sanitation and micro credit programme etc have been undertaken here with the prior knowledge, awareness and cooperation of various ministries and departments like NGO Affairs Bureau, Ministry of Women and Children Affairs etc. Again, as per safety and security matter, the government fails to show that actually there exists any insecurity due to the existence of the slum. In the same way, government fails to link any slum, let alone the Agargaon Basti, with the recent bomb blasts or terrorist attacks.

Before writing this article, I talked to the secretary of the Daridra Bimochon Baboshai Bohumukhi Smabay Samity Ltd, a registered organisation of the slum-dwellers. He tells that there is no record of illegal activities or drug business or smuggling in the Basti. He informs that police frequently visits the slum but there is no bad record in police book. Of course, he admits that there have been some arrests on false accusation of those who protest government initiative to evict the slum. Finally he adds that if



government has any proof that the slum dwellers are engaged in any subversive activity, then it should take specific action against those so-called culprits. He asks, is the eviction all solution?

I don't know what will be government's answer to this question. But the government must consider the fact that the eviction of the slum may eliminate the anticipated threat to security, but it will simultaneously violate the fundamental rights of equality under law and equal protection of the law and the right to life as guaranteed by the Constitution. Is not the government responsible to uphold these rights of poor helpless law-abiding slum dwellers who have been denied the blessings of nature?

It is true that the government may evict the slum on any day after 30th September 2005. And the government seems waiting for such an occasion. Unfortunately after this judgement such destruction will be 'lawful'. But it is also true that 'lawful' act does not

always mean justice. Example is the present case. Destruction or eviction of Agargaon Basti will no doubt frustrate the natural justice. If the government thinks that the eviction is essential for greater national interest, it can take necessary steps to rehabilitate those slum dwellers.

In fact, government should think deeply before taking further action regarding Agargaon slum. The democratic government should not ignore the matter that future lives of more than one thousand men, women and children are depending on a single decision of it. The time is very limited. Government has to take its decision before the sky of Agargaon becomes heavy with the cries of thousand innocent helpless people.

The author is a legal researcher.



PHOTO:AFP
belongings to river erosion. The others are basically landless cultivators coming from different nooks and corners of the country. They maintain their lives by going to evict the slum on any day now. And it is going to be done lawfully. You may ask how? Hence, a brief mention of the background of

Star LAW analysis

Role of the judiciary in military intervention

BARRISTER MD. ABDUL HALIM

CONCLUDING PART OF THE TWO PART STORY

Doctrine of necessity

The present Pakistan constitution was adopted in 1973 when Zulfikar Ali Bhutto was the Chief Martial Law Administrator and president. But in 1973 General Ziaul Haque, the Chief of Army led a military coup; ousted Bhutto and his government; dissolved parliament; suspended the constitution and declared martial law. The legality of this martial law came up for consideration in Begum Nusrat Bhutto V The Chief of Army Staff and Federation of Pakistan. The Supreme Court

extra-constitutional step taken by the Chief of Army staff to overthrow the government of Mr. Bhutto, as well as the provincial government and to dissolve the Federal and Provincial legislature stand validated in accordance with the doctrine of necessity."

Dilemma for the judges

Thus when martial law is declared just to capture power through military coup or to oust the existing government for any other purpose, this martial law does not have any legal validity. But due to pressure of realities and facts or under a threat the judges have tried to legalise this type of mar-

pronouncing; they will either be suspended or their jurisdiction will be restricted or the judges concerned will be removed from office by the new regime. Again, it is improbable that the judgment of the court would have made the slightest difference to the continuance of martial law, because the military authority does not hesitate to frustrate such judgments by issuing decrees or proclamation. For example, when the Lahore High Court of Pakistan in Malik Mir Hassan V. State declared the proclamation of martial law declared 25th March, 1969 illegal, the military authority issued the President's Jurisdiction of Courts (Removal of Doubts) Order, 1969 by which the courts were barred from questioning the exercise of powers by the Martial Law Authority and the decision in contravention of this would be deemed to be of no effect. Likewise when the Supreme Court of Nigeria in Lakanmi V. Attorney General declared the military coup and martial law illegal, the decision of the court was made ineffective by the military government by issuing the Federal Military Government (Supremacy and Enforcement of Powers) Decree, 1970. The situation has best been explained by Justice Fieldsend in Madzimbamuto V. LardnerBurke N.O. and another: "It may be a vain hope that the judgment of court will deter a usurper, or have the effect of resorting legality, but for a court to be deterred by fear of failure is merely to acquiesce in illegality."

Thus the legality of so-called martial law which is followed by a military coup or revolution does not depend on the courts justification or judgment; rather it conversely controls the courts and judges. Judges are simply forced into a position of accepting the facts and the laws as they are, whether he likes or not. He has been taken over by events." An Argentinian Judge (Oyharte, J.) has aptly described the dilemma of judges: "The Supreme Court cannot modify the course of history. It lacks the power necessary to do this. When it is faced with the overthrow of constitutional authorities and the installation of a government of force by what have come to be called 'revolutionary' means, the judges of the court can do three things: (i) resigns, thus transferring the responsibility of the decision to others;

(ii) simply accepts the fact; (iii) try to save those institutional values which can still be saved."

But the judges should make choice for the third alternatives because, as mentioned by Mastafa Kamal. J. 'resignation of judges in revolutionary situations has not been uncommon, but except for the ripple that it causes in the body politic neither the judges by resignation en masse or in ones or twos have been able to deflect the revolutionary regime from following the course of action it chose to pursue nor have the people at large carried the mantle from the judges to overthrow the extra-constitutional force. On the other hand when judges resigned in protest against an unconstitutional take-over or when judges were removed because of their obstruction to the wishes of the new authority, their successors on the Bench merely conformed to the wishes of the new regime and often they were also of so low a calibre that justice was no longer administered properly.

Martial law in Bangladesh

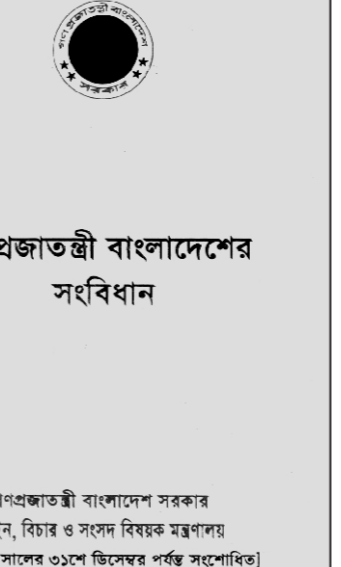
The Constitution of Bangladesh does not envisage the imposition of martial law. Throughout the text of the Constitution, no reference has been made to Martial Law. Although the term 'Martial Law' had duly occurred in Article 196 of the 1956 Constitution of Pakistan and Article 223-A of the 1962 Constitution of Pakistan, the Articles which enacted provisions for passing an Act of Indemnity in relation to acts done in connection with Martial Law Administration, it has significantly been omitted form corresponding Article 46 of the Constitution of Bangladesh that empowered parliament to pass an Act of Indemnity in respect of any act done in connection with the national liberation struggle or the maintenance or restoration of order in any area in Bangladesh. This shows that although in Pakistan Articles 196 and 223A of the 1956 and 1962 Constitutions respectively, recognised the possibility that Martial Law might be imposed under the common law doctrine of necessity for the purpose of 'the maintenance or restoration of order in any area in Pakistan', no such recognition was given in Bangladesh where the phrase 'Martial Law' was omitted from the analogous Article 46 of the Constitution of Bangladesh. Therefore, it appears that in the Constitution of

Bangladesh there is no provision whatsoever for the imposition of martial law under any circumstances even for the sake of restoring law and order.

But like some other commonwealth countries martial law was imposed unconstitutionally in Bangladesh twice first, on the 15th August, 1975 and second, on the 24th March, 1982.

On 15th August, 1975 Sheikh Mujibur Rahman, the then President of Bangladesh was brutally killed with his family members by a military coup. Following this assassination martial law was declared throughout the country. Khandaker Mostaque Ahmed assumed the office of the President. Though martial law was imposed, the Constitution was not suspended; it was to remain in force subject to martial law proclamation, regulations, orders etc. This martial law continued for 3 years and 7 months. On the 5th April, 1979 the Chief Martial Law Administrator and President Ziaur Rahman got his extra-constitutional regime legalised through the parliament which was elected during the continuance of martial law and on 6th April martial law was withdrawn.

For the second time martial law was imposed by the then Chief of Army Lieutenant General Hussain Muhammad Ershad ousting the civil government of Justice Abdus Sattar on 24th March, 1982. This time the Constitution was suspended. This martial law was kept in force for 4 years and 7 months. On 10th November, 1986 General Ershad legalised his regime through a parliament which was elected during the continuance of martial law and on the next day martial law was withdrawn. It is pertinent to note here that unlike the case of Dosso and Asma Jilani in Pakistan, in Bangladesh the legality of the declaration of martial law was not discussed by the Supreme Court in any case either during the continuance of or even after the withdrawal of martial law. But some fringe questions relating to martial law came up for consideration before the courts



in some cases (like Halima Khatun V. Bangladesh 30 DLR, Sultan Ahmed V. Chief Election Commissioner 30 D L R ... etc) the courts declared that martial law proclamation regulation etc. were supreme law and the Constitution lost its character as the supreme law. In this respect, the observations of Fazle Munim, J. in the case of Halima Khatun V. Bangladesh is worth quoting: "What it appears from the Proclamation of August 20, 1975 is that, with the declaration of Martial Law ... the constitution of Bangladesh ... (has been made) subordinate to the Proclamation and any regulation or order as may be made by the president in pursuance thereof ... Under the Proclamation ... the constitution has lost its character as the supreme law of the country. There is no doubt, an express declaration in Article 7(2) of the constitution to the following effect," This constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this constitution that other law to the extent of such inconsistency be void." Ironically enough, this Article, though it still exists must be taken to have lost some of its importance and efficacy. In view of ... the Proclamation of the supremacy of the constitution ... is no longer unqualified."

The author is an advocate of the Supreme Court of Bangladesh.

LAW news

China: End Censorship of Internet

The Chinese government should repeal laws and regulations aimed at complete government control of the Internet, Human Rights Watch said in a press release. Leaders of democracies must press President Hu Jintao at every meeting to adhere to international standards on freedom of expression and to tear down its Internet "firewall."

China's latest clampdown came on September 25, when the Ministry of Information Industry and the State Council, China's cabinet, introduced "Rules on the Administration of Internet News Information Services to ensure that news reports are 'serving socialism,' 'upholding the interests of the state,' and 'correctly guiding public opinion.'" As Xinhua, China's official news agency, stated, only "healthy and civilised news and information that is beneficial to the improvement of the quality of the nation, beneficial to economic development and conducive to social progress" will be allowed.

Official Chinese sources explain away the new regulations by invoking "national security," the "public interest," "state secrets," and "social order," ever-shifting terms left purposefully undefined in the interests of putting an end to words or activities that might challenge one-Party control. The new regulations, an update of those in effect since 2000, hit at both websites and e-mail. They aim to prevent distribution of any uncensored version of a news event or commentary. Restrictions include all news related to "politics, economics, military affairs, foreign affairs, and social and public affairs, as well as...fast-breaking social events," such as a coal mine disaster, an official demotion, a strike, or an organised protest against environmental degradation.

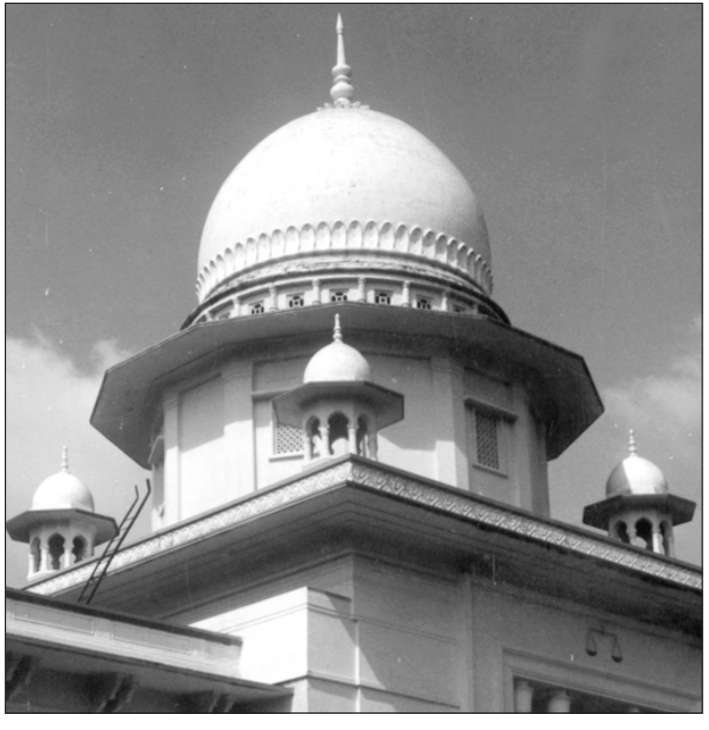
To comply, Internet portals must take their news and commentary directly from official news sources. As for e-mail, no private group or individual, even those using "Short Message Service" (SMS) to contact cell phone users, may distribute news or news analysis to a list without registering as a "news organisation," a move that ensures that only groups that parrot the government's version of events will have e-mail distribution privileges.

Human Rights Watch said that by decreeing that Internet news shall not include content "inciting illegal assemblies, associations, marches, demonstrations and gatherings that disturb social order" or furthering "activities in the name of an illegal civil organisation," China's leaders seek to prevent the strengthening of civil society mechanisms. They fear the Internet's use as an organising tool for unsanctioned causes or protests. "The new regulations make the government and the Chinese Communist Party the only arbiter of what is 'healthy and civilised,'" said Adams. "The Chinese authorities apparently think that keeping more than 100 million Internet users in the dark is better than allowing the peaceful exchange of opinions or expressions of grievances. This is Big Brother at its worst, and out of step with the direction of the rest of the world in the 21st century." Human Rights Watch said that reports "jeopardising the integrity of the nation's unity," promoting superstitious beliefs, questioning religious policy, or spreading rumors continue to be banned as they were under the earlier regulations.

More than 60 Chinese are serving time in prison for the peaceful expression of their views over the Internet. Zheng Yichun, a freelance writer and poet, was sentenced on September 22, three days before the new regulations were issued, to serve seven years for essays on the Internet advocating political reform; on July 28, a Bengbu (Anhui province) court sentenced Zhang Lin to a five-year term for posting Internet articles and essays that were "contrary to the bases of the constitution" and "endangered national security"; and, on April 27, in a case in which Yahoo! provided his name to the authorities, Shi Tao received a ten-year term for sending information through a Yahoo! email account about a Communist Party decision to a New York-based website. Mr. Shi's appeal was denied on June 2.

Human Rights Watch condemned the trend of major American-based companies assisting the Chinese government in its efforts to censor free expression on the Internet. Google has agreed to exclude from a list of links publications that the Chinese government finds objectionable. Microsoft has capitulated to China by sending an error message to Internet users in China who use Microsoft's search engine to search for the Chinese words for democracy, freedom, human rights, or demonstration, among others. Those who attempt to search for these words receive an error message announcing "this item contains forbidden speech." And Yahoo! recently provided information to Chinese authorities that led to the ten-year sentence of Shi Tao. Yahoo! later released a statement saying that it had to "ensure that its local country sites...operate within the laws, regulations and customs of the country in which they are based," without referring to any ethical principles that would also guide its corporate policies. "There have been great claims by Internet companies and enthusiasts that the Internet would be an unstoppable tool for free expression and the spread of democracy," said Adams. "But when companies like Yahoo!, Microsoft and Google decide to put profits from their Chinese operations over the free exchange of information, they are helping to kill that dream."

Source: Human Rights Watch.



declared martial law and military coup by Ziaul Haque valid; it overruled the decision of Asma Jilani. But this time the court did not rely on the doctrine of efficacy; rather it resorted to the doctrine of state necessity. The court said: "... It was in this circumstances that the Armed Forces of Pakistan ... intervened to save the country from further chaos and bloodshed to disaster. It was undoubtedly an extra-constitutional step, but obviously dictated by the highest consideration of state necessity and welfare of the people. ... The imposition of martial law was compelled by high considerations of state necessity and welfare of the people, the