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FACTfile

SADDAM HUSSEIN'S EXECUTION

A serious miscarriage of justice

BARRISTER HARUN UR RASHID

SADDAM Hussein was hanged in early morning on 30th December, the first day of Eid ul Zoha. It was a gross miscarriage of justice and is pure revenge by Shi'ite Iraqi government. Some say it borders on barbaric justice. His execution is simply a judicial murder.

He was a cruel dictator and he had little conscience. He should be tried for his crimes but the trial should be fair and above board.

What is justice?

An alleged criminal has a right to get both substantive and procedural justice. Substantive justice means that an accused should be punished for his alleged crime but confession of guilt by torture is not allowed because it violates procedural justice.

Procedure of the trial is pre-announced and prescribed so that the accused is aware of the processes of trial and in midway of a trial, procedure cannot be changed. For instance, during a football game, the goal posts cannot be shifted or changed. Both substantive and procedural justice are important for trial and that is why for criminal justice, Bangladesh has not only the Penal Code but also the Procedural Code.

Why was he hanged?

From the very beginning, there is a view that President Bush has been keen to hang Saddam Hussein for two reasons: (a) he wants to take revenge on the attempt of assassination when his father visited Saudi Arabia some years ago by alleged Saddam's supporters, and (b) to show the Iraqi people that Saddam Hussein will never come back to power so that Sunnis would stop violence.

It is suspected that motivated by the aforesaid considerations, President Bush welcomed the execution of Saddam, hailing as an "important milestone" on the road to building an Iraqi democracy but warned it will not end deadly violence. It is not understood how the President could arrive at this conclusion when Saddam Hussein has had no apparent role in violence.

Moreover the Baker-Hamilton report on the Study of Iraq recommended, among others, efforts for reconciliation between Shi'ites and Sunnis as one of the strategies for Iraq. How can reconciliation be done when a deposed Sunni leader of Iraq was hanged? It is simple as that.

There are four groups that have been fighting in Iraq against the US occupation. The Iraqi nationalists, the Al-Qaeda followers, the Shi'ites and lastly Sunnis are fighting against foreign occupation. Each group has its own reasons to fight and create instability in the country.

Why does the trial constitute gross miscarriage of justice?

There are many reasons and some of them deserve mention as follows:



(i)Saddam was charged with crimes against humanity. It is an international crime. Many legal experts say an international tribunal should have conducted the trial of Saddam Hussein. The tribunal could have a few Iraqi judges in the tribunal.

(ii)it has been reported that the court failed to provide in advance to defence lawyers important documents. As such they could not prepare defence case for Saddam Hussein

(iii)Reportedly there was continuous political interference on the court by the government. The last chief judge was sacked by the government. The independence of the court was severely curbed.

(iv)The court was created during the 15th month American occupation in Iraq. Many legal experts say that it was an American trial for Saddam Hussein, executed and remotely controlled by the US.

(v)Furthermore the Court lost track of paper work and kept no written transcript, according to the New York-based Human Rights Watch. The verdict of death sentence was challenged by Human Right Watch in its 97-page report indicating that the Iraqi Court was not equipped with such a complex case of international crimes.

What implications of hanging ?

The hanging has made Saddam Hussein a martyr in the Sunni world. Libya has declared three day mourning. Afghanistan's President Karzai criticised the hanging. The people of the Islamic world from Morocco to Indonesia

(except Kuwait, Iran and Iraq) are shocked and expressed anguish at the hanging of a person whose trial was flawed from the start to finish, although the reactions from the government are muted.

Iraq is likely to experience more violence in the coming months. US soldiers will be killed and already 3,000 have been dead in Iraq. Sunnis and Shi'ite will kill each other through bombs and grenades. Some suspect that Iraq will be disintegrated into three separate zones or countries-dominated by Kurds, Sunni and Shi'ite. Saddam's hanging is a severe blow to the unity of Iraq.

The hanging will alienate further America in the Middle East and the Bush administration's story that it is an Iraqi trial without any American input or influence is likely not to be believed. People are not stupid to fathom the factors behind the hanging.

Many in the Arab world say that Saddam Hussein should have taken poison when he was captured by the US army. He was perceived a coward by Arabs. Hitler and Goebbels committed suicide before Russian army came to capture them. Many Arabs believe that he should have followed the same fate.

Death penalty is inherently cruel. Human life is not created by human beings, so they cannot take away life of an another human being. In this case, the hanging of Saddam as a result of a flawed trial is indefensible.

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Gender discrimination across the life cycle

Birth histories and census date reveal an unusually high proportion of male births and male children under five in Asia, most notably in India and China, suggesting sex-selecting foeticide and infanticide in the world's two most populous countries, despite initiatives to eradicate these practices in both countries.

More than 115 million children of primary school age do not attend school. For every 100 boys not attending primary school, there are 115 girls in the same situation. Missing out on primary school deprives a girl the opportunity to develop to her full potential. Nearly one out of every five girls in primary schools in the developing world does not complete a primary education.

In the developing world an average of 43 per cent of girls of appropriate age attend secondary school. Research shows that educated women are less likely to die in childbirth and more likely to send their children to school. A UNICEF survey of selected countries in Latin America, the Caribbean, South Asia and sub-Saharan Africa finds that on average, children with uneducated mothers are at least twice as likely to be out of primary school than children whose mothers attended primary school.

More than 130 million women and girls alive today have been subjected to female genital mutilation/cutting (FGM/C), which can have grave health consequences, including the failure to heal, increased susceptibility to HIV infection, childbirth complications, inflammatory diseases and urinary incontinence. The younger girls are when they first have sex, the more likely it is that intercourse has been imposed on them. According to a World Health Organization study, 150 million girls and 73 million boys under the age of 18 experienced forced sexual intercourse or other forms of physical and sexual violence in 2002.

Globally 36 per cent of woman between the ages of 20-24 were married or in union before they reached 18, most commonly in

sub-Sahara Africa and South Asia, where it is often a long standing tradition and difficult to protest. Premature pregnancy and childbirth is often a dangerous consequence of child marriage. An estimated 14 million girls between 15-19 years old give birth every year. If a mother is under 18 her baby's chances of dying in the first year of life is 60 percent greater than that of a baby born to a mother over 19. Babies born to mothers under 18 are more likely to suffer from low birth weight, under nutrition and delayed physical and cognitive development.

Every minute, a woman dies as a result of pregnancy complications, adding up to more than half-a-million women per year. Some 99 per cent of all maternal deaths occur in developing countries, with over 90 per cent of those in Africa and Asia. In 2000, two-thirds of maternal deaths occurred in 13 of the world's poorest countries. The same year, India alone accounted for one-quarter of all maternal deaths.

One out of every 16 sub-Saharan Africa women will die as a result of pregnancy or childbirth, compared to just one out of

every 4,000 in industrialised countries. Motherless newborns are between three and 10 times more likely to die than newborns whose mothers survive.

In parts of Africa and the Caribbean, young women aged 15 to 24 are up to six times more likely to be infected with HIV than young men their age. Women are at greater risk of contracting HIV of men, partly because of physiological reasons. But gender discrimination also plays a role, denying women the negotiating power they need to reduce their risk of infection.

High rates of illiteracy among women prevent them from knowing about the risks of HIV infection and ways to protect themselves. A survey of 24 sub-Saharan African countries reveals that two thirds or more of young women lack comprehensive knowledge of HIV transmission. Elderly women may face double discrimination on the basis of both gender and age. Women tend to live longer than men, may lack control of family resources and can face discrimination from inheritance and property laws. Very few developing countries have safety nets for older people.

The State of World's Children 2007, UNICEF.



LAWeducation

Need for studying International Refugee Law

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At present, the problem of refugees and internally displaced persons (IDPs) -- global, multidimensional and critical in nature -- has posed a great challenge and before the national and international community. The number of refugees and IDPs have increased enormously, particularly due to man made disaster or natural disaster as well.

Generally, a refugee is a person who is bound to flee his native place or residence or leave his country of origin owing to oppres-

sion, persecution, massive violation of human rights, war, poverty, flight from effects of natural disaster like flood, earthquake, drought etc.

International Refugee Laws deal with the rights, duties and responsibilities of the refugees and at the same time, with the duties and responsibilities of the host and refugee producing countries simultaneously. At bottom, International Refugee Laws comprising the international instruments (the 1951 United Nations Convention relating to the Status of Refugees, and its 1967 Protocol relating to

the Status of Refugees, 1949 Fourth Geneva Convention relating to the Protection of Civilian Persons in Time of War, Article 44, the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness) defines and determines, inter alia, basic standards for treatment, human dignity and value of refugees. Apart from international refugee laws, the international bill of human rights, some international declarations and instruments have shown keen interest to and importance of refugees issues, for example, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights which provide that,

(a)"No one shall be subject to arbitrary arrest, detention or exile" (Universal Declaration of Human Rights, Article 9);

(b)"Everyone has the right to seek and to enjoy in other countries asylum from persecution" (Universal Declaration of Human Rights, Article 14);

(c)Everyone has the "right to a nationality" (Universal Declaration of Human Rights, Article 15);

(d)"Everyone has the right to freedom of movement and residence within the borders of each State; everyone has the right to leave any country, including his own, and to return to his country" (Universal Declaration of Human Rights, Article 13; International Covenant on Civil and Political Rights, Article 12)

By establishing the UNHCR in 1949, the UN reaffirmed and recognised the responsibilities of UN for the international protection of refugees. International protection is based on human rights principles. Since the refugees do not

enjoy the protection of the country of origin, the international community must come forward to provide that protection.

For international protection one could rely on international legal Conventions and Declarations adopted by the UN or by the regional organisations, such as the OAU Convention or Cartagena Declaration for Latin America. In conflict situations, the 1949 Geneva Convention related to the Protection of Civilian Persons in Time of War and the Additional Protocols of 1977 assume particular significance.

In many areas both to the host and refugee producing countries, the refugee law remains unclear, obsolete even today. It is to be noted that no country from the Indian subcontinent became party to the 1951 refugee convention. But all the countries have a traditional and long experience of providing shelter and attaching dignity to the refugees. India has a long tradition of accepting refugees from other countries (e.g. Tibetan refugees and the Dalai Lama, Afghan and Iranian refugees). Pakistan accepted thousands of Afghan refugees after the troops of the Soviet Union entered Afghanistan in 1979. Nepal has provided shelter to refugees from Bhutan of Nepali origin.

The people of Bangladesh had been subject to genocide and crimes against humanity in 1971 by Pakistan's military junta. Around 10 million Bangladeshi nationals had to leave for India to escape the marauding Pakistan army. Many of the Bangladeshi nationals became refugees in India for a nine-month period till Bangladesh emerged as an independent country on 16 December 1971.

Further Bangladesh has been confronted with the flow of refugees from Myanmar (Burma). Thousands of refugees came in 1978 from Akyab (now named as Rakhine) and again in 1991 another flow of more than 200,000 such refugees took shelter in Chittagong and its adjoining areas. The refugees are commonly known as 'Rohingya'.

And in this context, International Refugee Law is obviously a sine qua non of the legal study, especially at the university level. Because knowledge of law will be incomplete and inadequate unless and until international

refugee law is studied and understood properly. And in doing so, today's slogan may be "Study refugee law and know your duties and responsibilities". With a view to fulfilling the call of slogans and imparting theoretical and practical knowledge on refugee law Department of Law and Justice, Southeast University, Dhaka, as the first university (both among private and public), has taken the unique opportunity and privilege to introduce international refugee law as a core course in the syllabus of graduate and post graduate programmes in consultation with and assistance from the UNHCR Bangladesh. True to say, refugee law has tremendous prospects and potentiality of protecting human rights both at national and international level. Keeping this important view in mind, the syllabus of this programme is designed to impart practical and theoretical law education on refugee and to cope with the demand of time, to overview asylum, statelessness of IDPs and refugees, its causes and the UNHCR etc, to help familiarise students with the principals and related issues of international refugee law, to sensitise the students how they can be utilised to assist legal aid for ensuring access to justice of refugees, as the next responsible members of bar and bench.

Though some public and private universities introduce international human rights law and international humanitarian law in the academic curriculum, the international refugee law, the part of human rights law, is yet to be introduced or somehow ignored. Needless to say, today's students of law are tomorrow's leaders and policy makers in national and international arena. Hence, they should be sensitized with, inter alia, refugee and IDP issues, legal instruments, asylum procedure, detention, restriction on freedom of movement, the issues on identity, travel and other documents, access to justice, political, economic, social and cultural rights as enunciated in the international bill of human rights, the UN charter and international instrument of refugee.

Being a student of law one should obtain knowledge, as a whole, as to who is a refugee and what are his or her rights under international law. What are the rights of those asylum

seekers who fail to qualify as refugees under the 1951 Convention and the 1967 Protocol? How can refugees be distinguished from economic migrants? Can the international community deny protection to those who claim not to receive protection from their country of origin? They should know what exactly is the link between violation of human rights and movement of refugees? To what extent are those violations the causes of mass exoduses? In what ways can the rights of refugees be violated in the process of asylum-seeking in host countries? Last but not the least, students ought to know what the relationship between repatriation and human rights is? Can repatriation be truly voluntary when the country of origin is unable, or unwilling, to guarantee respect for the civil, political, economic, social and cultural rights of its citizens?

In fine let me inform that the UNHCR, Bangladesh Bar Council, RAMRU, ELCOP, some individuals, print and electronic media, NGOs and, of course, Department of Law and Justice, Southeast University have their different programmes for the promotion and protection of International refugee laws. It is pertinent to note that EPG in South Asia has been doing a lot to disseminate and promote refugee law, mainly in drafting the South Asia declaration on refugees and model national laws on refugees. The public and private universities of Bangladesh should come forward to introduce international refugee law in their respective law syllabus and the syllabus of other courses to impart a complete human rights law education. And it should be done, at least, for the sake of respecting fundamental human rights and dignity of refugees and IDPs as human beings and at the same time, showing proper honour of the words of Mrs. Sadako Ogata: "The refugee issue must be put to all governments and peoples as a test of their commitment to human rights."

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