FOR YOUR *information*

Hartal, recent SC judgment and vulnerable public interest

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MOST of the newspapers reported the Supreme Court judgment on hartal on December 02, 2007 as: the Appellate Division of the Supreme Court overturned the High Court verdict that had declared violence and coercion for or against hartal a criminal offence. Though the crude form of the summary of the judgment is this, this created some confusion among public. Seeing the title of the news reports, some people just asked, how could Supreme Court declare the destructive hartal legal? Thankfully, some news reports were articulate to present the real fact of the case that is as follows.

The High Court Division on February 15, 1999 issued suo moto rule seeking explanation as to why call for and enforcement of hartal would not be declared illegal and a criminal offence. After hearing the case, on May 13, 1999 the High Court bench delivered the verdict declaring hartal a political and constitutional right. But at the same time the court declared violence and coercion for or against hartal (general strikes) a criminal offence and ordered the law enforcers and courts to take legal action against any person who would force anybody in favour or against hartal. However, the verdict was appealed against, and after eight years of the appeal, the Appellate Division took up the appeal for hearing on November 21 and delivered the judgment on December 02, 2007. This judgment has two important aspects; one the one hand, it uphold the HCD decision that hartal is a political and constitutional right, one the other hand, it overturned its declaration that violence and coercion for or against hartal is a criminal offence. As per Supreme Court observation, for legal action against any person for any law and order infringement, provisions are already there in criminal laws, including the Code of Criminal Procedure and the Penal Code; hence there is no need to declare such infringements criminal offences.

This judgment is not at all unexpected to the people who are aware of the recent decisions of the Supreme Court on the similar issue. In 2000, in Khondoker Modarresh Elahi Vs The Govt of Bangladesh case (21(2001) BLD (HC) 352), the High Court Division observed that hartal, as a democratic right, should be observed as well as should be allowed to be observed peacefully without resorting to any illegal activities. Of course, on 10 June 2007, a High Court Division bench, following a public interest litigation, imposed a ban on the Awami League-led opposition combine's 'siege of Dhaka' on June 11. But the order was criticised and went unheeded. Maybe, this experience has restrained the Supreme Court to take a quite opposite decision declaring hartal illegal and hartalio destruction as special criminal offence, which many think would have been most welcome by the majority of the pubic. Or, maybe, the Supreme Court did not want to exceed the constitutional limit in the name of judicial activism. In India, the High Court of Kerala, in the case of Bharat Kumar Palicha and another Vs State of Kerala and others, AIR 1997 (Kerala) 291, held that the calling for and holding of bundh (hartal) by political party or organisation involves a threat expressed or implied to citizens not to carry on their activities or to practise their avocations on the day of bundh. It violates the fundamental rights of the citizens. The Supreme Court of India by its judgment reported in AIR 1998 (Supreme Court) 1984 upheld the judgment saying there was no right to call or impose bundh which interferes with the fundamental rights of freedoms of citizens, in addition to causing loss in many other ways. This public welcome judgment of the Supreme Court is still criticized by the Indian politicians as well as jurists as 'judicial over-activism'. However, this write-up is in no way to analysis the Supreme Court intent behind this judgment, rather to see the significance of this judgment in terms of securing public interest. Whatever be the normative character of a hartal, the actual character of hartal as we observe 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 their duties 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 are to see in the newspapers and televisions 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. Hence, to the citizenry hartal is another name of 'anxiety', 'insecurity', 'uncertainty', 'threat' etc.

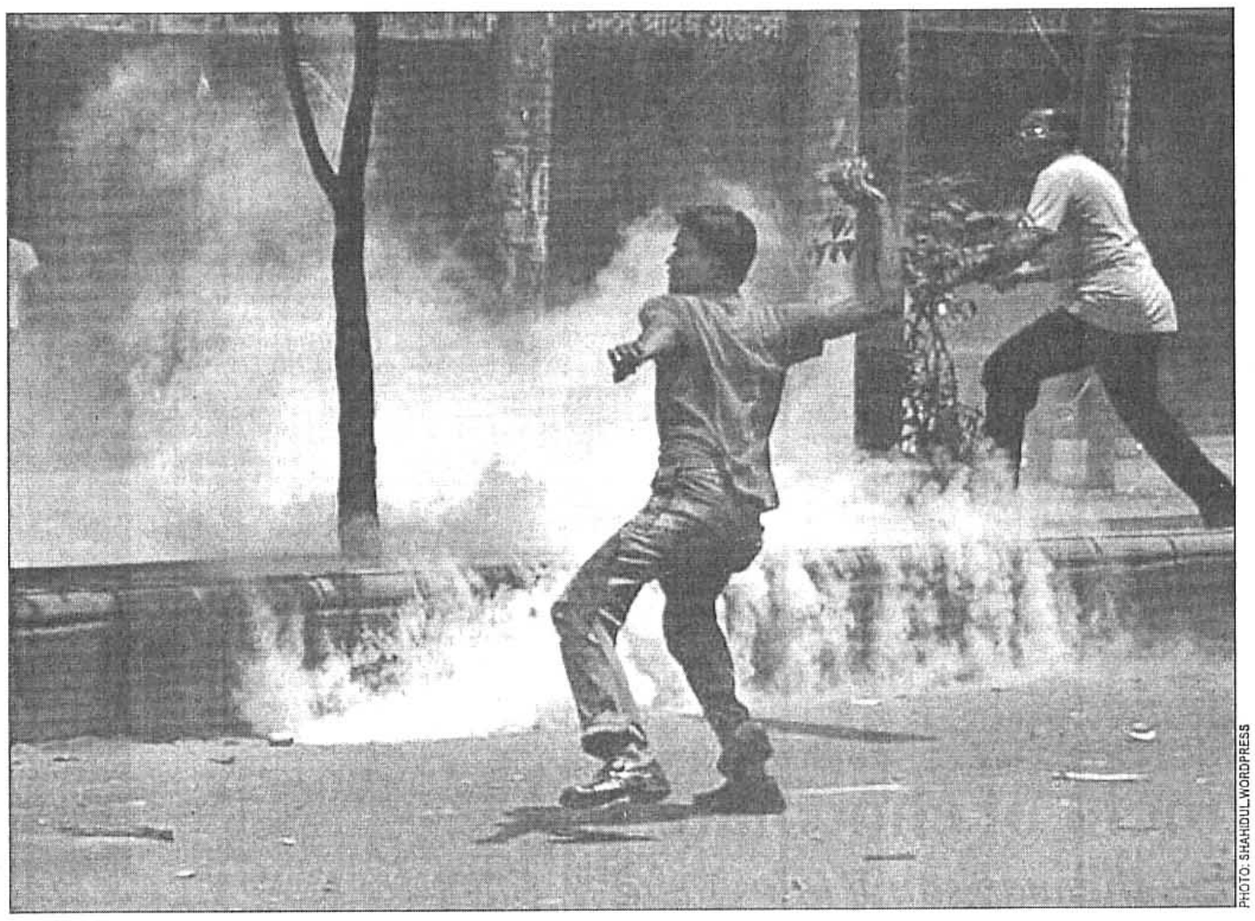

PHOTO: SHAHIDUL/WORDPRESS

Undoubtedly, this judgment of the Supreme Court will not bring any change in the status quo. It has very little to remove this clear public concern and secure the greater public interest. The Supreme Court in 2000 in Khondoker Modarresh Elahi judgment observed that 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 calling upon the people in general or to a particular class or group of people to observe it. But the freedoms as enunciated in the constitutional provisions cannot 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 individual rights. At the same time, any kind of provocation, instigation, intervention and aggression by anti-hartal activists to foil the hartal is also unlawful. In other words, hartal, as a democratic right, should be observed as well as should be allowed to be observed peacefully without resorting to any illegal activities.

This observation and suggestion of the Supreme Court had little influence on the politicians. Bangladeshi people know how capriciously and whimsically political parties in 2000-2006 called for hartals and sieges, how they had stanched away citizens' fundamental human rights in the name of exercising a political right, how they made people guinea pigs of politics, and how they threatened the democracy and ultimately replaced the democratic and constitutional government with an unelected government.

In the like way, though there are legal provisions in the ordinary laws of the land, e.g. Code of Criminal Procedure or the Penal Code, these will help a little to save people's individual fundamental human rights and to get redress for the financial and other harms caused by hartals. Understandably, ordinary citizens from remote nooks and corners of the country will not be able to seek protection of their fundamental rights under writ petition. And for some practical reasons legal action under ordinary laws becomes impossible when the perpetrators of criminal activities during hartal are not traceable or recognisable. Again even if sometimes the culprits are recognisable, an ordinary citizen can not take legal action against them when the culprits are political goons backed by powerful politicians. When the thana police is not much helpful and lower judiciary is not independent and prompt (practically, though not theoretically), ordinary citizens cannot rely on these legal provisions. In absence of options for public interest litigation or representative case on behalf of the victims of hartal and in the absence of the vicarious or strict liability, that is, the leaders or callers of a hartal are liable for any type of harms caused by hartal irrespective of their actual participation in that destruction, perpetration or injury etc., the ordinary law is unable to safeguard larger public interest.

In fact, hartal as a political right is very much clashing with some other fundamental rights like right to liberty, movement, work, conduct business etc. These individual human rights and hartal as political right cannot coexist peacefully. It is an impossible situation that hartals are being peacefully observed and at the same time people are getting their rights protected. Either hartal or other individual rights have to do away with the other or others. Question is which right is to do away with which one? Certainly, this is not the judiciary to decide which right/s will get priority. Nor is it the politicians. Politicians of the country have lost all their right to decide this question. Hence, it is the public in general, which will decide whether they will allow hartal to exist as political right.

A UNDP special report on hartal revealed that hartal had cost Bangladesh 3/4 per cent of its GDP on an average every year between 1991 and 2000. No doubt, the cost of hartals in between 2001 and 2006 would have been similar or more, if it had been calculated. From public debate it moved to the Supreme Court. After a long waiting of eight years, the Supreme Court now gave its decision. I don't think the ordinary citizens are happy with this judgment.

A good portion of the citizenry thinks that hartal had outlived its purpose as soon as the democracy was restored in 1991. According to them, when there was a democracy, there was a live constitution, there were free media, right to free speech, and above all, there was a live parliament, there would have been no argument for hartal. In the above-mentioned conditions allowing hartals meant our parliament was dead and we could not claim our demands in a civilised way or we could not ventilate our grievances soberly or intellectually.

By the way, an UNDP conducted opinion poll on hartal that covered 3,000 respondents from different walks of life revealed that 55 per cent of the respondents perceived hartal as an ineffective political tool against 38 per cent who believed it was somewhat or very effective. Again, in The Daily Star, 17 December 2006 a report showed that 90 per cent of the public interviewed in the opinion poll opined that hartal should be stopped.

However, an inclusive and conclusive judgment from the public is yet to come. Legally, members of the parliament (MPs) are taken to be the representatives the common people, and their judgment is the people's judgment. But in practice, the MPs these days do not represent the desires of the mass of the people. Majority of the citizens thinks that they usually serve the interests of the political parties they belong to. Hence comes the question of referendum. Though constitutionally the issue of hartal might not suit the requirements needed for a referendum, but for practical reason, at least for asking people their opinion as to hartal, it should be done. After all, a destructive political right like hartal cannot be allowed to exist without clear peoples' mandate.

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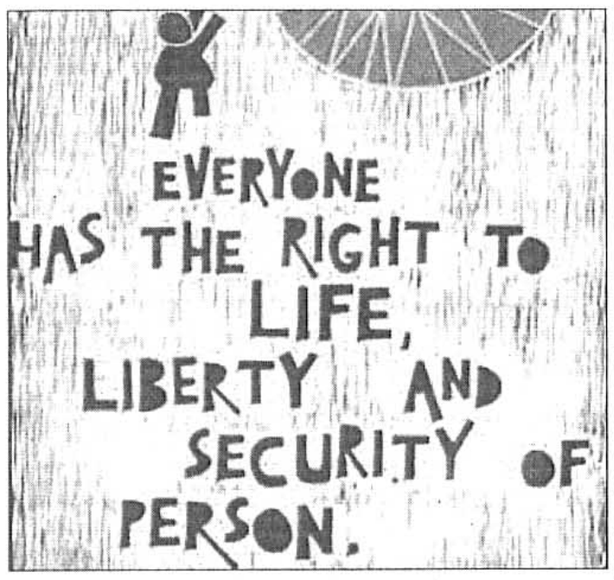
LAW *event*

Human Rights Day 2007



UN High Commissioner for Human Rights, Louise Arbour, issued the following statement to mark Human Rights Day which is commemorated on 10 December.

As we jointly celebrate today not only Human Rights Day but also launch the year-long campaign leading to the 60th anniversary of the Universal Declaration of Human Rights, we have cause to celebrate the accomplishments made, since 1948, on the road to ensuring fundamental freedoms for each one of us. The Universal Declaration and its core values- inherent human dignity, justice, non-discrimination, equality, fairness and universality- apply to everyone, everywhere, always. In all parts of the world, individuals, groups, organisations, and Governments have striven to transform into reality the promises contained in the Universal Declaration. Many have died in the pursuit of these ideals.

Today is also the day to reflect upon our individual and collective failures to stand up against violence, racism, xenophobia, torture, repression of unpopular views and injustices of all sorts. In today's growing divisions between the rich and the poor, the powerful and the vulnerable, the technologically advanced and the illiterate, the aggressors and the victims, the relevance of the Declaration and the universality of the enshrined rights need to be loudly reaffirmed.

In the course of this year, unprecedented efforts must be made to ensure that every person in the world can rely on just laws for his or her protection. In advancing all human rights for all, we will move towards the greatest fulfilment of human potential, a promise which is at the heart of the Universal Declaration.

Source: UNITED NATIONS.

LAW *week*

Saarc nations to share crime info

Saarc foreign ministers put into operation a $300 million regional development fund and finalised the draft agreement on a security pact to share information about criminal activities.

They also decided that Sri Lanka will host the 15th Saarc (South Asian Association for Regional Cooperation) summit next year as the Maldives opted out Friday due to preoccupations with national elections.

Indian External Affairs Minister Pranab Mukherjee disclosed the decisions at the conclusion of the 29th Saarc council of ministers meeting in New Delhi yesterday.

A cell is being established in the Kathmandu-based Saarc Secretariat for implementing the Saarc Development Fund (SDF) projects, he said. The council identified the social sector and physical connectivity projects as priorities, which include programmes for empowering women, enhancing quality of education and strengthening regional telemedicine networks. Pranab also said that the council unanimously approved the security pact draft and directed legal experts from all the eight member states to attend a meeting in Colombo in April 2008 to hammer out the details of the Mutual Legal Assistance agreement.

"All the Saarc states are victims of terrorism and we should have mutual legal assistance to tackle terrorists and criminals in the region," he said. The draft, which does not include an extradition clause, is based on recommendations made by Saarc home ministers, who met in October this year--*The Daily Star, December 09, 2007*

HC stays Hasina extortion case, court on JS premises

The High Court (HC) yesterday stayed for three months the proceedings of the Tk 2.99 crore extortion case filed against former premier and Awami League chief Sheikh Hasina and two others. The HC also stayed for three months the operation of the November 26 gazette notification providing special arrangements for the trial of the case fixing the Sangsad Bhaban premises as the trial venue until a writ petition filed yesterday is disposed in the higher court. The HC bench comprising justices ABM Khairul Huq and Abdul Awal also issued a rule upon the government asking it to reply in four weeks why transfer of the Metropolitan Sessions Judge's Court to the Sangsad Bhaban premises shall not be declared illegal. Meanwhile, Dhaka Metropolitan Sessions Judge's Court yesterday adjourned the hearing of charge framing in the case until December 13 as Hasina could not appear before the court because of illness. --*The Daily Star, December 10, 2007*

Niko case might be brought under EPR

The Anti-Corruption Commission (ACC) might question detained former premiers Sheikh Hasina and Khaleda Zia in cases filed against them for 'illegal' deals with Canadian gas company Niko. It is also likely to bring the cases under the emergency power rules.

ACC Director General (Admin) Col Hanif Iqbal yesterday said the question of quizzing comes when an investigation calls for a clear view of the allegation brought against an accused. The same is applicable here meaning the two [Hasina and Khaleda] might be quizzed if necessary. --*The Daily Star, December 11, 2007*

Plea against making public poll candidates' info rejected

The Supreme Court (SC) rejected the controversial appeal against the High Court (HC) directives for the Election Commission (EC) to collect and publish certain personal information about the aspirants to parliament. The full bench Appellate Division headed by Chief Justice Mohammad Ruhul Amin in its ruling said the petition did not qualify as an appeal as it was filed on the basis of false and fabricated documents. The judgment means now there is no bar to disclosure of eight-point details including academic qualification, profession, source of income, wealth accounts and criminal records (if any) of the candidates.

The HC passed the landmark order on May 24, 2005 following a writ petition filed as a public interest litigation by three lawyers--Abdul Momen Chowdhury, KM Zabir and Zahurul Islam.

Appearing for the original petitioners, Dr Kamal Hossain called for an investigation into how the HC verdict had been stayed in response to an appeal grounded in fabrication.

The SC in its judgment observed that "there has been no appeal in the eye of law" and the petition could not be considered an appeal since it "had been filed by fabricating papers."

Expressing annoyance over the manner in which the appeal was filed, the chief justice said almost every sector has been ruined and dishonest people are now trying to destroy the top court too, said KM Zabir.

Information HC wants to be made public

The HC had directed the EC to gather and publish information about prospective candidates' academic qualifications (to be supported by certificates), and whether they are accused in any criminal cases at present or whether there were any criminal records in the past.

It also wanted the EC to collect details about profession and sources of income of the candidates.

The EC was asked also to know and publish whether a candidate had been a member of parliament before, and the role he/she had played individually and collectively in fulfilling the commitment made to the people.

Besides, the HC asked it to obtain information about the amount of loans taken by a candidate from banks and financial institutions (personally, jointly or in the name of dependents) or loans taken from a company of which the candidate is chairman or director.

Assets and liabilities of the candidates and their dependants should also be reported. --*The Daily Star, December 12, 2007*

Aziz appointment as CEC was illegal for holding dual offices

The High Court (HC) yesterday declared "illegal" the appointment of Justice MA Aziz as the chief election commissioner who preceded the current CEC, sealing the scope for the government to allow any person to concurrently hold two constitutional posts. A division bench, comprising Justice ABM Khairul Haque and Justice Syed Ziaul Karim, pronounced the judgment, making its twin-rule absolute. The HC on June 18 in 2005, following a Public Interest Litigation (PIL), had issued a ruling upon the then CEC Aziz, the Election Commission and the government, asking them why Aziz's holding the office of CEC alongside being a sitting Supreme Court judge should not be held illegal. It had also issued a rule asking the respondents to show cause under what authority Justice Aziz simultaneously held both offices. During the hearing of the writ petition filed by three lawyers, the court sought legal aid from eminent jurists Dr Kamal Hosain, TH Khan, Barrister M Amir-Ul Islam, Mahmudul Islam, and Shahdeen Malik -- as amicus curiae. --*The Daily Star, December 13, 2007.*

Hasnat Abdullah gets 8yrs for tax evasion

A special court yesterday sentenced former chief whip and Awami League leader Abul Hasnat Abdullah to eight years' imprisonment for three counts of tax evasion. Judge AK Roy of the second special court, set up at the MP hostel on the Jatiya Sangsad Bhaban premises, delivered the verdict against Hasnat, who is on the run. The court also fined him Tk 40 lakh; in default of which he would have to stay in jail six more months. It also ordered the authorities to confiscate his properties worth Tk 1.65 crore that Hasnat did not mention in his tax returns submitted to the National Board of Revenue (NBR). --*The Daily Star, December 13, 2007.*

LAW *news*

ICC heading towards universality

The International Criminal Court (ICC) is now over halfway towards achieving its goal of universal acceptance, the court's President, Judge Philippe Kirsch, told the Assembly of States Parties today, calling for ratifications and accessions by the world's countries to continue. Judge Kirsch told the Assembly's sixth session, held at United Nations Headquarters in New York, that the Court has made "significant progress" as it nears the tenth anniversary of the adoption of the Rome Statute in July 1998, which led to the tribunal's founding. "The Court is fully operational," he said. "Investigations and proceedings are ongoing in four situations. Victims are participating in proceedings and the Trust Fund for Victims is functioning.

"Most importantly, it is increasingly recognized that the Court is having the impact for which it was created by the States Parties by contributing to the deterrence of crimes and improving chances for sustainable peace." Some 105 countries have become States Parties to the ICC, with Japan and Chad the latest to do so, and Judge Kirsch called for the number of accessions and ratifications to keep rising. "Working together, we can ensure that the Court makes lasting and sustainable contributions to justice, peace and accountability around the world." He also stressed that the Court, which is based in The Hague in the Netherlands, regards the establishment of permanent premises as a priority, and added that the Court has held fruitful dialogue on this issue with the Dutch Government.

In addition, he called for the world's countries to demonstrate greater support for the ICC, whether in practical cooperation measures such as the arrest of suspects or by advocating publicly on behalf of the Court. ICC Prosecutor Luis Moreno-Ocampo used his address to detail the work of his office, particularly in the cases it is investigating concerning the Democratic Republic of the Congo (DRC), the Central African Republic (CAR), northern Uganda and the Sudanese region of Darfur. He urged States Parties to play their part to ensure the arrest of the men who have already been indicted by the Court: Joseph Kony and four other commanders of the rebel Lord's Resistance Army (LRA) in Uganda, and two figures from the Darfur conflict.

"In Rome, States created a new system of justice where the worst criminals would not be allowed in the sharing of power any longer [and] where the use of massive violence against civilians would neither be rewarded nor forgotten," he said. "The Rome system was built upon the lessons learned from the last century when the international community failed, failed to protect entire populations," he added, cautioning that "the lack of arrest can affect the credibility and long-term deterrent impact of the Court."

Source: UN News Centre

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