



LAW interview

"Anything good for people, which will bring peace, we will stand for that"

Barrister Shafique Ahmed, the Minister for Law, Justice and Parliamentary Affairs, has recently (12 December 2009) talked to the ICRC about the humanitarian organization's role in 1971 and prospects of future cooperation. He also discussed some issues such as ratification of the Rome Statute, as Bangladesh is a signatory to that treaty. The idea of trying suspected war criminals also came up during the interview with him. The ICRC's acting Head of Mission **Jerome Fontana** and Bangladesh Office's Communication Officer **Rumana Binte Masud** were also present during the meeting. Law and Our Rights is producing the glimpses of the talk.



ICRC: How do you recognize the ICRC's role during the War of Liberation of Bangladesh in 1971?

Shafique Ahmed: The International Committee of the Red Cross played a commendable role during the War of Liberation in 1971 and its aftermath. And in addressing some of the issues, which required immediate attention of this type of humanitarian organization, so far I remember starting from the year of the war and after, the role of the ICRC was very helpful to the people, particularly to those who were directly affected by the war. That was highly appreciated by the people and the government. It is also true that the ICRC took some steps for transferring the people, who were made captive here during the time of war. Carrying on such activities, as it always does across the world, was very much necessary for the affected.

Bangladesh has not only benefited from the provisions of International Humanitarian Law, it has also played an

historic role in contributing to its development. We may recall the International Crimes (Tribunals) Act, 1973, and the active participation of Bangladesh in the drafting of the Rome Statute establishing the International Criminal Court in 1998. Is Bangladesh still willing to play this important role for the development of IHL, for example ratifying the Rome Statute by next March allowing Bangladesh to participate fully in the review of the Rome Statute at the review conference in May 2010 in Uganda?

Shafique Ahmed: The Rome Statute 1998, which constituted the International Criminal Court, Bangladesh is a signatory to that, but now comes the point of its ratification. We expect that Bangladesh government will ratify the Rome Statute by March 2010.

What are you doing to continue national implementation of international treaties, particularly which involve upholding human rights?

Shafique Ahmed: Bangladesh always is in

favor of rule of law and upholding the human rights. As a step forward, you might be interested to know that in the meantime we have already passed the National Human Rights Commission Act in the Parliament. Representatives from various groups including minority and disadvantaged communities will be included in the commission, so that they are represented through their members. We will continue to do so if such things involve the people's welfare.

The government is pledge-bound to try the suspected war criminals involving 1971, and the government has already taken some steps to that end. Bangladesh has already announced the establishment of a war crime tribunal. How are you going to do that? And there is concern that it may be used to weaken political opponents. Also, many people commonly believe that impunity for war crimes, crimes against humanity and genocide impedes the

course of reconciliation and fuels the cycle of retribution and revenge. What do you think?

Shafique Ahmed: Our idea is that we have to do it ourselves, and definitely any crime, which has been committed, should not go unnoticed, perpetrators must be brought to justice. I strongly believe in this for maintaining peace and stability in the society, and without this a society cannot exist. The society depends on the preservation of peace and stability. If the person who committed crimes is still at large, or not facing the justice, or not brought to justice; then his act will encourage others to commit such crimes, there will be a repetition. That's why the philosophy of jurisprudence is to bring the criminals before justice so that others take a lesson. So our aim is to try the people who were involved in war crimes, and we want to do that with full transparency. After coming to power we have amended the International Crimes (Tribunal) Act 1973, which was passed in the Parliament that time, when the Father of the Nation Bangabandhu Sheikh Mujibur Rahman was alive.

We have made some changes to the Act to make it internationally accepted. We have made it absolutely clear by amending the law that the tribunal will be an independent one in discharging its function. It will ensure fair justice to all and give full opportunity to the accused to defend themselves, to engage lawyers of their own choice, and we also made a provision that will allow any convict to appeal in the highest court of the country. I want to make one thing very clear that trying the suspected war criminals is no

way related to any political party or opponent; we just want to try the criminals. If they take shelter of any political party, or any political party gives a criminal shelter, people will not accept that. And everything will be done on the basis of evidence; we think we have enough evidence to prove their misdeeds. That's why we have amended the war crimes law to make it contemporary and acceptable to all including the international community. The tribunal will solely be of a civilian nature under the amended provisions.

Does Bangladesh intend to establish a national International Humanitarian Law Committee as 91 countries have done so? Also, what are the next priorities for Bangladesh in terms of national implementation of international humanitarian law treaties into its domestic legislation, for example, concerning the national implementation of the Biological Weapons Convention, the Geneva Conventions and their Additional Protocols, and the Ottawa Treaty banning all anti-personnel mines?

Shafique Ahmed: Of course, it (national international humanitarian law committee) is a good idea. The ICRC is also welcome to this effort with its resources to help us form such a committee. We can work together. My notion is anything good for people, which will bring peace, we will stand for that.

I have also talked to the Foreign Affairs Minister and the Home Affairs Minister to find out which other international treaties should be ratified by Bangladesh, and which should be taken to the Parliament. And about the treaties and conventions you mentioned,

Bangladesh will definitely go for it if and when situation arises, and in principle Bangladesh will support anything like this. Bangladesh considers these treaties as very important to ensure long-standing peace.

In addition to the Ministry of Law, Justice and Parliamentary Affairs, the ICRC has been cooperating for many years in disseminating international humanitarian law to all including the armed forces and other ministries, and students and journalists in Bangladesh through various trainings and workshops. How do you assess the result of this cooperation? Would you like this cooperation to be further strengthened?

Shafique Ahmed: I believe the ICRC's work with different groups and authorities will definitely bring a good result, and the effort by the ICRC should be strengthened further. We must give the idea to each of these bodies that the ICRC in the past had done something, which were acceptable to all, and were good for the people of Bangladesh. Also in the future it wants to continue to play the same role, which will be beneficial to the country. Such impression to the government is also important. Since Bangladesh regularly faces disasters like cyclones and floods, the ICRC has a very important role to play in this area too.

There's a concern about rampant misuse of emblem of the ICRC in Bangladesh. How can we work in dealing with this?

Shafique Ahmed: I think awareness is the key in dealing with such thing.

Thanks for giving us time.

Shafique Ahmed: Thanks.

Star JUDGMENT review

Perimeter to Freedom of Speech

ZAHIDUL ISLAM BISWAS

RECENTLY the Bombay High Court has made a significant ruling on freedom of speech while upholding a ban issued in 2007 by the Maharashtra government on a book titled 'Islam - A Concept of Political World Invasion by Muslims.' A three-judge bench of the Bombay high court held that in India, criticism of any religion -- be it Islam, Hinduism, Christianity or any other -- is permissible under the fundamental right to freedom of speech and that a book cannot be banned on those grounds alone. However, the criticism must be bona fide or academic. But the book contained an 'aggravated form of criticism made with a malicious and deliberate intention' to outrage the feelings of Muslims. In the landmark verdict, the court upheld the state's ban on the book,

observed that the courts must strike a balance between the guaranteed freedom and permissible restrictions, which is 'a difficult task'. The book, authored by R V Bhasin, a Mumbai-based advocate, in 2003 had been in circulation for four years before the state felt the need to ban it for 'several derogatory and false statements about Muslim religion, the community, Mohammed Paigambar and Muslim priests'.

R. V. Bhasin challenged the ban the same year and his counsel JP Cama argued at length that freedom of speech and expression has to be protected and unless a book gives rise immediately to a present and sudden danger of disrupting communal or societal peace, its ban cannot be justified. He said the author placed certain lesser-known aspects about Islam before the people and said, 'Assuming he is wrong, he has a right to be wrong.'

But the state's ban was supported as justified by advocate general Ravi Kadam and later on by Yusuf Muchala, the counsel for a few interveners, including Indian Union Muslim League, Maharashtra Muslim Lawyers Forum, Islamic Research Foundation, Jamat-e-Islami-e-Hind and Bombay Aman Committee. There was one intervener, I G Khandelwal, from Right to Read Foundation, to support the author.

The bench had reserved the matter for judgment last August (2009) after a lengthy hearing. The court said, 'The author can say what he feels is right and if it is wrong, he cannot be punished for it. But what needs to be seen is whether it was done bona fide with real desire to explore the tenets of Islam and give his exposition'.

In this case, the court held that the criticism of Islam and 'insulting comments with particular reference to Indian Muslims' were 'not academic'. 'It is an aggravated form of criticism made with a malicious and deliberate intention to outrage the religious feelings of Muslims. The contents are so interwoven that it is not possible to excise certain portions and permit circulation of the book,' the court said. It is to be mentioned that the author had declined an earlier suggestion to delete certain parts.

While, in the judgment, the High Court said that a person may have a right to say a particular religion is 'not secular', it cautioned against rabid contents 'reeking of hatred for a particular community' and 'malafide exercise to stir communal passions'.

The court also found the author's argument that banning the book in the age of the internet is passe and pointless as 'totally unacceptable'.

According to the judgment, the book contains 'highly objectionable and disturbing' statements about the author's wishful thinking of an impending war between Muslims and others and how Indian Muslims want to convert all Hindus, attack temples and Hindu women. Statements like these are 'likely to incite people to violence and may promote violence, enmity or hatred'.

After this verdict, the author of the book Mr. Bhasin told the Times of India, leading English daily, that he would go to the Supreme Court in appeal. He said that 'Freedom of speech cannot be blocked on interpretation.' However, the judgment has brought a sigh of relief to civil right activists committed to the communal peace and harmony in India. They believe that the judgment, if appealed against, will be upheld in the Supreme Court also.

The author is an advocate of the Supreme Court of Bangladesh, currently at the Centre for the Study of Law and Governance, Jawaharlal Nehru University, New Delhi. The write-up is based on a Times of India report by Swati Deshpande.

LAW news

Google to stop censoring search results in china after hack attack

GOOGLE has decided to stop censoring search results in China, after discovering that someone based in that country had attempted to hack into the e-mail accounts of human rights activists. The company disclosed the move in a startling announcement posted to its blog late Tuesday, January 12, 2010.

Google said it was prepared to pull its business out of China, if issues around the surveillance and its decision to stop censoring results could not be resolved with the Chinese government.

Although the company did not accuse the Chinese government of being behind the hack attacks, Google said that the attacks, combined with attempts by China over the last year to "further limit free speech on the web" led it to conclude that it needed to "review the feasibility of our business operations in China."

The company decided it will no longer censor search results on Google.cn, which it had been doing as a concession to the Chinese government since 2006 in order to be able to operate in China. The company didn't say when it would stop censoring material but stated that it would be discussing with Chinese authorities how it might continue to operate legally in China, if at all, with an unfiltered search engine.

"We recognize that this may well mean having to shut down Google.cn, and potentially our offices in China," wrote David Drummond, Google's chief legal officer and senior vice president for corporate development.

A source knowledgeable about the issue told Threat Level that the company is concerned about the repercussions of its decision on its employees in China. The source said the company timed its announcement for late Tuesday in the United States to come after the close of the stock market but also to coincide with early morning in China so that employees there would learn about what was happening before they arrived to work.

The search and advertising giant discovered in December that it was the target of a "highly sophisticated" cyber attack on its corporate infrastructure, which resulted in the theft of intellectual property. However, in investigating the incident, the company wrote on its blog, it soon realized the attack was something more than a simple security breach.

At least 20 other large companies were targeted as well, including other internet and technology companies as well as businesses in the financial, media and chemical sectors.



Google concluded that the primary goal of the attackers who targeted its network was to hack into the Gmail accounts of Chinese human rights activists. The attackers appeared, however, to succeed at obtaining access to only two accounts. That access was limited to basic account information, such as the date the account was created and the subject lines of e-mail, not the content of the correspondence. Google spokesman Gabriel Stricker told Threat Level that the company has already notified the owners of those accounts.

Stricker also told Threat Level that the company went public with the information as quickly as it could. "We have been working hard to secure our systems, confirm the facts, and notify the relevant authorities," he said.

The source who is knowledgeable about the investigation, however, told Threat Level that Google's decision to disclose the attack on Tuesday was also partly due to a decision made by the other targeted companies to keep the attack under wraps. "They made a specific decision not to go public," the source said. "You can either go out [with the information] or not, and for whatever reason, they've decided not to [disclose]."

He said Google felt it was important to alert the people who are potentially affected by the attack the activist community. Shortly after Google disclosed the hack, Adobe posted its own announcement, disclosing that it became aware Jan. 2 that it had been targeted in a "sophisticated, coordinated attack against corporate network systems managed by Adobe and other companies."

Adobe wrote that it currently had no evidence to indicate that any sensitive information belonging to customers or

the company had been compromised.

The source familiar with the investigation told Threat Level that the intellectual property the hackers obtained from Google was not data that would give them a business advantage over the company, but data that would help the hackers gain access to the activist accounts.

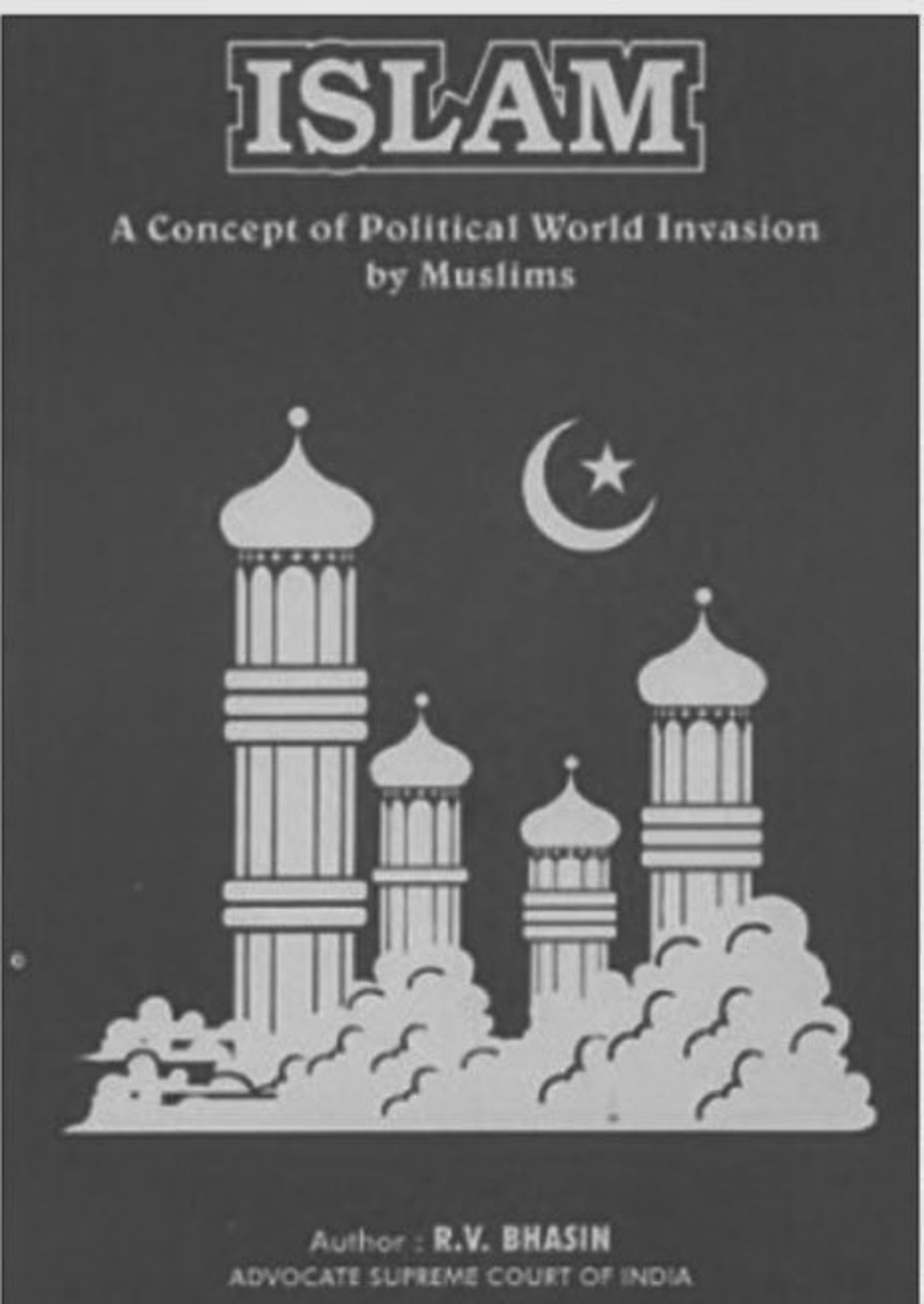
The source said that Google was able to determine definitively that the attack originated in China, and that the attack was sophisticated in a way that Google does not generally experience. The source added that the implications of the attack are "extremely dark and extremely disturbing."

"This is truly, truly beyond the pale," he said. "The political nature of this and the attempt to monitor activists, not only in China but out of it, is chilling."

In a separate investigation, the company said it discovered that the Gmail accounts of dozens of human rights advocates in the United States, China and Europe were accessed by third parties. These breaches, however, appeared to be the result of phishing attacks targeted at the users with the aim of stealing their account login credentials.

Google launched its Chinese-language search engine, Google.cn, in January 2006. The company said at the time that it did so in the belief that a search engine would help open access to information for Chinese residents. To obtain permission to operate in China, however, the company had agreed to censor search results that the Chinese government deemed objectionable. Google was harshly criticized by civil liberties groups for its concession to Chinese authorities. The company now appears to be regretting that decision.

Source: UN Wire.



and said that, 'in our country, everything is open to criticism and religion is no exception. Freedom of expression covers criticism of religion and no person can be sensitive about it.'

The bench, comprising Justices Ranjana Desai, D Y Chandrachud and R S Mohite, said, 'Healthy criticism provokes thought, encourages debate and helps us evolve. But criticism cannot be malicious and must not lead to creating ill-will between different communities... (it) must lead to sensible dialogue.' The 150-page HC verdict penned by Justice Desai