

Contempt of Court



While there is an imperative need to protect and maintain the authority and integrity of the courts, the question often asked is how it reconciles with the fundamental right -- freedom of expression/freedom of speech -- in terms of Article 39 (2) of the Bangladesh Constitution.

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Many people are familiar with the concept of contempt of court. Contempt of court is a charge which can be laid against someone for interrupting the process of justice in a court of law, or any action that interferes with a judge's ability to administer justice or insults the dignity of the court. A charge of contempt, if proved, can

result in fines and imprisonment.

Courts of justice have an inherent power to punish all persons for contempt of their rules and orders, for disobedience of their process, and for improper interference in the administration of justice.

In English law (a common law jurisdiction) the law on contempt is partly set out in case law, and partly specified in the Contempt of Court Act 1981. Under the English common law there

are three types of contempt:

- Interfering with "pending or imminent" court proceedings;
- Contempt in the face of the court;
- Scandalising the court.

Contempt of Court certainly has a long history and is said to have its origins in the medieval period in England. Contempt of Court -- "Contemptus Curiae" -- is said to have been a recognised phrase in English law since the 12th century (Fox: The History of Contempt: 1927).

The earliest legal history records that common law courts in England have assumed the power to coerce those who obstruct the administration of justice.

In *Johnson v Grant* (1923 SC at 790), Lord President Clyde described contempt of court as follows: "The offence consists in interfering with the administration of law; in impeding and perverting the course of justice -- it is the fundamental supremacy of the law which is challenged."

As Lord Diplock said in *AG v Leveller Magazine Ltd* (1979 AC 440 at 449): "They all share a common characteristic; they involve an interference with the due administration of justice either in a particular case or more generally as a continuing process."

One commentator (Joseph Moskovitz: *Contempt of Injunctions*: 1943) has described contempt as "the Proteus of the legal world assuming an almost infinite diversity of forms," and it can be said that contempt of court is as diverse as are the means of interfering with the due course of justice.

Public faith in the court, in proper administration of justice and in the authority of the law, is essential for rule of law and an ordered society. Public trust and confidence in the integrity of the court is a vital part of the administration of justice, which needs to be vigorously supported by all segments of society. Justice must not only be done but must also be seen to be done, and this is why public trust and confidence in the court is vital.

The contempt law is meant for preventing interference in judicial matters or for creating a situation in which a judge cannot perform his judicial duties properly, including scandalisation of a judge so as to destroy respect, public trust and confidence in the court. The law of contempt provides a sanction against scurrilous abuse of judges or alle-

gations that a judge or court is biased.

There is a clear distinction between criminal and civil contempt of court. Civil contempt involves disobedience of a court order or breach of an undertaking in civil proceedings, whereas criminal contempt of court is committed either when there is contempt in the face of the court or there is interference in the course of justice.

American philosopher late John Rawls said that "justice is the first virtue of social institutions, as truth is of systems of thought." Justice is distinct from and more fundamental than benevolence, charity, mercy, generosity or compassion. Justice is a right to a citizen and connotes two imperatives -- fairness and impartiality.

One of the basic principles of fairness is freedom from prejudice or interference. Furthermore, impartial trial can be adversely affected by all kinds of conduct and publications against the court or a judge.

While there is an imperative need to protect and maintain the authority and integrity of the courts, the question often asked is how it reconciles with the fundamental right -- freedom of expression/freedom of speech -- in terms of Article 39 (2) of the Bangladesh Constitution.

It is argued that freedom of speech/freedom of press is not an unfettered right under the Constitution. It is subject to the conditions enumerated in Article 39.

Article 39 (2) states: "Subject to any reasonable restrictions imposed by law in the interests of the security of state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, (a) the right of every citizen to freedom of speech and expression; and (b) freedom of press are guaranteed."

The law of contempt of court plays a key role in protecting the administration of justice. The law continues to be developed and adapted to meet the changing challenges to the supremacy of law in keeping up with contemporary values of society. In this context many jurists believe that the existing law in the country, the Contempt of Court Act 1926, may suitably be amended.

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Mosque at Ground Zero tests American principles

More moderate detractors of the proposal argued that to build such a centre at this site would be culturally insensitive. Others went much further, claiming that the proposed Islamic centre is an attempt by the Muslim world to plant a flag of victory at the site of a battle.

THE CHINA POST

Should a mosque be built just two blocks from the site of the September 11th attack? A spokesperson for US President Barack Obama wants those with reservations about the idea to ask themselves the same question, except replace the word "mosque" with "synagogue" or "church."

In late May, hearings were held at a community board in Manhattan to assess whether or not to allow a structure only a few blocks from Ground Zero to be re-commissioned as an Islamic community centre. After four hours of public debate, which included statements from relatives of those who died on that tragic day, the board finally came to a 29 to 1 vote in favour of the project.

As soon as the votes were tallied, American media outlets exploded with commentary -- much of it against the decision. Some pundits called building a mosque so close to the site of the terrorist attacks a "slap in the face."

More moderate detractors of the proposal argued that to build such a centre at this site would be culturally insensitive. Others went much further, claiming that the proposed Islamic centre -- which will have a basketball court and educational facilities and could essentially be considered an Islamic version of the YMCA -- is an attempt by the Muslim world to plant a flag of victory at the site of a battle.

Anti-mosque activists even tried to have the site of the proposed Islamic centre reclassified as a heritage building, thereby disallowing new construction on the site. To their credit the New York City Landmarks Preservation Commission rejected this reclassification proposal.

Also to his credit, New York Mayor Michael Bloomberg came out strongly in favour of allowing the Islamic centre to go forward while also saying he understood that many of his fellow New Yorkers felt differently. The US president entered the debate as well, saying he supported the fundamental "right" of Muslims to construct an Islamic centre and mosque at the site.

Whether or not it's a good idea to build a mosque so close to a site where self-professed Islamic jihadists killed roughly 3,000 people in an unholy war of terror is of course a matter of debate. Obama did address the issue over the weekend. Speaking about his earlier endorsement of the Islamic centre project, the US president said: "I was not commenting, and I will not comment, on the wisdom of making the decision to put a mosque there. I was commenting very specifically on the right people have that dates back to our founding. That's what our country is about."

Many of the original European settlers in the New World were searching for a place where they could practice religion without restrictions, and the founders of the United States of America were very clear in their instructions that the government of this new nation should not allow any religious favouritism. As with most articles of belief, however, the proof is in the pudding.

It's all very well and good to have public statements that defend the right of all Americans to worship what or whom they choose, but the proposal to build an Islamic centre which would include a mosque just blocks from the site referred to as Ground Zero in New York City's lower Manhattan gave America a test of its beliefs. Sadly, many Americans received a failing grade.

Since Obama's inauguration, he has pressed for reconciliation with the Muslim world. Not long after beginning his term in office Obama traveled to Cairo and spoke of "a new beginning" to US-Muslim relations in what many believe was a groundbreaking first step. And, while American-led wars against Muslim extremists continue to rage, this US president seems to be both talking the talk and walking the walk with regard to opening a new dialogue with the Muslim world.

Coming out forcefully during an election year in favour of a project that is not necessarily popular is not the smartest thing to do politically. Obama's opponents have begun firing and will certainly try to use this decision against him. It's refreshing, however, to see principle put before politics, and Obama, Bloomberg and other authorities in the city of New York deserve to be applauded for coming out on the side of equality.

Those who asked sarcastically if it would be acceptable to build a Japanese cultural centre next to a sunken US battleship in Pearl Harbor exposed the fact that they equate Islam with terrorism, which is refuted by the daily actions of the world's over one billion Muslims, the vast majority of whom are as peaceful as followers of any other faith.

To Obama and others who accepted the Islamic centre the issue boiled down to only one valid question: "Would it be acceptable to put any other house of worship at this same site?" Their answer was yes.

Small family is happy family

Fertility reduction can be instrumental in achieving rapid economic and social development, especially those aspects that have a direct bearing on the poor. Such a proposition should guide the formulation of a new population policy.

MOHAMMED ABUL KALAM

The total fertility rate in Bangladesh is high and the fertility rate of the younger group among whom the concept of birth spacing is not yet popular has, in fact, shown an increasing trend. The incidence of childlessness among currently married women has also declined.

These factors, along with the low rate of contraceptive use, the high drop-out rate in the use of temporary methods, the relatively high age of acceptors and marriage at a relatively young age, indicate the magnitude of the problems in reducing the total fertility rate.

Of great interest is the fact that while more than 50% of couples of below thirty-five years of age express their interest in using contraceptives, the number of acceptors of permanent methods has declined significantly after 1984/1985, either due to saturation of effective demand for fertility control or due to decline in the institutional capacity of the service providing agency.

Against this background, it is logical to wonder whether the target of reducing fertility rate to replacement level is a feasible goal, especially given the prevailing conflicting signals at the policy level.

In respect of population growth, the policy is to continue to promote the attainment of small family size on a voluntary basis and a reduced population growth aligned with replacement fertility level, while efforts to make available the knowledge, means and opportunity to practice family planning will be intensified. The family planning component, however, is designed mainly as a means to promote maternal and child health care and effectively avoids mention of the family planning program as a direct intervention to reduce fertility.

It was in June 1976 that the government spelt out in its policy outline "the urgent need for total orientation of the strategy for making population control and family planning an integral part of social mobilisation and national development efforts." The population policy statement, however, is ambiguous with respect to two issues in the current debate. The first is whether or not acceptable economic and social development can be achieved without a reduction in the currently high levels of fertility and population growth rates. The second is whether or not the government is justified in intervening in the free choice of couples to determine the size of their families.

In not being explicit about its position on these issues, the government's current position is not inconsistent with one that favours no direct action on fertility reduction that includes

modifying the fertility preference of couples. In view of these two ambiguities, no clear directions are being provided to the governmental and non-governmental agencies responsible for implementing the family planning programme. As a result, there is little activity to respond effectively to the large unmet needs for contraception, especially among the poor.

The current population policy, however, does not have a strong and explicit fertility reduction objective that includes modifying the fertility preferences of household. Moreover, its ambiguity with regard to the role of the government in the fertility decision making of couples is weakening the implementation of the family planning program in the field.

The Ministry of Health & Family Welfare and the Planning Commission just formulate plans to guide activities and resource allocation. Unless the current population policy is clarified and strengthened to include an explicit fertility reduction objective through government guidance and support, it is not likely that rapid and sustained fertility decline will occur to reinforce the gains that could be achieved from the economic and social reforms now in place.

In the light of the current situation, public policy and population must address two basic issues; the first is the effects of population growth on economic and social development, and the second is the role of the government in fertility decision-making.

While there is continuing debate about the effects of population on development in the international community, the concern over continued rapid population growth in Bangladesh must be viewed in the context of circumstances the country finds itself in at present. The circumstances include high levels of poverty, serious unemployment and under-employment, poor education, health and nutrition sector performance, and severe resource constraints, including a heavy debt burden.

Under these circumstances, the most salient concerns relate to the impact of continued rapid population growth and high fertility on:

- Current household welfare, particularly among the poor who constitute the large majority of the population;
- The future quality of human resources, which is a critical aspect of the future capacity of the economy to support a growing population at higher standards of living, and
- Full employment at rising real wages, which is a critical factor in alleviating poverty.

At the household level, lower fertility would not only provide direct health benefits to the



Large population drains resources.

mother, but would also provide poor households added opportunities to invest more resources and time per child to improve health, nutrition and schooling performance. With greater investment in human capital, the prospects for economic and social mobility of their children are enhanced, thus breaking the inter-generational cycle of poverty.

At the aggregate level, rapid fertility decline and slower population growth could reduce the pressure to expand basic health, nutrition and educational services to accommodate an otherwise rapidly growing population. Such reduced pressure could provide added opportunities for increasing the coverage and improving the quality of such services.

Moreover, rapid fertility decline eventually translates itself into reduced growth of the population of working ages, thus reducing the pressure to expand employment to accommodate to new entrants to the labor force. Such reduced pressure provides added opportunities for both improving human and physical capital, leading to full employment at higher productivity and real wages.

Thus, in all the above concerns, fertility reduction can be instrumental in achieving rapid economic and social development, especially those aspects that have a direct bearing on the poor. Such a proposition should guide the formulation of a new population policy.

The second issue of public policy that should be clarified is whether or not the government is justified in intervening in the free choice of couples to determine the size of their families. This is because of the strong views expressed sometimes that the determination of the number of children should be left entirely to individual couples. The constitutional provision on the rights of spouses to found a family in accordance with their faiths and the demands of responsible parenthood is often used to sup-

port such a view.

While the government is justified in intervening in fertility, the type of intervention to be pursued would depend upon the costs and effectiveness of the intervention. One important aspect of cost may be noted. In a society that values freedom of choice, interventions that involve coercion would entail very high social cost that would make such interventions politically and morally unacceptable.

In the context of the current Bangladesh situation, where the top governmental leaders enjoy wide popular support, all that might be needed to modify fertility preferences might be for the government to endorse the social goal of a small family. Within such a goal, couples are free to determine the actual number of their children and the means to achieve their desired family size.

The family planning program could then be designed to support the overall achievement of such a social goal in addition to its primary objective of improving material and child health. In designing such a program, additional resources must be allocated to accommodate those who will be persuaded to modify their fertility goals in line with the newly endorsed social goal, in addition to meeting the needs of those couple who have already decided to reduce their fertility.

In sum, a stronger population policy with an explicit fertility reduction objective must be formulated in the line described above. Such a policy should be properly viewed as an integral component of the overall development strategy to achieve the national goals of poverty alleviation, full employment, equity and social justice and sustainable growth.

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