



## INTERNATIONAL HUMAN RIGHTS DAY

# No human rights without remedying human wrongs

PROF. MIZANUR RAHMAN

**I**T is not that Bangladesh only owes the responsibility to try the genocidal atrocities of 1971. The international community was also under an obligation to bring the alleged perpetrators to the altar of justice. One has much reason to interpret that failure to bring the perpetrators, military personnel or their aides, of human rights atrocities in Bangladesh during the 1971 liberation war, was the starting point of failure to prevent further genocidal atrocities in the global context. The wanton killings in Cambodia in the 70s, massacres in Serbia, atrocities in Rwanda were examples of these.

However, later on the international community witnessed several international and mixed tribunals to suppress international crimes. The later developments of jurisprudence in prosecuting atrocities have increased the possibility to try the criminals under national jurisdiction.

Given the limited number of international criminal tribunals and their scarce resources, war crimes prosecution by national tribunals have received prominence. Bangladesh was the pioneer in formulating first national "international crimes" law in the history of the world back in 1973, the spirit of which was later inculcated in the ICC Statute, 1998. It may set an example of effective national prosecution of international crimes with a blend of national and international criminal jurisprudence.

The Case of Sierra Leone, Dili, Cambodia, and Lebanon experiences with suitable compatibility may be the torch bearer for Bangladesh Tribunal.

The establishment of International Crimes Tribunal in Bangladesh is a legitimate assertion of its authority to affect its legal interests and law-making activities, judicial processes or enforcement means. National and Territorial jurisdiction of the state is one of the manifestations of state sovereignty and hardly raises any concern from other states or bodies.

Apart from this, a state may exercise universal jurisdiction under international law to punish persons who commit acts falling within international law's definition of war crimes, crimes against humanity and genocide. Universal jurisdiction is not a formula for gaining jurisdiction, but one for placing the national legal order at the service of the international community.

Bangladesh can legitimately manifest this service. Jurisdictional manifestations of Bangladesh to try the 1971 war criminals and perpetrators of genocide fit with the provisions of international law. Article 3 of the International Crimes Tribunal Act 1973, accommodates the blend of national, territorial and universal manifes-

tations of jurisdictions.

The tribunal has started to take cognizance of crimes of international nature with particular emphasis of allegation of crimes against humanity. Crimes against humanity need not be newly defined, as has been recently demanded by some political opponents of the ongoing trial. It is trite, and therefore true, to say that there are no human rights without remedies for human wrongs, in the sense of arrangements for punishing those guilty of crimes against humanity. These are broadly but clearly defined by international law and recognised by national legislation, the International Crimes (Tribunal) Act, 1973 of Bangladesh for example.

The ambit of crimes against humanity includes: murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime, within the jurisdiction of the tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Leaders, organisers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in the executions of such plans. The ambit and scope of crimes against humanity can only be improved based the definition prescribed by Nuremberg Tribunal, the ICC Statute and the like.

Crimes against humanity are perpetrated by state officials or agents (for example, in the case of Bangladesh, the razakars, al-shams, al-badrs) systematically and in furtherance of an unlawful policy of denying political or racial group the right to life or physical integrity. The Nazi war crimes tribunal (1947) observes: "Crimes against humanity [...] can only come within the purview of this basic code of humanity because the state involved, (read Bangladesh here) owing to indifference, impotency or complicity, has been unable or has refused to halt the crimes and punish the criminals."

The practices of national and international tribunals

mark the gradual recognition of a crime against humanity so repulsive that all states are assumed to have a legal interest in its suppression: they become bound by what the International Court of Justice (ICJ) later in *Barcelona Traction Case* (1970) termed "an obligation erga omnes."

Treaties on the subject and the decisions of important courts are virtually unanimous. Crimes against humanity get extra momentum once they are proved to be widespread and systematic emanations of a policy approved by the perpetrators and their allies.

The Supreme Court of Bangladesh rightly rejected a petition challenging the constitutionality of Article 47A providing safeguard of war crimes legislation. The simple reason is that the language of Article 35 (1) which provides safeguard against retrospectivity of law, is not attracted by the 1973 Act. Article 35 (1) says that, "No

person shall be convicted to any offence except for violation of a law in force at the time of the commission of the act charged as an offence." Genocide, arson, murder, rape, extermination were always a crime and universally condemned by international law and our national law prevailing prior to 1973. It is not that a new category of crime was created by the 1973 Act. By way of abundant caution the fathers of the constitution inserted the protective

provision of Article 47A. Hence, it is argued that the 1973 Act has not created any new criminal responsibility; rather it has merely criminalised acts already recognised "crimes" under existing "other legal instruments or any custom or usage having the force of law in Bangladesh."

It is to be reminded that making a new criminal responsibility and bringing an already recognised crime within the ambit of law by providing the penalty not "greater than the recognising law" are two different matters. The 1973 Act was the first ever written national law to prosecute international crimes, which the scholars have regarded as the foundation stone of modern international criminal law. Denying this truth is to deny the trends and evolution of individual responsibility under international law.

Procedural fairness is a much talked about concern in the ongoing international crimes trial. The scheme of the 1973 Act has laid down certain procedural fairness:

i) Provision for an independent investigation agency, charges can only be brought if credible information against the suspects is found;

ii) Envisages right of appeal of a person convicted by the tribunal to the Appellate Division of the Supreme Court;

iii) The accused may give explanation relevant to the charge, can conduct his own defence or have the right to be represented by counsel; and

iv) The accused shall have the right to present evidence in support of his defence and to cross-examine any prosecution witness.

These are the manifestations of the 'due process of law' and 'fair trial' and make the 1973 Act more humane, jurisprudentially sound and legally valid and therefore, an improvement over the Nuremberg Charter -- the founding stone of modern international criminal justice administration.

Media access to the Tribunal information, sympathy to the accused ailing condition, allowing to challenge the jurisdiction of the tribunal, placing demands before the tribunal, allowing a move for a non-confidence motion against the tribunal chairman -- are some glaring examples of procedural standards already followed by the Tribunal.

Procedural fairness entails no universal shape. International criminal law presupposes a minimum standard, this is why, and even the international standard is frequently evolving. Because of the given mandate, historical texture, social structure each tribunal becomes distinctive and unique. While we are talking about procedural fairness, we need to understand that we should not talk about a utopian procedural fairness which cannot be complied with. It should not appear as a rigid benchmark, but a constructive framework upon which the tribunal can deliver the justice.

It is evident that justice, once there is a procedure of its delivery, is prone to have its own momentum. The call for application of national penal law to "international crimes" by a political party spokesman is based on a nullity. The call implies no wisdom about the nature and prosecution of human rights atrocities like war crimes, genocide and crimes against humanity. The demand to denounce the tribunal and follow almost abstract standard of procedure can only be paraphrased as "let them set free."

The writer is Chairman, National Human Rights Commission



STEPHANIE CARTER

## Rights of the innocence

MAHMUDA IMAM

**B**ANGLADESH remains an overpopulated country. There are children belonging to very poor families who are deprived, underprivileged and often marginalised. Among them are the street children without parents, homes or any form of shelters. There are slum children living on the sides of the streets or next to the railways.

These children start their day with the worries of collecting basic meals. In an age where they should be going to schools; they search for livelihoods. They have to work hard till the night. At times they are made to be involved in different types of risky jobs which are threats to their lives. While growing up, these children usually experience severe malnutrition, social repugnance and considerable vulnerability, as a result of which they often grow hostile, possess hatred and distrust is often drawn into these naive children leading them towards criminal activities, thus playing the most effective role in tainting the society.

Street children are found in bazaars, commercial areas, bus terminals, hotels and parks, on the pavement earning a living through collecting garbages, breaking bricks or pulling rickshaws. Some of them work on the roadside tea stalls while others simply beg for a living. Some street children are involved in petty crimes and are used by gangs to peddle around drugs, snatch toll collections and so on.

Most of these children also look physically weaker, thin and wiry and tinier than their actual age. They work to support their families, where some do it to earn themselves and spend on whatever things they want, including drugs.

Being deprived from education and proper care those children loose their moral sense and the influence gathered from their peers also play a big role in leading them astray. A growing number of street children pose a threat to the society. Teenager criminals are feared to be more desperate. Due to adventurism characteristic of young age, they will not hesitate to commit crimes without the slightest thought of their own safety.

The government statistics based on a survey by the Bangladesh Institute Development studies estimated that the number of street children in Bangladesh is around 380,000 -- of whom 55% live in Dhaka city. A little less than half of them (49.2%) are around 10 years old, while the remaining fall in the age group of 11-19 years.

With 74.3% boys and 25.7% girls, the major problems faced by these street children are inse-

curities, physical and sexual abuses by adults of the immediate community; harassment by law enforcing agencies, no access to educational institutions and health care facilities; and lack of decent employment opportunities.

Street dwellers in the city are extremely vulnerable in terms of their health needs, hygiene and utilisation of healthcare services. It is found that most of the street dwellers have been suffering from disease of respiratory and digestive systems, severe pain and scabies.

People in our society are not quite as concerned about drug addictions among street children as much as they should be. The upper and middle income groups and the educated section of the society are not directly affected by this problem.

The BBS and International Labor Organization surveyed children aged between 5-17 working in the five worst industries: welding, auto workshops, road transport, battery recharging and recycling; and found 149,000 children working in these sectors an average of nine hours a day.

They worked 6-7 days a week for little or no wages. Children recharging and filling batteries had an average monthly wage of Tk.313. Street children earned an average monthly wage of just Tk.288 by collecting old paper, selling items on streets, shining shoes and begging. Those in the transport sector receive an average Tk.1,417 a month.

The estimated number of street children in Bangladesh is 445,226, of which 75% are in Dhaka city -- 53% boys and 47% girls. All categories of street children are called tokais (rag pickers) by the general public.

Child Labour is simply the most severe form of child exploitation and abuse in the world today. They are forced to work for a living, sacrificing their childhood as well as their future to barely survive poverty is the single most important factor responsible for the prevalence of child labour in the country.

About 55 million people live below the poverty line in Bangladesh. Poor households badly need the money that their children earn. Child Rights charter implementation is not only a government obligation but also a responsibility of the people of Bangladesh in this regard. As citizen we should change our attitude. It is difficult to guarantee their basic rights but the government and non-government organisations, social workers, print and electronic media are striving to enhance children's recognition and their voices.

The writer is a Women & Human Rights Activist.

## Where are we in addressing the excluded?

MAHBUBA NASREEN

Since the Independence, the Government of the Peoples' Republic of Bangladesh has been committed to support social inclusion through a variety of national laws and policies to fulfill the commitments of the Constitution.

Although all of the promises were not equally maintained within the 40 years of Independence, changes have occurred in context of raising awareness of people, including the socially excluded group. Such changes were contributed through the participation of common people, human right activists, national and international organisations and development partners; which have ultimately been materialised through different policies and interventions of state. However, some groups are still considered as socially excluded and ignored in development agenda.

Development efforts regarding social inclusion in Bangladesh are based on a wide array of international commitments including the Millennium Development Goals (MDGs), the Educational for All (EFA) Framework formulated in Dakar (2000), and a series of international legal conventions including the Universal Declaration of Human Rights (1948), the Convention of the Elimination of All Discrimination Against Women (CEDAW, 1979), the Convention of the Rights of the Child (CRC, 1990) and the ILO Act No. 182 (Convention on the Worst Forms of Child Labour) of 1999.

However, it must be mentioned that Bangladesh has not ratified two key articles of CEDAW, as well as the Convention Related to the Status of Refugees (1951), and the ILO Convention on Indigenous peoples (1989).

Human rights of the indigenous people are explicitly set out in the ILO Conventions 107 and 169, the Universal Declaration of Human Rights, the UN International Decade of the World's Indigenous People (1995-2004), the International Covenant on Civil and Political Rights, Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination. The Second International Decade, from 2005-2015, started with the theme of "A Decade for Action and Dignity."

It is well recognised that exclusion on the basis of gender is the most universally recognised form of social exclusion. However, internationally, attention to forms of social exclusion other than on the basis of gender has been more recent and, as yet, there is a less coherent conceptual framework on which to base analysis and action.

In all societies some groups are socially excluded. The groups affected and the degree of discrimination varies from one group to another and one society to another, as do the forms that social exclusion takes. It is also explored in detail how social exclusion causes poverty and hampers poverty reduction and development efforts. Social exclusion describes a process by which certain groups are systematically disadvantaged because they are discriminated against on the basis of their ethnicity, race, religion, sexual orientation, caste, descent, gender, age, disability, HIV status, migrant status or where they live.

Discrimination occurs in public institutions, such as the legal system or education and health services, as well as social institutions like the household, and in the community.

The socio-economic, educational, political and legal barriers to social inclusion in Bangladesh are wide-ranging. Social exclusion affects an array of social groups within the country including women, indigenous groups; disadvantaged and vulnerable groups (e.g. disabled persons, special occupational groups such as sweepers, sex-workers, transgender and so on). Disabilities are accompanied by strong social stigma in the country; an attitudinal situation that will take many years to reduce.

Statistics on these and other groups are not always available and often unreliable. Despite achievements in some of the MDG targets, EFA goals, the country is facing the challenges of poverty, frequent disasters, unaccounted rural-urban migration and growing urban congestion, lack of proper utilisation of local governance, malnutrition and unemployment.

Unrest in the Chittagong Hill Tracts and debate around defining indigenous community as "ethnic minorities" instead of "adivasis" should be given serious attention. Recent national policies such as National Women's Development Policy, 2011, National Child Policy, 2010, National Education Policy, 2010, National Agricultural Policy, 2010, National Food Policy, 2006, National Plan for Disaster Management etc targeted vulnerable, women and children (street children, ultra-deprived children, indigenous children), extreme poor, people living in disaster prone areas and other disadvantaged groups. However, National Policies must also include area specific vulnerability and social exclusion.

The writer is a Professor and Coordinator, Centre for Disaster and Vulnerability Studies (CDVS), Department of Sociology, University of Dhaka. Email: mahbubadu@yahoo.com