



LAW OPINION

No political concession at war crimes trial

TUREEN AFROZ

Forty-three years ago, Bangladesh, the then East Pakistan, experienced one of the worst genocides in the history of mankind. After being discriminated for decades by the racist regime of Pakistan, the people of the then East Pakistan unanimously exercised their 'right of self-determination' and declared its independence from Pakistan on 26 March 1971. The said racist regime however launched an unjust war in which the Pakistani Army and its local collaborators (Razakar, Al Badr, Al Shams etc.) committed the most heinous crimes, such as, genocide, crimes against humanity, war crimes etc. upon the people who believed in Bengali nationalism and thereby, demanded independent Bangladesh exercising universally recognised 'right of self-determination'.

Bangladesh's Liberation War in 1971 resulted in up to three millions of merciless deaths at the hands of Pakistani Army and their local allies. Bengali civilians were routinely tortured in camps jointly managed by the Pakistani Army and its local collaborators. Bengali Hindus were persecuted; Bengali women were raped, and were made subject to sexual enslavement and forced pregnancy. The future of tens of millions of Bengalis was changed overnight as they had to take refuge in neighboring India. There were also target killings of Bengali intellectuals.

Two of the alleged orchestrators of these horrific crimes, Motiur Rahman Nizami and Delwar Hossain Sayedee, have faced trial before the International Crimes Tribunals, Bangladesh for their alleged crimes committed during 1971. The nation is eagerly waiting for the trial and appeal judgments of them respectively.

Nizami, in particular, was identified during this trial as a leader and instigator of many of the killings that occurred in 1971. He was charged with 16 counts. His charges include genocide, 'crimes against humanity' by murder, rape,

abduction, deportation, religious persecution, etc., and 'other international crimes'. It was alleged that Nizami was directly involved in a number of massacres such as massacres at Arpara and Vutergari villages on 16 April 1971, Karamza Village on 8 May 1971, Bousgari village on 10 May 1971, Dhulaura village on 27 November 1971 and Brishalikh village on 3 December 1971. Nizami was alleged to have played a key role in the abduction, torture and killings of civilians at the old MP Hostel, Mohammadpur Physical Training Institute and

of Gouranga Saha and detained them for three days during which they were repeatedly raped.

It is true that both Nizami and Sayedee have been members of the political party, Bangladesh Jamayat-e-Islami. However, political background of the accused has absolutely no bearing in determining his or her criminal liability at the trials before the International Crimes Tribunals, Bangladesh. 15 trials those have been initiated so far before the International Crimes Tribunals involved accused criminals, 11 of whom have political connections with Bangladesh Jamayat-e-Islami, 2 with Bangladesh National Party (BNP - the opposition party, 2008-2014), 1 with Jatiya Party (JP - the current opposition party) and 1 with Bangladesh Awami League (BAL - the party in power, 2008-2014; also, the current party in power). Therefore, it is clear that political orientation or association of the accused criminals have no bearing upon the ongoing trials at the Bangladesh tribunals and as such, accused criminals cannot be shielded from justice under the guise of a political party.

In conclusion, it is stated that the International Crimes Tribunals, Bangladesh are independent in the exercise of their judicial functions and are legally mandated to ensure fair trials. Accused criminals are guaranteed all universally recognised rights to defend his/her position including right to know the charge, right to have a public trial, right to plead guilty/not-guilty, right of legal representation, right to present evidence, right to cross-examine prosecution witnesses, right not to be self-incriminated, right of appeal, etc. Moreover, since the trials at the International Crimes Tribunals, Bangladesh are evidence-based, there is absolutely no room to make any political considerations or concessions to the accused criminals.

THE WRITER IS PROSECUTOR, INTERNATIONAL CRIMES TRIBUNAL.



of Bengali intellectuals.

Sayedee was charged with similar crimes. On more than one occasion, he accompanied Pakistani troops as they murdered unarmed Bengali civilians, according to testimony at the tribunal. He was also alleged to have caused widespread destruction by ordering the arson of roadside buildings in more than a dozen villages. Sayedee was said to have targeted leaders of the freedom movement. Evidence was presented that Mahbubul Alam Howlader was tortured and his older brother murdered by Sayedee and his men. On another occasion, Razakars under Sayedee's command attacked the Hindus of Hoglabunia village. Some of the men raped a woman yet Sayedee did nothing to stop them. Evidence was presented that Sayedee abducted the three sisters



LAW CAMPAIGN

To protect right to environment

Raise Your Voice Not the Sea Level



The Global Mean Sea Level (GMSL) has risen by 4- 8 inches (10 to 20 cm) over the past century!

EMDADUL HAQUE

Right to environment is an integral part of human rights. In recent years, the recognition of the progressive links between human rights and the environment has tremendously increased. The number and scope of international and domestic laws, judicial decisions, and academic studies on the relationship between human rights and the environment have grown rapidly after the second half of the 20th century. On the other hand, the slogan for World Environment Day 2014 is 'Raise Your Voice Not the Sea Level' and it will thematically focus on 'Small Islands Developing States and Climate Change'.

Undeniably, the United Nations Charter of 1945 marked the beginning of modern international human rights law, whereas the Stockholm Declaration of 1972 is generally seen as the starting point of a rights based approach to environmental recognition and protection. Twenty years later, the Rio Declaration in 1992 has galvanised the growth of environmental law knotting bond between environment and development paving the way for sustainable development. It has been estimated that at present there are around 1000 treaties existing with environmental protection norms and of these treaties, 150 are multilateral.

Sharing with agony that most human rights treaties were drafted and adopted before environmental protection became a matter of international concern. As a result, there are few references to environmental matters in international human rights instruments, although the rights to life and to health are certainly included and some formulations of the latter right make reference to environmental issues. Similarly, the international environmental law is a soft nature of law with deontological norms and values being imbued with sustainable development,

intergenerational equity, intra-generational equity, the precautionary principle, polluter pays principle, and even environmental impact assessments within its jurisprudence. Even more importantly, despite vintage from developmentalists, environmental rights are included in more than 100 national constitutions. These provisions are having a remarkable impact, ranging from stronger environmental laws and landmark court decisions coinciding environment and development in a parallel manner.

Every year on June 5 World Environmental Day is being celebrated aiming at raising awareness of the importance of respecting and vowing to protect environment. It was established by the UN General Assembly in 1972 and the first Environment Day was celebrated in 1973. Since then it is hosted every year by a different city with a different theme. Barbados, a Caribbean island at the cutting edge of the fight against climate change, will host this year's World Environmental Day global celebrations on 5 June 2014.

Climate change has been at the top of the political agenda over last few decades. The main cause of all this climate change is human activity, primarily industry. Over the past 100 year the global temperature has increased by 1.4°F over the past century, and is projected to rise another 2 to 11.5°F over the next hundred years. Global warming is affecting and relatively contributing for the sea level rising. Over the past 100 years sea level has risen about 10- 25 cm and the trend keeps increasing. Today, our world is hotter than it has been in two thousand years. If current trends continue, the global temperature may climb higher than at any time in the past two million years by the end of the century. It is clear that many of the world's poorest people from

least developed and developing states are likely to suffer the most from climate change.

Controversy and mudslinging is unabated between USA and China concerning the position of the world biggest polluter. Brazil and India is also in the race of third position. The USA is responsible for 30.3% of the world's gas emissions. Globally, an estimated 2,00,000- 5,70,000 people die each year from ambient air pollution. Cars are responsible for 40%- 90% of the world's air pollution. From 1945- 1992 the United States conducted a total of 1,030 nuclear tests.

Proper implementation of environmental law in international, regional and national level can be a boosting step towards global protectionism. But in most countries environmental laws are available in book only. In Bangladesh around 200 laws are related to this sector which sounds good but its implementation is a bitter reality in promoting environmental justice. In response to climate change, the Climate Change Resilience Fund created by the stakeholders of developing states and global agencies is like insult to injury to the victim countries. Also, the proper use of the fund is not beyond question.

Furthermore, the Intergovernmental Panel on Climate Change (IPCC) is a scientific intergovernmental body under the auspices of the UN always vomits either adaptation or mitigation for combating the human induced buzzing issue. Scientists say IPCC put politics before science and needs reform to work properly. The Kyoto Protocol of 1999 after being effective in 2005 envisaged its first commitment to emissions reduction between 2008-2012, and the second commitment between 2013-2020. The protocol was amended in 2012 to accommodate the second commitment period but this amendment has not entered into legal force. Moreover, without a doubt, practicing the 3R's model of waste management and environment protection namely reduce, reuse and recycle has become a handy option to control environment degradation everywhere.

Environment is like mother arranging almost everything for all human beings. Losing to protect environment is not like losing an election or few points in the stock market. There are diversity of languages, cultures, and geographies but ultimately every nation has the community of its own citizens on the earth. As a result, elevating the right to safe and healthy environment can be a step forward for sustainable world with dignity, harmony and peace. Otherwise the hedonistic approach of human being may expedite the journey of destruction from the earth sooner than stipulated period of time.

THE WRITER IS A SENIOR LECTURER OF LAW AT SOUTHEAST UNIVERSITY.



YOUR ADVOCATE



This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies.



Query

We have been married for almost 6 years and have a 5 year old son. Since last 5 months my wife is staying with her parents that prevents our child going to school and learn the Holy Quran. I am educating him in English medium school as well as teaching him Quran simultaneously but my wife opposes on this. I do not want to lose out on this time because this is the best age for him to learn as many things as possible. In this backdrop, I need your advice on the following:

- 1.Can I obtain legal custody of our son without divorce (so as to have him with me for educational purposes) as I do not want to divorce her for this reason
2. If yes, how (what is the legal procedure for this custody?) as per Bangladeshi Muslim Family Rules.
- 3.Is there any other legal way for this matter?

Mainuddin

Response

Thank you for your query. Please find the below mentioned legal provisions relevant to your queries.

You, by virtue of being the father of the child, can be considered to be the natural guardian of the child (unless guardianship has officially been vested in another person). On the other hand, since the child is currently aged 5 years, your wife, by virtue of being the mother of the child, has priority for the custody of the child (until the age of 7 in case of a male child). As such, even though the son is presently residing with your wife, legal control of the child still vests in you by virtue of your guardianship, and thus, you can make an application to the appropriate Court in order to regain custody of your child. You are not required to file a divorce in order to make such an application.

Procedure for application:

You are entitled to make an application to the court pursuant to S.25 of the Guardians and Wards Act- 1890. This section provides for the situation where a ward (i.e. the child in this situation) leaves or is removed from the custody of the guardian and the Court opines that it will be for the welfare of the child to return to the custody of his guardian. In considering the application, the

Court is guided to decide what appears to be for the welfare of the child, and in relation to this, Courts are required to have regard to the age, sex, and religion of the child, the character and capacity of the proposed guardian (I.e you, in this situation) and his nearness of kin to the child, and any existing or previous relations of the proposed guardian with the child or his property. In assessing such matters, the court is also likely to hear evidence relevant to the child's welfare.

On an application being made, it is opined that you (and your legal representatives) should be adequately prepared to present evidence of the fact that your son's education has been effectively carried out by you when you had custody of the child. It should further be clarified that in order to continue this education, and to facilitate the overall well-being of your son, you should be granted custody of the child. Further, if the Court is of the opinion that the minor is old enough to form an intelligent preference, the Court may consider that preference. Therefore, it is advisable, on your part, to take any possible steps in ascertaining your son's wishes, and considering their consequences prior to the application being made under S25.

Other legal Procedures relevant to the issue:

As clarified previously, filing a divorce is not a pre-requisite to making the aforementioned application under S25. In the situation where the application is rejected, you can further consider the avenue of making an appeal against the decision under S 47^o of the Guardians and Wards Act-1890. The appeal shall lie to the High Court Division from an order made by a Court, and thus, you might avail a further opportunity of presenting your case and your reasons for demanding custody of your son in order to ensure his welfare. However, in a continuing marital relationship, it is not the wisest idea commence litigation over the custody of the child. Rather, I would strongly suggest that try to solve the matter amicably with the help of the elderly persons from both the families.

I hope the above shall help you to ascertain your legal position and take the best decision for your child.

FOR DETAILED QUERY CONTACT: OMAR@LEGALCOUNSELBD.COM.



LAW LETTER

Cell phone and towers are inevitable threat towards nature

In the modern time the importance of information and technology is increasing day by day. In the aspect of improvement in telecommunication sector, the cell phone is the most important one and already become the part of our daily life. In the present world, the contribution of cell phone cannot be described in a single word. But cell phone usage has many hazards to the human health as well as the environment. Various studies indicate that, the emission for a cell phone is extremely harmful. It causes genetic damage, tumors, memory loss, increased blood pressure headaches, cancer, autism, heart damage, hypertension and most importantly low sperm count etc.



In the developing and less developed country like us, we used to type of cell phone technologies which are GSM (Global System for mobile) and CDMA (Code Division Multiple access) technology. Most popularly in our country we used the GSM technology whereas it is more hazardous than the CDMA technology.

GSM technology emits more electromagnetic radiation than the CDMA. Electromagnetic radiation has two types of effects as named thermal and non-thermal effects. When we hold the phone near our ear for long time, we may suffer by the thermal effect and non thermal effect on the cells, genes, and the DNA. Excessive use of cell phone may cause sleep disturbance, lack of concentrations, tinnitus (ringing in the ears) etc.

Women and children are the most affected group by the radiation emitted by the cell phone as well as the towers. Hormonal imbalances, miscarriages, breast and ovarian cancer may cause for the radiation. In the present world there are 6 billion cell phone users so, the hazardous effect of cell phone over human is easily imaginable. The cell phone and towers affects not only the human being but also hazards environment.

The study regarding the impact of mobile tower radiation suggests that it has disastrous impact on nature, plants as well as birds. Though the use of cell phone cannot be stopped but the installation of cell phone tower might be regulated with the adoption of proper measures. Otherwise, the cell phone towers will be considered as the silent killer of the nature of our loving Bangladesh.

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