

REVIEWING THE VIEWS

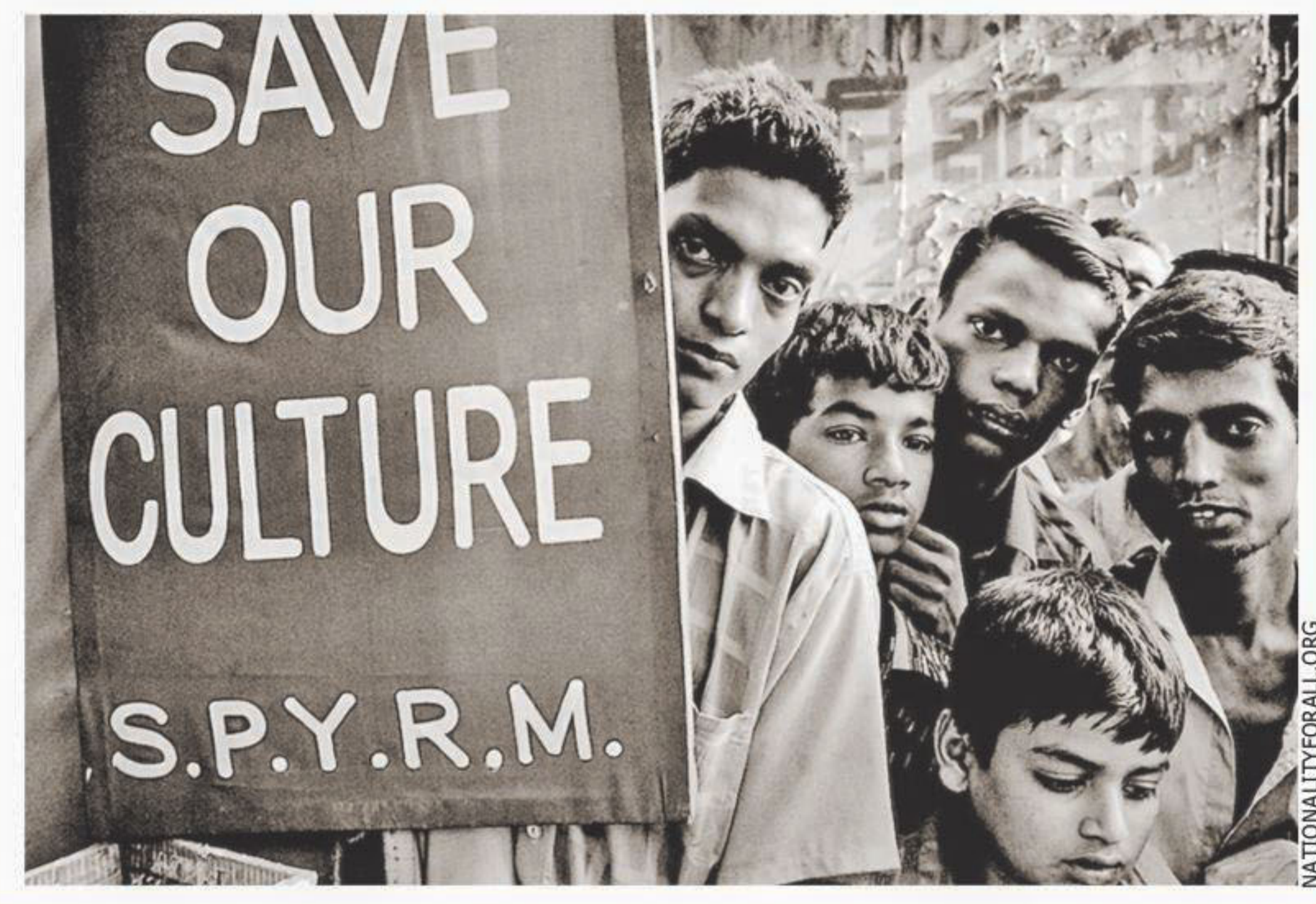
The plight of the linguistic minority

IMTIAZ AHMED SAJAL

IN Bangladeshi parlance, the Urdu-speaking Muslim people who had migrated to the then East Pakistan from Uttar Pradesh, Bihar and Rajasthan are categorised as 'Biharis'. The Bihari community is a linguistic minority and is exceptionally different from other minority communities of Bangladesh. The communal riot of Bihar during 1946-47 led this community to take refuge in the territory of Bangladesh. In the early days of Pakistan, there was confusion as to the legal identity of these people, i.e., whether they would be regarded as refugees or voluntary migrants or political asylees or stateless persons. In 1951 they were granted the citizenship of Pakistan and during the 24 years of Pakistani rules, they were a privileged community both in social and economic fields.

Because of their active anti-liberation role, the Biharis became subject to widespread political persecution preceding and during the 1971 liberation war of Bangladesh as well as in the aftermath of liberation. After Independence of Bangladesh, the Government of Bangladesh promulgated a set of laws that were intended to manage abandoned properties. These laws applied to a large extent against the Biharis, to confiscate not only residential but also commercial and movable properties including Cash, Ornaments and Bullion. The consequences of operation of abandoned property laws have been, simply, gross denial of freedom and liberty, and institutionalisation of systematic socio-cultural, economic and political deprivation of Bihari community in Bangladesh. They have been displaced and lost everything; thousands of middle class families rendered to paupers overnight. In order to save their souls had gone to the ICRC sponsored camps. Since then, the Biharis are suffering from a crisis of their legal identity and status.

In 1972, following the creation of Bangladesh, an estimated 1,000,000 Urdu speakers were living in settlements throughout Bangladesh awaiting "repatriation" to Pakistan. Agreements between Pakistan, Bangladesh and India in 1973 and 1974 resulted in some 178,069 members of this community being "repatriated" from Bangladesh to Pakistan between 1973 and 1993 out of some 534,792 who had registered with the ICRC for repatriation. At present, it is generally estimated that there are more than 300,000 Biharis in Bangladesh, half of whom live in 116 camps all over the country. For several decades the successive



governments of Bangladesh have been treating the Biharis who opted for repatriation to Pakistan but are left in Bangladesh as 'refugees', not as 'citizens'.

In 2003, in the case of *Abid Khan and others v Govt. of Bangladesh and others* (55 DLR), a division bench of the High Court Division held that the ten Urdu-speaking petitioners, born both before and after 1971, were Bangladeshi nationals pursuant to the Citizenship Act, 1951 and the Bangladesh Citizenship (Temporary Provisions) Order, 1972, and thereby directed the Government to register them as voters. The Court further stated, quoting from an earlier case of *Mukhter Ahmed v Govt. of Bangladesh and others* (34 DLR) - "the mere fact that a person opts to migrate to another country cannot take away his citizenship."

The effect of the 2003 decision was limited to the ten petitioners. Ultimately, the Supreme Court of Bangladesh had to confirm that Biharis are citizens of Bangladesh in 2008, in the landmark decision of *Md. Sadaqat Khan and others v Chief Election Commissioner* (60 DLR), the High Court Division reaffirmed that all members of the Urdu-speaking community were nationals of Bangladesh in accordance with its laws and directed the Election Commission to enroll the petitioners and other Urdu-speaking people who

want to be enrolled in the electoral rolls and accordingly, give them National Identity Card without any further delay.

The Election Commission very swiftly issued National Identity Cards to any member of the Urdu-speaking community who applied for one and who met the legal and administrative requirements. The Urdu-speaking community can no longer be viewed as stateless or refugee, as they are considered to be nationals of Bangladesh. As per art.6 of the Constitution they are 'Bangalis' or 'Bangladeshis' not 'Biharis' or 'stranded Pakistanis'. They are entitled to apply for administrative and judicial remedies in accordance with the laws of Bangladesh, in the same manner as any other Bangladeshi citizen.

This minority group is obviously a backward section of the citizen and has long been ignored in the development discourse of Bangladesh. For more than four decades they are deprived from all the basic human rights. Particularly those living in camps are facing social exclusion and severe discrimination in every aspect of life-education, employment, health services, business, access to justice etc. Mainstreaming of this group is a crying need of the time.

THE WRITER IS A LAW STUDENT, UNIVERSITY OF DHAKA.

GLOBAL LAW UPDATES

Fighting racism for 50 years and beyond

ON 21 December 1965, the United Nations General Assembly adopted Resolution 2106, which established the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). It is among the oldest conventions in the UN Human Rights Office arsenal to target oppression and discrimination.

The Convention essentially resolves to "to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination."

2015 marks 50 years since the adoption of the Convention. It was forged during the time of great civil unrest in parts of the world. The drafting took place during the civil rights movement in the United States, whose Civil Rights Act was passed just prior to its adoption. Apartheid was at its height in South Africa, with the Sharpeville Massacre bringing the cruelty of the regime into international focus. And many countries in Africa were doing away with colonialism for independence.

Yet, despite these milestones, racism continues to plague societies. To combat it, ICERD continues to examine the situation in each country that has ratified the Convention through its committee. In fact, the 177 States that have ratified the Convention must regularly report to and appear before the committee in Geneva. The committee, in turn, issues concrete recommendations on how various forms of racism that exist in each country can be effectively eliminated.

Indeed, even after half a decade since its adoption, ICERD continues to remain relevant to the issues that we face today. As one opinion by UN Secretary-General BAN Ki-Moon put it, "The Convention, as a living instrument, must be interpreted and applied taking into account the circumstances of contemporary society." Over the past 45 years, the committee has effectively addressed new and emerging issues within the framework of the Convention and adopted innovative practices to improve its efficiency and effectiveness.

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FOR YOUR INFORMATION

BENEFITS FOR pregnant worker

As per law, maternity leave means the period of absence for which a female worker will be permitted to get salary and other benefits from her employer to give birth and taking care of her newborn child.

RAISUL ISLAM SOURAV

THIS has been often a common phenomenon in Bangladesh that female workers give birth at their work places like factories or mills. This is just one of the scenarios of our worker's rights where they spend of their live to earn. This sort of incident illustrates that apart from ordinary rights factory authorities are very reluctant to ensure maternity benefits while a mother worker needs extra care and attention during her pregnancy.

The government has approved six months maternity leave along with other benefits for government employees. On other hand, our existing labour law allows maximum sixteen weeks maternity leave for the female workers with full payment preceding and following the day of her delivery. However, condition requires that she should not have more than two living children and served not less than six months immediately preceding the day of her delivery. As per law, maternity leave means the period of absence for which a female worker will be permitted to get salary and other benefits from her employer to give birth and taking care of her newborn child.

Nonetheless, no employer can employ a woman in his/her establishment during the eight weeks immediately after the delivery. In addition, if there is reason to believe that or if any female worker has informed her employer that she is likely to be delivered of a child within ten weeks then the employer shall not employ her for doing any work which is of an arduous nature or involves long hours of standing or likely to adversely affect her health.

Procedure to take leave: Every pregnant woman entitled to maternity leave may give notice either orally or in writing to her employer that she expects to be confined

within eight weeks. Any woman, who has not given such notice and has been delivered of a child shall give similar notice to her employer within seven days that she has given birth to a child. After receiving the notice the employer is bound to permit the women to absent herself from work from the day following the date of notice.

Procedure to pay maternity benefits: An employer shall pay maternity benefit wholly in cash to a woman in such one of the following ways as the woman desire, namely (a) for eight weeks before delivery, within three working days of the production of a certificate signed by registered medical practitioner stating that the woman is expected to be confined within eight weeks of the date of the certificate, and for the remainder of the period for which she is entitled to maternity benefit within three working days of the production of proof that she has given birth to a child or (b) for the said period up to and including the day of delivery, within three working days of the production of proof that she has given birth to a child, and for rest of the period, within eight weeks of the production of such proof or (c) for the whole of the period, within three working days of the production of proof that she has given birth to a child. However, a woman shall not be entitled to any maternity benefit or any part thereof, if she fails to produce the proof that she has given birth to a child within three months of the day of her delivery.

Payment of maternity benefit in case of woman's death: If a female worker dies at the time of her delivery or during the next period of eight weeks, the employer shall pay the amount of maternity benefit due, if the newly born child survives her, to the person who undertakes the care of the child, and if the child does not survive her, to the person nominated by her or if she has made no such nomination, to her legal representative.

If a woman dies during the period for which she is entitled to maternity benefit but before giving birth to a child, the employer shall be liable only for the period up to and including the day of her death, provided that any sum already paid to her in excess of such liability shall not be recoverable from her legal representative, and any amount due at the woman's death shall be paid to her nominated person or to her legal representative.

However, no employer can discharge, dismiss, remove or terminate the employment of a woman within a period of six month before and eight weeks after her delivery without sufficient cause to deprive her from maternity benefits. Additionally, where forty or more women work in a factory and they have child under the age of six then the employer shall arrange sufficient number of hygienic rooms for that children where experienced and trained women will take care of them.

Hence, law is enough to ensure rights for pregnant worker though there exists discrimination between government and private employees, and between worker and managerial employees. However, proper compliance with the law can protect every right for the workers. Alternatively, state should bring the violator in the process of justice.

THE WRITER IS AN ASSISTANT PROFESSOR OF LAW, DHAKA INTERNATIONAL UNIVERSITY.



LAW EVENT

To learn about liberation war

CENTER for the Study of Genocide and Justice (CSGJ) of Liberation War Museum (LWM) organised its 2nd Winter School on "Genocide, Justice & the New Generation" from December 17-24, 2015 at Proshika HRDC, Manikganj. Total 40 students of various disciplines from 12 universities and professionals including academics, judges, lawyers and media personalities participated in this residential workshop.

Resource persons in the school included numbers of faculties of law, history and social science from the USA, Australia and Bangladesh. Julian Francis, "Friends of Liberation War Honour"

Dhamrai. They interacted with the local freedom fighters who shared their experience of liberation war and victims who narrated their horrific stories and havoc that were wreaked by barbaric Pakistani army and their collaborators in 1971. Participating in non-judicial hearing activity was one of the learning experiences for the participants who performed the roles of commission, prosecutors, defence counsels, victims, and civil society-media.

Preparing a Declaration of Intent the participants pledge: to conduct research and disseminate the history of liberation



awardee; Amy Fagin, Executive Director of Beyond Genocide; Professor M Rafiqul Islam of Macquarie Law School; Chief Investigator Md. Abdul Hannan Khan and Prosecutor Dr. Tureen Afroz of International Crimes Tribunal-Bangladesh (ICT-BD); war baby and descendants of martyred intellectuals spoke in different sessions of the school. The school was coordinated by Ms. Umme Wara and Mr. Khair Mahmud.

Through interactive discussion, brainstorming, group exercise, field visit, documentary film screening, theatre art and mock trial, the participants explored the concept of genocide from the perspective of Bangladesh and beyond.

While emphasising on the dissemination of liberation war history to new generation, the school also focused on the trauma and sufferings of Birangonas and war babies as well as their effective reparation and social acceptance for ensuring justice and rejuvenation of Bangladesh.

The participants visited battle fields of

war among common people and new generation through internet and social media; to discard the misconceptions regarding ICT-BD trial.

The closing ceremony was honoured with the presence of eminent writer Professor Dr. Muhammed Zafar Iqbal; Mofidul Hoque, Trustee of LWM and Director of CSGJ; Ziauddin Tariq Ali, Trustee of LWM.

The participants, volunteers and residential mentors were given certificates upon completion of the programme. Ifekhar Sahariar of Rajshahi University and Mahboob Sobhani of CMM Court jointly received the Best Performance Award while S M Pizuar Hossain of BRAC School of Law received the Academic Excellence Award and Laila Tasmia of Dhaka University received the Best Performance in Non Judicial Hearing Award.

THE EVENT COVERED BY GOLAM KIBRIA SOURAV, STUDENT OF LL.M, UNIVERSITY OF DHAKA.