

**CONSTITUTIONAL ANALYSIS**

# Article 7B and constitutional stalemate

*There are better alternatives than Article 7B in order to safeguard the Constitution from unconstitutional intrusions. Instead of freezing the basic provisions by Article 7B, their amendment procedure could be made more rigid by requiring extraordinary majority (votes of the three fourths members of the parliament).*



Jubaer Ahmed

THE fifteenth amendment has rendered quite a good number of provisions of the Constitution of Bangladesh unamendable. According to Article 7B, the preamble, Part I, Part II, Part III (subject to Emergency related provisions), and all Articles relating to the basic structure of the Constitution including Article 150 have been designated as basic provisions of the Constitution and accordingly they are not amenable to amendment. Moreover, Article 7B has made it clear that these provisions will not be amended in any possible way of amendment.

In the past, the Constitution of Bangladesh had undergone many untoward changes specially during unconstitutional regimes. These illegal regimes were prone to make intrusions in the Constitution by injecting their political ideology in order to prolong unconstitutional rule. Undoubtedly, the resultant effect was these amendments were far from reflecting the will of the people. In order to put an end to this mischievous trend, fifteenth amendment introduced Article 7B. However it has also put an end to the legitimate constitutional intervention that may be required to introduce in future. No doubt the underlined philosophy behind inserting Article 7B is to maintain the stability of the Constitution yet it has generated few constitutional dilemmas.

In order to incorporate

newfound, but well established, values of the society the amendment of the constitution is an inevitable means. That's why it's necessary to amend Constitutions and generally Constitutions do incorporate provisions that lay down procedure as to how amendments can be validly brought in. The Constitution of Bangladesh also incorporates provisions relating to amendment in Article 142. The fifteenth amendment has snatched away more than 50 articles out of 153 articles of the Constitution from the grip of Article 142 through introducing the idea of un-amenable basic provisions in Article 7B. If both the Articles are read simultaneously they will sound contradictory. Article 7B starts with "notwithstanding anything contained in Article 142 of the constitution" which has made an overt inroads into the authority of Article 142.

Apart from Article 7B, the fifteenth amendment has also inserted article 18A in the Part II of the Constitution which has made the protection and improvement of environment and biodiversity as one of the fundamental principles of state policy. Sensing the importance of preventing environment from destruction the legislators introduced the provision. The legislators could bring Article 18A in the aforesaid amendment because Article 7B was not there. Regrettably in future, Article 7B may lead to constitutional stalemate if

situation warrants change in the Constitution. If the Constitution remains unamendable contrary to people's will favoring changes, it will eventually defeat the spirit of our Constitution.

Of course, there are better alternatives than Article 7B in order to safeguard the Constitution from unconstitutional intrusions. Instead of freezing the basic provisions by Article 7B, their amendment procedure could be made more rigid by requiring extraordinary majority (votes of the three fourths members of the parliament). In addition, Article 7B could specify and limit the grounds for amending the basic provisions. Moreover, public referendum in case of amendment of the basic provisions of the Constitution could serve the best alternative to Article 7B of the Constitution.

The Constitution as the solemn expression of the will of the people is the supreme law of the country, hence it should be subjected only to the will of the people and not anything else. If the will of the people behoves the legislators to bring better standards in fundamental human rights what will then happen? Will the legislators amend Article 7B to create the scope, where Article 7B itself has fallen in the ambit of the Part II of the Constitution which is simply not amenable at present?

THE WRITER IS A LECTURER IN LAW, NORTHERN UNIVERSITY BANGLADESH.

**GLOBAL LAW UPDATES**

## People's Tribunal on Myanmar crimes

Manjica AHamed & FAzle ELahi

PERMANENT People's Tribunal (hereinafter "PPT") has been working since June 24, 1979. Since its establishment, the PPT has held 42 sessions on numerous occasion of human rights violation. On November 24, 2016, a group of researchers, academics and activists in coalition with global Rohingya refugees drew the attention of PPT on Myanmar's State crime against Muslim Rohingya ethnic minority, and subsequently, the Kachin group made their complaint in March 2017 to the PPT. Following which on March 6-7, 2017, the 'Official Opening Session: Permanent People's Tribunal on Myanmar's State Crimes against Rohingya, Kachin and other Groups' was hosted by the International State Crime Initiative, School of Law, Queen Mary University of London. The PPT on Myanmar consisted of a panel of jurists

documentation relating to State-sponsored massacres, extrajudicial executions, murders, disappearances, drownings, rape and sexual violence, destruction of homes and villages, the wholesale denial of civil rights, in the context of State terror.

After the full day hearing, the prosecution accused the Myanmar State, which includes departments of government, the military, the police, the border police, the National League for Democracy (NLD) and Aung San Suu Kyi for committing crimes against Kachin and Rohingya ethnic groups. The prosecution submitted that the Myanmar is responsible for genocide, war crimes and crime against humanity, including the targeting of civilians, rape, the use of sexual violence as a weapon of war, arbitrary detention, forced labour, restriction of the provision of humanitarian assistance to internally displaced people (IDPs). The prosecution



Opening session of Permanent People's Tribunal on Myanmar crimes against Rohingya.

(hereinafter "Panel") including Prof. Daniel Feierstein, former President of the International Association of Genocide Scholars (IAGS); Dr. Helen Jarvis, former Chief of the Public Affairs Section of the Extraordinary Chambers in the Courts of Cambodia (ECCC), Mr. Denis Halliday, UN Assistant Secretary-General, and a team of prosecutors.

In the opening session, the Panel heard not only the testimony and expert opinion in relation to the State crimes but also the historical genesis of these crimes. The Panel then heard the historical testimony from the representatives of the Kachin National Organisations. In addition, the testimonies of Rohingya rape victims, and victims of recent attacks were presented as evidence before the PPT. In fact, the Panel heard oral testimony from witnesses and experts, as well as video and written

will be submitting further testimony from Rohingya, Kachin and other groups as well as expert evidence from academics, medics, NGOs and activities in future occasions.

Taking into consideration all accounts of crime, the Panel was convinced and opined that the charges of serious crimes demand adjudication by the PPT and accordingly a full session will be convened within the next six months. The Panel urged the UN and other international agencies to move beyond descriptive reports of the situation, and concluded by calling upon the mass and social media to keep shining the spotlight on this humanitarian issue.

THE WRITERS ARE PHD STUDENT, MIDDLESEX UNIVERSITY, UK AND BARRISTER-AT-LAW RESPECTIVELY.

**HUMAN RIGHTS RIGHTS aDVOCACY**

## Resettling Rohingyas and international law

ARif AHmed

THE 1951 Convention Relating to the Status of Refugees and its 1967 Protocol Relating to the Status of Refugees are two major international instruments under international refugee law. Again the 1954 Convention Relating to the Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness are two other major international instruments that were adopted by world community to protect the rights of stateless people worldwide. Though neither Bangladesh nor Myanmar has acceded to any of these

obliged to provide the shelter and protection to Rohingyas and in no way it can avoid its obligation. Hence, Bangladesh has obligations towards the Rohingyas mainly to: (1) grant a temporary asylum; and (2) to ensure respect for and protection of the basic human rights of Rohingyas during this asylum, i.e., Bangladesh has an obligation to ensure that the basic human rights of Rohingyas are respected while they are in temporary asylum by ensuring equal protection of law and access to essential services, e.g., food, education and housing.

But in reality, these obligations have not always been complied with and the reasons

punitive restrictions on international organisations providing lifesaving humanitarian aid. Though Bangladesh has allowed the entry of Rohingyas into its territory several times, she has refused their current effort for valued reasons including security concerns and demographic burden. The government has recently taken a decision to temporarily resettle thousands of Rohingyas in the Thengar Char Island situated in Hatiya Island in Noakhali. This is not rational according to the UNHCR as relocating them from Cox's Bazar to this island would deprive them of their rights to freedom of movement, livelihood, food and education. This 6,000-acre island is not worthy of living as it is situated in more than 37 miles away from the mainland. It is officially uninhabited and completely inundates during the monsoon. This island was declared a 'reserved forest' by the Ministry of Environment and Forests in 2013 where about 50,000 birds of 55,000 species live throughout the winter season according to the Spoon-billed Sandpiper. If Rohingyas are resettled in such an isolated island, their human rights are likely to be violated by the government of Bangladesh.

The Rohingyas living in Bangladesh under humanitarian grounds are presently in a double jeopardy as both Bangladesh and Myanmar force them to live in a line of paradox. They are the most vulnerable groups in the present world as they are persistently subjected to flagrant human rights violations in Myanmar for decades. Bangladesh has given shelter to refugees from Myanmar in 1978, 1991, 2012 and 2016. In 2016 Bangladesh has given shelter to about 70,000 Rohingyas in its territory. It is now hosting around 5,00,000 Rohingyas in its territory, i.e., half a million Rohingyas living in camps in Cox's Bazar along Bangladesh's southeast border with Myanmar live in cramped and unsanitary conditions, in makeshift homes, with little access to clean drinking water and proper food. It proves that in comparison to Myanmar, Bangladesh is always far more respectful towards its international law obligations.

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instruments, they have international obligations towards the Rohingyas residing within their territories under their respective constitutional framework and different UN treaties (i.e., under broader mandate of UN) to which they have already been acceded. That is to say, despite Bangladesh is not a State Party to these major refugee law instruments, under the principle of non-refoulement, it is

for the non-compliance point to the limits of international refugee law as a comprehensive solution to the problem of migration of the Rohingyas. Bangladesh has already breached this obligation on several occasions, e.g., the 1992 expulsion and recent boat turning incidents of Rohingyas in 2012 and 2016 from Bangladesh. The Bangladesh government has been accused of withholding food aid and of

**FOR YOUR INFORMATION**



## Filing complaint by consumers

ACCORDING to section 2(3) of the Consumer Rights Protection Act 2009, the following persons can file a complaint to the Directorate of National Consumer Rights Protection: (a) any consumer; (b) one or more consumers having same interest; (c) any consumer association registered under any Act; (d) the National Consumers' Right Protection Council or any officer authorised to file any complaint on its behalf; (e) the Government, or any Government officer authorised by the Government in this behalf; or (f) the concerned wholesaler and retailer.

The procedure of filing complaint is regulated by the 2009 Act. In accordance with section 76(1), any person, who is generally a consumer or likely to be a consumer, may make a written complaint to the Director General or any person empowered by the Director General against any anti-consumer right practice under the 2009 Act. The complaint must be in writing and have the receipt of the products or services annexed to it. The complaint can be made in person, through fax, e-mail, website or other electronic means of communication or through any other way.

The complainant must mention his full name, father and mother's names, address, contact details and profession.

According to section 60 of the Act, the complaint needs to be made to the Director General or any officer of the Directorate within 30 (thirty) days of arising the cause of action of any anti-consumer right practice.

If a complaint is proved to be true after investigation or inquiry, the Director General or any officer empowered by him

may impose fine upon the person. When the fine is realised, 25% of it will be paid to the complainant. However, if the complainant is an officer or an employee of the Directorate, he/she shall not be entitled to receive such 25% realised fine.

**Complaint filing point:**  
Dhaka: Director General, Directorate of National Consumer Rights Protection, 1 Karwan Bazar (TCB Bhaban-8th Floor), Dhaka.

National Consumer Complaint Center, 1 Karwan Bazar (TCB Bhaban-9th Floor), Phone: 0177753668, Email: nccc@dncrp.gov.bd.

Chittagong: Deputy Director, Chittagong Divisional Office, Directorate of National Consumer Rights Protection, TCB Bhaban, Bandartila, Chittagong.

Rajshahi: Deputy Director, Rajshahi Divisional Office, Directorate of National Consumer Rights Protection, Srirampur, Rajshahi.

Khulna: Deputy Director, Khulna Divisional Office, Directorate of National Consumer Rights Protection, TCB Bhaban, Shivbari More, Khulna.

Barisal: Deputy Director, Khulna Divisional Office, Directorate of National Consumer Rights Protection, Mohila Club Bhaban, Barisal.

Sylhet: Deputy Director, Sylhet Divisional Office, Directorate of National Consumer Rights Protection, Divisional Commissioner's Office, Sylhet.

Rangpur: Deputy Director, Rangpur Divisional Office, Directorate of National Consumer Rights Protection, New Engineer Para, Rangpur.

BY LAW DESK (SOURCE: DNCRP.PORTAL.GOV.BD.)