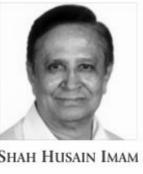


# Dealing with a chameleon

PLEASURE IS ALL MINE



SHAH HUSAIN IMAM

**T**HE traditions of Myanmar's hermitage, of which the Burmese military remains a purveyor, sometimes come to the fore in awkward ways. One story exemplifies this. Shwe Eain Si (19), the Miss Grand Myanmar, lost her title because of commenting on the

Dhaka, 20 diplomats from the west with one from Indonesia were given a conducted tour of the ravaged villages. They were appalled at the sight of the burned, scrawny habitats.

Hawks in the military like to air the view that in accordance with an old Burmese law/custom, burned lands belong to the state. One wonders what the refugees might return to!

The sequel to the meeting between the Myanmar Union Minister U Kyaw Tint Swe and

UN agency with the multi-faceted task but the Myanmar government is against any UN involvement. The State Counsellor's Office alluded to the MoU of April 28, 1992 which was fully bilateral without any involvement of UN bodies. This deviates from Aung San Suu Kyi's September 19 speech which had clearly mentioned that the refugees would return in line with the 1993 Rohingya Repatriation Agreement between Myanmar, Bangladesh and the UNHCR.

of religious ethnicity.

It cannot be lost on Myanmar that it was only when international pressure had stacked heavily against it that she took the initiative to engage Bangladesh. There is no going back on her part now. Those collective concerns and pressures on Myanmar to abide by the rule of law do not only remain but are likely to be bolstered by each incident of Myanmar's betrayal.

The voices that remained to be galvanised are

*Given Myanmar's track record on repatriation and the undoing of it, we can be bilateral as far as the formation of a joint task force goes but not anything beyond that.*

Rohingya issue in Rakhine State and posting it on Facebook. What she said, however, resonated with a prevailing view on the subject: "The Arakan Rohingya Salvation Army (ARSA) is responsible for the violence in the State." As if that was not flattering enough to the regime, she went on to add, "ARSA by recourse to a deception was trying to draw the sympathy of the international community." It went viral, clearly not to the liking of the organisers who balked at her reference to "violence in the state" presumably ruffling the feathers of the military.

The nervous organisers preferred to err on the side of caution saying, "Since Shwe Eain didn't behave like a role model, she has to forgo the title, trophy and the award money."

Even Suu Kyi as the de facto leader of the government, knowing how her country is riven by inherent ethnic divisiveness, shared with a Minister of State at the Foreign Office, Mark Field, the positive stories outside Rakhine State where "Flowers of democracy have begun to bloom in Burma". If that indeed is the case, why must Rakhine be a cauldron of hell for a single ethnic minority?

The Myanmar government insists on verification of more than half a million Rohingyas, mostly Muslim refugees, to be entitled to repatriation to their ancestral home on the other side of the border. Yet, what illustrates the basic irony is that despite repeated requests by the international community, it was denied access for well over a month to the troubled state to verify allegations of mass murder and arson against the authorities. The incidence and traces of barbaric cruelty were corroborated by satellite images.

Nonetheless, the shutting out of the true picture on the ground and blocking aid to the victims have been the biggest obstacles in preventing a humanitarian disaster from snowballing as it has.

Finally, last Monday, coinciding with the ministerial level meeting between both sides in



PHOTO: AFP

the Bangladesh Foreign Minister AH Mahmood Ali in Dhaka last Monday and the press statement of Myanmar's State Counsellor's Office has been marked by cautious optimism in Dhaka. Both sides have agreed to have the Rohingya refugees return to Myanmar and to this end, form a joint working group to start the process of repatriation. Yet, the two countries differ on the question of involving the UNHCR in the process entailing verification, voluntary return, resettlement of the refugees in Rakhine with full dignity, restored livelihoods and security.

Bangladesh wants to associate the appropriate

Given Myanmar's track record on repatriation and the undoing of it, we can be bilateral as far as the formation of a joint task force goes but not anything beyond that. In terms of the verification of refugees made complicated by lack of papers and their sequential return to their ancestral homes, UN involvement is not just desirable but also essential. This should form part of the TOR (terms of reference) of the basic agreement itself. Even Kofi Annan's thrust on restoration of citizenship right to the Rohingyas should evoke a positive response to guarantee a sustainable solution to the retrograde problem

repositioning themselves behind the cause. India at the UN Human Rights Council had wanted the repatriation of the Rohingya refugees and urged Myanmar to give citizenship in the Rakhine state for a sustainable solution to the crisis. Can China and Russia have a quarrel with that kind of a rational approach?

The terrorist card cannot be overplayed in Myanmar at the expense of tackling spill-overs into the wider region. That realisation is dawning.

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# Crime and compensation

MD SHAHNEWAJ PATWARI

**F**OLLOWING the verdict of the widely discussed Narayanganj seven-murder case, Dr Shahdeen Malik, a renowned jurist, proposed that our government initiate the practice of giving monetary compensation to victims of grievous injuries and to the families of victims of murder or manslaughter. He referred to the examples of developed countries that have already started this practice half a century ago.

He also brought in the example of India, for taking the initiative to incorporate monetary compensation in section 357 of their Code of Criminal Procedure. Dr Malik opined that even if the government cannot compensate all the victims of crimes at present, the Narayanganj seven-murder case can pioneer the concept of awarding financial compensation to the victims or their families.

One of the five types of penalties under section 53 of the Penal Code, 1860 is that of fine, which has also been merged with the other provisions of punishment for all offences defined in this Act, including imprisonment, imprisonment for life, or death penalty. However, the amount of fine has not been specified and has been left to the discretion of judges. The fine sentenced is usually small and is submitted to the public exchequer after collection. The victims or the families of the victims are thus, often, deprived from compensation.

The practice of awarding monetary compensation to victims or their families is not absolutely foreign to our laws. In fact, section 15 of the Prevention of Repression of Women and Children Act, 2000 states that the, "tribunal may consider the fine if they think that it is necessary, which is imposed for the offences under sections 4 to 14 of this Act, as damages for the victim of the offence and in case, where the fine cannot be realised



from the convict or from his existing property, it can be realised from the property of which he will be the owner or in possession in future and the claim of such fine or damage shall prevail over any other claim on that property."

Additionally, section 13 of the same Act lays down the provision regarding a child born as a consequence of rape. Under the section, the state is responsible for providing maintenance of a child born as a result of rape. To do this, the government primarily collects maintenance costs from the rapist's estate. However, if it is not possible, the government shall provide the maintenance costs from the state's fund.

The government does so from the concept of a welfare state. From this view point, it can be argued that it is the government's responsibility to compensate the victims of crimes as they have previously failed to protect them. To do so, the state may

primarily collect compensation from the criminal and upon any failure to do so, owing to the financial condition of the said criminal, it may provide compensation from the state's own funds.

Another instance of provisions facilitating monetary compensation is Section 138 of the Negotiable Instruments Act, 1881, which allows the court to collect a fine thrice the amount of the dishonoured cheque. The practice of disbursing the claim of the creditor from this fine is common in Bangladeshi courts. Besides, Section 1 of the Fatal Accidents Act, 1855 states, whenever the death of a person shall be caused by wrongful act, neglect or default, the family or his financial dependents can claim financial compensation in court and the court may give such damages as it may think proportioned to the loss resulting from such death to the parties, respectively.

Section 27 of the Anti-Corruption

Commission Act, 2004 provides that the court can confiscate the illegally gained properties in addition to sentencing the corrupt individuals. Confiscation of properties should also be incorporated in other legislations to compensate the respective victims of the offences defined under different legislations.

It is a common misconception that a state's responsibility is fulfilled upon the delivery of judgment in a case. This is far from true, as the true end of a state is to ensure justice, which may not be accomplished until the victim's status is restored. Hence, compensating the victims for crimes committed against them also falls within the government's duties. For example, if the victim of a murder was the sole breadwinner of the family, mere punishment for the criminal does not end the family's suffering. Rather, their financial struggle

increases in the aftermath.

The financial struggles of the families of the victims or his/her immediate dependants can be minimised if the government compensates them from the collected fines. Jeremy Bentham also emphasised on the need for financial compensation of the sufferer, stating that "satisfaction" should be collected from the perpetrator's assets, but if the perpetrator has no asset it should be given from the public treasury for public good.

While deciding the amount of the compensation, the court should take into account multiple factors, like the pain and suffering of the victim, medical expenses, damage to property, and his absence from the workforce or whether he was unable to find employment. In cases where the victim dies, the court should take into account the dependency of the family on the victim's income, the age of the victim and qualifications, etc.

According to the principle of strict liability, the state is responsible for the safety and wellbeing of its citizens, and thus, any harm to them is a failure on the part of the state and indicates that the state has broken the implied social contract with the citizens, wherein the state collects tax in exchange for providing protection to body and property. Hence, the victims of crime and their families or dependents are entitled to claim compensation, similar to the civil law circumstances where a party can claim remedies for violation of a contract. The provision for monetary compensation is essential to the establishment of restorative justice in the criminal justice system of the country and, hence, should be considered carefully.

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## QUOTABLE Quote



JORDAN B PETERSON

CANADIAN CLINICAL PSYCHOLOGIST AND PROFESSOR OF PSYCHOLOGY

*To love is to essentially decide and to act in a way as if being itself is fundamentally good.*

## CROSSWORD BY THOMAS JOSEPH

- ACROSS**
- 1 Arrest
  - 7 Cornfield pest
  - 11 Positive aspect
  - 12 Valiant one
  - 13 Kids' rooms, often
  - 14 Roasting spot
  - 15 Arm art
  - 17 Towel word
  - 20 Land in the sea
  - 23 Woodsman's tool
  - 24 In perpetuum
  - 26 "-- the season..."
  - 27 Rink stuff
  - 28 Nest egg acct.
  - 29 Storage sites
  - 31 Quick bite
  - 32 Wife of Menelaus
- DOWN**
- 33 Historic times
  - 34 YouTube uploads
  - 37 Come together
  - 39 Elk feature
  - 43 Writer Rice
  - 44 Try hard
  - 45 Implores
  - 46 Sounded a horn
  - 9 Mine yield
  - 10 Took the title
  - 16 Car quartet
  - 17 Sub entry
  - 18 Banish
  - 19 Clearing up
  - 21 Spine-tingling
  - 22 Golf bunkers
  - 24 Scoundrel
  - 25 Fall mo.
  - 30 Fishing nets
  - 33 Texas player
  - 35 Sunrise site
  - 36 Savvy about
  - 37 Boxing poke
  - 38 Low number
  - 40 Turned on
  - 41 Time to prepare
  - 42 Valentine color



## YESTERDAY'S ANSWER

B A S I S S A L A D  
 A W A R E I R A Q I  
 W A L K I N G T O U R  
 L Y E Z E N S A T  
 S E O U L  
 L O C H S P A P A S  
 A L O E T A X I  
 D E T E R J E T E R  
 R E D U X  
 O A K V A N F A D  
 R U N I N G M A T E  
 A R I E S L E M O N  
 L A T T E E N E M Y

## BEETLE BAILEY

by Mort Walker



## BABY BLUES

by Kirkman & Scott

