

Zero tolerance for fatwas that violate human rights



TAQBIR HUDA

ON December 12, 2017, Bangladesh Police arrested Abu Musa, an imam of a local mosque in Kumarkhali upazila of Kushtia district, for issuing a fatwa prohibiting women from going out of their homes to work in farm fields. Five other mosque officials were also arrested which included President of the Kalyanpur Mosque Committee and its Secretary. The fatwa was issued on Friday, December 8, 2017, after *jumma* prayers and the men even used the mosque's loudspeakers later that evening to announce and spread the message. The announcement induced inhabitants of the town to try and prevent the local women from going to work in the fields. In fact, a local woman named Alo Khatun, who raises goats at her home and therefore has to go nearby farm fields to collect grass for them, told *UNB news*, "After the fatwa, I'm afraid of going outdoors" (6 held in Kushtia over fatwa, December 13, 2017).

This incident and many others should prompt us to question the precise legal status of fatwas in Bangladesh. Although Bangladesh is a secular country, non-state actors, such as religious leaders and clerics, have long held much sway in implementing ad-hoc, extra-judicial rulings based on what they perceive (or want people to perceive) as implementations of Islamic Law. This is especially prevalent in rural areas which are far away from the secular courts and where the local populations tend to be more conservative while having very little awareness about their legal rights and obligations.

The legality of fatwas in Bangladesh has specifically been subject to judicial scrutiny over the past two decades, prompted by a fatwa in 2001 which declared that a woman's remarriage to her former husband would be invalid without an intervening marriage with another man (known as *hilla*). The woman was then forced to follow the fatwa by marrying another man and then consummating the marriage. The ruling in this fatwa ran contrary to section 7(6) of the Muslim Family Laws Ordinance 1961, which does not require an intervening marriage in such a situation. After this incident came to light by way of a news-

report, a High Court Division bench comprised of Justice Gholam Rabbani and Justice Nazmun Ara issued a *suo moto* rule (on its own motion, without being approached by any party) in response to it. Many including Ain O Shalish Kendra (ASK) and Dr Kamal Hossain were added as intervenors in the case and produced overwhelming evidence before the court demonstrating the widespread occurrence of fatwa violence across the country, whereby male members of the rural elite carried out these ad-hoc rulings against the poor and socially marginalised (almost always women), usually on matters of women's chastity, morality

and mobility (Sara Hossain, High Court Nails Fatwa, *Interventions* 2002). In a seminal verdict dated January 2001, the High Court declared "any fatwa including the instant one are all unauthorised and illegal" (21 BLD 45). It recognised execution of fatwas of such nature to be a punishable offence under Sections 494, 508, 509 of the Penal Code (and for this particular fatwa, under Section 7 of the MFLO as well). It further recommended that giving a fatwa by unauthorised person or persons be specifically made a punishable offence by the parliament "immediately, even if it is not executed" along with

several other important recommendations that would help curb fatwa violence and misuse of religion in general, which sadly fell on deaf ears. Although the government did not file a petition for leave to appeal against this judgment, two individuals, Mufti Mohammad Tayeeb and Moulana Abdul Kalam Azad, filed for leave to appeal separately as third parties arguing, *inter alia*, that the verdict violates their fundamental constitutional rights to freedom of thought and religion. In May 2011, the Appellate Division allowed the appeals in part, and disapproved of the High Court's blanket ban on fatwas and qualified its issuance (*Md Tayeeb vs Bangladesh*, 12

degraded within their communities. In response to this a constitutional challenge was filed against the state's utter failure to act against these incidents by Bangladesh Legal Aid and Services Trust (BLAST), ASK and others before the High Court in 2009. In July 2011, the Court gave the judgment and declared infliction of all kinds of extra judicial punishments, including those imposed or inflicted by local shalish in the name of "fatwa" to be illegal and without any lawful authority (*BLAST vs Bangladesh*, 63 DLR 1). The Court further declared that any person involved, present, participating or assisting in any such action or its execution would come under the purview of the offences under Penal Code and be liable to punishment.

Interestingly, the imam and the mosque officials in the Kushtia case were not arrested under any section of the Penal Code but under the Special Powers Act 1974, which is a controversial military era law containing provisions for preventive detention to stop someone from committing a "prejudicial act". Perhaps this was because the fatwas in the aforesaid Supreme Court cases pertained to the infliction of physical and mental violence against women while the Kushtia fatwa inflicted economic violence, a type which was not discussed in these judgments and therefore may not come within the purview of the aforementioned sections of the Penal Code. This incident also highlights a shortfall of the Appellate Division judgment, which did not adequately clarify who can issue a fatwa since they did not specify who would count as an "educated person"—does an Imam of a local mosque, such as Abu Musa, fall under this category? We do not know. In light of such uncertainties, it is incumbent on the Parliament to respond to the epidemic of fatwa violence by finally enacting a law that systematically incorporates the Supreme Court judgments on fatwa by statutorily qualifying its legal status and specifically outlining punishments for those who inflict different types of violence and injustices in the name of fatwas. This was one of the recommendations made by the High Court to our Parliament in 2001 and it is regrettable that even after the passage of 16 years and countless cases of fatwa violence, our Parliament is yet to do its due diligence.

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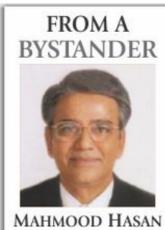


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ADC 01). It ruled that fatwas can be given but only on "religious matters" by "properly educated persons" which may be accepted voluntarily but "any coercion or undue influence in any form is forbidden." It also highlighted that "no punishment including physical violence or mental torture in any form can be imposed or implicated on anybody in pursuance of [a] fatwa."

In the period between 2001 and 2011 while the appeal was still pending, there was an alarming increase in fatwa violence implemented through *shalish* (traditional dispute resolution processes), which entailed women and girls across the country being caned, beaten, lashed or otherwise publicly

Gujarat scare for BJP



FROM A BYSTANDER
MAHMOOD HASAN

TWO important state legislative elections were held in India recently. Gujarat went for elections on December 9 and 14, and Himachal Pradesh elections were held on December 9, 2017.

As counting began on December 18, all eyes were focused on Gujarat, well known for communal riots. The 1985 riots helped BJP's rise in the state. It is the home state of Narendra Modi from where he rose to become prime minister in 2014, despite being severely criticised for the riots of 2002 that cost nearly 2,000 lives. Gujarat is considered a political battleground and BJP's performance not only measured the party's popularity but also its prospects for the next Lok Sabha election in 2019.

As the preliminary results started to trickle in there were clear visible signs of panic and anxiety among BJP leaders that they may lose majority. However, results show that BJP crossed the majority threshold of 92 and got 99 seats in the 182-seat state legislative assembly. However, compared to the results of 2012, BJP lost 19 seats. Indian National Congress (INC) improved its tally to 80 seats (61 seats in 2012). In cricketing jargon, BJP became victim of nervous 90s. Indeed it was a poor show when BJP claimed to cross 150 seats before the elections. This is the sixth term in a row that BJP has won Gujarat

elections since 1995. For Congress it was the seventh defeat in succession since 1990.

In Himachal Pradesh BJP has ousted Congress. In the 68-seat Himachal assembly (majority 35 seats) BJP gained 44 seats (26 seats in 2012) compared to 21 seats of Congress (36 seats in 2012). The irony is that BJP's Chief Minister candidate PK Dhumal lost the election.

This election came just when Rahul Gandhi was in the process of taking over

Congress's gains and BJP's losses. First, the Electronic Voting Machines used in this election had the provision for "None Of The Above" (NOTA)—the negative vote. Out of 68.41 percent casting their vote, two percent voted NOTA. Second, financial policies of BJP backfired in Gujarat, dominated by the business class. Modi's demonetisation of November 2016 had damaged the rural economy of India. Later the Modi government introduced the "Goods and

pro-poor programme of Congress government. This time Congress tried to use KHAM through Hardik Patel, a young Indian social and political activist. Hardik organised the lower castes Patidars (poor land-owning community) and the Patels (village leaders) to vote for Congress—that lifted the results for Congress. Fourth, religion became an issue in the election. BJP brought Hinduism into the political discourse wrapped in the slogan of "vikas". Naturally, BJP did not field any Muslim candidate in this election. Meanwhile Rahul Gandhi's secularism also came under criticism. Fifth, the anti-incumbency factor worked against BJP. While there was 10 percent increase in women voters turning out for Congress, there was a drop of eight percent for the BJP. In urban areas BJP did better than Congress. Congress got more seats in rural districts. Finally, BJP played majoritarian politics as against Congress's inclusiveness. All these factors and many others in individual constituencies defined the political discourse and the voting pattern in Gujarat.

The campaign discourse this time was most distasteful. Campaign speeches by leaders of both parties used divisive issues of caste and religion. Personal attacks were indeed most offensive. In an interview Congress leader Mani Shankar Aiyer called Modi a "neech aadmi" (lowly person) after the prime minister accused Congress of seeking votes in BR Ambedkar's (Harijan) name. Undaunted Modi came out with a scathing attack on Congress alleging that former Prime Minister Manmohan Singh met some Pakistanis at Mani

Shankar's house "secretly" to make Ahmed Patel Chief Minister of Gujarat. Ahmed Patel (a Muslim) is political Secretary of Sonia Gandhi and member of the Rajya Sabha. Mani Shankar later apologised for his remark about Modi. But Modi's allegation against Manmohan Singh has created a political uproar and deadlocked the Lok Sabha session on December 19.

Surprisingly, BJP ally, Shiv Sena, launched a sharp attack on Modi for dragging the Pakistan issue in Gujarat election and termed it an "impious" way to win the election. Shiv Sena said that if Pakistan was indeed involved then as Prime Minister, Modi should take action rather than level allegations.

Rahul Gandhi speaking on the results said Congress gave a tough fight in Gujarat that gave a massive jolt to BJP. He questioned Modi's credibility and termed Modi's "vikas" model as hollow. After the initial scare Modi and BJP Chief Amit Shah were nevertheless upbeat about retaining Gujarat and sweeping Himachal Pradesh.

In the final analysis, it is clear that it was Modi's personal victory in Gujarat and not that of BJP. The results also propped up Congress under its new president Rahul Gandhi. Interestingly, it was a bi-polar electoral duel between the BJP and the Congress. No regional party had any electoral presence in these two states. What shape of political alignments will emerge for the next Lok Sabha election in 2019 remains wide open.

Mahmood Hasan is former Ambassador and Secretary.



Prime Minister Modi shows his ink-marked finger after casting his vote outside a polling station during the last phase of Gujarat state assembly election in Ahmedabad, India, December 14, 2017.

PHOTO: REUTERS/AMIT DAVE

Congress leadership from his mother Sonia Gandhi, who led the party for 19 years. He took over as President of Congress on December 16. The change of guard from among the Nehru dynasty came at a time when Congress has been in the doldrums. Many hoped that as president of the party Rahul Gandhi will change Congress's fortune.

Psephologists have identified several factors that have been at work for

Services Tax" (GST) on July 1, 2017, which is widely resented by consumers. Third, the caste factor played against the BJP. In Gujarat OBC, Adivasis and Dalits together constitute 62.5 percent of voters, compared to 37.5 percent of forward caste, Muslims and others. In the 1980s Congress created a vote bank by uniting the Kshatriya, Harijan, Adivasi and Muslims (KHAM). The KHAM strategy was an extension of the

A WORD A DAY

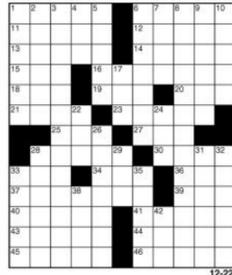


SEQUOIA
NOUN

A redwood tree, especially the California redwood.

CROSSWORD BY THOMAS JOSEPH

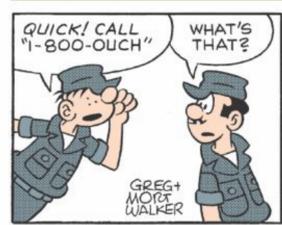
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|-----------------------|--------------------------|----------------------------|
| ACROSS | 33 Near the ground | 5 Tears |
| 1 Significant | 34 Drake's music | 6 Indy auto |
| 6 Crowd sounds | 36 Twice cinq | 7 For all of us |
| 11 Love, to Luigi | 37 Guacamole base | 8 Classic carol |
| 12 Tax cheat's worry | 39 December 24, for one | 9 Pony Express workers |
| 13 Cellulose fiber | 40 Candidate of the '90s | 10 Yarn |
| 14 Guiding principle | 41 Raft pilot | 17 Santa suit color |
| 15 Blasting stuff | 43 Puzzle out | 22 Lawn makeup |
| 16 Bedroom sight | 44 Sluggish | 24 Fresh |
| 18 Wedding words | 45 Over | 26 Copied illegally |
| 19 Brief time | 46 High homes | 28 Advice for the obsessed |
| 20 Attempt | DOWN | 29 Bouncer |
| 21 D.C. team | 1 Purple swallow | 31 Entertain |
| 23 Copenhagen natives | 2 Mystery writer | 32 Brings to bear |
| 25 Bunny move | 27 Field worker | 33 Visit briefly |
| 27 Field worker | Cross | 38 Place to put in |
| 28 Army doc | 3 Classic carol | 42 Small bill |
| 30 Broad | 4 Spanish gold | |



YESTERDAY'S ANSWER

BROW DUETO
LEVI WINTER
OPAL ICICLE
COLD FEET
COLD SNAP
ABOARD INA
CARTE MINDS
DIA RELAYS
COLD CALL
COLD WAVE
GASCAP IRAN
BREATH LEND
STABS LASS

BEETLE BAILEY



BY MORT WALKER



BABY BLUES



BY KIRKMAN & SCOTT

