



Rohingya genocide & the politics of terminologies

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ROHINGYAS are now the world's most persecuted community. World powers and rights advocates however struggle hard in finding an appropriate terminology for the persecution. With the politics of regional influence, investment and arms deals in the background, China, India, Russia and United States are playing with words to downplay a clear case of

as an essentially "internal" problem of Myanmar and "sincerely hopes [Myanmar] to restore stability as soon as possible and the local people [to] live a normal life again." Russia, on the other hand, sees the problem as an "inter-religious conflict" that must be resolved through inter-religious dialogue. After the initial "voicing of concern" over the issue, the cautious and calculative United States has recently elevated its understanding to an

ethnic cleansing".The UK government approached the problem as a "fastest growing humanitarian catastrophe." Interestingly, a recent statement of the UK Foreign office suggests that they received "very troubling" evidence which "will be used to assess whether genocide has been committed" against Rohingya Muslims in Burma. While the latest position of the UK government marks a welcome sign of growing international awareness about

the Rohingya persecution and published its report titled, "Countdown to Annihilation: Genocide in Myanmar." Though the 2015 report of ISCI termed the process as a "highly organised and genocidal in intent", Professor Green is convinced that it is visibly and undoubtedly a genocide now. A shadow students' tribunal staged recently by the Society for Critical Legal Studies in Chittagong has proved that elements of genocide are strongly present in Myanmar. Even before that, a leading jurist of the country Barrister M Amir-Ul Islam framed the case as a "Clinical Illustration of Genocide" in one of his presentations before the SAARC LAW conference in Sri Lanka. ISCI has endorsed the Six Stage of Genocide Model of Professor Daniel Feierstein (Genocide as Social Practice). It is a prism through which ISCI considered how the Rohingya persecution elevated to genocide. The process started with stigmatisation. Starting with the denial of citizenship in 1970s, Rohingya community has been successfully alienated from the Burmese citizenry. With all deliberative official patronisation, the group has been snatched away of their "Rohingya" identity. With an enforced identity "illegal Bengali migrants" tagged over them, they have been made extremely unpopular among the Burmese majority. At the second stage of the process, official and unofficial harassment, deprivation, arbitrary arrests and detention, violence and terror were unleashed for a considerable period of time. Third stage of the process involved political, legal, social and geographical isolation to sever their historically existing relations with the broader Burmese community. Fourth stage of the process involved systematic weakening of the group by enforced malnutrition, epidemics, torture and sporadic violence and psychological destruction by humiliation and persistent abuse. At the fifth stage of the process the state ensures the "physical destruction of the

group as such" (the key element of genocide) through mass killing and persecution. Last stage of the genocidal process would involve symbolic enactment by rebuilding a society where the targeted group is clearly "gone". Professor Green argues that 2017 August-October atrocities of the Myanmar regime undoubtedly mark the final stage of the genocidal process and the world must act NOW. Unfortunately, the world seems reluctant to take note of the concern. Professor Penelope J Green herself unveils the most plausible account of this politics of terminologies. The world super powers are politically reluctant to take the obligations a finding of genocide would cast upon them under the 1948 Genocide Convention. It is the obligation to prosecute the perpetrators - to kick off the International Criminal Court (ICC) process straight. For reasons not understandable, neither the UN Security Council nor the ICC Prosecution department is showing much interest in that line. Question then comes, what our government is doing? While our immediate concern with the "Refugee Aspect" of the problem is understandable, should we shut-down a collateral strategy of creating the highest possible pressure upon Myanmar regime by bringing the "Genocidal Aspect" to light? With our genocide stricken traumatic past, who else is better suited than Bangladesh to make a "Stop Genocide" call to the world? Bangladesh government unfortunately continues to echo the European Union by agreeing to see it as the "fastest-growing refugee crisis creating a refugee emergency". While our rough neighbour continues to give us a tough time on the refugee repatriation talk, they are enjoying our silence on the "Genocidal Aspect" most, I am sure.

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genocide. International human rights bodies and governments are merely lurking behind the reality under some elusive terminological pretexts. This write up attempts to understand this politics of terminology from a critical perspective and seeks to locate where Bangladesh's position should ideally be. While Norendra Modi's ultra-right BJP government is more concerned with the "extremist violence" in Myanmar, it hopes for "peace, justice, dignity, and democratic values for all." China sees it

"ethnic cleansing" and "horrendous atrocities" causing "tremendous suffering" to the Rohingya population. At the organisational level, the United Nations Secretary General diplomatically calls it a "human rights nightmare." Amnesty International, however, has travelled up to the "Crime Against Humanity." Human Rights Watch on the other hand adopted "Ethnic Cleansing". The United Nations High Commissioner for Human Rights also termed it "a textbook example of

the issue, a recent seminar in the UK Parliament (Seminar on International Response to Rohingya Crisis organised by Centre for Turkey Studies, 29 November 2017) calls the time a ripe one for terming the atrocity a genocide plain and simple. The keynote speaker of the seminar was Professor Penelope J Green, Founder and Director of International State Crime Initiative (ISCI) based in the Queen Mary University London. In 2015, ISCI conducted an 18-month-long study on

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

My paternal uncle passed away recently, he and I shared a very close relationship and he always took keen interest in my life and wellbeing. My uncle was a very successful businessman and consequently he had multiple bank accounts in various banks in Bangladesh. After his death, I came to know that he nominated me as the nominee of one of his bank accounts. My aunt is now telling me that I will not get any such money. My uncle left behind his 4 legal heirs, namely, his wife and 3 children (1 son and 2 daughters). In such circumstances, I would like to know what would be my legal rights as nominee of the account.

Tawaaf Shamsi
Dhaka

minor, the depositor in the prescribed way shall direct who shall, in the case of the death of the depositor will receive the money during the period of minority of the chosen person. After the death of the depositor the nominee attains all the rights of the individual depositor that he/she had on that deposit, and every other person shall be deprived of those rights. When a banking company has made payments in accordance with Section 103 of the Bank Companies Act 1991 all its obligations in respect of the deposit concerned shall be deemed fulfilled. Moreover, this legislative provision takes precedence over any other law (e.g. law of inheritance).

As you can see in the preceding

judgment of the High Court the nominee would merely hold the money as trustee and thus would be obliged to distribute the money among the legal heirs of the account holder. The judgment of the hon'ble High Court has subsequently been stayed by the hon'ble Appellate Division.

Moreover, you may be glad to know that the Bangladesh Bank which is the prime regulator of scheduled banks in Bangladesh has issued a circular (DFIM Circular No. 2) dated 15th June 2017 restating the original position reflected in Section 103 of the Bank Companies Act 1991. The said circular was issued to managing directors or chief executive officers of all the scheduled banks of Bangladesh, it states that in the event of death of the depositor all money in the account of the depositor may be given to the nominee.

Following the High Court Ruling, It had been noticed that some of the scheduled banks were taking affidavit from nominees of depositors saying that the nominees may not be eligible to receive the deposited money after the death of the account holders. The rights of the nominee of a bank account are enshrined in Section 103 of the Bank Companies Act, consequently taking affidavit from the nominees is violation of Section 103 of Bank Company Act 1991.

The scheduled banks were taking affidavit in connection to the High Court ruling establishing right of the legal heirs as against that of the nominees. However, with the advent of the Bangladesh Bank circular (DFIM Circular No. 2) dated 15th June 2017 the muddled water has been settled and we got the much needed clarity on the subject matter. It is therefore settled now the nominee attains all the rights of the depositor that he/she had on that deposit in the event of his/her death.

In light of the discussion above it therefore transpires that you will be entitled to get the money deposited in your late uncle's account in issue and your receipt of the same does not run counter to any legal rights on your uncles legal heirs.

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'Judicial divorce' as exit

SHAIKH MD MUJAHID UL ISLAM

PRESENT Muslim divorce Laws in Bangladesh allow husbands to pronounce divorce unilaterally. The only restriction imposed on this unilateral exercise of power is to serve notice to the wife according to section 7 of the Muslim Family Laws Ordinance, 1961 and for non-compliance therewith, penal provisions are inserted in that law. But this does not impose any substantial restriction upon the husband to pronounce divorce to the wife. Conversely, the present substantive criminal laws for crimes towards women are comparatively rigid. For example, offences under Dowry Prohibition Act, 1980 and Nari-Shishu Nirjatan Domon Ain, 2000 are mostly non-bailable.

Divorce in Bangladesh is considered as a stigma for women. Specially, after the birth of the issue in the family, if husband pronounces divorce, it becomes difficult for the wife to survive in the society, both financially and socially. As a result, the criminal laws are used as a shield to create pressure to their husband so that he can continue with his conjugal life. It is not difficult to find many cases in courts in Bangladesh where a wife is filing cases against the husband and his family members for torture and dowry demand even after pronouncement of divorce by husband. Subsequently, when husband and his family shift their stand from divorce, wife seeks to withdraw the case and continue the conjugal life.

As a result of this duel stand of divorce law (Soft) and Criminal law (Hard law), the consequence becomes terrific. On one hand, thousands of divorces get pronounced every day and on the other hand, millions of criminal

cases stay pending before Chief Judicial Magistrate Courts, Nari O Sishu Nirjatan Domon Tribunals and Family Courts in Bangladesh. Whether we will allow this duel standard and coincide with the continuation of this current practice or not is an important question to deal with, in this backdrop. The consequences of continuation of this current practice are multi-faceted. Firstly, it endangers the matrimonial relationship between husband and wife, as the wife is always at risk of unilateral pronouncement of divorce by husband. Secondly, this pushes women in Bangladesh within the court boundary with claims founded on criminal charges. Thirdly, there are

wife or there is no mutual divorce between them.

Sometimes, husband files divorce case before family court in order to avoid other legal difficulties. But, in rest of the cases, mostly husbands pronounce divorce through serving notice to Union Council and to opposite party as legal requirement of section 7 of Muslim Family Laws Ordinance, 1961 and the divorce is executed through registration of divorce under Muslim Marriage and Divorce Registration Act, 1974.

In most of the cases wives also pronounce divorce through exercising their delegated power (Talak E Tafiz) and the execution of divorce is almost same (service of notice and registration before Nikah Registrar). As a result a large number



thousands of criminal cases pending before Magistrate Court and Nari O Sishu Nirjatan Domon Tribunal and the true cause of action arises out of the pronouncement of divorce. Finally, this situation also engages a large number of women in Bangladesh for criminal charges, who are mostly family members of husband like mother, sister, sister in law.

So what should be our starting point to resolve this problem? A solution may come through 'Judicial Divorce' system, which is still within our legal system. Section 5 of the Family Courts Ordinance 1985 says that divorce is also one of the jurisdictions of the Family court. Under that provision, sometimes, wife files divorce case before family court under Dissolution of Muslim Marriages Act, 1939, when husband did not delegate divorce power to

to the court. Even after divorce, wives file different criminal cases against husband in order to create pressure and to resolve other marital claims.

Here, 'Judicial Divorce' would be the best way of exit from family relations, and at the same time, other related issues like dowry demand, maintenance, custody of the child, restitution of conjugal rights would be dissolved along with this divorce case before court. It would not be necessary for the wife to file criminal cases for creating pressure upon the husband to reconsider his decision of divorce, as the wife would get the forum to defend the divorce decision.

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