



ICC and Myanmar: Impunity ended or extended?

AISHA BINTE ABDUR ROB

While the ICC's assumption of jurisdiction over Myanmar State's crimes appears to be progressive, it produces certain arbitrary distinctions that can potentially exacerbate injustice and further endanger the Rohingya.

THE recent decision of the International Criminal Court's Pre-Trial Chamber recognising the Court's jurisdiction over Myanmar's alleged crimes against humanity has been hailed as breaking new ground in the Rohingya crisis and in the pursuit of international criminal justice more broadly. As Myanmar is not a party to the ICC Statute, it was previously understood that the Court's jurisdiction with respect to the State's alleged international crimes could only be triggered by a UN Security Council referral. However, the possibility of a UNSC referral remains essentially theoretical, given the high probability of Russian and Chinese vetoes preventing its passage. In a bold stroke of innovative adjudication, the ICC has held that it can hear the case of crimes against humanity by Myanmar officials alleged to have deported the Rohingya to Bangladesh.

The Court accepted an analogy between deportation and cross-border shooting in that the crime is a continuing act which commences in one State but achieves completion only in the territory of the other State. Thus, the alleged crime of deportation was completed in the territory of Bangladesh, which is a party to the ICC Statute. The decision allows ICC to exercise jurisdiction with respect to acts executed by non-State parties' nationals within their own States, provided the



relevant crime as a continuing act, or an element of the crime, ends in the territory of a State party.

This new frontier for international criminal justice has been greeted with effusive praise from key actors calling for the resolution of the Rohingya crisis. UN Human Rights Chief Michelle Bachelet has described the decision as an "immensely important step towards ending impunity". The judgment has also received ringing endorsement from the likes of Kingsley Abbott, senior legal advisor at the International Commission of Jurists and Adilur Rahman Khan, vice-president of the International Federation for Human Rights.

However, while the ICC's assumption of jurisdiction appears to be progressive, it produces certain arbitrary distinctions

that can potentially exacerbate injustice and further endanger the Rohingya. The first and most elementary problem lies in the definition of the crime itself.

According to Article 7(2)(d) of the Rome Statute, for the crime against humanity to be established on the ground of deportation, the deportees must be lawfully present in the area wherefrom they are deported. This is significant because part of the Burmese strategy for the eventual erasure of the Rohingya from Myanmar was the denationalisation of this people and their designation as illegal immigrants. Hence, the deported Rohingya were technically not lawfully present in Myanmar. As such, it is the prerogative of a sovereign State to deport those who are as a matter of law "alien invaders".

On this reading of international criminal law, it is unclear how an allegation of deportation as a crime against humanity can be sustained on the present facts.

Secondly, war crimes have also allegedly been committed in the Kachin and Shan states of Myanmar but these fall beyond the Court's self-proclaimed competence given that these were perpetrated entirely within Myanmar's territories. For the Rohingya deportees themselves, justice can be rendered only in the case of the subset that reached the territory of Bangladesh, not those who died at sea, happened to seek safe haven elsewhere or are detained in Myanmar's permanent "refugee" camps.

The potentially most damning consequence of the ICC decision is one that is most obscured beneath the veil of secrecy that has for so long shrouded the "slow-burning genocide" of the Rohingya. The convenient narrative has been that the transition of Myanmar from authoritarianism to democracy will eventually resolve the plight of the Rohingya. However, the narrative both misinterprets the history of the crisis and misunderstands its cause. While Myanmar has long been in the throes of violent ethnic conflict and military oppression, the different ethnic groups and the military are united in their hatred of the Rohingya. Thus far, massacres have been directed towards ethnic cleansing, seeking to compel the

Rohingya to leave the State so as to build a nation of ethnically Burman, or at least Buddhist religious identity. This vision of citizenship entails a goal of expelling the Rohingya and it justifies continued persecution on the basis that the Rohingya should "return to their country". If the ICC intervention establishes that Myanmar is answerable for atrocities against the Rohingya only to the extent that the crimes reach the shores of a State party, the Court is effectively incentivising Myanmar to abandon its relatively lenient approach of expulsion and switch instead to a policy of containment and extermination.

The Rohingya are thus offered a fractured and unequal justice that exposes them to further danger while the ICC itself faces a potential diminution of relevance and legitimacy. It is clear that in certain respects, the international criminal justice system requires reforms of practice while in others, nothing short of a fundamental revision of the system's doctrinal underpinnings is needed. As the Court weaves more haphazard stitches in the patchwork of international criminal justice, what is at stake is not merely the Court's coherence or jurisdictional coverage, but its pledge to end, and not extend, impunity.

THE WRITER STUDIES HUMAN RIGHTS AND TRANSITIONAL JUSTICE, TRANSITIONAL JUSTICE INSTITUTE, ULSTER UNIVERSITY, UK.

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

I am a job holder and like many others in Bangladesh, I love to go to restaurants after work or on weekends for socialising, for recreation or just when I am tired of home cooked food. So the other day I went to a fancy restaurant where I ordered a can of soft drink. Although the can of drink itself had an MRP of BDT 40 printed on it, I was charged BDT 80 for it. This is amounting to a great amount of profit for the restaurants from the hard earned income of the general public and is also the case with most restaurants, hence my question is if there is any legal resort that could prevent these restaurants from making undue profit by exploiting consumers. Sumon Dhaka

Response:

Going to restaurants in the urban areas of our country is a form of recreation for many these days and it is very likely that with the advent of all sorts of new restaurants, cafes and eateries consumers are being exploited in one way or the other. This seems to be a common problem these days as most of the general public are not aware of the protection that law provides to the consumers.

Firstly, to begin with, it is important to define the meaning of consumers. The Consumer Protection Act 2009 has provided power to the general public to come forward and to be able to exercise their rights as consumers and to not be exploited.

As per S.40 of Consumers' Rights Protection Act 2009, if any person sells or offers to sell any



goods, medicine or service at a price higher than the price fixed under any Act or rules, he shall be punished with imprisonment for a term not exceeding 1 (one) year, or with fine not exceeding Taka 50 (fifty) thousand, or with both.

Anyone who is a consumer or is likely to be a consumer can complain under S.76(1) of this act in the following procedure. A consumer is anyone who uses or consumes products or services. Under S. 60 of the Act, the complaint must be lodged to the Director General within 30 (thirty) days of the cause arising, in a written form for example by post, cell phone short messaging services, fax, e-mail or any other electronic media against any anti-consumer right practiced under the 2009 Act. The complainant must provide the

following information: i) Name; ii) Father's name; iii) Mother's name; iv) Phone number; v) Fax/ e-mail (if any) mobile phone number; vi) Occupation

Along with the written complaint, evidence of the overcharged product needs to be annexed which will be in the form of a money receipt, the empty can, bottle or any remains of the over-charged product.

If a complaint is proved to be valid 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.

There are a number of addresses provided on the website of DNCRP as the avenue to complain:

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@dnrcp.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.

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

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.

I hope the provided information shall be able to aid you in finding a solution to your problem.

FOR DETAILED QUERY CONTACT: OMAR@LEGALCOUNSELBD.COM.



GLOBAL LAW UPDATES

US accused of failing to protect citizens

AMERICAN gun violence is "a human rights crisis" and the US government's refusal to pass gun control laws represents a violation of its citizens' right to life, according to a new report by Amnesty International. In its report, Amnesty argues that "the USA is failing to protect individuals and communities most at risk of gun violence, in violation of international human rights law" and goes on to say that "the right to live free from violence, discrimination and fear has been superseded by a sense of entitlement to own a practically unlimited array of deadly weapons."

While it gives some attention to public mass shootings, the Amnesty report focuses more on everyday forms of gun violence, particularly urban violence, domestic violence, and the impact of gun violence on children. Mass shootings "account for less than 1% of gun deaths in the USA," the report notes.

To address the crisis of gun homi-

cide, suicide and injury that leaves about 38,000 Americans dead and 116,000 wounded each year, Amnesty recommends the US pass a sweeping set of gun control measures, including universal background checks, the requirement of a valid license to buy a gun, no gun purchases for those under 21, a ban on certain military-style weapons and ammunition, and the creation of a digitised national gun registry. Furthermore, according to Amnesty, congress should also pass a federal law prohibiting carrying guns in public "unless there is a credible justification for doing so".

Amnesty also recommended that "the USA should guarantee the right to health and access to healthcare services for gunshot survivors and insure that healthcare costs do not cause "catastrophic financial burdens" to survivors or their families".

COMPILED BY LAW DESK (SOURCE: GUARDIAN.COM).



HUMAN RIGHTS RIGHTS RIGHTS ADVOCACY

SHUVADEEP PAUL

GOD has created us as equal but we the human beings have differentiated ourselves in many division, sub-division and so on. The caste system has been continuing as a long practice in the Hindu society for time immemorial. The four castes namely, the Brahmin, Kshatriya, Vaishya and Sudra castes groups are generally determined in terms of 'karma' (deeds) and 'dharma' (belief) doctrines. The Harijans are a kind of community who are under the sub-division of Sudra caste. 'Harijan', meaning the 'Children of God', was a term first used by Gandhi to refer to the 'Dalits' back in 1932. When Gandhi started using the term, many including BR Ambedkar objected to it, stating that it was condescending and obscurantist in nature. The Supreme Court of India has declared the term 'Harijan' as abusive and insulting to the people belonging to the lower caste. However, in Bangladesh, the Implementation

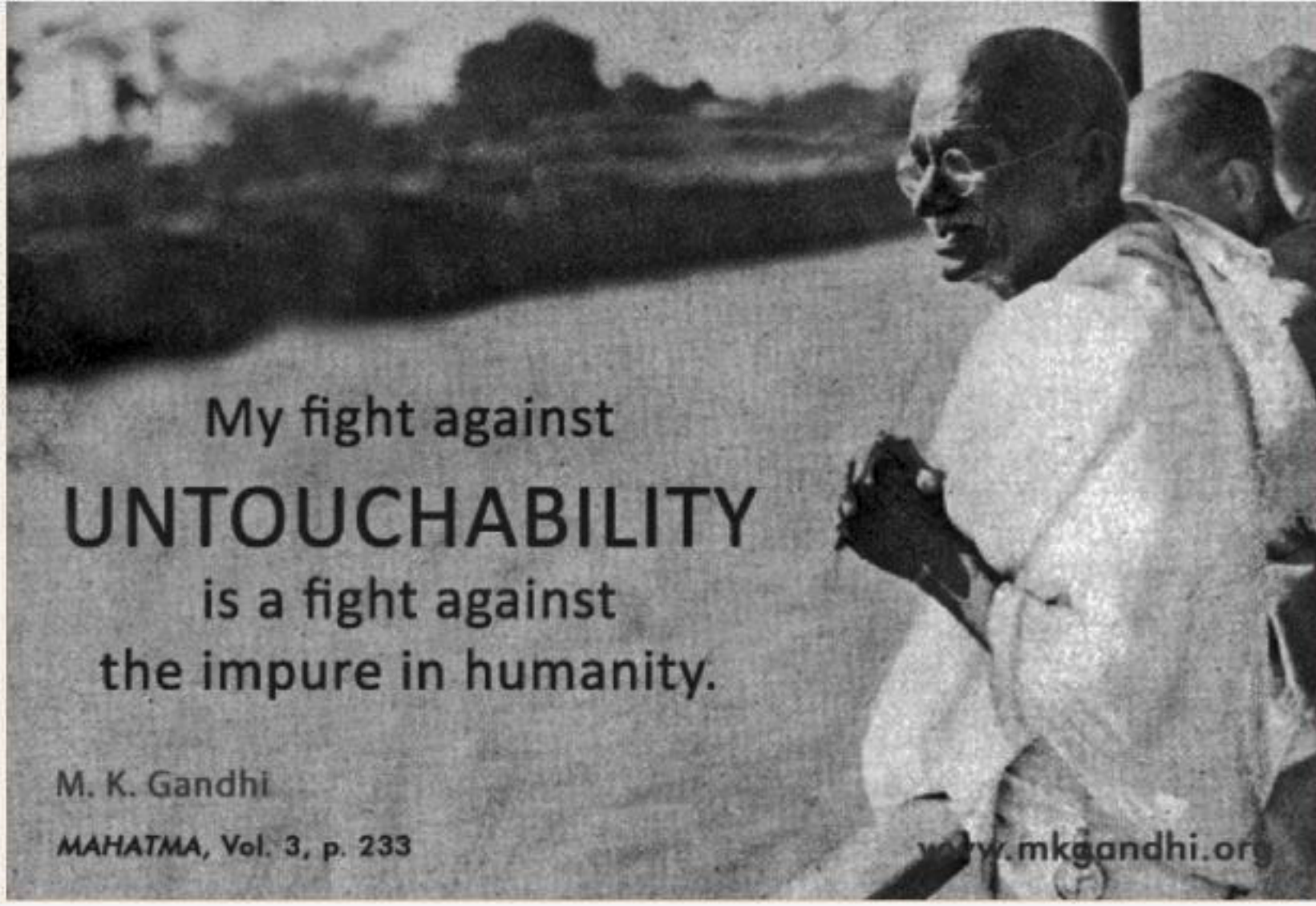
Manual of Livelihood Development of Dalit, Harijan and Bede 2013 sanctions use of the term 'Harijan'.

Under the constitutional law of Bangladesh and international law such as the Universal Declaration of Human Rights (UDHR), the International Covenant for Economic, Social and Cultural Rights (ICESCR), and the International Covenant for Civil and Political Rights (ICCPR), the Harijans are entitled to be recognised with human dignity.

At present, according to Ministry of Social Welfare, out of total population, 15 lac people consist of Harijan community. Baashfor, Domar, Rawuth, Telegu, Hena, Hari, Laal-beghi, Balliki, Doam, etc... are races from the Harijan community. Despite their significant role in the society, they are deprived of the rights which they deserve to get. Though the Harijans in undivided India used to enjoy and be recognised by the civil society, the secluded communities in undivided Pakistan and undivided Bangladesh

were debarred from the enjoyments of rights and acceptance in the society. The whole Harijan community in the then Bangladesh remained socially isolated and segregated. Members of the Harijan community

used to face the practice of untouchability and different kinds of discrimination from the State as well as the society. Enjoying rights to education, health, shelter and others is still a matter of struggle for them in



many parts of Bangladesh.

As a part of Sudra caste, even the personal law is quite unfair to them. Succession, adoption, marriage system - all is differently applied for them. Not only by religious practice, but also by different social restrictions, communities like Harijan and Dalits are deprived of basic human rights. Being the "Shebok" of society, they are remained untouchable to the mainstream population of the society. The doors of temple are open to all, but, we the so called upper caste people of society have built an artificial wall of 'segregation' for them. Hence, the responsibility of State is to protect and ensure social justice for the Harijan community.

Adopted by the Government of Bangladesh, the Implementation Manual of Livelihood Development of Dalit, Harijan and Bede 2013 is yet to be implemented. Even in big cities like Dhaka, Chittagong, Rajshahi, maximum people from the Harijan community are far away from enjoy-

ing their human rights. Therefore, pilot projects and a close monitoring system need to be developed for ensuring rights of the Harijan community. A uniform law can plausibly be proposed and introduced debaring all discriminations among different castes of the Hindu community.

Cross-cultural bondage between mainstream society and the Harijan society should be developed undoubtedly. Their work and contribution should be respected by all in our society. Being the 'Children of God', the Harijan community has left no stone unturned to satisfy the society at large. But in return, does the society give minimum social justice, security and respect to them? The answer is perhaps known to all. It is high time to stand together and break all psychological and societal barriers in order to build up an inclusive society for all of us.

THE WRITER IS AN ASSISTANT JUDGE, SUNAMGANJ DISTRICT JUDGE COURT, BANGLADESH.