"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH ● dslawdesk@yahoo.co.uk

PARLIAMENT SCAN

Could Jatiya Sangsad expel Ms Tamanna Nusrat, MP?

M Jashim Ali Chowdhury

Member of the Parliament from one of the women's reserved seats, Ms Tamanna Nusrat's loathsome forgery in public examination, her permanent expulsion from the Open University and a subsequent expulsion from the local unit of the ruling party have put the whole fabric of parliament's institutional morale in question. In this regard, it is pertinent to recall a writing of mine in *The Daily Star*, 'Law and Our Rights' on August 1, 2009. Then, the Speaker of the Eighth Parliament (2001-2006) Barrister Jamiruddin Sircar was being investigated for a financial scandal in

a grass cutting project within parliamentary premises. In that piece titled as "A Probe into the Parliament's Power of Expulsion", I argued that the parliament could expel any of its members for conducts striking at the root of its institutional morale and integrity. It appears that MP Tamanna Nusrat's case in 2019 fits even more within my earlier arguments.

MP Nusrat's expulsion may start with the ruling party leadership asking her to resign from the parliament or from the party. In the first scenario, the Speaker would simply accept the resignation. In the second case, the Speaker would declare her seat vacant as per article 70 of the Constitution. If none of these are happening, the third route could be a corruption case in the court and a verdict of conviction for offence involving 'moral turpitude'. Formally communicated by the court, either the Speaker or the Election Commission would declare a seat vacant by following articles 66, 67 of the Constitution and rules 172, 173, 176 of the Rules of Procedure (RoP). Problems with this route are several. It is lengthy. Its ultimate outcome is uncertain, and it does not add to the dignity and moral high ground of the parliament. Hence the fourth avenue of expulsion by the parliament requires consideration.

The United States Congress has an express expulsion power in article I, section 5, clause 2 of the Constitution. Though the substantive definition of the expellable offences is not found in the US Constitution, around 30 legislators have been expelled so far for offences involving moral turpitude and misdemeanour. The US Supreme Court in *Powell* v *McCormack* 395 US 486 (1969) recognised the Congress's "interest in preserving its institutional integrity" as a permissible ground. The RoP of Jatiya Sangsad and the Constitution of Bangladesh however do not help us this way. Rules 15 and 16 of the RoP outline the possible cases of "withdrawal" and temporary "suspension" of unruly and disruptive MPs by the Speaker and House acting together. Absence of express mention of "expulsion" in the Constitution and the RoP forces us to see whether there is any express prohibition on "expulsion" for the sake of parliament's 'institutional integrity'.

In terms of institutional argument, the UK Parliament constitutes the best source of inspiration. The British Parliament is doctrinally sovereign, and it regulates its procedure and Constitution. Jurisprudence from the British judiciary suggests that judiciary is less likely to travel within the parliament's protected empire (*Bradlaugh* v *Gossett* (1884) 12 QBD 271). The British Parliament has expelled members for allegations like misdemeanour, breach of privilege, contempt of parliament and obstruction of the House. While the contempt of parliament argument may be an alluring point to jump over, we must overcome a problem before doing so. Unlike the UK Parliament, ours is not sovereign one nor does it have power to regulate its composition.

We, however, may overcome the confusion of parliamentary sovereignty and its composition power by looking into Canada and India where a written constitution would bind the legislature in the way ours one does. Section 18 of the Canadian Constitution Act 1867 has bestowed all the privileges, immunities and powers of the UK House of Commons in the Canadian Parliament. It has so far expelled four MPs for conduct bringing disrepute to the parliament. Articles 105(3) and 194 (3) of the Indian Constitution have granted similar scope to the Indian Legislature until it enacts its own law. India has not enacted any law so far. Here are the two ways India and Canada may inform us.

First, while the Bangladesh Constitution does not expressly endow the House of Commons liked privileges upon the Jatiya Sangsad, article 78 authorises legislating the range of parliamentary privileges and immunities. Such law not being enacted so far, it may comfortably be argued that norms of the palace of Westminster would apply to ours as well. In that case, the question should not be one of 'existence'; rather be one of 'extent' of the parliamentary power (Mahmudul Islam, *Constitutional Law of Bangladesh*, 2nd Edition, p. 424).

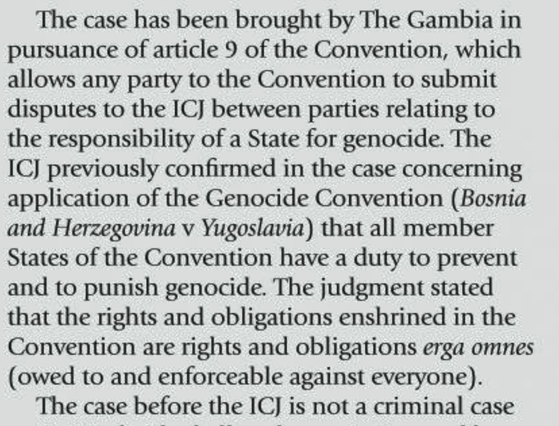
Second, the Indian Supreme Court's decision in *Raja Ram Pal* v *Hon'ble Speaker, Lok Sabha*, AIR 2007 SC 1448 clarifies the "extent" by holding that 'expulsion' resides within the power of self-protecting the parliament's institutional process, discipline and integrity. It is completely different from the parliament's power to regulate its composition.

People, and in MP Tamanna Nusrat's case - her party, remain free to elect new representative to the vacant seat. Only thing the parliament would need to ensure is a due and fair process of expulsion where the accused would be allowed a full right of defence and explanation. What is at stake is not the mere question of salary, privilege or status of an individual MP Tamanna Nusrat. It is on this institutional rubric that I argue for the expulsion of MP Tamanna Nusrat from the Jatiya Sangsad.

THE WRITER IS DOCTORAL CANDIDATE (LEGISLATIVE STUDIES), KING'S COLLEGE LONDON.

GLOBAL LAW UPDATES

ICJ case against Myanmar: Why The Gambia?



Myanmar's military committed extensive atrocities against ethnic Rohingya Muslims. These atrocities reached the peak during the military-led brutal ethnic cleansing campaign, beginning in mid-2017. With the fear of persecution, the Rohingyas fled to Bangladesh, giving birth to one of the largest refugee crises in the history of the world.

Alleging that Myanmar's atrocities against the Rohingya in Rakhine State violate various provisions of the Convention on the Prevention and Punishment of the Crime of Genocide (otherwise known as "the Genocide Convention"), The Gambia - with the support of 57 members of the Organisation of Islamic Cooperation (OIC) - has filed a case before the International Court of Justice (ICJ). The Gambia ratified the Convention in 1978. Interestingly, Myanmar has been a party to the Genocide Convention since 1956.

The case has been brought by The Gambia in pursuance of article 9 of the Convention, which allows any party to the Convention to submit disputes to the ICJ between parties relating to the responsibility of a State for genocide. The ICJ previously confirmed in the case concerning application of the Genocide Convention (*Bosnia and Herzegovina* v *Yugoslavia*) that all member States of the Convention have a duty to prevent and to punish genocide. The judgment stated that the rights and obligations enshrined in the Convention are rights and obligations *erga omnes* (owed to and enforceable against everyone).

The case before the ICJ is not a criminal case against individual alleged perpetrators and hence it does not involve the International Criminal Court (ICC). Rather, the case is a State's litigation brought against another State governed by legal provisions in the UN Charter, the ICJ Statute, and the Genocide Convention.

This has been a historic filing of case because for the first time without being directly affected by the alleged crimes, a State has used its membership nder the Genocide Convention to bring a case before the ICJ.

COMPILED BY LAW DESK (SOURCE: HRW.ORG).

RIGHTS CORNER

Clean air as a human right

If you are reading this from a city in a high-income country, you have about a one in two chance of breathing in air that exceeds World Health Organisation guidelines for air pollution. That is worrying enough, but if you live in a city in a low or middle-income country, the chances of breathing in clean air are much slimmer still - 97 per cent of cities in these countries do not meet air quality guidelines.

Most of the global population is exposed without their consent to hazardous substances and wastes that increase their likelihood of developing diseases and disabilities throughout their lives. In some cases, it has the potential to be a human rights violation.

The World Health Organisation estimates that 23 per cent of all deaths worldwide - a total to 12.6 million people in 2012 - are exposed to environmental risks. Low and middle-income countries bear the brunt of pollution-related illnesses, with a disproportionate impact on children, women and the most vulnerable. Air pollution alone kills an estimated seven million people worldwide every year.

In response to this, the United Nations Human Rights Council established a mandate on human rights and the environment in March 2012, to study the human rights obligations relating to the enjoyment of a safe, healthy and sustainable environment. The UN Environment Programme (UNEP) works closely with the Special Rapporteur on human rights and the environment, David R. Boyd.

What would the world look like if the enjoyment of a healthy environment was indeed universally recognised as a fundamental human right?

First and foremost, the sound management of chemicals and waste would have to be prioritised, according to the UNEP. Without the sound management of chemicals and waste across the world, it would be impossible to achieve equality, justice and human dignity for all.

Second, knowledge and information sharing on these topics would have to improve, as well as the engagement of vulnerable people. Environmental issues are best handled with the participation of all concerned citizens.

Third, the right to an effective remedy would have to be emphasised, in the case that the damage has already been done. The right to an effective remedy is well established under international human rights law. For example, the International Covenant on Civil and Political Rights guarantees victims of human rights violations an effective remedy. This has been interpreted to include environmental wrongs that adversely affect human rights. Most national constitutions and domestic legal frameworks also provide for these rights.

Fourth, systems would have to be put

in place that support these efforts in all parts of the world and all sectors of the global economy. The UNEP calls for a more comprehensive global framework that protects people from a toxic environment and addresses injustices worldwide resulting in risks to human health. Solutions exist to eliminate and reduce exposure to toxic pollution, but strong international cooperation is required to ensure that these solutions lead to sustainable development and the protection of human rights.

FROM LAW DESK (SOURCE: UN.ORG).

LAW VISION

On the settlement of land disputes in the CHT

Md. Shohidul Islam Hero

Land crisis is arguably the main problem in the Chittagong Hill Tracts (CHTs) centering which many other problems have arisen over the years. From time immemorial, the CHT inhabitants have been complying with their traditional collective ownership principle coupled with customary rules and regulations for land management. They would own their land orally which was socially accredited and transfer it by verbal commitment, informing the Raja and paying annual tax to him.

The British applied *terra nullius* in the CHT and declared the lands of the CHT exclusively vested to the government rejecting the ownership of three local Rajas. Subsequently, 1,356 square miles out of 5,146 square miles were declared as 'reserved forest' which comprise almost 25 percent of the total territory of the CHT. The Kaptai barrage submerged almost 54,000 acres cultivable land and made 1,00,000 people homeless without compensation and rehabilitation.

The Bangladesh government deployed military force in the CHT in response to insurgency by the Shanti Bahini, a military wing of Parbatya Chattagram Jana Samhati Samiti (PCJSS). About 4 lacs Bangalee inhabitants had been settled in the CHT during 1979-1984. In consequence, many tribal people allegedly lost their ancestral property and were displaced. Among them, 90,000 families were internally displaced and 10,000 families had been repatriated from India following the Peace Accord (*The Daily Star*, December 2, 2014).

In 1997, Shanti Bahini surrendered and PCJSS entered into historic Peace Accord with the government of Bangladesh. Following the Accord, the Hill District Local Government Council Act 1989 was amended in 1998 which provided for little autonomy of the people. The Peace Accord introduced Regional Council, an apex and unique system of governance to supervise and co-ordinate the Hill District Councils. But no election was held in the councils. Moreover, two writ petitions were filed alleging the violation of state's unitary formation by the Regional Council Act. The High Court Division declared some provisions of this Act and the Hill District Council Act unconstitutional which added a new dimension to their agonies. Presently, an appeal on the matter is pending in the Appellate Division of the Supreme Court of Bangladesh.

The Chittagong Hill Tracts Land Dispute Resolution Commission Act 2001 set up a Land Commission, headed by a retired judge of the Supreme Court as its chairman to settle land disputes and to determine the ownership of the land of those who were dispossessed. Ancient customary laws were not recognised and the claimants, without having title documents, are not getting any remedy despite being in the possession for a long time of the property inherited from their forefathers. Though a number of complaints (approximately 22,000) have been filed, but no decision regarding those complaints has not been made yet. Despite amending the Act in 2016, the government could not formulate the necessary Rules accordingly.

Traditionally, many tribal inhabitants did not feel the need of keeping title documents as they used to transfer land orally. So, lands belonging to the owners who possessed no documents, vested absolutely to the State as *khas* land. The government can now take control of such lands for any purpose simply evicting the inhabitants at any time.

The government claims to have fulfilled 48 clauses out of 72 of the Peace Accord (*Prothom Alo*, December 2, 2019); however, the major issue of land has remained unsettled. They got better schooling, better treatment, developed transportation even in the remote hilly areas, according to the government; but they are yet to get back their ancient land which seems to be a violation of their guaranteed right.

In order to settle the land disputes, the Land Commission should start its function within no time with the Rules formulated. The government may consider allocating the *khas* lands to the evicted and displaced tribal people. A survey and record of rights accordingly only for the CHT should be there in place as soon as the settlement of disputes is solved.

THE WRITER IS STUDENT OF LAW, UNIVERSITY OF CHITTAGONG.