

## LAW OPINION

# The Historic Seventh March Speech of Bangabandhu: Its Influence on International Legal Discourse and Reform

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Bangabandhu delivered an immortal speech on 7 March 1971 amid a deepening political crisis in then East Pakistan. The crisis engineered by the Pakistan ruling military oligarchy, which sought to deny by bullets what the *Bangalees* achieved through ballots, the first ever general election held in Pakistan in 1970. President General Yahya summoned the National Assembly but subsequently postponed it indefinitely in early March which triggered unprecedented civil disobedience and non-cooperation movement under the charismatic leadership of *Bangabandhu*. It was in this context that *Bangabandhu* made this greatest speech at the Ramna Racecourse. For this 19-minute extempore speech with no repetition and hesitation, *Bangabandhu* was hailed as the "Poet of Politics" by Newsweek (5 April 1971). UNESCO also recognised and recorded the speech as a World Documentary Heritage in 2017.

From the viewpoint of the birth of Bangladesh, it was the most influential and heart-touching speech that surfaced latent *Bangalee* nationalism to inspire and motivate people to be more freedom-lover. Its immediate purpose was to encourage people to participate actively in then ongoing non-cooperation movement, which was spontaneous enough to paralyse Yahya's writ in East Pakistan. Its goal was to prepare people for their self-rule and sacrifice needed to achieve freedom. *Bangabandhu* did not proclaim independence but conveyed tacit assertions for political emancipation through a movement for independence should then ongoing reconciliatory talks fail. He fell short of making a formal declaration of independence, which would have enabled Yahya to accuse him of secession, a sedition charge under constitutional law. Restraining himself on 7 March sent the ball to Yahya's court who failed to play, fled Dhaka, introduced martial law, arrested *Bangabandhu*, and unleashed a military reign of terror on the night of 25 March 1971. It was this speech that formed the bedrock of the unilateral declaration of independence (UDI) of Bangladesh on 10 April 1971 and a powerful force behind the formation of freedom fighters who fought Pakistani occupation troops and physically liberated Bangladesh on 16 December 1971 together with the Indian army.

Textually, the speech was a multi-dimensional work plan that set the agenda in the March crisis and beyond. He gave (a) orders, such as close all institutions and government departments, pay no taxes, government employees must follow his orders, employees to collect salaries; (b) directives, such as turn houses into fortress, confront the enemy with whatever people have, set up committees under Awami League, close all roads 'even if I cannot give orders'; and (c) warnings to Pakistan and its troops not to shoot people who learnt to give blood, none could stop them, and we would be free *insallah*. He also invited Yahya to come and see how his troops killed people and expressed compassion to support labourers participating the unrest.

Although the March 7 speech was intended to strengthen the popular movement for freedom of the *Bangalees* from the oppressive rule of Pakistan, its action plan had far-reaching impacts on specific aspects of international law as existed and interpreted in 1971. These international legal dimensions are highlight-

ed and commented upon below.

## DEFINITION OF COLONIALISM

Colonialism was a recognised institution of international law after the two world wars. Certain so-called primitive people and their territories were declared 'trust' and 'non self-governing' and placed them under the rule of some powerful states, mostly European, to prepare these people for self-rule. However, the colonisers betrayed the 'civilising trust' by political subjugation, economic exploitation, social discrimination, cultural imperialism, and gross human rights violations of the colonised for the benefit of metropolitans. These atrocious features became the definitional hallmark of colonialism in which these treatments were perpetrated by overseas colonial powers on alien colonised people whose territories remained non self-governing. In 1960, the UN and international law outlawed colonialism and entitled these dependent people to self-determina-

tion and self-rule up to independence. Many colonial people and territories acquired their statehood by virtue of the 1960 decolonisation declaration.



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*Bangabandhu* in his March 7 speech departed from this traditional identification of colonialism. He briefly outlined the colonial features and practices of Pakistan in East Pakistan for the past 23 years. He narrated the events of political domination, economic exploitation, military oppressions, and discriminations in all spheres of governance during the pre- and post-1970 election period, particularly the violent denial of the 1970 election outcome and ongoing gross atrocities and killings in East Pakistan. Through these narratives, he purported to convey to the people and world that the *Bangalees* and their territory were the victims of Pakistan's internal colonialism, which commenced immediately after the independence of Pakistan from the British colonial rule in 1947 and continued in 1971. He essentially asserted that colonial conditions must be determined by the nature and features of treatment of the people, not by

not the subjugated people in an independent state, is entitled to self-determination, then self-determination becomes the right of the territory, not of the people, which is legally absurd. The Judge maintained that 'it is for the people to determine the destiny of territory and not the territory the destiny of the people' (1975 ICJ Reports 122). This formal judicial endorsement of the existence of colonialism in independent states (status of the Western Sahara nomads in Morocco and Mauritania) set this idea firmly in international legal discourse and there have been many secessionist bids in independent states after the March 7 speech of *Bangabandhu*.

their technically independent status. His message was that colonialism could exist in even a politically independent state. Through his March 7 speech, *Bangabandhu* deconstructed the traditionally defined western colonialism that only identified the colonial rule of European metropolitan powers over the dependent people of non self-governing territories and extended its relevance to independent states should colonial conditions exist.

*Bangabandhu* through his political activism particularly since 1963 when he became the President of Awami League, notably the famous *six-point program* of 1966, displayed beyond doubt that the *Bangalees* of East Pakistan endured prolonged Pakistani internal colonialism, which he reiterated in his March 7 speech. This extrapolated interpretation of colonialism was echoed in the *Western Sahara* case of the International Court of Justice (ICJ) in 1975. Judge Dillard argued that if only the subjugated people of an overseas colony,

not the subjugated people in an independent state, is entitled to self-determination, then self-determination becomes the right of the territory, not of the people, which is legally absurd. The Judge maintained that 'it is for the people to determine the destiny of territory and not the territory the destiny of the people' (1975 ICJ Reports 122). This formal judicial endorsement of the existence of colonialism in independent states (status of the Western Sahara nomads in Morocco and Mauritania) set this idea firmly in international legal discourse and there have been many secessionist bids in independent states after the March 7 speech of *Bangabandhu*.

## DECOLONISATION RULE

The traditional definition of colonialism had given rise to a rule of international law called 'the one-time only rule' under which a colonial people and territory can exercise their right to self-determination to become independent only once. Their right to decolonisation extinguished once they exercised it and there would be no reassertion of this right because they were no longer under

active for the oppressed. This led him to utter that the movement in March 1971 was for freedom and independence. Until 1971, the UN held the policy that it 'has never accepted and does not accept and will not accept the principle of secession of a part of its Member States' (1970 7:2 UN Monthly Chronicle 36, 39). But after the birth of Bangladesh by disintegrating Pakistan's territorial integrity, the UN significantly shifted its position when its Secretary-General reported to the General Assembly in late December 1971 that the UN had difficulties to support the territorial integrity of Members which use their territory to the grave detriment and human rights abuses of its citizens (UN Doc. A/8401/Add. 1, 1971). International law now recognises that there is a room for the creation of new state by breaking-away from existing states.

colonialism. The UN, being an organization of states, followed this rule and consistently opposed all break-away attempts from its member states, whose territorial integrity was paramount for the UN. *Bangabandhu's* deconstructed idea of internal colonialism in Pakistan challenged the wisdom inherent in the 'one-time only rule'. To *Bangabandhu*, the right of the *Bangalees* to self-determination, although exercised once in 1947 against the British colonial rule and became independent, resuscitated after nearly a quarter century of Pakistani neo-colonialism in East Pakistan.

*Bangabandhu's* March 7 speech laid the foundation to disprove the validity of the 'one-time only rule', implying that there should be room for the creation of new states from existing states. He gave clear indication in his speech that since Pakistan's territorial integrity became oppressive of its own people, its disintegration was in order and imper-

ative for the oppressed. This led him to utter that the movement in March 1971 was for freedom and independence. Until 1971, the UN held the policy that it 'has never accepted and does not accept and will not accept the principle of secession of a part of its Member States' (1970 7:2 UN Monthly Chronicle 36, 39). But after the birth of Bangladesh by disintegrating Pakistan's territorial integrity, the UN significantly shifted its position when its Secretary-General reported to the General Assembly in late December 1971 that the UN had difficulties to support the territorial integrity of Members which use their territory to the grave detriment and human rights abuses of its citizens (UN Doc. A/8401/Add. 1, 1971). International law now recognises that there is a room for the creation of new state by breaking-away from existing states.

UDI of Bangladesh proclaimed on 10 April 1971. The outcome was the birth of Bangladesh, the first ever successful exercise of secession from an existing independent state in the post-colonial era. Major secessionist attempts prior to Bangladesh were Katanga from the Congo Republic in 1960 and Biafra from Nigeria in 1966. The Katanga separation was engineered by the Belgian business interest and fought by Belgian troops, while the Biafran army fought and lost the war against Nigeria. These claims became a 'determination' not by the 'self' concerned because these secessions were not actively asserted and participated by the people concerned. The territorial integrity of parent states prevailed over the self-determination of people for want of active popular participation in the process.

By contrast, *Bangabandhu* pursued a pro-people political strategy. He convinced the people that the territorial integrity of Pakistan not only failed to protect the human rights of its own nationals but became oppressive in East Pakistan. His March 7 speech particularly highlighted the events that occurred after the 1970 election, which developed mass antipathy and negative loyalty to Pakistan. *Bangabandhu* with overwhelming support from the people passionately and collectively asserted the *Bangalees'* independent political destiny. It was through this popular political activism symbolised by March 7 speech, *Bangabandhu* prepared the *Bangalees* to be ready to fight for their right, which inspired the people to join the liberation war spontaneously to become freedom fighters, a formidable insurgent force to fight the Pakistani occupation troops. The speech directives succeeded to galvanise the *Bangalee* national identity and prepared the ground and justification for independent Bangladesh. The post-Bangladesh world witnessed many bids for independence from parent states, exemplified by the creation of the Baltic and Balkan states. The right to emancipation and independence from Pakistan that *Bangabandhu* asserted in his March 7 speech has been endorsed as valid in international law by the ICJ in the *Kosovo* case in 2010. Secessionist movement by Catalonia from Spain has been ongoing.

## CONCLUSION

The March 7 speech was a product of its time and *Bangabandhu* delivered it in response to a political crisis. But the speech went well beyond its national orientation and impacted on certain aspects of international law as prevailed and applied in 1971. It became a ground-breaking pathfinding first step to usher international legal discourse on the issues of colonialism, decolonisation rule, and the creation of new states from existing states. The directives that *Bangabandhu* announced provoked new discourses on these issues opening new frontiers of international law. These discourses and their reformist pursuit were coined and propagated first by *Bangabandhu* through his March 7 speech at a time when international legal evolution was hamstrung by the cold war rivalries and Pakistan was a close ally of the US and China, and Pakistan's territorial integrity was staunchly supported by all Muslim states of the world. For these reasons, the historic March 7 speech of *Bangabandhu* has assumed and will continue to assume paramount national and international significance.

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## LAW WATCH

## All that is wrong with the Digital Security Act

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The Digital Security Act (DSA) was enacted in the year 2018 purportedly replacing the controversial Section 57 of the Information and Communication Technology Act, 2006 (as amended in 2013). This new law has however shown a more restrictive approach towards freedom of expression in its wordings and application than the former one. This excessive interference with free expression has encouraged demands from people of many walks for the abolishment of the DSA. In response, the risk of unsupervised/unprotected use of cyberspace has often been presented as a justification for the legislation. In this backdrop, it is important to identify what is wrong with the Act, if any.

Article 39 of the Constitution of the People's Republic of Bangladesh recognises freedom of expression as a fundamental right. However, it presents a long list of restrictive grounds with the said guarantee. This plethora of limits on free expression has often been criticised for creating an array of disproportionate exceptions to the general rule, and not conforming to international standards. Although the provision may itself need revision, the explanation provided by the Constituent Assembly as to its application can help avoid arbitrary curtailment of freedom. The restrictions imposed, as they argued, on free

expression must be reasonable, and are to be subjected to judicial review. Moreover, standards for applying the restrictive grounds can be derived from international law as Bangladesh has a commitment to uphold individual freedom of expression under international law. Along with these, comparative constitutional law standards of freedom of expression can be of aid in guiding a proper evaluation of the legislation.

Although the Act aims to ensure digital security, it ends up providing only a tautological definition by mentioning it as 'the security of any digital device or digital system'. This vague and overly broad definition results in arbitrariness when Section 8 empowers the Director General of the Digital Security Agency as well as the members of the law enforcement agency to remove or block information published in digital media if it threatens 'digital security'.

Apart from allowing the leeway of arbitrary imposition of censorship, the Act suffers from the vice of excessive criminalisation as well. The Act repeats (rather harshly) the old mistakes of criminalisation of defamation, sedition, and of hurting religious sentiments as it was done in the Penal Code 1860, a colonial holdover still in place.

Again, Section 25 of the DSA criminalises 'spreading information with an intention to affect the image or reputation of the country



or to spread confusion.' This does not have any reasonable link with the ground of state security or other constitutionally permitted restrictive grounds. The relevant standard test as found in the case *Brandenburg v Ohio* is the criminalisation of expressions that cause imminent lawless action. Penalising for expressions that merely affect the reputation of the country or spread confusion is too wide to be justified by any domestic or international standard. Moreover, the vague and overly

broad wordings of the provision can bring a chilling effect to the expressions on matters of public concern.

To avoid biases in free speech regulations, restrictions should be imposed in a content-neutral manner. In other words, expressions can only be limited if they ignite imminent violence or riots, but not otherwise. Section 31 of the Act elaborately covers the expressions that create hostility or disturb communal harmony. However, Section 28

of the Act again criminalises expressions that hurt religious sentiments. The presence of Section 31 renders that Section 28 covers nothing but restrictions based on ideological contents. Moreover, it is inconsistent with the concept of secularism, a fundamental principle and 'a guide to the interpretation of the constitution'. Similarly, Section 21 imposes restrictions based on "propaganda or campaign against liberation war, spirit of liberation war, father of the nation, national anthem or national flag." This again, is not only vague and overly broad but also a content-based restriction. To make the situation worse, these content-based restrictions are provided with a disproportionate penalty and categorised as cognizable and non-bailable.

Freedom of expression is essential for institutionalising a culture of democracy. It protects even offensive expressions from the unjustified control of the government, and creates a free marketplace of ideas. The DSA indiscriminately places the essential cyber security provisions such as digital fraud or hacking with provisions that lack justification to disproportionately limit free expression. A substantial revision is needed to make the law compatible with the standards in place.

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