Disqualification by accusation? Some thoughts about the new ICT Act clause

WINKERS AWEIGH!

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VISUAL: **ANWAR SOHEL**

The latest amendment to the International Crimes (Tribunals) Act, 1973, is widely perceived to disqualify individuals from running in any election upon the submission of a formal charge. The amendment, passed on October 6, disqualifies individuals from holding public office or from being appointed to any service of the republic. Since the provision excludes the requirement of a conviction, it naturally prompted discussion about whether this contradicts the fundamental principle of "innocent until proven guilty." After all, all it would take for someone to lose their job or electoral candidacy is a formal charge submitted to the tribunal by the chief prosecutor. The court does not even have to take cognisance of the charges, let alone indict, prosecute, or convict them.

But this article argues that the situation may not be so straightforward. It can be recalled that the first time a question about the International Crimes (Tribunals) (Third Amendment) Ordinance, 2025 arose, it concerned the status of 15 serving army officers under trial at the tribunal. When asked about the officers' status on October 26, one prosecutor said, "It is now up to Army Headquarters to decide when to apply the law. Until it is applied, they can be considered serving officers."

The following day, the chief prosecutor's office issued a clarification. It stated that the prosecutor's remark had been "misquoted and distorted," creating the wrong impression that the law's application depended on the army authorities. It clarified that under Section 20C of the amended ICT Act, 1973, once a formal charge is submitted, the accused is "automatically disqualified from holding any public office or service of the republic, unless discharged or acquitted by the tribunal."

The statement also noted that Section 26 of the act gives it precedence over any other law, as reinforced by Article 47(3) of the constitution.

Turning to the amendment in question: the change comes in the form of an added sub-section (20C) under the heading "Disqualification of the accused upon formal charge." It states that upon submission of a formal charge, the person concerned will be disqualified: "(a) from being elected, or being a member of Parliament; or (b) from being elected or appointed, or being a member, commissioner, chairman, mayor or administrator, as the case may be, of any local government bodies; or (c) from being appointed to any service of the Republic; or (d) from holding any other public office." The disqualification will not apply to anyone discharged or acquitted.

Before going further, it is worth clarifying what "formal charge" means. It is essentially a petition from the chief prosecutor's office listing criminal accusations. The prosecutor submits this—typically to the registrar's office—after receiving the investigation report. The court then hears the petition, and may take cognisance of the accusations or, if it finds no merit, dismiss some of the charges. The prosecution then has to prove those charges, which the court finds credible. Thus, the submission of formal charges does not in any way entail judicial oversight or involvement; it is merely the initiation of proceedings that may eventually lead to trial.

Whether the latest amendment to the ICT Act, 1973, is legally tenable or whether it goes beyond its remit as set out by the law itself is, of course, a matter for legal debate, a debate perhaps best settled in court. But it certainly warrants closer scrutiny. What is clear is that the disqualification for MP candidates based on formal charges, as provided by the amendment, is in contravention of the constitution.

That said, none of the four points under the new sub-section disqualifies an existing public servant from continuing in service. The "c" of Sub-section 20C, which is relevant for the army officers, bars individuals only from "being appointed."

The army subsequently asked the government for directives on the matter. When asked about this at the army headquarters on November 5, Brigadier General Md Mustafizur Rahman said that the government had yet to clarify the issue. As such, the confusion still remains.

Thus far, most public discussion has revolved around the wording of the amendment rather than the remit or scope of the law itself. The ICT Act, 1973 states at the very outset that it is "An Act to provide for the detention, prosecution, and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under international law." It does not mention "disqualification." Some might argue that disqualification falls within the remit of other laws—perhaps the Representation of the People Order, or even the constitution, which clearly sets out the eligibility of members of parliament in Article 66. Hence, it could be argued that the latest amendment oversteps the boundaries of what the international crimes law is meant to regulate.

The constitution does state that anyone "convicted" by the International Crimes Tribunal will be disqualified from running for parliament. But it says nothing about disqualification on the basis of formal charges.

Now, let us turn to Article 47(3) of the constitution cited by the chief prosecutor's statement. It reads: "Notwithstanding anything contained in this Constitution, no law nor any provision thereof providing for detention, prosecution or punishment of any person ... for genocide, crimes against humanity or war crimes and other crimes under international law shall be deemed void or unlawful ... on the ground that such law or provision ... is inconsistent with, or repugnant to, any of the provisions of this Constitution."

In plain language, anyone's "detention, prosecution or punishment" for crimes against humanity will stand even if it contradicts the constitution. Notably, there is nothing about "disqualification." Nor can disqualification be reasonably interpreted as "punishment" because punishment only comes after conviction at the end of a trial. It doesn't fall under detention or prosecution either.

It should therefore be clear that since it was originally the intent of the law to provide for "detention, prosecution and punishment" for crimes against humanity (among other offences), the constitution also recognises that. But the constitution does not recognise "disqualification" arising out of the ICT Act.

Whether the latest amendment is legally tenable or whether it goes beyond its remit as set out by the law itself is, of course, a matter for legal debate, a debate perhaps best settled in court. But it certainly warrants closer scrutiny. What is clear is that the disqualification for MP candidates based on formal charges, as provided by the amendment, is in contravention of the constitution. Since the constitution's exception clause under Article 47(3) does not cover such disqualification, the constitution should prevail. Contrary to what the amendment states, formal charges would not automatically disqualify individuals from running for parliament, nor army officers from continuing to hold office.

As things stand, there is nothing in the constitution that permits the removal of electoral eligibility—or eligibility for any office—on the mere filing of charges. If such a departure from established constitutional safeguards is to be made, it should be done through a clear constitutional amendment, not through legislative overreach. Until then, the ICT Act's disqualification clause remains suspect at best, and untenable at worst.

The education vacuum is fuelling crimes in Rohingya camps

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Today, more than one million refugees live in the Rohingya camps in Cox's Bazar—the largest refugee settlement in the world. Over 700,000 people from the community fled to Bangladesh following a violent military crackdown in August 2017, joining other refugees from previous raids. I was among the thousands.

The families in the camps struggle to survive with limited resources, and without access to education, the youth are among the most vulnerable. Lack of learning opportunities fuels hopelessness and pushes many young people towards risky behaviours, including joining gangs, drug use and gambling. Solving the education crisis would have deep ripple effects on camp safety, health, and prosperity.

The education system in the Rohingya refugee camps has suffered a major setback from the USAID funding cut. Many learning centres were forced to shut, leaving nearly 230,000 Rohingya children without access to education, according to Unicef. This closure has deeply affected both students and teachers, creating social and moral challenges within the camps.

Currently, classes from only grades 2-9 are operating at partial capacity, whereas before the crisis, all grades from 1 to 11 were operational. The disruption has led many students to drop out and join the workforce. Without classes to attend, youths spend more time outside of classrooms, where they are vulnerable to exploitation. As a result, cases of kidnapping, gambling, and child marriage have increased.

Budget cuts also mean loss of qualified teachers. As it is, camp teachers earn very low salaries—not more than Tk 12,000 per month. Those who can earn Tk 20-30,000 are forced to find other work, leaving schools no choice but to hire unqualified teachers.

Lack of learning opportunities fuels hopelessness and pushes many young people towards risky behaviours such as joining gangs, drug use, gambling and others.

PHOTO: **AEER SHAAD**

Even after the UN conference on Rohingya issues, we saw no sustainable solutions to the education crisis. The discussions mainly focused on food and humanitarian aid rather than long-term plans. Meanwhile, the situation in Myanmar worsened, with the Arakan Army (AA) controlling most of Rakhine State. Justice for the Rohingya remains stalled in the ICC, ICJ, and Argentine Court, leaving our community without hope or progress since the 2017 genocide.

I, myself, am a victim of the education crisis in the camps. The NGO-based education system is neither formal nor well-organised; most teachers are unable to properly guide or inspire students. Many learning centres feel more like play areas rather than real classrooms, with little follow-up or care for students' academic progress. Because of this, I decided to study in a community-based school, which is run and funded by camp residents and where qualified teachers provided me with a more structured and meaningful education.

After completing my 10th grade, I faced another barrier: there were no means for higher education. According to government policy, we are refugees and therefore not allowed to pursue formal higher studies. Even those who complete their 10th grade find no real job or livelihood opportunities, as "volunteer" is almost the only job available in the camps. Seeing no other path forward, many youths lose hope, drop out of school, and eventually are drawn towards unethical activities.

I was fortunate to have the support of my family, which helped me stay motivated, complete my schooling, and establish my own community organisation—the Rohingya Youth Empowerment Network (RYEN). I founded it to make a difference for my community through quality initiatives. Today, through dedication and teamwork, our organisation runs various programmes focused on education, youth empowerment, and community services.

In the seven years since the exodus, thousands of young refugees like myself have grown up without access to proper schooling and higher education. When the learning centres remained closed for months, children turned them into playgrounds, and criminal groups used them as gambling compounds.

Girls face a different set of challenges due to societal norms and safety concerns. Many parents stop their daughters from attending classes after puberty, fearing harassment or social criticism. As a result, female literacy rates remain significantly lower than those of boys.

The 2022 youth report by the United Nations High Commissioner for Refugees (UNHCR) found that 78 percent of Rohingya youth "see no future," and this frustration often leads to depression, anxiety, and loss of ambition. In 2024, Human Rights Watch (HRW) warned that the community is on the verge of becoming a "lost generation" without access to secondary or higher education.

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To reverse this crisis, education in the camps must be prioritised and better funded. Expanding access to formal education, vocational training, and digital learning can help the Rohingya youth build skills and hope. National and international stakeholders can provide livelihood programmes for both teachers and learners to ensure stability and sustainability. Community-led awareness campaigns against drugs and exploitation can further protect young people from unethical paths.

The Rohingya community continues to call for sustainable, dignified repatriation with full citizenship rights in Myanmar. Until that becomes possible, improving education and youth empowerment in the camps is the most powerful tool to prevent a generation from being lost to despair and unethical activities.