

# INTERNATIONAL COMMISSION OF JURISTS Australian Section

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## BANGLADESH

A REPORT ON THE
CURRENT HUMAN RIGHTS
SITUATION

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## INTRODUCTION

Many people in Australia will remember the harrowing scenes of hardship witnessed on our television screens in mid-1988, when we saw the problems of Bangladeshis when faced with the massive inundation by floods of about two thirds of their country. Others with a longer memory will recall the scenes of devastation nineteen years ago when the region then known as East Pakistan won its independence from West Pakistan, in a War of Liberation marred by vindictive acts of bloodshed and destruction rarely witnessed since the end of the Second World War. We will recall Henry Kissinger's description that Bangladesh was "the basket case of the world".

More recently, I have been disturbed to hear from Bangladeshis in Sydney that they have been the victims of human right violations in consequence of their legitimate expression of political opposition to the current administration. With these thoughts in mind, and given that I had the opportunity to visit Bangladesh in June 1990 for two weeks, I decided to use this time to achieve the following purposes:—

- To make a preliminary investigation into the current status of human rights and the rule of law in Bangladesh,
- 2. To consider preliminary findings in the light thereof, and
- 3. To establish contacts with human rights workers and NGO's (Non Government Organisations), and in particular those representing the legal community in Bangladesh, with a view to fostering closer contact between persons of like interests in Bangladesh and Australia.

With the support of the Australian section of the ICJ I contacted the Australian Department of Foreign Affairs and sought their assistance in facilitating interviews for me with significant NGO's. It transpired that there were thousands of NGO's in Bangladesh. From a wide selection of names which were shown to me I indicated a preference, given my time constraints, for meeting representatives of human rights NGO's representing lawyers and those concerned with the problems of women, refugees and religious minorities.

I am most grateful for the detailed assistance that was given me by His Excellency, Mr Richard Gate, Australian High Commissioner in Bangladesh and in particular, Ms Felicity Volk, Third Secretary, Australian High Commission, Bangladesh.

Annexed as Appendix I is a Schedule of Meetings and Organisations interviewed. I extend my thanks to those who were prepared to spend time with me, at that stage a complete stranger, and to discuss the issues of concern to me.

## POLITICAL HISTORY OF BANGLADESH

Situated in the Delta Region of the Ganges and Brahmaputra Rivers, the region now called Bangladesh has attracted settlers and invaders of different religions, races and countries over many centuries. In its early recorded history, the Bangla (Bengali) people were under the Hindu civilisation. 3rd Century BC, Buddhism became prevalent. Buddhists and Hindus co-existed until the Moslem invasion in 1199 when the region was brought under the Sultanate of Delhi. The region developed under successive Moslem empires. peaking with the Moghul Empire in the 17th Century. The first regular European contact was with Portugese traders in the 15th Century. By the 18th Century, the British East India Company had established its foothold in the region with the British conquest of Bengal in 1757. During the 200 years of British rule, conflicts between the Hindus and Moslems festered. Lord Curzon, then Viceroy of India, divided Bengal for administrative purposes into East and West Bengal, the former having its capital at Dhaka (also spelt Seven years later, the split region was reunited. Moslems however Dacca). feared Hindu social, economic and political domination and increasingly supported the formation of a Moslem home state, separate from India in the area.

Indian partition in 1947 saw the creation of Pakistan with two wings, east and west separated by a distance of about 1000 miles. The only really unifying factor between the two states was Islamic solidarity. Apart from this, there were ethnic, cultural and importantly linguistic differences between the two regions. Although East Pakistan had the larger population and produced more cash crops, West Pakistan dominated politically, controlling the nation's defence, administration and economic and foreign affairs. In 1952, serious riots occurred in Dhaka over attempts by the West Pakistan Government to impose Urdu linguistic domination over the Bengali speaking East Pakistan. The "Language Movement", led by Sheikh Mujibur Rahman emerged as the major national political organisation in East Pakistan. This developed into the Awami League which led the political call for the internal self-government of the East.

In 1970, the Sheikh's Awami League won a massive electoral victory capturing all but two seats in the National Assembly from East Pakistan and 167 of the 313 seats for both East and West Pakistan. They were the clear majority in Parliament, over the People's Progressive Party then led by Zulfikhar Ali

Bhutto (from West Pakistan). Constitutionally, the Awami League should have formed the government of Pakistan. The President of Pakistan however postponed the opening of the Assembly which led to riots in East Pakistan. In March 1971, Sheikh Mujibur Rahman declared East Pakistan to be the Independent State of Bangladesh. He was then arrested and for the next nine months a War of Liberation occurred during which over two million Bengalis were killed, hundreds of thousands of women were raped and the infrastructure in the new country was completely destroyed by the Pakistan army. Ten million Bengalis fled to India and twenty million Bengalis were displaced within their country needing food and shelter. The Pakistani forces finally surrendered on 16th December 1971 and Bangladesh was then proclaimed as the 139th nation of the world.

Sheikh Mujibur Rahman returned from imprisonment and the political history of Bangladesh began. His Awami League Government ruled until he and most of his family were assassinated in a military coup in August 1975. His rule was marked by allegations of serious corruption, nepotism and administrative Nevertheless he is still revered as father of the nation. incompetence. was succeeded as President by another Awami League leader, Khandaker Moshtaque Ahmed was himself overthrown in a second coup in November 1975. military commanders who took over were themselves removed in another coup four days later and the new administration was headed by the former Chief Justice, Abusadat Md Sayem, who was proclaimed President and Chief Martial Law Real power however lay in the hands of the Head of the Army, General Zia (Ziaur) Rahman, (no relation) who had played a major role as a liberation fighter in 1971. In a peaceful coup, Sayem was induced to resign in April 1977 promised elections having been delayed, and General Zia assumed the Presidency, which position he held until his own assassination in a further coup on 30 May 1981. In June 1978, elections were held and General Zia was elected President. Some commentators dispute the validity of the result and Zia's legitimacy as a candidate. Allegations of serious electoral fraud have been made. His newly formed Bangladesh Nationalist Party (BNP) won a great majority of seats in a parliamentary election in 1979 when martial law was lifted.

Zia's successor was another Supreme Court Judge, Justice Abdus Sattar. Sattar continued BNP rule until he was overthrown in a bloodless coup on 24 March 1982 which brought the current incumbent, General Hossain Mohammed Ershad to power. He won a Presidential election boycotted by all the major opposition

groups in 1986. Following the precedent set by General Zia, General Ershad established his own political party, the Jatiya Party, which won a large majority of seats in elections held in March 1988. These elections were however boycotted by the major opposition parties and the election was marred by low voter turnout and many allegations of serious voting irregularities. President Ershad recently announced that new Presidential elections would be held in 1991, before the constitutional expiration of his current term. The opposition parties must now decide whether or not they will contest the election and their decision will to a certain extent, be predicated on their assessment as to whether a genuinely free and fair election can be held.

## **POLITICAL PARTIES**

To an outside observer Bangladesh appears to be a genuine multi-party state. Political parties have both an ideological and a personality basis. Within the Parliament, the dominant party is the Jatiya Party of the President which has a generally capitalist/nationalist/conservative philosophy making it the natural ally of the U.S.A. There is an increasing tendency to adopt a more pro-Islamic approach, though the party eschews Moslem fundamentalism. On the right there are several Moslem fundamentalist parties which have a small local following, including (interestingly) amongst students, which historically have had a pro Pakistan policy. Within the Parliament, the official Opposition is led by the left leaning JSD Party under A.S.M. Abdur Rab.

The major opposition political parties are not represented in the Parliament. These are the Eight Party Alliance, lead by the Awami League whose leader is Shiekh Hasina, the daughter of Shiekh Mujibur. The ideology of this alliance can briefly be described as upholding the four tenets of Shiekh Mujibur, namely Nationalism, Socialism, Democracy and Secularism.

The other major political grouping is the Seven Party Alliance, headed by the Bangladesh Nationalist Party whose leader is Begum Zia, the widow of the late General Zia. The ideology of the BNP appears to be akin to the Jatiya Party. President Zia removed these four pillars from the national ideology. Personality conflicts appear to be a major factor inhibiting coalition between the Jatiya and BNP groupings. (Begum Zia reportedly holds the present administration accountable for the death of her husband.) Conversely,

although ideologically dissimilar, many former Awami League leaders have found political positions under the current administration.

Finally, reference should be made to the fact that the Communist Party (divided into several parties) is legal and essentially middle class but relatively impotent in Bangladesh. Most people I spoke with explained that Moslem Bangladeshis could not support a party which espoused atheism. Of course, as in any third world state, illiteracy, poverty and the influence of the rural rich and the military must cast serious doubts as to the effectiveness of the democratic tradition.

#### **GEOGRAPHY**

Bangladesh has a total area of approximately 144,000 sq kilometres (55,000 sq miles). 90% of the country is an alluvial flat plain. Low lying hills are in the north-east and south-east regions, however most of the country is no more than 10 metres above sea-level. Although close to the Himalayas, there are no large mountains or deserts. Approximately 10% of the country is forested, in the hill areas of Sylhet, the Chittagong Hill Tracts and the Mymensingh area, and in the large south western swamp area known as the Sundarban, near the mouth of the Ganges. Huge amounts of river silt are deposited in Bangladesh each year which is the cause for both the great fertility of the plain and also the regular serious flooding. The inability to control the waterways is a major problem and one which foreign aid does not appear to be currently The country also suffers from cyclones, tidal waves, shifting addressing. and periodic severe famines which add to its economic river courses, problems. Bangladesh shares a small land border in the south-east with Burma, 283 kilometres long. The rest of the land border on three sides is with India.

## **POPULATION**

With a population of approximately 110,000,000 people, Bangladesh is the third most densely populated country in the world behind Hong Kong and Singapore. 95% of the population are ethnically Bengali, with Hill Tribe minorities, including 16 tribal groups in the Chittagong Hill Tracts region, Burmese and the Biharis comprising the remaining 5%. About 85% of the population live in the rural areas, depending on agriculture for support and about 45% of the

total population is below 15 years of age. The annual birth rate is approximately 2.5% with the average life span in 1974 of 46. The infant mortality rate in 1974 was 153 per 1000, the highest in Asia.

## **RELIGION**

85% of the population are Moslems (mostly Sunni). 10% are Hindu and the remainder are Buddhist, Christian or Animist. Most of the Chittagong Hill Tract tribal people fall into these minority religious groups.

## **LITERACY**

The literacy rate in Bangladesh is estimated to be 23%. Whilst primary school education is theoretically compulsory, poverty means that most children never attend the country's 44,000 primary schools. Bengali (Bangla) is the national language spoken throughout the country. English is spoken by the educated elite. Urdu, Hindi and tribal language are also spoken. Literacy was approximately 19% for women and 40% for men in 1981. Public expenditure in education is less than 2% of GNP which is low by international standards. Many rural children cannot afford to go to school, though primary education is in theory compulsory and free. Only 20% of students complete the 6 years primary school.

## POLITICAL - ADMINISTRATIVE STRUCTURE

The 1975 Constitution (replacing that of 1972) established a Presidential form of government with a uni-cameral Parliament (Jatya Sangshad) of 300 elected members and 30 specially appointed women representatives. The President is the Chief Executive in the French model directly elected for a 5 year term by universal adult franchise. He is assisted by a Council of Ministers headed by the Prime Minister, who must be a Member of Parliament and is appointed by him, all of whom hold office at the President's pleasure, and subject to Parliament's confidence.

The country is divided into four administrative divisions each under a Divisional Commissioner. The four divisions are Dhaka, Chittagong, Rajshahi

and Khulna. These divisions are divided into 64 Districts under the control of a District Commissioner. Each District contains several units known as Upazila (formerly called Thanas). There are 495 Upazilas. The Upazila is the local point of public administration in the country and each is headed by an elected chairman. The last Upazila election took place in March 1990.

#### NATURAL RESOURCES - ECONOMY

Bangladesh has few proven mineral resources apart from natural gas in the Sylhet area. There are a few traces of oil. Electricity is produced by thermal and hydro-electric processors from a large dam at Kaptai in the Chittagong Hill Tracts (CHT). The principal sector of the economy agriculture providing employment for about 80% of the work force. Rice is the Jute is the main non-food crop and the principal foreign exchange earners for the country include jute, cotton, tea, tobacco, other cereals and Bangladesh exports fish and shrimps. The country also exports textiles and products of cottage industries. There industrialisation. In 1987-88 total exports from Bangladesh amounted to AUS\$1,646 million and imports reached AUS\$3,063.5 million. The USA, Western and Eastern Europe are the major trading partners. The value of Australian trade with Bangladesh in 1988-89 was exports to Bangladesh AUS\$70.2 million and imports from Bangladesh AUS\$22.7 million.

The 5,000 kilometres of sealed roads are relatively poor and are a government priority for improvement using foreign aid monies. Transport also uses the internal rail network and extensive river systems.

Travelling by road can take up to five hours to travel 100kms from Dhaka to Comilla. Nevertheless, purported, the regular floods and torential rains reek regular havoc with the road system. An injection of billions of dollars of properly managed funds would be required to build a flood free road system. More cheaply, monies could be employed towards desilting the rivers to prevent flooding and keep them maintained for navigation. Because of the difficulties in communication, and notwithstanding the compact size of the country, rural areas are often quite remote from the authority of the Central Government and this has important implications not only for economic development and political democratisation, but also for human rights.

Foreign aid and loan assistance financed nearly 50% of total imports in 1980-1.

Australia's current level of foreign aid is approximately \$20 million per year. Aid is given by one of four means: food aid, population related programmes, health related programmes and training, with some Bangladeshi students given scholarships to study in Australia.

## CURRENT HUMAN RIGHTS SITUATION IN BANGLADESH

In the following analysis of the human rights situation, I was unable to obtain any domestically prepared and up to date statistics or analyses of the human rights situation. Although there are a large number of NGO's dealing with a variety of human rights related issues only in 1987 has a centralised collective of 31 NGO's been established, namely the Coordinating Council for Human Rights in Bangladesh (CCHRB). Regrettably, many of the human rights related NGO's appear to spend as much time criticising each other as they do in monitoring the human rights violations committed by government or other abusers against the population. In Annexure 2, I list the various Organisations with whom I consulted and summarise the ideals of each Association.

My coverage of the current human rights situation in Bangladesh relies therefore heavily on the Schifter Report issued in February 1990 by the U.S. Department of State, a report prepared in April 1990 by the Australian High Commission, and various Amnesty International, Lawasia and ICJ Reports and articles in journals. In addition, I have also referred to a report issued in January 1990 entitled "State of Human Rights in Bangladesh" by the Bangladesh Human Rights Commission. These analyses are extended by information gathered during my interviews.

Whilst the Schifter Report concluded "there were no major changes in the human rights situation in 1989", the Australian High Commission report concluded "1989 has witnessed an improvement in the overall civil and political human rights situation in Bangladesh". The 1989 AI report referred to reports of detentions without trial, torture in detention, extrajudicial executions in the CHT, and continued use of the death penalty in sentencing.

Whilst there has been little substantial improvement in the socio-economic conditions of the large percentage of the country's population, the reality

is, as in so many Third World countries, that whilst fundamental rights as recognised internationally in the Declaration of Human Rights and the two Covenants are enshrined in the Constitution of Bangladesh, nevertheless violated regularly, in large part due to the nation's poverty and the associated problems which beleaguer the country. Indeed as noted later in this report, the Constitution generally enumerates many civil, political, economic, cultural and social rights in terms similar to the wording contained in the two Covenants. However most are fettered by the qualification "Subject to any reasonable restriction imposed by law in the public interest or state security" or words to this effect. The Australian High Commission has concluded that the Bangladesh Government is sensitive to international opinion regarding human rights issues and notes that human rights NGO's are generally free to investigate allegations of abuse and to promote awareness of human rights and the rule of law, although the effectiveness of such programmes is limited by illiteracy and problems of internal communication.

Especially due to the massive poverty in Bangladesh and the consequences of unemployment and underemployment, illiteracy, high levels of child mortality and low life expectancy rates, and poor health standards outside the main urban areas, the attainment of economic, cultural and social rights can only be for most an impossible dream.

There is a further problem with corruption which is endemic in the country. Indeed it is so open that even I, a foreigner, could not enter or leave the airport without a bribe of about US\$20.00 being solicited by the security guard to obtain my luggage. Anecdotal stories of bribery and kickbacks appeared to be a regular feature of dinner party conversation, indicating the all pervasive nature of this debilitating social evil.

In 1988-89 the per capita income was A\$210 amongst the lowest in the world. GDP growth was i.8%. Over 60% of the population is landless and 2%-3% of the population control over 30% of the country's wealth. Foreign aid plays a vital role in the economy; 45% of the Government budget is funded from this source. At least 10% of food requirements are imported and paid for from aid funds. Population control by way of Government policy is hampered by social, cultural and religious factors. It is an essential programme also for many of the women based NGOs. Malnutrition affects an estimated 50% of the population, especially children under 5 years and pregnant and lactating women. It is estimated that 57.6% of the rural children aged 0-6 years

suffered from chronic malnutrition and 8.1% suffered from acute malnutrition. There are associated illnesses of anaemia, blindness and tuberculosis. The mortality rate is amongst the highest in the world and there is a high maternal mortality rate, many of which are abortion related.

#### POLITICAL EXPRESSION

Many of the human rights lawyers with whom I spoke expressed concern that there was a fundamental denial of the basic human right to have a generally representative, democratically elected government. They gave this as their major example of a continuing human rights violation in Bangladesh.

Thus, the conclusion of the Report of the Bangladesh Human Rights Commission of Jan. 1990 outlining the perceived priorities commences: "To apply the test as to whether, state of human rights in a country is good or bad depends upon the following tests: (1) Holding of free and fair election on the basis of human franchise; (2) Free and fair field for the opposition; (3) Govt.'s due accountability to the people; (4) Constitutional Govt.; (5) Independence of the Judiciary; (6) Free and neutral mass media. The above political process and action ... under a democratic set—up depends upon certain values: Respect for the personal liberty; Protection of fundamental rights of a person; Tolerance". (sic)

Similarly Justice A R Chowdhury stressed in an article published by the Institute of Human Rights and Legal Affairs in 1986, that: "Democracy can never be sustained without the rule of law which is its only safeguard". He then stressed that "the decision recorded by the majority vote may then be fairly said to represent not a portion of the society but the whole society".

To the extent these allegations are correct there is a failure to implement Article 25 of the International Covenant on Civil and Political Rights (ICCPR).

Schifter notes at page 1354 "The governing party's dominance in the electoral process and the fraud and violence which are characterised at national elections in recent years, raise serious doubts about the ability of Bangladeshi citizens to change their government peacefully and polarisation democratically. In addition, the political between the

Government and the opposition and internal divisions within the opposition continued to prevent agreement on the holding of parliamentary elections."

The most recent parliamentary election in March 1988 was marred by a boycott by the major opposition parties, sporadic voter violence, low voter turnout and allegations of serious voting fraud. In the local government elections held in March 1990, interestingly the Awami League with its extended organisational network in the country did well. Foreign observers noted that such fraud was as much attributable to the opposition parties as it was to the Government party. The BNP did well especially in the urban areas especially amongst students.

Features of the Bangladesh political scene include:-

- the alienation of the majority of the rural population from national politics due to poverty and communication problems within the country;
- the personalised nature of politics in Bangladesh, controlled by political leaders with less emphasis on political ideology;
- the opportunistic nature of politics;
- successive post-liberation governments have been perceived to have betrayed the national ideals in their corruption and represssion.
- a wide spread cynicism of the ability of any government to achieve meaningful reform, especially for the rural poor.

The Australian High Commission reports that recent years have seen a lessening of political repression since the serious repressive practices witnessed between 1986 and 1988 when large numbers of Opposition personalities and students were arrested.

The next Parliamentary election is not due till 1993. President Ershad has indicated that a presidential election will in fact be held in 1991. The opposition parties are deciding whether or not to boycott this election.

The opposition parties charge that there cannot be free and fair elections under Ershad. One queries whether in a country like Bangladesh genuinely free and fair elections in the western model could ever really be possible. Bangladeshis could well consider the establishment of a Citizen's Committee to supervise and monitor the free elections along the Philippine Namfrel model. An attempt to mount such a monitoring was carried out by CCHRB for the 1990 Upazila Election. After some delays approval was given to monitor by the Home Minister. They mobilised 798 observers from 10 NGO's in 67 Upazilas. Annexed at 3 is a copy of the Executive Summary and recommendations of the Report published by CCHRB.

Allegations of electoral irregularities made to me included:

- vote buying especially at the rural level;
- vote rigging and harassment of voters on election day, and
- harassment of opposition candidates by police, including the use of the
   Special Powers Act against them. (See below)

If successful, the Namfrel model could mobilise hundreds of thousands of election watchers who would able to play an important role at the regional level in ensuring the proper conduct of the election, at least on the election day and during the following count. It would also raise voter awareness about proper electoral procedures.

While I was there, numerous people raised with me the question of foreign observers attending the election. Observers were allowed to attend the March Local Government election and it is likely that foreign observers will also be allowed to attend the Presidential election as this will be seen as a means for the Government to establish its credentials. I observed that a small number of foreign observers could realistically not make any meaningful declaration as to the propriety of an election unless the scale of fraud was excessive such as occurred in the Philippines in 1986 or in the Panama election last year especially having regard to the fact there would be thousands of polling centres in the country. As the government, which is so heavily dependent on foreign aid for its economic survival, would also be conscious of the adverse effects of gross election fraud, I suspect that such would not occur.

Many in the Opposition criticize the current Parliament. As the 1988 election was boycotted by the major opposition parties, there is justifiable criticism that the current make-up of the Parliament is not representative of the national political divisions. Ershad has however taken the wind out of this criticism by calling the early election.

Certainly, Opposition leaders have access to the media to voice criticism and the "Hartal" is a common feature of Bangladesh life. This is a nationwide strike for a part of the day. Whilst I was there, a "Hartal" was called against the 1990 Budget by the leaders of the Opposition and it was successful to the extent that travel across the country was brought to a standstill, streets were deserted and presumably, many factories and offices could not function efficiently. Opposition leaders currently appear to be able to operate with little harassment.

#### THE LEGAL SYSTEM - JUDICIAL INDEPENDENCE

The Constitution guarantees judicial independence from Executive interference (Article 22). The Supreme Court is divided between the Appellate Jurisdiction (five judges and the Chief Justice) and the High Court (26 judges). this are the District Courts and Magistrates Courts. Most of the 64 districts in the country have a District Court and most Upazila have at least one Magistrate. Controls exist on the judiciary by virtue of the fact that judges are appointed by the Executive. Justice A R Chowdhury observed in an address to a seminar on the Independence of Judges and Lawyers organised by the ICJ in Kathmandu in September 1987 that: "over the years there has been systematic tampering and interference with judicial independence by the executive who influence, pressure, allure, transfer and an undermining of their security of service among other methods." He further observed "today our heads hang down in shame and pain when we hear Judges running after the Ministers and party in power for material benefits such as posh housing plots, inclusion in foreign delegations and jobs after retirement". There is also concern that because Judicial salaries have not kept pace with inflation Judges are not free from financial anxieties and further the best qualified candidates are often unwilling to accept appointments.

Whilst the present Chief Justice has a reputation for impartiality amongst the legal profession, the former Chief Justice was regarded as a puppet of the President.

In 1988, the Government introduced the controversial Eighth Amendment to the Constitution which, inter alia, proposed the establishment of permanent High Court benches outside the capital Dhaka. The amendment was seen to be a mechanism for Executive control of the Supreme Court and thus judicial independence and resulted in the first legal challenge to a constitutional amendment. It purported to give legal status to the unacceptable situation of control which pertained during the 1982-1986 martial law period. The Supreme Court declared the amendment ultra vires in September 1989. This was the culmination of lengthy legal dispute which included a partial boycott of the Supreme Court by lawyers for almost twelve months.

There seems to be a broad consensus about the quality and judicial integrity of most of the Supreme Court Justices. Although they are appointed by the President, they can only be removed for proven gross misconduct or incapacity, and retire when they turn 65.

However, the same can not be said for the lower judiciary of the District and Magistrates Courts. For promotions, they are dependent upon the Government, for housing, they depend on the district administration and they are paid only nominal salaries. Especially with regard to the Magistrates, legal expertise is not significant. The lower judiciary is generally regarded as being riddled with corruption. Almost everyone I spoke with indicated that at this level there was no rule of law in Bangladesh.

The court system, both civil and criminal, is overburdened and is effectively available only to those who can afford representation. There is a shortage of able judges. Many people simply do not bother to seek legal redress through the courts because of the costs and delays involved. There are no public defenders and no government legal aid scheme. Whilst legal aid is offered on an ad hoc basis by some of the lawyers from the human rights organisations. such as the ones with whom I met, they do not provide a meaningful nationwide system of legal representation for the underprivileged. This comment is not meant by way of criticism but rather acknowledges the lack of resources under which the human rights organisations operate. Such groups also actively promote awareness of human rights and the law especially amongst the rural poor and women by such means as fact finding missions into alleged human rights violations.

There is a huge backlog of over 500,000 civil and criminal cases before the Courts and whilst prisoners may be released on bail, many especially the

poorer prisoners are detained for lengthy periods pending trial, often for very minor misdemeanours and the law does not provide for a reduction in sentence to compensate for such periods of detention. A legal time limit for the disposal of criminal cases - 240 days at District Court level and 120 days at Magistrate level, is not enforced. In the Supreme Court delays amount to many years. The Bangladesh Observer reported on 20 January 1990 that over 30,000 cases dating from 1982 remain on the Supreme Court list (see copy article at Annexure 4).

## THE SPECIAL POWERS ACT, 1974, - DETENTION WITHOUT TRIAL

Section 33 of the Constitution provides that persons arrested should be presented to a Magistrate within 24 hours and that no one should be detained in custody after that period without the authority of the Magistrate. However, the article also authorises preventative detention (as distinct from punitive detention) which is designed to prevent a person from indulging in conduct injurious to the state. Further, an individual's rights to access to legal assistance is guaranteed. Apart from this Constitutional sanction of detention, the major criticism of human rights advocates relates to the continuing widespread use of the Special Powers Act, 1974 (SPA) interestingly introduced by Sheikh Mujibur, but now criticised by the Opposition groups.

Under this Act, individuals can be detained for an initial period of 30 days without charge prevent commission to the of any prejudicial Communication of the grounds of the Order must be made to the detainee within 15 days of date of detention and to a specially constituted Advisory Board, comprising 3 persons (2 persons who are or were qualified to be Supreme Court judges and a senior Public Servant), within 120 days of the detention. Board must report to the Government within 170 days of the detention as to whether or not there is sufficient cause to detain where the person has no legal representation. If sufficient cause is established the order may be confirmed by the Government. If not, the order shall be revoked and the There is though nothing to prevent a rearrest on release. detainee released. Unless revoked, the Board shall review the order each six months, and the detainee is to be advised of the result of such review.

Under the SPA, access to legal representation can be denied until a specific charge is laid. Authority to arrest and detain under a Preventative Detention

Order (PDO) is delegated to District Commissioner level. A person detained has no right to bail, but may be released on bond with or without surety. Detainees are also not entitled to apply for judicial review of the order until after six months.

While I was in Bangladesh, the Minister for Home Affairs announced that there were now 3,088 people held in custody under the Special Powers Act. In April 1989, there were 2157 SPA detainees. No explanation was given for this huge increase. He acknowledged in Parliament on 30 April that the Legislation has helped him a lot in the management of his portfolio.

In early 1989, 40 alleged activists in a Hindu separatist movement were detained under the Act and 26 remain incarcerated. It is generally accepted that the Act is especially used against political opponents in rural areas or to detain indefinitely suspected criminals against whom the Authorities have insufficient evidence to justify a formal charge. There is also concern that new orders against individuals are signed as soon as previous ones have expired, or that people are then charged for bogus criminal activity. There is some disagreement as to how many persons detained are political activists and how many are "common criminals or persons detained as a result of personal vendettas by corrupt local officials". By either analysis the Act enables gross violation of the fundamental right of liberty and amounts to a serious and continuing violation of human rights. The fact the power to detain is delegated to District Commissioner level is also a matter of concern.

The existence of the Act and the general acceptance that it is greatly misused provides the most worrying feature of continuing abuse of the rule of law in Bangladesh. Given that the country is not at war and faces no external threat or serious internal military insurgency, there is not justification for the continuation of the Act.

Whilst the Government claims to hold no political prisoners the reality is that given the large numbers who are held under the Special Powers Act (no statistical analysis of whom was available), this claim cannot be accepted or tested. On the other hand it certainly seems true that senior opposition political figures are free to operate without serious restriction, and the persons most at risk are the more junior operatives especially at regional level.

Needless to say prison facilities are severely overcrowded and lack basic facilities. In April 1989, Dhaka jail had 33,115 inmates (real capacity 20,237).

I was told the CCHRB and the Bangladesh Human Rights Commission are currently preparing a booklet on the rights of people on arrest, as part of their community education programme.

## EMERGENCY RULE - ROLE OF ARMED FORCES

Since 1971 Bangladesh has been ruled for nine years by martial law governments. In 1987, following widespread political opposition to President Ershad, a state of emergency was declared. While a Proclamation of Emergency is in operation, the Constitutional provisions of fundamental rights may legally be waived. During the Emergency, the President may suspend the right to enforce such rights. This power though not currently in force provides effective unfettered power to the President, which has been used in the past, to the great concern of the Human Rights community.

The armed forces play a major political role in the country and Ershad has publicly declared that the Indonesian and Turkish systems are a valuable role Since November 1986, the military's only direct involvement in law and order has been its involvement against insurrection in the Chittagong Hills Tracts. The Bangladesh military establishment receives a huge percentage of the national budget which many believe is unjustified having regard to the non-existence of a serious security threat. Even the U.S.A. Ambassador is reported to have expressed concerns at the unacceptably high level of military spending.

The administration claims such expenditure is approximately 16% whilst others allege expenditure in the range of 30-40%.

The army has over 80,000 personnel and there are about 81,000 police, with about 7,500 in the navy and 3,000 in the airforce. In addition, there are the Village Defence Parties, a uniformed but unarmed local militia who theoretically assist the Government in such projects as family planning and anti-smuggling at the village level. Many have regarded this militia as agents appointed by the Government to control the population. There is also a

home guard — the Bangladesh Ansars and a force of 32,000 in the Bangladesh Rifles, who are supposed to be border guards with an important role also in preventing smuggling (though many accused them of being principals in smuggling activities). In major urban areas, there are riot police.

Senior military officials have penetrated into all levels of government and the civil service as well as business.

Military officers and police use live ammunition and batons in control of crowds and especially on campuses. The police seem to have ready access to university campuses to control disturbances and in a recent incident, students were injured when police fired into a demonstration of students. Public riots often result in allegations of police brutality. Such allegations appear to have merit and are not properly or satisfactorily investigated by the Authorities. There appears a general consensus that the police/armed forces are politically motivated, and to the extent this is the case, there is a clear breakdown of the principle of the separation of powers. The police are under the control of the Home Minister who is a former army officer.

#### OTHER POLITICAL, CIVIL AND ECONOMIC RIGHTS

## (1) RIGHT TO LIFE

Article 32 of the Constitution provides that no person shall be deprived of life or personal liberty save in accordance with the law. Nevertheless, the law permits the imposition of the death sentence. In 1989 at least 13 persons were sentenced to death though it is not known if there were any executions. Further there is widespread concern about the large numbers of persons who reportedly die in police custody as a result of torture or police brutality. The human rights organisations have provided substantial data from fact finding missions evidencing these abuses which appear to go unchecked by the authorities. At least 17 reported deaths in custody occurred in 1989. The AI 1990 Report also recorded that over 30 tribal villagers in the CHT were killed in extra judicial executions by a civil defence unit and settlers in the area. There were also reports of killings by the Shanti Bahini (the tribal opposition movement). There were no confirmed reports of disappearances in 1989.

## (2) FREEDOM FROM TORTURE - POLICE ABUSE OF DETAINEES

Whilst the Constitution (Article 35) forbids torture and cruel inhuman or degrading punishment, the local human rights organisations continue to report serious human rights violations against detained persons. Bangladesh has not acceded to the Convention against Torture. In 1986, Amnesty International published a major report critical of the actions of the authorities in dealing with the Chittagong Hill Tracts (CHT) revolt which resulted in action by the Government to stem abuses in this context. The 1990 AI Report notes the continued use of torture under police custody.

Most serious were the allegations that police treatment of accused criminals is regularly rough and can include abusive interrogations and beatings. I was given graphic examples of deaths in custody from police abuse by the Bangladesh Human Rights Commission, details of which have also been reported in the local press. Victims of abuse have no real redress and complaints against police brutality are usually ignored by the authorities. The human rights organisations discussed the need for an effective witness protection programme and are also contemplating the establishment of safe houses for witnesses and informants. In addition, the human rights organisations have started to conduct important and effective missions enquiring about such human rights violations and a list of some reports of the BSEHR of such enquiries is produced in Annexure 5.

Nevertheless, because of the paucity of their resources often such NGO's are not able to provide protection to complainants or witnesses after completion of an investigation. This leaves these people particularly vulnerable to subsequent harassment which can act as a serious disincentive to future complaints from victims, especially outside the major urban centres.

There is a further problem flowing from the endemic corruption within the police force which results in police failing to properly investigate some crimes while pursuing innocent people as alleged criminals at the instigation of powerful local persons. Many drew attention to the fact that it was often difficult for "little people" to motivate the police into charging those who commit crimes against them.

There seems no doubt that senior opposition political figures can operate with

relative impunity, but more junior political opponents such as student leaders may well be the victims of such abuse.

Instances of recent police violence include -

- On 11 December 1989, police burned the village of Simulia and looted properties following an incident while attempting to arrest a local Muslim leader. This incident was the subject of a BSEHR report critical of police conduct. During the two day confrontation 21 people were killed, 39 injured and several villages were destroyed leaving 4,000 people homeless.
- On 22 December 1989 following the death of a police constable on duty,
   more than 50 police went on an indiscriminate rampage attacking people.
- In February 1990, police action to disperse a demonstration in Jessore resulted in at least four deaths and over 100 injuries when police used live bullets on the crowd.
- In March 1990, Bangladesh Rifles personnel attacked a bus load of passengers when a cigarette stub was thrown from a bus and landed on a BDR guard.

Lower level Government officials, party bosses and labor leaders also sometimes reportedly intimidate others through violence or threats of it.

## (3) FREEDOM OF PERSON FROM ARBITRARY INTERFERENCE, DETENTION

In 1987, large numbers of people were detained for varying periods following widespread political agitation. I was advised that all persons detained in 1987 were released by 1988 after the lifting of the State of Emergency, which had been declared in 1987. Although the Constitution Article 43 secures the right of privacy of correspondence and prohibits entry of homes, search and seizure without a warrant, nevertheless, the Constitution itself states "subject to any reasonable restrictions imposed by law in the interests of the security of the state public morality or public health" and the SPA permits search as well as arrest without warrant which reportedly regularly occurs. Instances were cited where police greatly abuse their powers in the conduct of

investigations. There are also regular reports of civilian and military intelligence services monitoring the opposition and human rights NGO's such as the local branch of Amnesty International by means of selective wire taps, mail interception or home searches.

## (4) FREEDOM OF SPEECH AND THE PRESS

Article 39 of the Constitution similarly guarantees freedom of speech and of the press but with the same restriction. In practice, the Government controls the press by various means including the formal and informal censorship, "guidance" from the Press Information Department, temporary closures of and arrest or intimidation of journalists and The Bangladesh Human Rights Commission has called for the repeal of the Press and Publication Act which is one of the legal instruments for such restrictions. I was given one example of the arrest in January of Mohammed Ali Mansur, staff photographer with the Daily Millet under the Special Powers Act in January 1990. Annexure 6 is a summary of circumstances of his arrest prepared by the Bangladesh Commission of Human The SPA allows the Government to ban domestic publications, to hold newspaper employees responsible for contents and to compel journalists to sources. As publications are dependent on advertisements news especially from government and corporates this is another means of control. All Radio and television media and the national news service are government owned and controlled. Bangladesh has 74 dailies and 290 weeklies and periodicals, most of which are privately owned and respect the views of most political parties. There are a few English language dailies. political parties reportedly assert pressure on the media to intimidate them by such tactics as threatening phone calls and threats of arson. Although many foreign publications are available, the Government sometimes uses the Customs Act by way of censorship. The Satanic Verses has been banned. government articles and editorials appear, but censorship applies to articles critical of the military, the President and his family. Over 25 periodicals have been banned in the last 7 years and in 1989 several Bengali weeklies were During 1989 no foreign journalists were arrested, expelled or barred from entry and in June some were asked to cover the Chittagong Hill Tract Drama groups are theoretically obliged to obtain government approval before performances but this rarely occurs. A major local Dhaka Theatre Company reports that its scripts are regularly censored. Actors who perform in unauthorised places are theoretically subject to arrest. Films are subject to censorship for pornography and all films from Israel and South Africa are prohibited.

## (5) FREEDOM OF PEACEFUL ASSEMBLY

This right is guaranteed in the Constitution Article 37, subject to any reasonable restrictions imposed by law in the interest of morality or public interest. While I was in Bangladesh, I observed several street demonstrations against the Government which did not seem to be harassed by the authorities. I am unclear as to whether police permits must be obtained before assemblies can occur but assume this would be the case. University students are often in the vanguard of such demonstrations.

## (6) FREEDOM OF ASSOCIATION

Article 38 of the Constitution guarantees the right to form associations or unions, subject to the same restriction as for freedom of assembly. In practice, individuals are free to join private organisations and associations and there are no restrictions on affiliation with international organisations.

With regard to trade unions, the right to formation is constitionally subject to government approval. The Government has the power to suspend unions but took no such action in 1989. Workers in unions may draft their own constitutions, elect officers, develop programmes to conduct business without government interference and can affiliate with international organisations. However, union members need government clearance to travel to international labour meetings. No such clearances were withheld in 1989.

There is no legally recognised right to strike but it is an accepted form of protest in Bangladesh and they are frequently held especially for political purposes as well as for industrial reasons. The Government has the power to bar strikes for three months in essential industries. However, only about 3 percent of the workforce is unionised reflecting the low level of industrialisation and the large percentage of the workforce in agriculture. Unions are important in the jute, tea and transportation industries. Most

unions are connected with a political party, and the largest trade union federation is sympathetic to the Opposition.

Notwithstanding the above, the International Labour Organisation noted in 1989 that Bangladesh's law contained some defects affecting freedom of association and collective bargaining rights including restrictions as to who can hold trade union offices, wide ranging and supervisory powers vested in the Registrar of Trade Unions and the rule requiring that a union organise at least 30% of the workers in an establishment before it can be registered.

Real union effectiveness is minimised by the fact that union leaders are often tied to political patrons other than their members and there are frequent allegations of impropriety made against union officials. The massive unemployment means that in most areas employers can ignore employee demands and even though against the law, harass effective union leaders or dismiss staff for engaging in union activities. There are particular problems in the garment industry, which has a high level of female staff.

## (7) FREEDOM OF RELIGION

Article 41 of the Constitution provides that "subject to law, public order and morality every person has a right to profess, practise or propagate any religion and every religious community or nomination has the right to establish, maintain and manage its religious institutions. No person attending any education institution shall be required to receive religious instruction ..."

President Zia was responsible for the first steps towards the Islamisisation of the country, which Sheikh Mujibur had argued should be secular. Then in 1988 the Eighth Constitutional Amendment recognised Islam as the state religion, but it also recognised that all religions may be freely practised. While I was there President Ershad, on several occasions, made public statements calling for increased adherence to the faith. Numerous persons reported that Saudi Arabia was supplying large amounts of money for military purposes on the condition that more mosques were built (in a country already full of mosques). The Muslim Fundamentalist Party is small but influential. There is a strong social resistance to conversion from Islam. Proselytising by Christians is mostly directed towards Hindus and tribals. Foreign

missionaries are permitted though some report problems with the Bureaucracy. The Hindu, Christian and Buddhist minorities expressed concern at victimisation and religious discrimination. Complaints alleged vandalising of temples and churches, anti-christian propaganda in government books and newspapers and encroachment on properties. In particular, Hindus report the continuing use of the Alien Properties Act dating from the mid 1960s as a means by which Hindu property was confiscated unlawfully especially in the rural areas and notwithstanding a 1984 Executive Order requiring the return of such property to the original owners.

On the other hand, in the Cox's Bazar area there is a large Buddhist minority. I was not advised of any overt discrimination. Hindus and Christians whom I met similarly reported a basic freedom of worship. There have been no reports of religious based communal disturbances in recent years, although there may be a religious factor behind the CHT troubles.

Most educated people were concerned about the possible introduction of Shariah law especially with regard to its attacks on the rights of women. Women's organisation leaders indicated that most Bengali women would not accept such a development as had occurred in Pakistan.

Schifter reports at page 1355 that members of minority religious groups are disadvantaged in practice though not in law in their access to Government jobs and political office.

## (8) FREEDOM OF MOVEMENT

Article 36 of the Constitution provides for the freedom of movement within the country and the right of all citizens to leave and reenter subject to any reasonable restrictions imposed by law in the public interest. Bangladeshis are free to move throughout the country except in designated areas in the Chittagong Hill Tracts. Foreigners are also restricted in these and some other border areas. There is freedom to emigrate subject to foreign exchange controls. There are some restrictions on travel abroad by civil servants. The Government rarely hinders returning citizens though a Bangladeshi student was detained in 1989 on the grounds of anti-Bangladesh activities in England and I was also advised of the detention of a senior politician on return.

Bangladesh permits foreigners to acquire citizenship after five years permanent residence at the discretion of the Government.

Bangladesh has not acceded to the International Refugee Convention though it has a positive working relationship with the UNHCR which has an office in Dhaka. At present, there are approximately 300 asylum seekers known to the UNHCR mostly Somalis, Iranians, Ethiopians and Tamils. There are also some Burmese students who were not known to the UNHCR representatives. No cases of involuntary refoulement were reported to me. The UNHCR works for third country resettlement usually in Scandinavia.

involving There is major problem the approximately 250,000 non Bengali-Muslims, known as the Biharis or "stranded Pakistanis". Liberation in 1971, these persons opted for Pakistani citizenship and Pakistan agreed to accept them. However, their repatriation has been delayed indefinitely and the Biharis now reside in 66 camps throughout the country in appalling conditions. Though they may work and conduct other duties, they face disadvantages as non-citizens. Bangladesh will permit them to apply for citizenship but they do not want to do so. They are not classified as refugees. In July 1988 an agreement was signed with Pakistan for their repatriation under the auspices of the UNHCR, but an attempt to repatriate a group in February 1990 was called off at the last minute. The main obstacle to Bihari resettlement in Pakistan is communal violence in that country and the fear of the Pakistani authorities that their return will prompt further problems. Biharis speak Urdu and are racially distinct. They face two alternatives: assimilation into the Bengali community which is often difficult due to Bengali resentment of Bihari support for Pakistan in 1971, or awaiting the outcome of the repatriation negotiations.

## (9) WORKER'S RIGHTS

## (a) The right of association and to form trade unions

Unionisation - see above at page 23.

## (b) The right to organise and bargain collectively

Workers have a limited right to collective bargaining, though public sector employees are precluded. There is no formal process of

mediation. Special rules apply for the Chittagong Export Processing Zone where union activity was suspended in 1985.

## (c) Prohibition of forced or compulsory labour

Article 34 of the Constitution prohibits forced labour except in relation to prisoners and as required by law for public purposes. However, there are reports of bonded labour on tea and rubber plantations. It is an offence for a government employee to terminate employment without the consent of the employer and there is also a law permitting the forceable conveyance of seamen on board ship to perform their duties.

## (d) Work conditions

Regulations regarding minimum wage rates, hours of work and occupational safety and health are not enforced. The minimum wage of approximately 10¢ per hour is insufficient to sustain a decent standard of living. While the law specifies an 8-hour day, 48-hour week with overtime not to exceed 60 hours per week and to be paid at double rate these requirements are usually ignored in practice. Safety equipment and precautions are largely unknown and safety inspectors are often untrained, underpaid and corrupt. There are particular problems in respect of child labour where safety precautions are not met because standards which do apply only relate to adults.

## (e) Child labour

The law prohibits the employment of children under the age of 14. The Act however is not enforced. Child workers account for 15% of the total work force (about 3 million children in 1986) and 50% work a minimum of 10 hours a day earning an average monthly income of \$21. Children peddle rickshaws, serve as domestic servants, work as helpers in transport services, carry loads at railway stations, labour on construction sites, work in factories and work in agriculture. There is little report of the sexual exploitation of children unlike in other Asian countries.

The non-existent rights of children is one of the grossest human rights violations currently in effect in Bangladesh. In a year when Australia

is contemplating signing and acceding to the Convention on the Rights of Children recently adopted by the United Nations, the non-existent rights in respect of nearly all Articles of the Convention for the vast majority of the children in Bangladesh is tragic. Paradoxically, Bangladesh acceded to this Convention earlier this year. The reality is that with the economic state of Bangladesh, meaningful compliance with the terms of the Convention can only be an aspiration for the vast majority of underprivileged children in the country.

## (10) RIGHTS OF WOMEN

Article 28 of the Constitution outlaws discrimination on the grounds of a religion race cast sex or place of birth and provide for equal rights of women with men. Article 29 provides for equal opportunity in employment for all citizens. In addition, various laws have been enacted especially under the current administration to protect women including the Dowry Prohibition Act 1980, the Cruelty to Women Act 1983, the Child Marriage Restraint Act 1984 and the Illegal Trafficking of Women Act 1988. However, traditional social, religious and cultural beliefs hinder women in their quest for equality and result in a totally inadequate enforcement of the protective legislation.

Women's organisations are attempting to engender increased respect for the rights of women especially amongst the illiterate and rural women. The problems are immense. For most rural men, a woman ranks in importance below the family cow. To the foreign visitor, the most obvious feature of Bangladesh society by comparison with other Asian societies is the absence of women from public view. Women rarely perform activities such as work in local markets, shopping, or working in agriculture. The absence of women from the work force (except in the garment industry, employing over 300,000 women most of whom are not unionised) is generally accepted as a waste of large percentage of the population from perspective employment. Within the house men control finances and women are economically subservient to male relatives.

Discriminatory practices directly affecting women include marriage and divorce law, and inheritance law. In addition, notwithstanding the outlawing of dowry, payment by families of wives to their husband's

family continues to be a widespread practice and dowry killing is a frequent event. More disturbing is the level of domestic violence against women. Acid throwing often connected with unrequited love or dowry disputes is regularly reported in the press. The legal system does little to diminish women's vulnerability to male violence in rape molestation and acid throwing because of the technicalities of the rules of evidence. Most commonly violence is simply unreported. published a report on violence against domestic female workers, with In addition, male domination of the police force provides a further problem for law enforcement. All the economic statistics show women to be far worse off than men in terms of health, mortality rates and education. As is to be expected there are no Government funded female refuges for victims although there are several NGO hostels.

Abortion is prohibited under Bangladesh law. Whilst there are laws imposing restrictions on employment of women in unsafe conditions and during childbirth, these are rarely enforced. There is reportedly no effective family program amongst the poor where it is most needed and this is an important activity of womens groups. Women in this area also remain subservient to the wishes of their husbands.

Article 65(3) of the Constitution reserved 15 of the 300 seats for woman members for a period of iO years from the commencement of the Constitution in addition to the number of women otherwise elected. Nevertheless, this is largely tokenism. Women play an insignificant role in public office, although interestingly, the current leaders of both major opposition alliances are women. However, most people recognise they are not leaders by virtue of merit, but by inheritance, Sheikh Hasina who is the daughter of Shiekh Mujibur, is the leader of the Awami League and Begum Zia, the leader of BNP, is the widow of President Zia. Neither is regarded as being particularly charismatic or competent. Women have the right to vote and equal pay, but female wages are substantially less than male wages.

## (11) DISCRIMINATION ON GROUNDS OF RACE

Bangladesh has acceded to the Conventions on the Elimination of all Forms of Racial Discrimination, and against Apartheid.

Whilst the Constitution outlaws discrimination on the grounds of race (Article 28) discrimination against the tribal peoples of the Chittagong Hill Tracts (CHT) especially with respect to property rights has been a persistent In the mid 1980's allegations were made that tribal land was given to Bangla Muslim settlers in these areas or was otherwise confiscated by the Some 300,000 ethnic Bengalis moved in to the 3 hill tract districts, living amongst the half million tribals. An insurgency developed which led to an upsurge in violence and serious allegations of human rights violations military authorities committed by the in the mid 1980's. International's report of October 1986 focused international attention and made allegations of arbitrary detentions, indiscriminate killings, rapes and looting, destruction of villages, torture, destruction of Buddhist shrines. An indigenous tribal militia, the Shanti Bahini also carried out attacks on the military and Bangali settlers. Many tribal people fled to India as refugees (between 30,000 to 50,000). There were only isolated reports of violations and further violence in 1989 and Local Government elections were held establishing elected tribal dominated District Councils with local limited autonomy and power to allocate land, over local law enforcement, housing, health and educational facilities. Nevertheless, the CHT area remains partially closed.

There have been recent reports of an upsurge of Shanti Bahini violence against Bengali settlers and deaths were reported from violence whilst I was in Bangladesh. Some settlers have retaliated. In 1989, the Government offered the Shanti Bahini an amnesty which appears not to have worked. Concern lingers amongst many tribal people in relation to their rights and in September 1989 a further 1,500 or so fled as refugees into India.

## ROLE OF LEGAL AND HUMAN RIGHTS ORGANISATIONS

These organisations have a vital role to play in a society like Bangladesh where Government agencies either through lack of funds or lack of desire are unable to provide an all embracing monitoring mechanism to assist the underprivileged in protecting their rights and to monitor particular incidents of human rights violation. They also play a role in assisting people, especially the rural and urban poor to develop an awareness as to their rights to prevent them being the victims of illegal violations. There is a particularly important role to be played in this regard amongst the women who

are in effect the victims of double oppression. In this context, seminars such as those organised by the ICJ in December 1987 on legal services to the rural poor and other disadvantaged groups in Rajpipla, India and on rural development and human rights in Lucknow, India in December 1982 are of particular value. Reproduced as annexure 5 are the conclusions and recommendations of the Rajpipla Seminar.

## CONCLUSION

Although Bangladesh recently served a term on the Commission on Human Rights where it was an active member, Bangladesh has acceded to very few international human rights conventions as per the list enclosed (see Annexure 7). Important Conventions which it has not signed or ratified include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the two Optional Protocols to the ICCPR, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment, the Convention and Protocol on the Status of Refugees and Conventions relating to the rights of women.

A complaint to the UN Sub-commission on Prevention of Discrimination and Protection of Minorities regarding human rights abuses against the Chittagong Hill Tracts people was concluded in August 1989 with the report expressing "satisfaction with the progress made in respect of the treatment by Bangladesh of its tribal population."

The Bangladesh government is reportedly sensitive to international opinion regarding human rights issues. Amnesty International issued major reports in relation to the use of torture in Bangladesh between 1983 to 1986 and, in 1986 in relation to Unlawful Killings and Torture in the Chittagong Hill Tracts and between 1987 to 1988 in respect of the detention without trial of large numbers of opposition members. Amnesty's 1989 year report noted that the prisoners of conscience had been released, but that there were new allegations of torture of criminal suspects in custody and of executions of non-combatant villagers in the Chittagong Hill Tracts and that at least 46 people had been sentenced to death. It also reported that large numbers of CHT tribal refugees remained in India. AI expressed concern at the extension of the death penalty to new offences. Similar problems were noted in its 1990 The Government also responded to outside inquiries about violations by submitting reports of findings. During 1989 there were no visits to Bangladesh by Amnesty International or similar groups though the government invited international observers to the local government election held in March Observers were also invited to the CHT Local Council Election in June 1989.

The last adverse reference to the Human Rights situation of Bangladesh in ICJ records appears in the ICJ Review No 37 of December 1986. This reported on

electoral matters and adopting the report of the Norwegian Human Rights Project concluded "an assessment of the possibilities for genuine democratisation process in Bangladesh is difficult. The basic instability of the elite's political system and the strong disagreements over basic rules for the conduct of political affairs are constant factors. A certain danger exists therefore that every electoral procedure and every election will be considered as illegitimate by important sections of the population. ... The regime may seem half hearted in its belief in democracy, but the two opposition parties derive their heritage from regimes which were at least periodically quite authoritarian".

International Human Rights Organisations represented in Bangladesh include the International League for Human Rights, Lawasia, Amnesty International and the ICJ as well as a large number of local NGO's anxious to establish links with NGO's in other countries.

The role of Government must be to protect its people from abuse, especially from Government servants, and to provide a system of administration where all are equal before the law. If a Government fails to provide such security for its people then a Government is failing in its mission.

Whilst the evidence appears to be that the Bangladesh Government is not perpetrating human violations of a gross and obvious kind, nevertheless, on the available evidence, it is not possible to proclaim with confidence that the rule of law exists in Bangladesh, especially in so far as the underprivileged are concerned. There is clear evidence that police behaviour is abusive of human rights, especially in the conduct of investigations. There is substantial anecdotal evidence that, especially before the lower Courts, justice is not administered in a fair and impartial manner.

Poverty and the unequal distribution of wealth lead to the further conclusion that most Bangladeshis do not enjoy basic social, cultural and economic rights let alone civil and political rights, and there is little prospect in the foreseeable future that the situation will change.

## POST SCRIPT

In September 1990 the President announced that he intended to repeal the Special Powers Act. In early October the opposition campaign against the Government resulted in violent demonstrations in Dhaka leading to deaths of demonstrators and numerous reports of further injuries. In response, the Government has detained further people under the Special Powers Act. A doubt therefore currently exists as to whether or not the administration will adhere to its commitment to repeal the Act. During the same period, further violence erupted in Bangladesh ostensibly related to the inter-religious conflict in India between Hindus and Muslims.

By the end of November the opposition campaign against President Ershad had reached a peak. Spurred by student protestors and a coming together of the major opposition parties, Ershad announced his resignation to a stunned and then joyous nation on 6 December. He handed over power to his caretaker Vice President Supreme Court Chief Justice Shahabuddin Ahmed and arrangements were made for the holding of an election on 27 February 1991.

Subsequently, Ershad, his wife and most of his senior Ministers and associates have been detained, some under house arrest and others in prison pending prosecution for a variety of charges. Ironically they are being detained under the Special Power's Act.

The interim Ahmed administration has no vested interest in securing the victory of any of the major political alliances and the military has publicly maintained a neutral position in the lead up to the election. Although there have been allegations of pre election related violence it seems likely that, possibly for the first time in the country's history, the result of the election will largely reflect the national will.

Whilst the events related in brief in this Post Script to some extent render this Report a historical document, nevertheless I feel the recommendations retain their importance given the turbulent political history of Bangladesh, and its current economic plight which is exacerbated by the Gulf war between Iraq and the so called "Allied nations" (which include Bangladesh, which has despatched a force of some six thousand soldiers to join the Allied army).

Assuming a democratically elected government takes office after the election that government will need all the support that it can muster from the international community to secure its long term viability.

# **RECOMMENDATIONS**

- 1. That the Report of the Secretary-General David Bitel be noted and adopted.
- 2. That the Australian Section of the ICJ encourages greater liaison between Australia and Bangladeshi Human Rights NGOs.
- 3. The Australian Section of the ICJ calls on the Government of the Republic of Bangladesh to:-
  - (a) Sign and ratify International Human Rights Conventions including International Covenant on Civil and Politicall rights, the International Covenant on Economic, Social and Cultural Rights, the two Optional Protocols to the ICCPR, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment, the Convention and Protocol on the Status of Refugees and Conventions relating to the rights of women.
  - (b) Support the establishment of an election monitoring organisation in Bangladesh.
  - (c) Repeal the Special Powers Act and release forthwith all persons currently detained thereunder.
  - (d) Establish a Human Rights Commission with full powers to investigate allegations of human rights violations and with prosecutory powers.
- 4. That the Australian Section expresses concern that the growing tendancy to adopt "fundamentalist Islamic traditions" in Bangladesh and in particular Shariah Law may lead to downgrading of importance of human rights concerns and in particular in further lessening of the already limited rights of women in Bangladesh.
- 5. That the International Commission of Jurists conduct a Mission of Inquiry to Bangladesh to investigate and report on the adequacy of administration of justice in Bangladesh in the Magistrate Courts and District Courts and the conduct generally of the Bangladesh Police Force in the criminal investigation process having regard to accepted international norms and the Rule of Law.

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# ORDRE DE MISSION

# **ANNEXURES**

- 1 Programme.
- Bangladesh Human Rights Commission Pamphlet.
   Institute of Human Rights and Legal Affairs Bangladesh Pamphlet.
   Bangladesh Society for the Enforcement of Human Rights Pamphlet.
   Saptagram Pamphlet.
- 3. CCHRB Upazila 1990 Election Observation Executive Summary.
- 4. Extract from "The Bangladesh Observer" 20 January 1990: "30,000 Cases pending in the Supreme Court".
- 5. ICJ Conclusions and Recommendations Seminar on Legal Services for the Rural Poor and other Disadvantaged Groups in South Asia, Rajpipla, December 1987.
- 6. Human Rights Conventions and Protocols to which Bangladesh has acceded as at 1 September 1987.
- 7. Extracts from the Constitution of the People's Republic of Bangladesh: Part III, Fundamental Rights.



# INTERNATIONAL COMMISSION OF JURISTS Australian Section

G.P.O. Box 173 Sydney 2001 Australia

# <u>ORDRE DE MISSION</u>

# TO WHOM IT MAY CONCERN

David Bitel, the Secretary-General of the Australian Section of the ICJ will be visiting Bangladesh in June 1990. During his visit the Australian Section has requested that he make inquiries as to the current status of the rule of law and human rights issues generally in Bangladesh with a view to reporting back to the Australian Section on these matters.

Any assistance that can be afforded to him would be greatly appreciated.

Yours faithfully

JUSTICE M D KIRBY

President

NSW Court of Appeal

President

ICJ Australian Section

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# ANNEXURE 1

# MR DAVID BITEL SECRETARY GENERAL OF AUSTRALIAN SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS

# **PROGRAMME**

# 11-13 June 1990

# Sunday 10 June

Mr Nazmul Huda and Mr Md Shahjahan, Bangladesh Society for Enforcement of Human Rights

# Monday 11 June

Mrs Mashuda Shefali, Canadian International Development Agency

Justice Subhan and Mr Akram H Chowdhury, Bangladesh Human Rights Commission

Mr Md Kamaluddin and other members, Amnesty International

# TUESDAY 12 June

Professor Rokeya Kabeer and other members, Saptagram

Father Timm, Coordinating Council for Human Rights in Bangladesh

Mr Neville Smith, First Secretary, Consular and Immigration, Australian High Commission

Justice A R Chowdhury, and other members of the Institute of Human Rights and Legal Affairs

# **Hednesday 13 June**

U Kyaw Zin Hla, UNHCR representative

# BANGLADESH HUMAN RIGHTS

COMMISSION



ানবাধিকার কমিশল

रलाटमन यानर

Recognizing that, in accordance with the Universal Declaration of Human Rights the ideal of free Human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby every one may enjoy his economic social and cultural rights, as well as his civil and political rights.

—Preamable of International Covenant on Economic, Social and Cultural Rights

77. Purana Paltan Line (1st Floor)
Dhaka; Bangladesh.
Mailing Address: G.P.O. Box: 2099
Dhaka, Bangladesh

# Bangladesh Human Rights Commission (BHRC)

Bangladesh Human Rights Commission (BHRC) is an independent, autonomous, non-governmental and non-profit institution for the dissemination of human rights and legal education to the poor, the dispossessed and the oppressed sectoral groups in Bangladesh. Its long term objective is to create rights awareness among the target sectoral groups in order to protect, promote and to ensure respect for and realization of the Universal Declaration of Human Rights and fundamental rights provisions of the Constitution of Bangladesh.

At the same time, BHRC takes persuassive policies and programmes to motivate the government in adhering and stricktly uphold the norms of the Universal Declaration of Human Rights and to ratify International Covenants and other important human rights instruments in addition to the full realization of the fundamental rights provisions of our Constitution.

### BHRC Statement of Principles

As a human rights institution BHRC believe in the inviolable dignity of the human person and her/her basic inalienable rights to life, to freedom and to the means necessary and suitable for the proper development of life.

BHRC believe that in a country like Bangladesh where 90% peoples lives under poverty line and more than 85% population are illiterate, Civil and Political rights have a very little meaning to the people unless they are likewise guaranteed social, economic and cultural rights. However, as a matter of policy, constrained by our resources, we exercise our committment to human rights and our prefrential option for the poor, the dispossed and oppressed by addressing more basic human rights, prefrebly by way of educating them their legal rights and to provide the sectoral groups a range of services designed to make full use of law as an empowerment tool.

BHRC views legal aid as a resource of "development" But asserts that in poverty sticken Bangladesh traditional legal aid, though important, have a very little meaning to development. Therefore, BHRC limited itself to handling public interest cases or social action litigations, cases of sectoral groups that affect large numbers of people or reflect social issues, referring private disputes to traditional legal aid practioners. Of course, it will certainly respond to few category of individual cases where the question of gross violation of human rights is involved.

There are many causes of injustice in society. BHRC supports the views of Justice Bhagwati (known as poor man's judge) who lists three main factors that deprive the poor what he calls are three "A"s or the lack of awareness, lack of assertiveness and the lack of availability of resources. All these combined factors make it very difficult to ordinary people to approach the Courts or the authorities there by depriving them of justice.

Therefore, BHRC propogate for an especial kind of legal aid programme that seek to build capabilities of people to understand law and to use it effectively to parceive, articulate and advance or protect their interests. This kind of legal aid is known as "developmental legal aid" (Jose Diakno and Acnan Buyong Nasu tion), or "Alternative Legal Aid" (Justice Bhagwati). As opposed to traditional legal aid which carries within it the germ of dependence but does not fundamentally change the structure that generate and sustain injustice. Developmental Legal Aid or Alternative Legal Aid, on the other hand, is not limited to legal

remedies or court-related solution alone. Developmental Legal Aid views the law in the context of the whole social structure and does not, as in Traditional Legal Aid, simply assert that law is just and all that is needed is to enforce it. In other words, a main objective of Developmental Legal Aid is "conscientization" as a means to gradually change the unjust social structure". Therefore, ultimate programme BHRC are being oriented towards changing existing unjust social structure through disseminating common knowledge about law and human rights to sectoral communities.

BHRC views that there is a close relationshp among others, between "development" and "human rights". BHRC supports the prevailing view that one of the necessary pre-requisites of genuine development are strong peoples organizations and part of the growth of these groups, in turn, depends on high degree of awareness of law and human rights by themselves. BHRC asserts that this awareness can be hightened if legal aid makes full use of its educative functing. Again, only heightened awareness of legal and human rights problems and causes, however, will not lead to actionunless it coupled with awareness of possessing power to act. Therefore, BHRC gives emphasis not only to educate people about their basic rights, but also encourage the people it serves to organize and act collectively with other similarly situated. In other words, to win justice, the poor, the dispossessed and the oppressedwho are the people, must rely, not only on legal aid alone, but on their own organized efforts as well. Since, in the endjustice will be won only by social liberation. And, to be real liberation must be self-liberation. And that is "development" in itself.

Bangladesh Human Rights Commission (BHRC)

envision a society wherein human rights violations are no longer being committed and people of Bangladesh will be able to enjoy the fruits of the fundamental provisions of our constitution. BHRC, therefore, support social structures and actions towards this vision and oppose forces which prevent its attainment. This is consonant with BHRC's quest for the full observance of the International Bill of Righis.

# Objectives

The specific objectives of the organization are:

- to provide Community-centered Legal Aid (CLA to the Sectoral Groups through their respective organizations (NGOs.)
- to provide Para-legal Training for the members of the sectoral groups and community organizers;
- to conduct a Summer Course on Human for University Graduates;
- d. to promote legal literacy, including translations and publications in laymon's language
- to establish a human rights Documentation and Information Centre which interested individuals and organization will have access;
- f. to publish weekly "Law Conner" in popular weekly with cartoons simplify legal problems and responds to the needy about their inqiries concerning specific legal problems through letters on regular basis.

BHRC's approach to legal aid is mainly centered on Community-centered Legal Aid (CLA) programme, a new approach in this field so far Ban gladesh is concerned, under which grass-roots organizations working with the following communities or sectoral groups have been covered:

- 1. peasants/farmers groups;
- 2. industrial labourers/factory workers;
- 3. small fishermen groups;

- women and urban poor (squatters/slum dwellers)
- 5. rural journalists

Bangladesh Human Rights Commission (BHRC) takes formal stands on legal issues that affects its above priority groups and provide direct legal aid in order to redress their grievance and uphold and protect their rights.

BHRC does not undertake individual casework excepts cases under Cruelty to Women Act, torture and other cases of gross-violations of human rights.

### Strategy

In providing legal aid, BHRC does not necessarily depend on the court-related solutions to problems but gives priority in educative and organizational endevours that seek to correct political imbalances between the powerful and powerless. Therefore, BHRC invent and uses METALEGAL TACTIC as a first-hand weapon in combating the problems. In other words, BHRC resorts to social action litigation to only as a final option and only after exhaustion or in conjunction with meta-legal tactic.

### Programme and Services

- Legal Research: The compilation, systematization and monitoring of laws, policies, pronouncements and other official acts which affect the priority areas of concern of BHRC.
- 2. Para-Legal Training Programme: At the beginning, the following courses will be taken a. Para-legal and Rights Awareness Seminar for Development Workers; b. Para-legal Seminar for Farmers; c. Programme for the Womens organizers on Legal Rights and Social Justice; d. Basic Courses on Genuine Trade Unionism (GUT); e. Courses for Rural Journalists on Law, Development and Social Justice etc., whose perspective is the building of a just, free and democratic society.

- Legislative and Policy Reforms: Helping grass-roots organizations formulate and draft position papers, proposed legislation and implementing guidelines and bringing them to the attention of proper government entities;
- 4. Press-Pressure and Urgent Action (PUA) Pressure through publicity in different media about an incident of hunan rights violation followed by a letter of appeal to the concerned agency has proved to be a very useful and effective remedy against human rights violations;
- 5. Fact-Finding on Human Rights violations (HRVs): BHRC conducts Fact-Finding Mission to record human rights violations, wherever occures in the country, in order to put pressure on the government for its appropriate actions and to prevent its recurrence.
- Legal Literacy: Promoting legal literacy, including translations and publications in layman's language is another empowerment tool of BHRC for its sectoral groups. The following are the proposed publications of BHRC:
  - a. Handbook on Human Rights Advocacy;
  - b. Para-legal Training Manual;
  - c. Torture and Human Rights;
  - d. Human Rights Training Manual For Law Enforcing Agencies;

# Newsletters

- 1. HUMAN RIGHTS (fortnightly in Bengali)
- 2. CONCERN (Quarterly) in English

### Memberships

BHRC have two types of Memberships; 1) Grass-roots organizations that work for the priority areas of concern of BHRC; 2) Individual Memberships.

Membership is by invitation. Criteria for acceptance of a new member are:

- ), Adherence to the international Bill of Rights of the United Nations:
- 2. Acceptance of the BHRC Declaration of Principles:
- 3. Willingness to undertake training on human rights; education and gives times voluntarily to educate the target peoples in their respective areas about their legal rights and duties.
- 4. The proposed members must not politically active (although BHRC has respect for all political parties and politicians alike) and man of integrity and inpertiality.

## Chapters

BHRC starts its Human Rights Advocacy Programme at the District and Upozila level in order to provide membership and organizing of its own Chapters At the initial stage each new District will have one Chapter. Again, every old District will make a Sub-Region and all Chapter members will elect a Sub-Regional Co-ordinator One Division will represent as a Region, Coordinators will elect a Regional Co-ordinator who will in turn automatically become member' of the Central Executive Committee of BHRC. The Central Executive Committee' in turn, will elect a NATIONAL ADVISORY COUNCIL from among the leading personalities and intellectuals of the country committed to human rights and social justice issues. Election of the Central Executive Committee will be held every after three years. while terms of the NATIONAL ADVISORY COUNCIL will be ended every after two years.

# Continuation Committee (CC)

Chairman,

National Advisory Council: Justice K.M.A. Sobhan Secretary-Geh. : Akram H. Chowdhury

SANGLADESH HUMAN RIGHTS

দেশ মানবাধিকার স্থিত Recognizing that, in accordance with the Universal Declaration of Human Rights the ideal of free Human beings enjoying freedom from feat and want can only be achieved if conditions are created whereby every one may enjoy his economic social and cultural rights, as well as his civil and political rights.

 Preamable of International Covenant on Economic, Social and Cultural Rights

77, Purana Paltan Line (1st Floor) Dhaka, Bangladesh Mailing Address G.P.O. Box: 2099 Dhaka, Bangladesh

7

# The Institute of Human Rights & Legal Affairs Bangladesh

Affiliated to
The International Commission
of Jurists, Geneva, Switzerland

Registered Under Bangladesh Socities Registration Act



Established—August, 1984

"Whereas it is essential, if a man not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law"

-Universal Declaration of Human Rights

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. (Article 12).

Everyone has the right to leave any country, in cluding his own, and to return to his country (Article 13 (2).

Everyone has the right to seek and to enjoy in other countries asylum from persecution. (Atticle-14 (1).

No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality (Article-15 (2).

No one shall be arbitrarily deprived of his property. (Article-17 (2).

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. (Article-18).

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless off rontiers. (Article-19).

Everyone has the right to freedom of peaceful assembly and association (Article-20 (1).

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (Article-21 (1).

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent her voting procedures. (Article-21 (3).

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment (Article-23 (1).

Everyony, without any discrimination, has the right to equal pay for equal work. (Article 23 (2).

Everyone has the right to form and to join trade unions for the protection of his interests (Article-23 (4).

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other tack of livelihood in circumstances beyond his control (Article-25 (1).

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of nient. (Article 26 (1).

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society (Article-29 (2)).

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein. (Article-30).

# AIMS & OBJECTS

- (a) To uphoid the principles and objectives of the // Universal Declaration of Human Rights, 1948;
- (b) to uphold the rule of law and the sencity and inviolability of constitution of the country;
- (c) to uphold and protect the independence of the judiciary and independence of the judges;
- (d) to create awareness and make people conscious of their basic legal and human rights by holding seminars, symposiums and through write-ups in the newspapers and magazines;
- (e) to undertake study and research of the existing laws of Bangladesh particularly the penal laws with a view to suggest suitable amendments and changes in this behalf to the government to bring them in conformity with the basic human rights and to meet the social changes and needs of the time:
- (f) to render the legal and constitutional aid and assistance for the protection and enforcement of basic human rights;
- (g) tu render legal aid and assistance to person or group of persons in their struggle against all form of oppression, discrimination and unjust laws:
- (h) to do all such other things as are incidental to or as the Institute may think condusive for the attainment of the above mentioned aims and objects of the institute;
- to work as an affiliate of the International Commission of Jurists, Geneva, Switzerland in accordance with its aims and objects;
- (j) to establish and support research and academic institutions, training centres and to grant stipend, scholarships and travel grants in furtherence of the objects of the Institute;
- (k) to publish journals and periodicals on subjects connected with the objects of the Institute;
- (I) to participate in International Conferences on Human Rights and Law.

Temporary Office: 3A, Dhanmondi Residential Area Road 6, Dhaka Telephone: 509609, 238080

# The Institute of Human Rights & Legal Affairs Bangladesh

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- Universal Declaration of Human Rights

# THE INSTITUTE OF HUMAN RIGHTS & LEGAL AFFAIRS, BANGLADESH

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Tomer Vice-1 resident outpreme court ou	317001	(…)
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Former Ambassador		
Mr. B.M. Abbas, A.T.	503690	(R)
Former Minister, Govt of Bangladesh.	508169	
Mr. Agha Yousuf	236285.7	(O)
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Mr. Molizur Rahman	23/643	(0)
Former Vice President Islamic Development Bank	608515	(R) -
Dr. Mustalizui Rahman	403238	(0)
Eye Specialist and former	400276	(R)
Governor, Lions Club International	,	(,,,
	*	
Mr. Fazlur Rahman	231049	(O)
Managing Director, IFIC Bank Ltd.	311523	(R)
Mr. M A. Samad	230379	(0)
Managing Director, BGIC LTD.	603378	(O) (R)
The state of the s	003370	(11)
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former Vice Chancellor Dhaka University;	310425	(R)
President, Bangladesh Academy of Sciences		
Dr. R.K. Khandker	210240	(0)
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		,
Dr. Halida Hanum Khandker	603329	(R)
Assistant Coordinator		
Womens' Programme, CARE		
Prof. Mrs. Razia Matin Chowdhury	600324	(R)

former Principal Federation of

University Womens College

# Universal Declaration of Human Rights

### Payamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Whereas disregard and contempt for furnian rights have resulted in barbarous acts which have outraged the conscience-of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and fredom from fear and want has been pro-claimed as the highest aspiration of the common people.

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations.

Whereas the peoples of the United Nations have in the Charter roalfirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of min and women and have determined to promote social progress and botter standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of the pledge.

All human beings are born free and equal in digrity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. (Article-1).

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (Article-2).

Everyone has the right to life, liberty and security of person. (Article 3)

No one shall be subjected to fortun: or to cruel, in-human or degrading treatment or punishment. (Article-5)

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equall protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. (Article 7).

Everyone has the right to an effective renedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. (Article-8).

No one shall be subjected to arbitrary arrest, detention or exile (  $A_{\rm H}$  -9)

Everyone is entitled in full equality to a fair and public hearing by an independent and impactal tribunal, in the determination of his rights and obligations and of any criminal charge against him. (Article 10)

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. (Atticle 11(1)

No one shall be held guilty of any penal offence on accordance any action omission which did not constitute a penal offence, under contemporational law, at the time when it was committed. For superality he imposed than the one that was applicable at the  $\Omega$  depenal offence was committed. (Affice  $\Omega$   $\Omega$ )

# BANGLADESH SOCIETY FOR THE ENFORCEMENT OF HUMAN RIGHTS.

( दाःनातन मानदाधिकाद वाख्यादन मः भाग



The National Centre
for the Legal Protection of
Human Rights.

--"It is essential, if man is not be compelled to have recourse, as a last resort, to rebellion against tyranny and oppressions that human rights should be protected by the Rule of Law".... Universal Declaration of Human Rights.

Head Office: 97, Purana Paltan Line, Dhaka-1000 Bangladesh. Phone:- 40-03-08-44/7654

fadanta Commission with the President of BSEHR the formar Chief Justice Mr. Kemaluddin Hossain as its Chairman. Former Secretary to the government and former Director general, Bureau of anticorruption Mr. Borhanuddin Ahmed, Former Secretary to the government and former inspector general of Police Mr. M. A. Khaleque as among others its other members. The purpose of this commission is to make itself available at the national level for making impartial enquiries on most vital national issues and lo give to the people correct informations about the issue. It is the policy of BSEHR to make the commission available also to the government to assist the government in arriving at correct findings and decisions in any national issues on the basis of impartial neutral uninterfered and independent enquiry of the Human Rights Commission of Inquiry.

Pressure and Publicity at work: The BSEHR has information and press cell managed by specialist staff members. Once the report is published attention of the relevant authorities are drawn for taking necessary steps to prevent their recurrence. The BSEHR is also helping some of the national dailies to publish cases of human rights violations in the country. One of the main purposes of this campaign is the impact it may have on government decisions.

BSEHR'S approach to legal literacy: (a) The BSEHR has been organising campaigns in slum and industrial belt with a view to awakening the people for realization of their legal and social rights and responsibilities by way of informal talks in simple language. Besides this, BSEHR tries to utilize different means and media such as pre-recorded drama played through cassettes dealing with common violation of human rights (b) Pocket Law: Another device for legal education: One of the

leading Bengali Language weekly of Bangladesh 'BICHITRA' provides the BSEHR a regular column POCKET AIN (POCKET LAW) where our legal experts give solutions to legal problems sought by local people as well by the Bangladeshis living in far off places like Canada, Sweden, West Germany, Quatar, Kuwait, etc. (c) Manobadhikar Barra: This is a monthly journal which exclusively deals with the human rights issues in Bangladesh. This human rights journal which is first of its kind in Bangladesh, seeks to disseminate Information of human rights in Bangladesh, draws attention to the concerned authorities against violations and thereby prevent their recurrence. Copies are sent to all law enforcing agencies.

(d) Legal Literacy through Seminar and Sysmposium: BSEHR arranges seminar and symposium from time to time with a view to discuss important issues relating to law and social justice and suggests recomendation to the appropriate authorities. Through these seminars BSEHR tries to encourage its clients who are being deprived of their rights. To give vent to their grievances openly to the andiences almiing to create pressure on the person or authority concerned. This has proved to be very effective in establishing one's rights.

(c) Legal literacy: for the visitors through legal desk: The BSEHR is also providing legal advice daily to the people who are seeking legal advice for various legal problems across its own desk.

### Members of the Board of Advisors:

The BSEHR is being governed by the Board of Advisors consisting of eminent jurists, lawyers, journalists, industrialists, artists, educationists and other notable persons. The Board of Advisors is responsible for taking up all major policy decisions of BSEHR, which, in its turn, are

implemented Hirough the administrative guidance of the Executive Director. The 3 member Finance committee in the Board of Advisors, are ejected to look after day to day financial matters of the BSEHR. The names of the Members of the Board of Advisors of the BSEHR are shown below:

1. Justice Kemaluddin Hossain (former Chief Justice of Bangladesh Supreme Court)- President,

2. Nazmul Huda, Barrister at Law-Secretary General, 3. Dr. Momtazul Hoque Khan (former Project Leader-WHO)-, 4. Advocate Mrs. Sigma Hnda-President, Bangladesh tativo mobila Ainjibi samitce, 5. Prof. Mohammad Afsar uddin-Prof. of sociology. Dhaka University, 6, prof. Muhammad A. Momen- Associate Prof. Institute of social welfare and research. Dhaka University, 7. Chazi Shamsur Rahman, Retd. Dist. and Session judge, former Chairman, Press Connell and Copyright Board, 8. Advocate Mrs. Rokeya Kader, Member of Jatiyo Mohtla Atujibt Samttee, 9. Gtas Kamal Chowdlmry, President, National Press Club, 10. Dr. Mtzamur Rahman Shelly, Chairman Centre for Development . Research, 11. Prof. K.A.A. Quamruddin, Dean of the Faculty of law, Dhaka University, 12. Ehteshamur Rahman, Producer and Director of Films, 13.Advocate Rezaur Rahman, TV Compere & Editor Akhoni shomoy, 14. Mr. Nurul Islam Khan, Additional Director Deptt, of social services, 15. Father R.W. Timm, 16. Mr. M.A. Motin-Executive Director.

Branch Committees: The BSEIR has at present two hundred District and Upozilla branches throughout the country, attending to local violations of human rights in their respective areas, under direct supervision and control of the National Committee.

# BANGLADESH SOMETY FOR THE ENFORCEMENT OF HUMAN RIGHTS.

( वाश्नाप्तम भानवाधिकां वालवायन अर्श्



The National Centre

for the Legal Protection of

Human Rights.

--"It is essential, if man is not be compelled to have recourse, as a last resort, to rebellion against tyranny and oppressions that human rights should be protected by the Rule of Law".... Universal Declaration of Human Rights.

Head Office: 97, Purana Pahan Line, Dh. (00) Bangladesh, Phone: 46, (28, 47, 765) The Bangladesh Society for the Enforcement of Human Rights (BSEIR) was founded in 1977 as an activist organisation especially to promote the administration of Justice, the rule of law and to secure legal guarantees for basic human rights in Bangladesh.

The BSEHR is a voluntary, non-profit organisation registered under the Society's Registration Act XXI of 1860 vide registration No. S-632/8 of 1978-79. The BSEHR was further registered under the of Social Services Department Government of the Peoples' Republic of Bangladesh in 1984, vide Registration No.DSS/FDO/R-163 under which the BSEHR has been empowered to undertake/carry on voluntary activities under the Foreign Donations, Regulation Ordinance/Rules 1978. The BSEHR has exchange of information relation with different international human rights organisations like United Nations Commission on Human Rights-Geneva, International-London, International Comission of Jurists Geneva. Human Rights Internet U.S.A., Anti-Slavery Society for the Protection of Human Rights. Survival International-London, Asian Coalition of Human Rights Organisation and Justice and Commission, BSEHR is expected to obtain consultative status with U.N. in the next U.N. general assembly session.

### **OBJECTIVES**

-to educate the members of the society about their basic and fundamental human rights and to enlighten them about the various legal remedies available to them in the event of their breach:

-to spread legal literacy education and knowledge among the poor people;

-to offer legal aid and advice to the poor, under and non-privileged ones; to conduct and promote research in the area of law relating to removal of poverty and promotion of economic and social uplift to the weaker and less fortunate sections of the society and to suggest reforms leading to the removal of social injustice:

-Last but not the least, to investigate issues relating to human rights violations with a view to creating favourable public opinion and thereby prevent their recurrence and help the victims. The BSEIP also suggests remedies to the concerned authorities for immediate redressal of those human rights abuses.

# MODALITIES:

The BSEHR deals with human rights in all five of its programme divisions: Legal Aid, Action research, Legal literacy and clinical education. Investigation and fact finding, Pressure campaign and publicity. It maintains a human rights documentation centre for the use of students, lawyers and social workers.

Legal Aid Programme (LAP): Although the BSEHR was established in 1977, the BSEHR started its activities formally in september, 1979. Under its legal aid programme the BSEHR has so for entertained about 3000 cases upto March 1989.

Poor clients (victims) and affected persons come in person in the office to file complaints and lodge their grievances. Legal Aid Personnel help these clients who are mostly illiterate, to write up their complaints and after necessary examination of the evidence, if approved, the case is assigned to legal retainers (Lawyers) for further actions, if necessary for filing the cases in the court of law. If there is no necessity to go to court the BSEHR tries to take initiative to resolve

the dispute through negotiation. In number of cases this approach proved successful. The BSEHR provides the clients legal aid free of cost. Category of cases received by the B\*FHR are as follows:

SI No. Nature of cases/grievances:

1. Matrimonial

2. Dispute over property

3. Unlawful

dismissal/suspension/demotion

4. Harassment/eviction

5. Unlawful detention/arrest/torture

6. Labour dispute

7. Disappearance/mirder/kidnapning

8. Rape case

9. Domieile

10. Social protection

11. Environment pollution

12. Allegation against discrimination

13. Proffessional negligence, breach of duty etc.

Action research: The research cell conducts studies in the areas of law concerning the rights of those likely to be subjected to torture, exploitation, harassment and oppression. Once the research is analysed, the division makes recommendation to government and legislators wherever necessary. The BSEHR has an experienced research team which has completed the following research studies on legal matter and complicated social issues: 1. How far Muslim Laws are protecting the rights of the Women in Bangladesh. 2. How far the working children are deprived of their natural rights. 3. Effectiveness of existing social legislation in protecting the rights of the Industrial workers in Bangladesh 4. Enjoyment of Human Rights by Rickshawpullers in Dhaka city in the context of Socio-Econlinic Status, 5, The Social Evaluation of the Maid servants engaged in domestic work from the point of view of

Human Right. 6. The level of enjoyment of Human Rights by the Disabled Persons (1) Dhaka City. 7. Socio-Economic condition of Squatters in Dhaka City. 8. Narir Aingot-Adhikar (The rights of women in the eye of law). 9. Stranded Pakistants in Bangladesl (10. Rural Migrants and Vagrants 11. Study of Marriage, Divorce and Separationamong the stum dwelling Women in Dhakeity. 12. Immoral Traficking with reference of Prostitution in Bangladesh. 13. The codification of Tort Laws in Bangladesh. 13. The Trade Unionism and Trade Union Laws in Bangladesh.

Legal literacy and Clinical Educatio Services: Strives to foster self-awarenes in respect of rights and responsibilities and that elementary legal education is pre-condition for effective legal at services in the developing countries like Bangladesh. The BSEHR has been publishing small booklets concerning legal rights of women, industrial labourer

cte. Fact-finding activities; The BSEHR ha**s a**lestablished—its—own—machinery—t

investigate violation of human rights. The purpose of fact finding investigation mainly to clarify disputed facts arising a the context of complaints of violations of human rights so as to enable itself to surificate a correct decision and also to assist to investigating agencies of the government reaching correct conclusions and/or comble the findings to be produced a evidence in any trial before any judicional authority.

The BSEIIR has so far undertaken 65 fa linding missions inside Bangladesh and i impact was widely recognised by the mass-media and various social groups the country.

At the national level, BSEHR set up II Human Rights Commission of toqui [HRCI] in Bengali called Manabadhik.

# SAPTAGRAM NARI SWANIRVAR PARISHAD



# AN ORGANISATION REPRESENTING THE STRUGGLE BY WOMEN FOR WOMEN



SAPTAGRAM NARI SWANIRVAR PARISHAD— loosely translated as Saptagram Women's Self-Reliance Movement—is a Bangladeshi non-profit-making, development organisation. Rural—based, its primary objectives are to bring together women, both landless and land-poor, to fight for the right to define their own priorities and better the conditions of their existence.

These women suffer double oppression: as member of an exploited class and as member of a subordinate gender.

Throughout their lives they have been brain-washed into believing that their pre-ordained role is to serve and please men. If they fail, they can be discarded as they no longer have any value. This social order is perceived as a "natural" order—women have nothing to remind them that they are born equal with men and that given the will they have the power to change the social order and take control of their lives.

To bring that about, however, they must organise. They must draw on the one resource they possess, that is, the strength that lies in solidarity of action to confront the slow, uphill and even dangerous task of transforming society. They face a formidable arsenal of weapons—samaj, tradition, cultural heritage and even religion—assembled by the social order to maintain the status—quo.

Saptagram Nari Swanirvar Parishad has stepped into this battle with no other weapon of its own except a commitment to the cause of their oppressed sisters and the determination to help them to fight for their rights.

Saptagram is an expression of the growing awareness among the educated middle and upper-middle class women that their fate is linked inexorably with that of their less fortunate sisters in rural Bangladesh. That to win their own freedom in a male dominated society, they must all unite in the knowledge that only in such unity lies true strength.

Saptagram is also a unique experiment in rural development work in Bangladesh. Unique in the sense that it is the only rural-based NGO where every stage of administration from policy making decisions to their implementation in the field is in the hands of women, thus successfully challenging the myth that the women of Bangladesh need male protection if they are to work at rural level. Challenging too, the concept that in a predominantly Muslim society; men, being great believers in the segregation of women behind purdah, would not accept their public mobility. Today, in hundreds of villages spanning seven districts, our female staff are successfully organising, conscientising and mobilising their target groups.

Although it has not been a completely smooth process, Saptagram Nari Swanirvar Parishad has been engaged in this work for over a decade without encountering any problem that could be regarded as insurmountable. The main forms of resistance to its work came not from the expected source, the Mollahs (religious Teacher), but from vested interests in the rural power structure. For them, Saptagram's works with dispossessed and disenfranchised sections of society contributes a major threat to their arbitrary exercise of power.

# HISTORY IN BRIEF

The organisation was started in June 1976 by Prof. Rokeya Rahman Kabeer, an educationalist for nineteen years, who left her job and went to her home district, Faridpur, to begin a women's project. Aware of the limitations imposed by her urban background she was cautious in her approach and to begin with adopted only seven villages for project work. By 1986, however, Saptagram had expanded to cover seven districts spreading over one-fifth of Bangladesh. It has now taken the decision not to expand any further. Rather than becoming a National Organisation and possibly diluting its effectiveness, it is determined to concentrate its energies on consolidating what has been achieved

During this period Saptagram has undergone a certain change in its approach towards development as a direct response to the demands of its target groups. The women strongly felt that although they had come to comprehend the meaning and purpose of unity, their husbands did not. In order for women to function effectively, men had to be made aware of what group formation was all about. Responding to this demand. Saptagram began to work among the landless men too, taking care to keep the groups seperate in accordance with the women's wishes. Despite the inclusion of men's groups, however, stress continues to be put mainly on women so that the ratio between women and men's groups stands today at 4:1. Saptagram deals with about 1200 groups. Taking into consideration the fact that each group is comprised of approximately 25/30 individuals, this means the organisation effectively influences the lives of over 30,000 family members.

# AIMS AND OBJECTIVES

Simply put, these are:

- 1) To work among women of the deprived sections of the rural community.
- 2) To make them conscious of the root causes of their social and economic deprivation and the means with which to tackle them.
- 3) To initiate income-generating activities on co-operative basis in non-traditional fields like locally based petty trade, inter district trade in different items like rice, wheat, firewood, woven clothings etc, leasing and cultivation of land and selling the subsequent products in haats (village markets), production of saplings and seeds to sell locally. Sericulture— cultivating mulberry trees, production of silk cocoons, reeling and spinning of silk thread and even at times weaving, in short, women can be widely involved in all stages of silk production. Women's group are also producing pottery, cane and bamboo household items, varieties of pickles, fish nets etc., for local markets. The women, for the first time possibly, are also the main force working in routine road maintenance.
- 4) To provide education to the groups with special stress on the method of maintaining accounts in a very simple format.
- 5) To provide relevant knowledge on health and nutritition,



A women potter prepares the clay for her products.



A finishing touch at their market products.



Women Potters selling their goods.



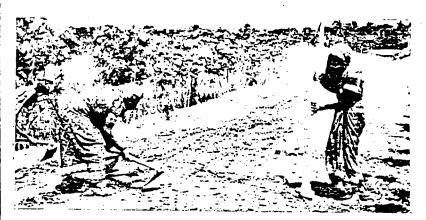


'Saptagram Silk Production Programme: a girsl is busy reeling silk thread from cocoons.

A member of a Women's group makes bamboo-basket



Women's groups are active in Pickle making sold locally. Children here take out seeds from fruits used for making pickles



Women's group engaged in road maintenance work in Faridpur.



Women's group members are busy making fish-net.



A weaver, of S4FTAGR4M Signoup is weaving Saree

# ADULT EDUCATION

This has been part of Saptasgram's aim right from its inception. However, in the early stages, it was not easy to convince the target groups of the need for it and we were limited to a few classes based on the BRAC syllabus. By 1983, the damand became acute as a direct result of an incident. Target groups doing earthwork found themselves being substantially. snortenanged. There was widespread agitation against this corrupt practice spearheaded by the women. The Martial Law authorities in Faridour were 'gheraped' (surrounded), an investigation begun, and the corrupt practice unearthed as a result of which several local government officers were transferred and the local Chairman was faced with a very uncomfortable situation. This was a great achievement on the part of the women who learm two valuable lessons. One: The value of unity, and two: the need for education. The demand for the latter became so vociferous that Saptagram had no choice but to attempt to meet it. Classes began to function on a much wider scale although it became increasingly clear that the existing syllabus had a number of shortcomings, most prominent of which was the fact that education was mostly, if not wholly, male oriented. Slanted to emphasise the traditional role of men and women into a typical Jack and Jill situation where Jack fell down and Jill had no option but to come tumbling

As a result, Saptagram decided to draw up its own syllabus with a careful eye to the changing needs of women. The new syllabus aims to bring to the forefront social, legal and even the moral rights of women in an effort to achieve three main objectives.

One: To educate women so that they acquire the necessary knowledge of not only reading and writing but numeracy too,

Two: Through the syllabus, to make women aware of their rights under both civil as well as religious laws.

Three: To help women becoming self-reliant in maintaining their accounts relating to the various income-generating activities rather than be dependent on their counterparts.

Today, adult education has become one of the linchpins of Saptagram's project although that is not to say that it is neglecting children. Several classes are being run for their benefit and it is often the case that these children carry on their education in government primary schools once they have achieved a basic standard. In addition, where parents are poor, we provide small financial assistance, specially in the case of female students, many of whom we have helped to obtain their SSC certificates,



An Adult Education Class is in progress.





Adult education is an absolute necessity.



Children's Eduction

# FAMILY PLANNING AND HEALTH

As far as family planning goes, Saptagram has its own stand radically different to that of international bodies like the World Bank, US AID, IPPF and Pathfinder. Neither does it agree with government policy or other NGOs involved in this field. Saptagram resents and resists strongly the callous attitude towards women when it comes to forcing dangerous drugs on them, injecting them with Depo-Provera and implanting IUDs into their uterus without follow-up checks. Saptagram opposes these activities in the name of family planning. Instead, we help in ligation, when askec for, giving anti-tetanus injections and accompanying them to the clinics to ensure that they are given proper treatment.

Although we have been involved in health programmes from the beginning we prefer to emphasise much more on the preventive rather than the curative side, deworming over 30,000 children in the process.

Target groups are taught about nutrition and provided with health-giving fruit-tree plants and seeds for vegetable with high nutritional yies. They are also taught to prepare home made saline solutions to fight the denydrating effects of diarrhoeal diseases. However, years of experience in the field has convinced us that in the absence of pure drinking water, the adoption of such health programmes is putting the cart before horse.

# PURE WATER TO PEOPLE

Impure water is the cause of almost 60% of the disease common to rural Bangladesh. Yet the only drinking water available in many cases comes from stagnant ponds in which both buffaloes and humans bathe, the very same pond then being used for washing clothes of people suffering from cholera and other infectious diseases.

Better late than never, and hindered greatly by the lack of finance. Saptagram has adopted the policy of bringing pure water to the rural population. It has adopted the practice of sinking tube-wells under the protection of gloup members leaving neither Union Chairman nor the village elite to play any role as to their placement. We provide the tube-wells and the beneficiaries provide the labour and sinking cost. It is a very effective collaboration.

# LEGAL AID

Regrettably, financial considerations limit us once again to organising seminars and workshops where laws and legal rights can be discussed and group member better informed

However, at the national level, Saptagram is an active member of THE RESISTANCE COMMITTEE FOR OPPRESSION AGAINST WOMEN AND SOCIAL INJUSTICE. More than a hundred organisations from all over the country have come together to fight discrimination and oppression like rape, wife-killing over dowry, attack with acid and kidnapping young girls for the purpose of prostitution.

The aforementioned organisation is building up public opinion and mass mobilistion and the results have been most positive, with Saptagram as its main voice in the districts of Faridpur. Kushtia, Jessore and Khulna.

We have taken legal action in a number of cases of rape, kildnapping and murder of women. In all these actions, lawyers have provided free service. Saptagram intends to play an ever more active role in this area in future.

**Saptagram** does not claim to have all the answers. But it will strive to remain true to its commitment to the struggle against the oppression and exploitation of women in Bandiadesh.



"Mother and Child Health Care Centre". An NGO in Faridpur, Saptagram works in close collaboration with this NGO in Health Programme.

Dr. Zahed, Founder member of MCHC is seen here giving prescription to one of the villagers in Faridpur Sadar.



Patients are receiving medicine as prescribed.



Saptagram's Para Medics are giving Ketrax to children for de-worming.

"BLAMING THE WOMEN AS THE MAJOR PERPETUATORS OF DOWRY IS LIKE BLAMING THE SOLDIERS ON THE BATTLEFIELD FOR FIGHTING. THEY MAY BE THE ONES SEEN KILLING AND DYING, BUT ONLY THE GENERALS AND POLITICIANS HAVE THE POWER TO DECLARE WAR..."

"MANUSHI"



Women's group runs a grocery shop.

Liason Office: 76. Segun, Bagicha (Ground Floor), Dhaka-2 BANGLADESH.

Phone: 41 68 49

Cable: SAPTANARI, DHAKA. 1986

# CCHRB Upazila Election Observation Executive Summary

CCHRB observed the 1990 Upazila elections with the aid of 798 observers of 10 NGOs in as many centres of 67 upazilas. The best observers were highly educated and experienced people. The field workers of the NGOs could give reliable statistics but were not sufficiently trained in what to look for in election centres.

The statistics show that there was a lively interest in the upazila elections, with an average of six candidates per upazila and a turnout (ballot count) of 56.71% of the eligible voters. There was also a lively awareness of the public in trying to prevent election abuses.

# Abuses of the electoral process include:

- 1. Underage voters standing in line (2.28% of ballots cast).
- 2. Partially open (268) or fully open (9) vote stamping areas.
- 3. Ministers giving relief goods or making threats before election.
- 4. Stuffing of ballots by party supporters inside the centres.
- 5. Exclusion of traditional election officers in favour of party members.
- 6. Threats and use of violence by party mastans, especially before election.
- 7. No signatures or thumb impressions on ballot stubs.
- 8. Eligible voters not on election lists.
- 9. Prevention of voting or name and number already cut. .
- 10. Candidate agents forced out of centres.
- 11. Registration of voters in more than one place.
- 12. Polling centre officials stamping ballots illegally.
- 13. Purchase of votes.
- 14. Ballot papers found missing.
- 15. Ballot papers stamped in advance.
- 16. Centres closed down early.

Although there was a strong apprehension of violence before the election (in 112 centres for males and 194 for females), violence at election time was relatively little. Physical arrangements were generally good. A comfortable majority considered there was good management and security arrangements. Interference with voting was observed in 137 centres, and vote rigging was recorded in 51

# Upazila Election 1990 Observation

centres and attempted in 11 centres. Other irregularities included; arrest for false voting (2), police involvement in false voting (4), threats (9), vote buying (2), false vote (60), tricks in voters' lists (4), challenged votes (2), arrest with arms (6), vote boxes looted (2), minor irregularities (60).

Some of the main abuses observed by CCHRB officers themselves were: stuffing of ballots in two centres by a minister's two brothers (though the election in those centres was declared valid), stuffing of ballots in the centre by party supporters and turning away of voters whose number had already been used.

# The chief recommendations of the CCHRB are:

- Ministers should not be allowed in election areas within 48 hours of election.
- 2. Ballot boxes should be sent to regional counting stations for tabulation.
- 3. A protest list should be maintained by the polling officer for those denied a vote.
- Relief distribution in connection with elections should be banned.
- 5. No candidate should be allowed the use of government facilities for his election campaign.

# Upazila Election 1990 Observation Full text of observation reports

# Introduction

The Coordinating Council for Human Rights in Bangladesh (CCHRB) in its Executive Committee meeting of Jaunary 2, 1990 decided to monitor the Upazita Election in March, 1990 in order to check on whether the Universal Declaration of Human Rights' call for "genuine elections" and "free voting procedures" (Subsection 3 of Article 21) was being observed and because of all the national and international interest in free and fair elections in Bangladesh. Father Timm, the President of CCHRB, brought up the proposal for monitoring. It seemed to CCHRB that its member organisations could do the job most objectively and with least expense, since they already have field workers throughout the country, president H. M. Ershad announced that 25,000 foreign observers were welcome in order to see that the elections were free and fair, but CCHRB felt that 1,000 local observers would be much more effective.

# Initial hurdles

CCHRB petitioned the Home Minister, Mahmudul Hasan, for clearance to monitor the elections, since he had invited a Bangladesh Society for the Enforcement of Human Rights (BSEHR) observer team which monitored the Parliamentary Bye-election in Narsingdi in September, 1989 to do the same for other Bye-elections. A copy of the petition letter was sent to President Ershad because of his interest in inviting foreign observers for elections in Bangladesh. A team composed of the President of CCHRB, Father Timm, the Secretary General, Shafiqul Haque Chowdhury, and the Director, Philip Gain, met the Home-Minister on January 20. The Home Minister stated that he is only in charge of maintenance of law and order. The CCHRB team was directed to the Chief Election Commissioner.

The first meeting with the former Chief Election Commissioner, Justice Chowdhury A. T. M. Masud (whose term expired in February and who was replaced) took place on January 29. A letter of petition was submitted to him requesting clearance for observing the elections. The team met Justice Sultan Hossain Khan, who succeeded Justice Chowdhury A. T. M. Masud. Both of them pointed out that there is no provision in law for observers in the election rules and regulations, but that anyone could observe elections from outside.

Justice Masud, however, promised to give a letter in a few days but after one further postponement no letter was given before he was replaced. CCHRB submitted another letter, together with a sample letter of reply, stating only that

# Upazila Election 1990 Observation

The upazila election was far from a fair and free election. What encouraged the voters was the resistance from the affected groups.

In this backthrop it appears that if the ruling party observes nutrality and does not interfere with the election machinary things would improve. The ministers' presence and interference puts the district administration at all levels in a difficult position and they feel obliged to obey the minister's orders.

The rulling party should not take advantage of its position and must behave like any other contesting party in any election. The administration should see that election laws and rules are strictly adhered to.

The credibility of any election is dependent upon its being a free and fair election. The responsibility of holding a free and fair election is on the government, which in any democratic set up is run by a political party. It becomes farcical if to curb terrorism and to maintain law and order law enforcing agencies are employed and then the minister in charge runs about interfering with their due discharge of duties.

# CCHRB recommendations for improvement of elections

- 1. Do not allow ministers in the upuzila after the 48-hour campaign limit time before election begins. It has been seen in these elections that the main allegations of election rigging and control came from areas where ministers were on the spot or actively involved.
- 2. Seal the ballot boxes and send them to a central counting station where the arrangements for security and honesty are adequate.
- 3. If a voter's name is checked off outside the centre and he finds inside that his number has already been used for voting, he has no recourse. He should be told to give his complaint to the presiding officer, who will maintain a list for this purpose. Such lists should be sealed in an envelope and sent with ballots to the central counting centre.
- 4. Don't distribute any special grants of food, clothes, iron sheet, etc. on the election eve. During this time the ministers and some government functionaries were

#### Upazila Election 1990 Observation

allegedly involved in doing this, which was an explicit effort to influence the electoral process in favour of the JP.

- Don't make a high budget for election purpose. A high budget for election in a poor country like Bangladesh indicates wastage of resources and it might be a reason for voilance and terrorism in elections.
- Give the election commission more power in diciding upon what status a contestant who is a government official should bear during the election period (if he is a contestant in the election).
- 7. Maintain strict control and impartiality so that no candidate can use any government facilities for his election campaign.
- 8. Make sure that the Election Commission does not face any obstacle in exercising its functions as laid down in Article 118(4) of the Constitution of Bangladesh.
  - 9. Make sure that the law enforcing agencies and other government functionaries can function independently in maintaining law and order situation and in smooth running of the election.
  - 10. Publish the unofficial results in due time and the report objectively on Radio and Television Network (which are national).

Number of judges inadequate

# 30,000 cases pending in Supreme Court

Supreme Court Correspondent

The Supreme Court carries the load of annoximately 30,000 cases its archives. The cases have on its archives. The cases have accumulated during the post 1982 period, when the Benches were kept outside Dhaka without logistic support of adequate utilities of judges. and other requirements. The strength of the majors of the High Court Div is reduced to 27 on recent elevation of two judges from the High Court Division. The working strength is in fact 25 as two of them do not sit in the High Court Division.

The Permanent Benches outside Dhaka were declared often vires on September 2, 1989 followed by the long vacation of the Supreme Court from Septembr 3 to October 20. On re-upening all the judges sat at the permanent sent of the Supreme Court in Dhaka. The Supreme Court

got its lost vibration.

In the first week of December. 1989 judges went outside Dhaka to hold sessions according to the Constitutional requirement (Art 100) and the guidelines in the 5th Amendment Judgement. In Dhaka remains 15 judges from December 1 till Decemjudges from December 1 fill December 12. On 13th December, 23 judges presided over the Benches in Dhaka. On December 14 the Benches were presided by 24 judges. The Supreme Court went on winter vacation on December 15. It re-opened on January 22 the 22 the second of th ary 2, when 24 judges presided over the Benches at the permanent seat of the Supreme Court in Dhaka. This remained the position till January 11. The Judges are now holding sessions at Barisal, Chittagong, Comilla, Jessore and Sylhet. The Benches in Diska (the permanent seat of the Supreme Court) are now being presided over by 10 judges.

Latitur Rahman on January 15 to the Appellate Division of the Supreme Court, the actual strength of the Jewellery shops to remain closed from Jan 22 to 25

Before elevation of Justice Mustafa Kamal on December 1 and Justice

Staff Correspondent

The jeweliery shops all over the country country will remain closed from January 22 to January 25 in protest against the excesses of the excise, officials.

Bangladesh Jewellers' Association emergency meeting held on Thursday condemned the action by some excise officials in Chittagong who picked up gold for 14 jewellery shops in the port cay. The me

judges in High Court Division was 27.

To need the constitutional requirement of holding sessions outside Dhaka there must be logistic support of not only administrative in insture but of adequate mumber of judges albeit they must be capable. Unless the number of judges are increased in due course of time, there is strong opinion among the members of the higants to keep all the judges at the pertuament, seat of the Suntenne inigants to keep all the judges at the permanent seat of the Supreme Court in Dhaka. This would help in this had been a seas in much tetter environment with all logistic support. There are adequate numbers of the rooms lying vacunt in the Supreme Court building for accommandation of the instance to accommodation of the judges to preside over the Benches.

The lawyers, this correspondent has gathered, holds the view that if all the judges are kept in Dhaka for longer period unless the extreme necessity arises to send the judges outside, the disposal of the eases

would be much higher.
As pointed out by the Chief Justice: Mr. Shahabuddin Ahmed in reply to the address of felicitation on Junuary 16, the recruitment of judges in the Supreme Court and in the subordinate judiciary has become a problem; inadequate pay and privileges is one of the obstacles to

selection of right persons.

The judges of the Superior Court in any event must be kept free from all possible worries. The accom-modation is not readily available. Many of the judges have not yet been provided with Government accomprovided with Government accommodators. The capable persons in the Bar are reluctant to join the Bench for inadequate puy, lack of Government accommodation, transport and inadequate pension. Salary of a judge of High Court Div. is at present Taka 8,000/- per month with Taka 6,000/- for house accommodation, in alternate of Commodations in alternate of Commodations. tion in absence of Government accommodation. It is not possible to get proper residential house on renhal of Tuka 6,000. In case of Clov-trament accommodation, the Govgrament provides all facilities. On their retirement the judges cannot plead or act before any court or authority or hold any office of profit in the service of the Republic. They are to depend on the poor amount of pension. It would be in the interest of the nation that judiciary should be treated on a different line than the other public servant of other depart-ment, it is felt, to keep the judiciary

independent.

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# **CONCLUSIONS**

## **AND**

### RECOMMENDATIONS

ANNEXURE 5

Seminar on Legal Services for the Rural Poor and Other Disadvantaged Groups in South-Asia

> Rajpipla 27-31 December 1987

INTERNATIONAL COMMISSION OF JURISTS

#### Conclusions and Recommendations

#### Introduction

The International Commission of Jurists in collaboration with the Rajpipla Social Service Society, India, organised in December 1987, a South-Asian Seminar on Legal Services for the Rural Poor and Other Disadvantaged Groups in South Asia.

The purpose of the seminar was to:

- identify the obstacles faced by the poor and the disadvantaged and by the legal resource groups that work with them;
- examine and compare the work of existing legal resource groups in the region;
- make their work more effective through sharing of experiences; and
- discuss ways and means to overcome obstacles and to stimulate new groups.

Participants who came from Bangladesh, India, Nepal, Pakistan and Sri Lanka included lawyers working with the disadvantaged, law teachers and students and representatives of grass-roots organisations. In addition to the South-Asian participants there were also observers from the Philippines and Thailand.

Based on the experience of the participants the seminar identified the obstacles faced by the poor and the disadvantaged as well as those groups that work with the poor and made recommendations to deal with these obstacles.

The seminar discussed the role of legal activists and social activists in helping the poor, and the need for cooperation between them. The legal activists are lawyers who mainly use law as a resource to help the disadvantaged by conducting legal awareness programmes, by defending the rights of

the disadvantaged in negotiations with the authorities and, where necessary, in court, and by working for law reforms. The social activists are those who work directly with disadvantaged groups at grass-roots level in different fields of development, and help them to organise themselves through a variety of programmes.

In the Conclusions and Recommendations of the seminar the word 'activists' refers to both legal and social activists working together.

#### **Conclusions**

- 1. States through their development policies and programmes have tended to strengthen the traditional inequalities in their societies, and have created a majority of disadvantaged people as a result of inequitable allocation of resources and adherence to development plans and policies that benefit a few at the expense of others.
- 2. Among other projects, the building of large dams in the name of development has created disadvantaged groups when the projects involve the expropriation of survival resources of the tribals and others in the project area resulting in large scale displacement of such people without adequate compensation to cover their resettlement needs.

The Narmada dam project currently under construction in India is a good example of such a project.

- 3. The environmental damage and the ecological impact of dam projects affect not only the local people but a much larger section of the population. For example, the flooding of low-lying areas may even affect people in neighbouring countries as has happened in Bangladesh as a result of dams built in India.
- 4. In addition to the development policies and programmes of the governments, state managed cultural and social changes have also affected disadvantaged groups. The rise of religious fundamentalism when linked to policies pursued by governments has contributed to the creation of new disadvantaged groups. The inability of states to deal with diverse ethnic groups, and the escalation of ethnic conflicts, linked to state action or inaction, has also created disadvantaged groups.
- 5. The disadvantaged groups in the region can be broadly categorised as coming under the bonded and exploited labour sector, the high risk sector and

the threatened sector. Women are a good example of the bonded and exploited labour sector. The workers in hazardous industries such as the ex-employees of the Union Carbide Plant at Bhopal and workers in nuclear power plants come under the high risk sector. The tribal women working in the Narmada dam project which when completed will wipe out their entire means of existence also come under this sector, as do the women who are forced to sell their bodies in order to survive. Lastly, the threatened sector consists of disadvantaged groups whom the state deems expendable and about whom it takes unilateral decisions, e.g. the tribals affected by the Narmada dam project. The groups belonging to this category are the most disadvantage and most vulnerable.

- 6. State repression is aided and abetted by,
- institutions of Law and Order and this includes the Armed Forces, police and para-Military forces or vigilantes;
- the bureaucracy or administrative system;
- the judicial and legal system;
- the professions, especially the legal profession;
- the legislature; ( a
- the press and visual media; and
- local elites including the political power bases at the local level.
- 7. Among the ways in which state action or inaction results in repression of disadvantaged sectors are:
- failure of states to build a common nation including all the ethnic and other minorities;
- violation of the rights of ethnic and other minorities;
- control over natural resources;
- state controlled violence and misuse and abuse of lawful authority;
- non-performance of positive obligations imposed by law and flouting of orders and directions made by courts;
- selective enforcement of penal laws against social activists and nonenforcement of such laws against social elites;
- political process that excludes disadvantaged groups;
- exclusion or secrecy whereby disadvantaged groups are not consulted on projects affecting them so that the negative effects of such projects becomes a fait accompli; and
- control over the media and information technology.

8. In the countries of South-Asia, disadvantaged groups, in addition to state repression, also face increasing lawlessness of centres of private economic power. Examples are the atrocities committed by dominant castes and communities against minority castes and communities, and the severe repression of landless labourers by landed interests. States often connive at or even support such violence by dominant groups against disadvantaged groups.

#### Recommendations

#### Role of Legal and Social Activists

- 9. Legal activists, instead of treating law as a body of rigid rules, should view it as a means of helping to bring about social change. They need to undertake a deeper analysis of the potentialities of rights enshrined in constitutions, human rights laws, norms and values.
- 10. Legal activists, in close collaboration with social scientists and other experts, should critically review government policies and their impact on the rights of the rural poor and other disadvantaged groups, initiate public debate on such policies, and if needed take preemptive judicial action. They should also undertake public interest and social action litigation on matters of public importance.
- 11. To appreciate and understand the problems faced by disadvantaged groups, legal activists should work in close collaboration with social activists working with disadvantaged groups who are familiar with the effect of laws on the disadvantaged. Together they should strive to establish accountability of state institutions so as to limit their power over disadvantaged groups.

#### Accountability of State Institutions and their Disempowerment

- 12. Power tends to be monopolised by the state and needs to be redistributed. Inadequate mechanisms to monitor the use of power at different levels increases the risk of abuse of power. Activists should seek to monitor the use of state power and obtain redress for victims of abuse.
- 13. Devolution and decentralisation of power is also necessary to facilitate

effective participation of the people. As part of the strategy to combat all forms of state repression conscious and continuous efforts should be made by activists to mobilize disadvantaged groups on their problems as well as to effect structural changes.

- 14. Local officials are the most feared persons in the rural areas and need to be held accountable for their actions. There should be remedies against officials who abuse power. These may be by way of injunctions, or civil or criminal proceedings. Resort also can be had to other methods to restrain local officials, such as demonstrations and public protest meetings. Activists could also devise means of local dispute settlement.
- 15. The key to accountability is access to information. Law making should be an open process. In order to seek more information on the implications of a draft law, legal activists should campaign for a reasonable time to be given before a law is passed by the parliament, and the groups who are to be affected by that law should be consulted and activists should campaign for such consultation to take place. In the law making process those bills that may affect a person's quality of life, dignity, livelihood, or liberty should be given adequate time for discussion and consideration by the public and should not be treated as urgent bills.
- 16. Activists should also study the implications of draft laws and suggest necessary amendments to the legislature and executive. Also, they can together draft new laws. In the Philippines, organisations representing various disadvantaged groups cooperate with an umbrella organisation which facilitates the preparation by legal and social activists of alternative draft laws to those prepared by the executive. The activists then campaign for adoption of their proposed draft by the law-makers.
- 17 Reports should be published on the human and environmental consequences of urban planning, industrial and development projects prior to their being approved. Such reports should be detailed and identify both the intended beneficiaries as well as those who would be adversely affected by projects. There should also be regulations governing the re-location of any population to be displaced, with provisions for re-employment and compensation. Donor agencies granting aid for a project should insist on the preparation of such reports by the government receiving the aid. An insurance fund against future hazards of a particular project should be set up jointly by the government and donor agencies.

- 18. Activists should press their governments not to grant exemptions to multinational corporations (MNCs) with regard to payment of minimum wages, compensation for injuries and other labour and social security laws. In particular there should not be any distinction between free trade zones and non free trade zones. The MNCs should declare their intended length of operation in a country and while winding up should not discriminate between workers and executives in terms of severence payments and other benefits. Regional inter-governmental bodies should formulate common principles concerning the concessions to be given to MNCs and thereby strengthen their bargaining position and reduce competition among them.
- 19. The high level of militarisation in the countries of the region has contributed to the increasing use of the armed forces in ordinary law enforcement activities. The activists should create public opinion against increasing militarisation and the propaganda of state authorities that seek to justify increased use of arbitrary power and curtailment of rights of the people to meet an alleged external threat.
- 20. The magistrates and lower judiciary should be made conscious of their responsibility towards persons in custody and verify at every stage the need to continue their detention, as well as to apply the rules concerning the rights of persons in custody and on remand. On all these matters the higher judiciary should exercise strict supervision over the lower judiciary.
- 21. Judicial investigation should be compulsory on complaints of police misconduct or abuse of power. Any police official found responsible for such behaviour should be personally liable, and compensatory remedies should be available. Judicial investigation of complaints of police misconduct or abuse of power should be obligatory.
- 22. To prevent abuses in prisons and other custodial places,
- activists should be given access to prisons and they should form a committee consisting of people from all sections of the population to undertake prison visits;
- the prison rules and jail manuals should be reviewed to bring them into conformity with international norms for the treatment of prisoners, and activists should make recommendations in the reformulation of prison rules and jail manuals; and
- activists should evolve programmes to rehabilitate women who have been isolated and abandoned as a result of imprisonment.

#### Empowerment of Disadvantaged Groups

23. Disadvantaged groups must be organised if they are to be empowered. Wherever possibilities for empowerment exist they should be pursued, and where they do not exist they should be created. Activists should help disadvantaged groups to form their own organisations and work for legal recognition without state control. Activists should create public opinion against laws that impinge on their rights, including the right to organise.

Activists should draw up models for conferring legal status upon organisations of the disadvantaged for the purpose of developing cooperative

economic activities.

- 24. Activists should help disadvantaged groups to participate in the law making process. For example disadvantaged groups such as fishermen and peasants with the help of legal activists could prepare a document outlining needed reforms to laws that affect them.
- 25. In addition to rights awareness programmes carried out by activists there is also a need to focus on corresponding duties and obligations as well as to identify the state organs from which respective rights could be demanded.
- 26. Activists should undertake dynamic programmes for imparting legal awareness to the rural poor and other disadvantaged groups. Some of the methods that could be used are:
- circulation of written material in local languages e.g. booklets, leaflets;
- cultural programmes like plays, Mushairas;
- publishing articles in the local press;
- visual presentation e.g. posters, comics;
- audio-visual presentation;
- meetings, seminars and discussions; and
- para-legal training

In addition to regular awareness programmes, special campaigns and demonstrations could be organised on specific issues that affect a particular disadvantaged group in cooperation with the group.

#### Training of Para-Legals

27. It is essential that para-legal training programmes be provided for social activists and for members of disadvantaged groups since it is not possible for

trained lawyers to be involved continuously in legal dissemination programmes in rural areas.

- 28. Legal activists should design para-legal training programmes in consultation with and according to the requirements of social action groups working with the disadvantaged and provide training for persons recommended by them.
  - 29. Prior to providing basic legal information to para-legals who will be working with a particular disadvantaged community, legal activists should acquaint themselves with the situation and problems faced by that community.
  - 30. The basic legal information provided to para-legals should not be confined to existing rights, but should include both the potential and limitations of law, as well as the interaction between law and prevalent social conditions.
  - 31. Para-legal training should also include training in alternative means of dispute settlement.
  - 32. Para-legal training should clearly demarcate and specify the use and role of law and legal aid and legal resources programmes. This would enable paralegals to work with existing laws as well as to change laws and not give disadvantaged groups unnecessary hopes by confusing law with the aspirational goals of the programme.
  - 33. Social action groups should continuously assess and evaluate the performance of para-legals to ensure that they are carrying out their funtions properly.

#### Use of Customary Law and Courts

34. Activists, while dealing with the problems of the rural poor and other disadvantaged groups, should take note of indigenous methods of dispute settlement which may be socially effective and expeditious, as opposed to the formal procedures which have the problems of accessibility and delay, and at times are socially ineffective. However, indigenous methods would only be effective in disputes between members of the same or similar groups. Also, they should not be resorted to where traditional methods offend established

human rights principles. There is a need to review continuously those aspects of customary law that have become part of the formal legal system, so as to ensure that they are in conformity with international human rights norms.

Disadvantaged groups could form their own 'peoples' courts' to resolve their problems without seeking redress in formal courts. However, there is a need to safeguard against corruption and other irregularities that afflict such courts and also to be aware of any customary bias against women.

#### The Legal Profession

- 35. Lawyers willing to assist in these programmes fall into three categories:
- lawyers who are fully committed to social action programmes and who are willing to work full-time with a social action group;
- lawyers who are committed to the ideals of social action and who are willing to offer their services whenever required by a social action group;
- lawyers who are willing to render assistance in exceptional cases:
- The tradition and culture of the legal profession, its economic benefits, | or [5] and the lack of social recognition and physical and economic insecurity faced by lawyers involved in social action very often discourage large numbers of lawyers from assisting disadvantged groups.

- The following measures could be undertaken to attract more lawyers to work with disadvantaged groups,
- social action groups either individually or jointly providing financial support to lawyers willing to work with disadvantaged groups;
- lawyers joining and conducting their professional practice as a group so as to pool their limited time and resources to help disadvantaged groups;
- legal aid programmes raising substantial resources to acquire the services of professional lawyers,
- use of media to generate adequate social recognition of lawyers engaged in legal services programmes for disadvantaged groups;
- restructuring legal education curricula to include courses in allied social sciences, and to place law in the socio-economic context, so as to enable prospective lawyers and judges to develop a socially oriented and multidisciplinary approach to law; and

organising 'socio-legal' clinics and field studies as part of the curriculum
in law schools in order to expose law students to the actual working of
law and to the multi-dimensional aspect of law.

#### X The Judiciary

- 38. In keeping with the socio-economic realities of the region there is a need for judgés to develop an approach oriented towards the rural poor and other disadvantaged groups.
- 39. The concept of judicial isolation needs to be reviewed. In practice judicial isolation tends to prevent judges from understanding the problems of disadvantaged groups and affects the dispensation of justice.
- 40. Judges in the region very often rely on precedents, particularly foreign precedents, which may not always be relevant in the given socio-economic context.
- 41. Continuing legal education should be provided for judges at all levels.
- 7 42. Laws concerning contempt of court need to be revised and frank discussion of legal issues and judicial decisions should be allowed. Judges like any other public official should thus be accountable for their performance.

#### Public Interest Litigation

43. Public interest litigation is a court proceeding initiated by an individual or organisation on behalf of a person or more often a class of persons who by reason of their disadvantaged position are unable to approach the court.

Public interest litigation is a useful and impatiant development in providing legal services to the rural poor and other disadvantaged groups. However, public interest litigation should be used discreetly and imaginatively taking into consideration that, if improperly used, it could be counterproductive and that it could also be used by privileged groups to deprive the disadvantaged of their sights. As far as possible public interest litigation should be undertaken after proper consultation with concerned disadvantaged groups, experts and activists working with similar groups in other parts of the country.

#### Media and Legal Activism

44. Governments are often inclined to use their control over the media to silence criticism and opposition to their policies and programmes. Since legal and social activism involves criticising and confronting the government's policies and programmes, it is essential to develop alternative media to present such views. Legal and social activists should use alternative media to expose draconian laws, create public indictment of false propaganda by state and private media and strengthen the information network among activists. Legal activists should develop legal journalism to create awareness of the impact of law on disadvantaged groups and to highlight instances where law has been used effectively by disadvantaged groups to claim their rights.

#### Research and International and Regional Coordination

- 45. There is a lack of information among activists in the region concerning developments in law and other related fields taking place in different countric of the region. To remedy this situation the following steps could be undertaken:
- research on law as a means for social development to understand the developments taking place in the field of law in different countries of the region;
- research on the implementation of welfare legislation in different countries of the region and exchanging the findings of such research among activists in the region;
- increasing the flow of information between groups in the region by using the resources of existing organisations or by establishing a centre for collecting and disseminating information;
- in each country, an activists' group should assume responsibility for collecting and disseminating information to other countries, as well as disseminating within the country information received from other countries; and
- greater contact and exchange between groups in the region through exchange visists, internships, meetings and seminars.

#### ANNEXURE 6

# HUMAN RIGHTS CONVENTIONS AND PROTOCOLS TO WHICH BANGLADESH HAS ACCEDED (as at 1 September 1987)

- 1. International Convention on the Elimination of All Forms of Racial Discrimination.
- 2. International Convention on the Suppression and Punishment of the Crime of Apartheid.
- 3. Convention on the Elimination of All Forms of Discrimination Against Women.
- 4. Slavery Convention of 1926.
- 5. 1953 Protocol amending the 1926 Convention.
- 6. Slavery Convention as amended.
- 7. Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery.
- 8. Convention for the Suppresssion of the Traffic of Persons and the Exploitation of the Prostitution of Others.
- 9. UN Convention on the Rights of the Child.



GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH
MINISTRY OF LAW AND JUSTICE



# THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH

दार्गामण मानमाधिकात कि नाम



[ As modified up to 31st December, 1986]

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#### PART III FUNDAMENTAL RIGHTS

- 26. (1) All existing law inconsistent with the Laws inconsistent provisions of this Part shall, to the extent of such rights to be void. inconsistency, become void on the commencement of this Constitution.
- (2) The State shall not make any law inconsistent with any provisions of this Part, and any law so made shall, to the extent of such inconsistency, be void.
- <sup>1</sup>[(3) Nothing in this article shall apply to any amendment of this Constitution made under article
- 27. All citizens are equal before law and are Equality before entitled to equal protection of law.
- 28. (1) The State shall not discriminate against Discrimination any citizen on grounds only of religion, race, caste, on grounds of religion, etc. sex or place birth.
- (2) Women shall have equal rights with men in all spheres of the State and of public life.
- (3) No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.
- (4) Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.
- 29. (1) There shall be equality of opportunity for Equality of all citizens in respect of employment or office in the opportunity in public employservice of the Republic.

- (2) No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic.
- (3) Nothing in this article shall prevent the State from-
  - (a) making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic;

1Clause (3) was added by Act XXIV of 1973, s. 2 with effect from 15th day of July, 1973.

(b) giving effect to any law which makes provision for reserving appointments relating to any religious or denominational institution to persons of that religion or denomination;

(c) reserving for members of one sex any class of employment or office on the ground that it is considered by its nature to be unsuited to members of the opposite sex.

Abolition of titles, honours and decorations.

- 30. (1) No title, honour or decoration shall be conferred by the State.
- (2) No citizen shall, without the prior approval of the President, accept any title, honour, award or decoration from any foreign sate.
- (3) Nothing in this article shall prevent the State from making awards for gallantry or from conferring academic distinctions.

Right to protection of law.

31. To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law is the inalienable right of every person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

Protection of rightt o life and personal liberty. **32.** No person shall be deprived of life or personal liberty save in accordance with law.

Saleguards as to arrest and detention.

- <sup>1</sup>[33. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.
- (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journ's from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

<sup>1</sup> Article 33 was substituted for the original article 33 by Act XXIV of 1973, s. 3.

- (3) Nothing in clauses (1) and (2) shall apply to any person—
  - (a) who for the time being is an enemy alien;
  - (b) who is arrested or detained under any law providing for preventive detention.
- (4) No law providing for preventive detention shall authorise the detention of a person for a period exceeding six months unless an Advisory Board consisting of three persons, of whom two shall be persons who are, or have been, or are qualified to be appointed as, Judges of the Supreme Court and the other shall be a person who is a senior officer in the service of the Republic, has, after affording him an opportunity of being heard in person, reported before the expiration of the said period of six months that there is, in its opinion, sufficient cause for such detention.
- (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order:

Provided that the authority making any such order may refuse to disclose facts which such authority considers to be against the public interest to disclose.

- (6) Parliament may by law prescribe the procedure to be followed by an Advisory Board in an inquiry under clause (4).]
- 34. (1) All forms of forced labour are prohibited Prohibition of and any contravention of this provision shall be an forced labour. offence punishable in accordance with law.
- (2) Nothing in this article shall apply to compulsory labour—
  - (c) by persons undergoing lawful punishment for a criminal offence; or
  - (b) required by any law for public purposes.

Protection in respect of trial and punishment.

- 35. (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence.
- (2) No person shall be prosecuted and punished for the same offence more than once.
- (3) Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law.
- (4) No person accused of any offence shall be compelled to be a witness against himself.
- (5) No person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment.
- (6) Nothing in clause (3) or clause (5) shall affect the operation of any existing law which prescribes any punishment or procedure for trial.

Freedom of

36. Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to move freely throughout Bangladesh, to reside and settle in any place therein and to leave and re-enter Bangladesh.

Preedom of assembly.

37. Every citizen shall have the right to assemble and to participate in public meetings and processions peacefully and without arms, subject to any reasonable restrictions imposed by law in the interests of public order or public health.

Preedom of association.

38. Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order:

<sup>&</sup>lt;sup>1</sup>Proviso to article 38 was omitted by the second Proclamation Order No. III of 1976.

**39.** (1) Freedom of thought and conscience Freedom of is guaranteed.

thought and conscience.

- (2) Subject to any reasonable restrictions imposed and of speech. by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence-
  - (a) the right of every citizen to freedom of speech and expression; and
- (b) freedom of the press, are guaranteed.

40. Subject to any restrictions imposed by law, Freedom of every citizen possessing such qualifications, if any, as profession or may be prescribed by law in relation to his profession, occupation, trade or business shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business.

- and Freedom of 41. (1) Subject to law, public order moralityreligion.
  - (a) every citizen has the right to profess, practise or propagate any religion;
  - (b) every religious community or denomination has the right to establish, maintain and manage its religious institutions.
- (2) No person attending any educational institution shall be required to receive religious instruction, or to take part in or to attend any religious ceremony or worship, if that instruction, ceremony or worship relates to a religion other than his own.
- 42. (1) Subject to any restrictions imposed by Rights to law, every citizen shall have the right to acquire, property. hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalised or requisitioned save by authority of law.
- '[(2) A law made under clause (1) shall provide for the acquisition, nationalisation or requisition with compensation and shall either fix the amount of compensation or specify the principles on which, and the manner in which, the compensation is to be assessed and paid; but no such law shall be called in

Cia uses (2) and (3) were substituted for Clause (2) by the Proclama-

question in any court on the ground that any provision in respect of such compensation is not adequate.

(3) Nothing in this article shall affect the operation of any law made before the commencement of the Proclamations (Amendment) Order, 1977 (Proclamations Order No. I of 1977), in so far as it relates to the acquisition, nationalisation or acquisition of any property without compensation.

Protection of home and correspondence.

- 43. Every citizen shall have the right, subject to any reasonable restrictions imposed by law in the interests of the security of the State, public order, public morality or public health—
  - (a) to be secured in his home against entry, search and seizure; and
  - (b) to the privacy of his correspondence and other means of communication.

Enforcement of fundamental rights.

- <sup>1</sup>[44. (1) The right move the <sup>2</sup>[High Court Division] in accordance with <sup>3</sup>[clause (1)] of article 102, for the enforcement of the rights conferred by this Part is guaranteed.
- (2) Without prejudice to the powers of the "[High Court Division] under article 102, Parliament may by law empower any other court, within the local limits of its jurisdiction, to exercise all or any of those powers.]

Modification of rights in respect of disciplinary law. 45. Nothing in this Part shall apply to any provision of a disciplinary law relating to members of a disciplined force, being a provision limited to the purpose of ensuring the proper discharge of their duties or the maintenance of discipline in that force.

Power to provide indemnity.

46. Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law make provision for indemnifying any person in the service of the Republic or any other person in respect of any act done by him in connection with the national liberation struggle or the maintenance or restoration

<sup>1</sup>Article 44 was substituted for the original article 44 by Act II of 1975, s. 3.
2Subs. by the Second Proclamation Order No. IV of 1976, w.e.f.

<sup>13-8-76.
3</sup> Subs. by the Second Proclamation Order No. I of 1977,

of order in any area in Bangladesh or validate any sentence passed, punishment inflicted, forfeiture ordered, or other act done in any such area.

47. (1) No law providing for any of the follow- Saving for ing matters shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges, any of the rights guaranteed by this Part-

- (a) the compulsory acquisition, nationalisation or requisition of any property, or the control or management thereof whether temporarily or permanently;
- (b) the compulsory amalgamation of bodies carrying on commercial or other undertakings;
- (c) the extinction, modification, restriction orregulation of rights of directors, managers, agents and officers of any such bodies, or of the voting rights of persons owning shares or stock (in whatever form) therein;
- (d) the extinction, modification, restriction or regulation of rights to search for or win minerals or mineral oil;
- (e) the carrying on by the Government or by a corporation owned, controlled or managed by the Government, of any trade, business, industry or service to the exclusion, complete or partial, of other persons; or
- (f) the extinction, modification, restriction or regulation of any right to property, any right in respect of a profession, occupation, trade or business or the rights of employers employees in any statutory public authority or in any commercial or industrial undertaking;

if Parliament in such law (including, in the case of existing law, by amendment) expressly declares that such provision is made to give effect to any of the. fundamental principles of state policy set out in Part II of this Constitution.

(2) Notwithstanding anything contained in this Constitution the laws specified in the First Schedule

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(including any amendment of any such law) shall continue to have full force and effect, and no provision of any such law, nor anything done or omitted to be done under the authority of such law, shall be deemed void or unlawful on the ground of inconsistency with, or repugnance to, any provision of this Constitution:

'[Provided that nothing in this article shall prevent amendment, modification or repeal of any such law.]

<sup>2</sup>[(2) Notwithstanding anything contained in this Constitution, no law nor any provision thereof providing for detention, prosecution or punishment of any person, who is a member of any armed or defence or auxiliary forces or who is a prisoner of war, for genocide, crimes against humanity or war crimes and other crimes under international law shall be deemed void or unlawful, or ever to have become void or unlawful, on the ground that such law or provision of any such law is inconsistent with, or repugnant to, any of the provisions of this Constitution.]

In applicability of pertain articles.

- <sup>3</sup>[47A. (1) The rights guaranteed under article 31, clauses (1) and (3) of article 35 and article 44 shall not apply to any person to whom a law specified in clause (3) of article 47 applies.
- (2) Notwithstanding anything contained in this Constitution, no person to whom a law specified in clause (3) of article 47 applies shall have the right to move the Supreme Court for any of the remedies under this Constitution.]

<sup>&</sup>lt;sup>1</sup>This proviso was substituted for the original proviso by the Proclamations Order No. I of 1977.

<sup>2</sup>Clause (3) of article 47 was added by Act XV of 1973, s. 2. 3Article 47A was inserted, ibid., s. 3.