THE HUMAN RIGHTS COMMUNIQUÉ

YOUR MONTHLY DOSE ON HUMAN RIGHTS

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INSIDE

BANGLADESH WAR CRIMES: A SCAR ON HUMAN RIGHTS IN NEIGHBOURHOOD

International humanitarian law (IHL), codified after World War II in the Geneva Conventions, establishes rules for the conduct of armed conflicts and authorizes individual criminal liability for violations. IHL is intended to deter and prevent the unnecessary suffering and damage that results from serious IHL violations, commonly called war crimes. The concept of war crimes is a recent one. Before World War II, it was generally accepted that the horrors of war were part of the nature of war, and recorded examples of war crimes go back to Greek and Roman times.

However, Before the twentieth century armies frequently behaved brutally to enemy soldiers and non-combatants alike - and whether there was any punishment for this depended on who eventually won the war. Commanders and politicians usually escaped any punishment for their role in war - or, if they lost, were summarily executed or imprisoned. Justice Vidyanathapuram Rama Ayyar Krishna Iyer was born on 15 November 1914 in Palakkad, Kerala.

He studied law from Madras University and practised law at Thalassery, Kerala. Before being appointed as the judge of the hon'ble Supreme Court of India, Justice Iyer contested elections as an independent candidate and was elected in 1952. He even became a minister of law, justice, irrigation, power, prison and social welfare when Mr. E.M.S. Namboodiripad was the Chief Minister of Kerala. However, he resumed practice after he lost election in 1962.

There was no structured approach to dealing with 'war crimes' or any general agreement that political and military leaders should take criminal responsibility for the acts of their states or their troops. Situation changed thereafter, with increasing awareness, the role of UN and other related conventions there was setting up of Tribunals and intervention of other international bodies which guaranteed a fair trial to the victims of war crime and a sense of justice throughout.

He was the second Islamist to be hanged for atrocities during the 1971 war of independence against Pakistan after Abdul Quader Molla, the fourth-highest ranked leader of the party, was hanged in December 2013. This execution has raised so much hue and cry because Bangladesh went ahead with the hanging despite last-minute pleas from the United Nations, the European Union and human rights organisations to halt the execution. The UN said the trial did not meet "fair international" standards.

This raises a question – Whether the tribunal is a free and fair war crimes tribunal and whether Justice actually prevails with its intervention or is it merely a mockery of the entire system?

When this tribunal was set up to address the issue of impunity for alleged war crimes and other crimes under international law, serious concerns were raised, particularly regarding its statute, which contains several provisions that are incompatible with international law and international fair trial standards.

The International Crimes (Tribunals) Act was drafted in 1973 with some international input and well before the creation of the two ad hoc tribunals for the Former Yugoslavia and Rwanda, whose rulings have since clarified and expanded the body of international criminal law. The Act was later marginally amended in 2009.

The International Crimes Tribunal was established with a controversial amendment to Bangladesh's Constitution in 1973. The amendment provides that a person charged with genocide, crimes against humanity, war crimes or other crimes under international law cannot challenge any law providing for their prosecution and punishment on the grounds that it is inconsistent with any of the provisions of the Constitution. This means the Act cannot be challenged on the basis that it violates basic constitutional rights that apply in other criminal proceedings. The constitutional amendment is fundamentally at odds with the rule of law, which ensures equal treatment of all persons before the law.

The Setting up of this tribunal was a result of the 1971 liberation war. The independence movement in the former East Pakistan, now known as Bangladesh, began in 1971 and was attributed to the concentration of political power in West Pakistan and perceptions in the East of economic exploitation. Rising malcontent and cultural nationalism in the East culminated in a violent crackdown by West Pakistani forces on March 25, 1971, known as Operation Searchlight. All major cities in the East were seized, political and military opposition were eliminated, and foreign journalists were deported.

Almost a thousand pro-liberation intellectuals were systematically executed. Although no systematic or comprehensive accounting was ever done, multiple large-scale mass graves have been uncovered around the country, and the popularly accepted figure within Bangladesh is that up to three million people were killed. The West's army had the support of many of East Pakistan's Islamist parties. It is these collaborators the government wants to try, not the main culprits in the former West Pakistan army by virtue of setting up this tribunal.

War crime prosecutions had become a common phenomenon over the last decade or so across the globe , but in 1973 the people of Bangladesh were taking pioneering steps to prevent impunity for grave atrocities, and setting up of this tribunal was one of them.

The country's Minister for Law declared that the tribunal would be "exemplary for the world community... working with full independence and complete neutrality." Unfortunately, the chasm between rhetoric and reality has proven profound. A growing consensus has emerged that the tribunal's legal and trial processes are grossly deficient. Most of the accused are members of Jamaat-e-Islami, an Islamist group closely aligned with the country's main opposition party. This has compelled many to conclude that the war crimes trials are politically motivated and represent a blatant attempt to weaken Prime Minister Sheikh Hasinsa's electoral opponents. The tribunal's judges have been accused of colluding with the court's prosecutors.

Brazen government interference with the court's deliberations has been extensively documented. Reports of defense counsel and witnesses being harassed, intimidated, and even arrested have become increasingly commonplace. The court's rules of evidence are inconsistent with international standards, skewed heavily against the defense. Although the ICT has issued 10 guilty verdicts to date -- eight of which carry death sentences -- the glaring deficiencies plaguing the proceedings strongly suggest that the accused have been deprived of the most basic requirements of due process.

Deadly riots have accompanied virtually every decision issued by the ICT, as police clash with demonstrators protesting the guilty verdicts.

Instances like sentencing an American prisoner to death after convicting him in absentia for perpetrating crimes against humanity during the country's 1971 war of independence from Pakistan show that what these trials do is see the victors of the Liberation War attempting to crush those who lost the conflict.

Born in bloodshed, Bangladesh seeks a justice long overdue. Regrettably, the very judicial body responsible for delivering that justice instead threatens to further deny it

Contributions are invited for the further issues of the CASIHR newsletter. The last date of submission would be 15th of every month and it can be mailed to us at casihr@rgnul.ac.in.

TRIVIA

- *In 2014, Amnesty International investigated and recorded human rights abuses in 160 countries and territories globally*
- *28 Countries completely prohibit abortion even when life of women is endangered*
- *As per Amnesty International, people in 82% Countries re tortured or ill – treated.*

DAYS OF MONTH

- *World Health Day– 7 April*
- *Natioanl Maritime Day – 5 April*
- *Ambedkar Jayanti – 14 April*
- *World Heritage Day – 18 April*
- *World Earth Day – 22 April*
- *World Books Day – 23 April*
- *Bill of Rights Day – 15 December*

UPCOMING EVENTS

- *Alexis Centre for Human Rights 'Newsletter' – 1 August 2015*
- *Harvard Health and Human Rights Journal – 30 September 2015*
- *Canadian Women Studies on "Woman and Human Rights" – 15 July 2015*
- *International Conference on Human Rights Integration – 15 May 2015*

DID YOU KNOW?

13 April in 1919 was the day when Jallianwala Bagh Massacre, one of the most heinous human rights violations in Indian History was committed in India

"Right to information is a facet of the right of speech and expression as contained in Article 19 (1) (a) of the Constitution. Right to information, thus, indisputably, a fundamental right"

- People's Union for Civil Liberties v. *Union of India* (2004) 2 SCC 476

A GIFT TO INDIAN CITIZEN: THE RIGHT TO INFORMATION ACT, 2005

Introduction

In the first decade of the new millennium we, the citizens of India find a gift of evolution of law and civilization, enlightening the citizen about his right to information. This law enacted as 'The Right to Information Act 2005' brings about a reversal of situation lighting up all that the citizen wanted to see but was not allowed to. It applies to all the three pillars of governance and to the constitutional bodies. This act will set the perspective right but only when the ordinary citizen learns a deft use of the provisions of this act. We, the citizens of India only need to know and exercise our Right to Information in an articulate language in keeping with the spirits of the Act.

"Sunlight" it is said "is the best disinfectant". The right to information is indeed access to this purifying light. An illustrious American President had said that "A nation cannot be both ignorant and free; that never was and never will be." Right to information is one of the crucial institutions of ensuring probity of conduct in society and maintenance of standards in public life.

The knowledge society recognizes information as an integral part of wealth. Every citizen of the country has an equal right to particular information in the official domain and whoever tries to sit on the information and suppress it, quite obviously should be presumed to do it for some ulterior motive. We need a transparent system of access to administration and dissemination information. Even within a short time we see its dramatic effects of this law in dismantling bureaucratic structures. What we need are more and more civil society initiatives to assist the citizen to exercise this right meaningfully and effectively.

A Gift to Indian Citizens-

Covers the whole of India except the state of J&K, all organs of governance in the country obliged to supply information when requested by any citizen, information about private bodies can also be obtained, a unique 'public authority' concept involved. Governance is all about preventing the situation in which people tend to encroach upon the interests of others resulting into a chaos. We, the citizens of India, have a right to know the manner in which we are being governed. Freedom of information is a Fundamental Right of every citizen. Right to Information Act 2005 has bestowed upon the citizen of India a gift shall be cherished by everyone as a citizen friendly law, revolutionary in its content and scope. The act has given a framework in which citizens can request information about governance from any organization in the country, and despite bureaucratic odds, expect to obtain the same.

Summing Up-

The scope of the act is enormous. What is beyond the scope of act is only handful of private organizations which may not be of much significance to the citizens. Barring a few private organizations of the act applies to almost every department/organization that concerns governance in any manner of every activity of life in society and also information related to private organizations. In the promulgation of the act lies answer to a variety of problems the citizens have been facing in their dealings with authorities. Not only this, the mindset of the people and bureaucracy should also change to make governance more transparent thus improving the quality of life in the country. Transparency, the theme around which the Right to Information has been webbed is bound to lead to accountability of the officials exercising the authority of governance. There is tremendous potential of check on corruption. These are the twin objectives of this Act. Transparency leading to accountability and containment of corruption.

[+] The aforesaid article has been authored by Mr. Harshvardhan Tiwari, II year, B.A. LL.B. (Hons.) student at Rajiv Gandhi National University of Law, Punjab.

HUMAN RIGHTS NEWS...

UP TOPS HUMAN RIGHTS VIOLATION LIST

17 April 2014, New Delhi

Uttar Pradesh has topped the list consisting of number of complaints filed with the National Commission of Human Rights against the police department. According to the NHRC, almost 20,000 complaints are filed against the police every year with the commission reporting human rights violation. Haryana and Delhi rank nest on this list, which receive 2,000-2,800 complaints a year. Surprisingly, police in the Jammu & Kashmir and the North-east, where alleged excesses of armed forces are regularly highlighted, fare much better with the number of complaints in single digits.

HUMAN RIGHTS COMMISSION IMPOSES FINE

4 April 2015, Kochi

The state human rights commission of Kochi ordered a circle inspector, to pay compensation of Rs 10,000 to a 60-year-old man who was arrested in an alleged idol theft case. The order came on a complaint filed by a resident. SHRC chairman, Justice J B Koshy ordered for the compensation to be paid in a month and to submit a report at the commission's sitting. SHRC is yet to decide whether to take a department-level action against the CI or not.

HUMAN RIGHTS GROUPS CALL FOR INVESTIGATION

9 April 2015, Andhra Pradesh

Human rights groups in India have called for a full investigation into the deaths of 20 suspected illegal loggers who were killed by police in the southern state of Andhra Pradesh. The activists have questioned that account and accused police of using excessive force on forest workers. The National Human Rights Commission has demanded a detailed report from state authorities, saying the incident involved a "serious violation of human rights". Amnesty International, also, has called for an independent investigation.

NGO ALLEGES RIGHTS VIOLATIONS IN DESTITUTE HOME

23 March 2015, Shimla

Gross violation of human rights of inmates residing at a government-run destitute home in Shimla has been alleged by a local NGO. It claimed that breaking all set norms, a newborn girl of an abused unwed inmate was separated from her mother and shifted to Kids Home in Shimla. It further claimed that last rites of dead inmates were not being performed as per their religious faith. Ajai Srivastava, chairman of the said NGO, stated that information gathered under RTI revealed that the inmates were suffering from different psychological problems but had no access to any psychological counselling. The chairman further demanded a high-level inquiry so that responsibility could be fixed for violation of human rights of the defenceless destitute inmates.

AROUND THE GLOBE...

AZERBAIJAN: RIGHTS DEFENDER CONVICTED

Azerbaijan Court on April 16, 2015 convicted Mr. Rasul Jafarov, leading human right activist and government critic, for six and a half year custodial sentence on the charges of tax evasion, abuse of power, illegal business activities and embezzlement. The conviction is regarded as politically motivated and government's efforts to curb independent voices.

Jafarov is the founder and chairman of Human Rights Club, Independent Human Right protection group. He launched a campaign called Sports for Rights to create awareness regarding politically motivated imprisonment and other Human Right violations in Azerbaijan just before the commencement of European Games. His Outspoken critic on government's effort to curb freedom of media is regarded as a prominent cause of his arrest and hence attracting attention across the world.

MORE THAN 147 DIED IN HENIOUS GARISSA ATTACK

More than 147 people were killed and around 80 injured in a condemnable attack on Garissa University College in northeastern Kenya on April 2, 2015. Al-Qaida-linked Al-Shabaab fighters took the responsibility of the attack, which is considered as the deadliest attack in Kenya since US embassy bombing attack in 1998.

Around 587 students were evacuated by the day long operation lead by the police troops which ended with killing four gunmen. The attack by terrorist was against Christian community and to free muslims.

The attack has been widely condemned by the by world community and termed as barbaric. The United States remains a committed friend of Kenya. U.S. Ambassador to Kenya Robert Godec said the attack once again reinforced the need for all countries and communities to unite in an effort to combat violent extremism.

JOAN BAEZ & AI WEIWEI TO RECEIVE TOP AWARD FROM AMNESTY INTERNATIONAL

Legendary folk singer Joan Baez and world-renowned artist Ai Weiwei – both committed activists – will be the joint recipients

of Amnesty International's Ambassador of Conscience Award for 2015, the human rights organization announced today.

Amnesty International's Ambassador of Conscience Award 2015 has been jointly awarded to legendary folk singer Joan Baez and world-renowned artist Ai Weiwei, both committed activists. The award is the organizations top honour given to those doing exceptional work in Human Rights protection through their work and has been presented in the ceremony held in Berlin on March 21, 2015.

"The Ambassador of Conscience Award is a celebration of those unique individuals who have used their talents to inspire many, many others to take injustice personally. That is why both Joan Baez and Ai Weiwei make such worthy recipients; they are an inspiration to thousands more human rights activists, from across Asia to America and beyond," said Salil Shetty, Secretary General of Amnesty International.

UN CALL FOR CEASE FIRE FOLLOWED BY INTENSE BOMBING AND AL – QAEDA ATTACKS IN YEMEN

UN Secretary General Ban Ki-moon called for international action to end the Saudi-led air campaign on Houthi rebels as intense bombing hit Yemen again and Al-Qaeda seized more ground in the chaos. Air strikes on the southern port city of Aden killed a rebel, while at least 76 other people died in bombing and fighting around Aden and Taez, officials said.

The United Nations says hundreds of people have died and thousands of families fled their homes in the war, which has also killed six Saudi security personnel in border skirmishes.

Ban called for an immediate ceasefire, saying the country was "in flames" and all sides must return to political negotiations. Saudi Arabia's regional rival, Iran, presented a four-point peace plan Friday to Ban after its foreign minister spoke to the UN chief late Thursday. The plan calls for a ceasefire and immediate end to all foreign military attacks, the urgent delivery of humanitarian and medical aid, a resumption of political talks and the formation of a national unity government.

GOVERNMENT & INTERNATIONAL COMMUNITY TURNING THEIR BACK ON WOMEN HUMAN RIGHTS DEFENDERS IN AFGHANISTAN

Amnesty International in its report said that women human rights defenders in Afghanistan who face mounting violence - including threats, sexual assault and assassinations- are being abandoned by their own government despite the significant gains they have fought to achieve. Rights defenders have suffered car bombings, grenade attacks on homes, killing of family members and targeted assassinations. Many continue their work despite suffering multiple attacks, in the full knowledge that no action will be taken against the perpetrators.

There has been significant international investment to support Afghan women, including efforts to strengthen women's rights. But too much of it has been piecemeal and ad hoc, and much of the aid money is drying up.

While Taliban are responsible for the majority of attacks against women defenders, government officials or powerful local commanders with the authorities' backing are increasingly implicated in violence and threats against women

Amnesty International's investigation found that a lack of political will on the part of Afghan authorities means that government bodies and officials charged with protecting women are under-resourced and lack the support to carry out their work.

The European Union Plus countries (EU plus additional diplomatic missions) has recently launched a programme that will, once operational, offer emergency protection and ongoing monitoring for rights defenders. However, the strategy has yet to be tested, and it remains to be seen how successfully it will be implemented.

DR. B.R. AMBEDKAR

Bhimrao Ramji Ambedkar was born on 14 April 1891. Popularly known as Babsaheb Ambedkar, he was an Indian Jurist, politician and social reformer who campaigned for the upliftment of Dalit in India. He was independent India's first Law Minister and the premier architect of the Constitution of India. Born in Mahu, Madhya Pradesh B.R. Ambedkar, completed his law and practiced at Mumbai Bar. He was strictly against untouchability and discrimination of dalits and led fierce campaign. Ambedkar came to light when in 1932 he demanded separate electorate for dalits and accorded Poona Pact of 1932. His major contribution, nevertheless was framing of the Indian Constitution. Chairman of the Drafting Committee, Ambedkar meticulously and diligently analysed every suggestion put foreward at the assembly and ensured that a Constitution catering to the needs and aspirations of people is framed. Owing to his ill-health, Ambedkar, passed away on 6 December 1956.

CROATIA V. SERBIA

The Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia) The Republic of Croatia filed the suit titled The Application of the Convention on the Prevention and Punishment of the Crime of Genocide against the Federal Republic of Yugoslavia on July 2, 1999, citing Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide. However with the transformation of the Federal Republic of Yugoslavia into Serbia and Montenegro; along with the dissolution of the latter in 2006, and with Serbia being considered its legal successor, the case came to be popularly known as *Croatia* v. *Serbia.*

The Republic of Serbia counter-filed a genocide lawsuit against the Republic of Croatia on January 4, 2010. The application encompassed people who went missing, and those who were killed, those finding refuge, and those who were expelled under the guise of all kinds of military actions and concentration camps with the historical account of World War II persecution of Serbs committed by the Independent State of Croatia, puppet state of Nazi Germany. Both applications had a financial aspect, seeking compensation of damages.

ISSUE RAISED

1) Issues of jurisdiction and admissibility and the positions of the Parties with regard thereto.
2) The scope of jurisdiction under Article IX of the Genocide Convention.
3) Serbia's objection to jurisdiction
   a. Whether provisions of the Convention are retroactive
   b. Article 10 (2) of the ILC Articles on State Responsibility
   c. Whether the Federal Republic of Yugoslavia succeed to the State Responsibility of Socialist Federal Republic of Yugoslavia

JUDGMENT

On February 3, 2015, the International Court of Justice dismissed both the cases after ruling that neither Serbia nor Croatia furnished sufficient evidence to prove the commission of genocide. The UN's highest court remarked that the atrocities committed by both the sides were not carried out with "genocidal intent," i.e. with the aim of destroying the Croats or the Serbs as ethnic groups, which is a necessary condition to qualify a killing as "genocide". In the same light, the ICJ dismissed the Croatian claim with 15 votes in favour, while Judge Cancado of Trinidad and Budimir Vukas, Croatia's "ad hoc" representative, were against. Serbia's counterclaim was rejected unanimously. The ICJ verdict was binding and could not be appealed.

ANALYSIS

The Court displayed a commendable degree of both restraint and consensus. The Court's general approach was entirely consistent with its 2007 *Bosnian Genocide* judgment: repeatedly finding that acts that qualified as the *actus reus* of genocide were committed, but without the necessary *mens rea* (genocidal intent), so that there was no genocide, while the Court had no jurisdiction to determine state responsibility for any other internationally wrongful act. While there are some interesting paragraphs regarding the assessment of evidence, but the Court missed out on a few crucial aspects, for example the question of state succession to responsibility (i.e. whether Serbia could have succeeded to the responsibility for a wrongful act of its predecessor state, the SFRY), or the question of the attribution to Serbia of the conduct of the Croatian Serb separatists by virtue of the relevant control tests.

Although the International Court of Justice took 16 years to decide that neither Serbia nor Croatia have a case against each other, the judgment is flawed for several reasons. Firstly, it reminds us that the ICJ is primarily a judicial organ (part of the United Nations system) but that it is sometimes asked to rule on what are primarily unresolved political issues between States (e.g. Kosovo's Declaration of Independence). Furthermore, decisions of the ICJ have no binding force except between the parties and that too, only for that case. Secondly, it reminds us of the politically charged nature of the definition of genocide even in a court of law, owing to the Convention on the Prevention and Punishment of Genocide (1948) which entails a particular definition of genocide which is quite narrow. In the present ICJ case, both Serbia and Croatia have sought to expand this definition to cover crimes which in some cases have been characterised as genocidal acts, possibly of ethnic cleansing, but not genocide per se.

In essence, the ruling of the ICJ that neither Serbia's claim nor Croatia's counterclaim constitute genocide, is not so much evidence of the court's weakness, as rather symptomatic of the difficulty inherent in the Genocide Convention itself. This is principally due to the very narrow definition of genocide as requiring proof of specific intent to destroy a religious, national, ethnical or racial group in whole, or in part. The ICJ has found no such specific intent here. Ultimately this case shows the politically motivated nature of the claims and counterclaims by both Serbia and Croatia, which cannot be upheld legally.

[+] *Croatia* v. *Serbia* General List No. 118, International Court of Justice (ICJ)