

# Of S. Asian despots

Although universal justice and an across-the-board accountability is still a long way off, it is nevertheless hard to identify a general bias and/or a state-specific prejudice in the ongoing pursuit of the felons who transgressed the norms of civilised behaviour while in power. Leading Western leaders standing trials justifying their "war crimes" is not likely in the near future either, but the ramifications of recent legal developments in the international arena will definitely be far reaching.

The arm of the law is growing longer and the world smaller for national leaders and others accused of atrocities. A strong message sent out to would-be vendors of evil is that justice has crossed national frontiers and has come firmly to rest in the territory of borderless international legalisms. To escape the legal course of your conduct is no longer easy if not outright impossible. The era of impunity is being replaced by a new phase of international law and justice.

There seems to be a consensus that the following events [not in chronological order] are important milestones in bringing the perpetrators of crimes against humanity at the highest levels, to justice. The very fact that serious efforts have been [and are being] made to bring these merciless individuals to justice may [hopefully] help to discourage dictators the world over from feeling that they can rule with impunity and fear no consequences. That would be a mighty achievement.

On June 28, 2001, the man responsible for so much suffering in the Balkans, Slobodan Milosevic, the former Yugoslav President, was handed over to an international tribunal. He was finally in a court of justice to face the consequences of his horrifying sins. His brief appearance before the tribunal was extraordinary by any account and telecast live across the planet. This was the first time that a former head of state was produced before an international court. In a world where national leaders have routinely escaped punishment for crimes ranging from corruption to genocide, Milosevic's indictment in The Hague was no doubt a historic event.

February 12, 2003, the Supreme Court of Belgium declared that Ariel Sharon, the sitting prime minister of Israel, can be tried for genocide in Belgium once he has left office. The historic judgment opens the way for survivors of the 1982 massacre of Palestinian refugees in Beirut to press their case against the Likud leader the moment he loses his immunity from prosecution. The ruling, while blocking the case against Mr. Sharon, did allow a Belgian court to hear the case against Mr. Sharon's co-defendant, Amos Yaron, the former Israeli Army chief of staff. In its summary, the high court said investigations and a trial could proceed even if a suspect was not physically present in Belgium. Several cases involving foreign leaders, past and present, had been on hold for almost a year, awaiting the high court's decision.

Jean Kambanda, a former Rwandan prime minister, went to jail for life for his role in the 1994 genocide, mostly of ethnic Tutsi.

The example of Augusto Pinochet, the former Chilean strongman, who spent a year and a half in British custody on a Spanish warrant before being allowed to return home, where his legal problems continue, must be a matter of some solace for his victims.

Hissene Habre, the former leader of Chad, was under arrest in Senegal until a new government turned him loose in 2000, but his fate remains uncertain.

Several dozen senior political leaders and high-ranking military officials, across the ethnic/religious spectrum (including Muslims,) are behind bars in the Netherlands facing a range of war crime charges at The Hague for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. Intensive efforts are underway to apprehend Radovan Karadzic and Ratko Mladic, the two topping the list of most-wanted war criminals. Others may hopefully soon get their day in court too. Peru is demanding that the Japanese extradite its former president, Alberto Fujimori.

Preparations are underway for the setting up of an international tribunal under the auspices of the United Nations to try leaders of the now defunct Khmer Rouge for their role in the deaths of over one million Cambodian citizens between 1975 and 1979.

A similar international tribunal has been recommended by the UN to try Indonesian military and militia leaders for their role in the violence in East Timor during the formerly occupied country's referendum on independence in 1999. A human rights panel established in Jakarta has found sufficient evidence to charge key Indonesian military officials with a host of crimes including allegations of torture, forced evacuation, kidnapping, rape, and mass killings.

Academic discussion of the phenomenon aside, a question arises what immediate benefits we in third world countries like Pakistan and India, with a long record of not-so-benign leaders, can draw from these developments to put our own house in order and to lay hands on those who have been unapproachable so far?

The first four days of November 1984 were the bloodiest in Delhi's history since 1947, says a highly acclaimed report "The Quest for Justice", compiled jointly by Vrinda Grover, a scholar and activist, and her associate, Kajal Bharadwaj. According to official figures, 2,733 Sikhs were brutally killed, burnt and slaughtered in the Indian capital within 72 hours. Countless others were injured, women raped and hundreds of homes and shops looted and destroyed.

Based on substantial documented testimony of both victims and other citizens of Delhi, the writers conclude, it was not a riot, but a massacre, a mass murder. "There was no large scale rioting between Hindu and Sikh communities. Actually, recorded testimony points to the fact that mobs were assigned the task of 'systematically eliminating and looting Sikh families'." This once again confirms the findings of "Who are the guilty? - Report of a joint inquiry into the causes and impact of the anti-Sikh violence in Delhi from 31 October to 10 November, 1984: PUCL-PUDR", deemed the most authentic account of the gory events.

Most impartial observers would agree that by substituting the word Muslim for Sikh, "The Quest for Justice" becomes equally valid for the recent pogrom in Gujarat. The indiscriminate killings in Gujarat were meticulously planned with computer printouts pointing out addresses of Muslims, and faultlessly executed with surgical precision, openly facilitated by the police and the government machinery.

Calculated butchery of a hapless

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minority by a majority community cannot be termed as "communal riots", in particular when almost all the victims belong to the former group. In a civilized society, a community cannot be held responsible for the action of individuals, or even organizations coming from that community. Gujarati Muslims were not responsible for what happened in Godhra, if someone insinuates that. As the renowned columnist Kuldip Nayar puts it, "The instigation of communal frenzy and the commission of mass murder cannot be ignored or excused. The persons who killed, burned or looted as well as the minds that engineered or conspired to arrange these events must be punished."

Similarly, the traumatic secession of East Pakistan is a dark and very tragic chapter of Pakistan's history. To date, there has been no serious attempt to nab and punish those who were responsible for the flagrant human rights abuses in the eastern wing of Pakistan. Gross atrocities committed against our Bengali brethren are war crimes by any definition of the term. Many of the main accused are still alive and can be put on trial for their alleged role. This is long overdue.

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In addition to that, there are scores of Pakistanis who were kidnapped, tortured, extra-judicially executed, jailed and abused on direct/indirect orders of the top leadership of Pakistan. The Pakistani judicial machinery has hitherto failed to offer any substantial relief to the victims. It is bitterly painful to accede that there are slim chances that our courts would ever be able to impart justice to the sufferers of the [past and present] despots, especially when Ziaul Haq and Altaf Hussain respectively stand for the worst type of state-sponsored and mafia-type terror in our region.

Pakistani generals standing trial in Pakistan is almost out of the question for foreseeable future. To get Benazir, Nawaz Sharif or Altaf Hussain extradited from their safe havens and held liable for their misdeeds in Pakistan is a difficult task. Likewise, tragically, Narendra Modi, the incumbent Bharatiya Janata Party (BJP) chief minister of Gujarat, the top leadership of Vishwa Hindu Parishad (VHP) and the Rashtriya Swayamsewak Sangh (RSS), and those who masterminded the massacre of Sikhs in 1984, are more or less beyond the reach of the Indian legal system.

At the same time finding proofs for the enormities of these obnoxious leaders and/or litigants willing to pursue their cases abroad cannot be a problem.

Why shouldn't we take some of the most gruesome cases to Belgium (or to any other EU-member country) and let justice take its course? The doctrine of "command responsibility", if not the exact chain of command, ought to be enough to implicate the aforementioned "leaders" for the heinous crimes committed against citizens of our countries.

The wheels of justice must catch up with them by now. Human rights attorneys should therefore thoroughly probe the feasibility/possibility of filing at the least civil suits, which are normally easier to initiate and sustain than the criminal ones, somewhere in the Western world on behalf of all those who unlawfully and maliciously suffered because of our self-styled leaders. A good lead is the O J Simpson trial where he was acquitted for homicide by the criminal court whereas the jury in the following civil suit fined him heavily on the same charges.

Regardless of the outcome of this exercise, the process will certainly make the life of respondents a bit less pleasant, expose their true faces and limit their mobility. It would also

the "piousness" they are so adept at feigning, spoil their political careers for a long time to come, consequently incapacitating them from further crimes.

While we're on the subject, let's extend it bit further. Not long ago, a federal judge in Argentina probing the alleged involvement of 11 former military personnel in the 1978 murder-kidnapping of a couple and their baby, declared unconstitutional two laws shielding hundreds of military officials from prosecution for human rights abuses.

As recently as February 25, 2003, a Chilean judge indicted five senior officers in the dreaded Chilean secret police during Augusto Pinochet's dictatorship for plotting the 1974 murder of a dissident army chief in a move hailed as historic by human rights groups -- something inconceivable in Chile 10 years ago.

Democratic governments that take over from the military issue [read are forced] several blanket amnesties. It can be persuasively argued that human rights violation cannot be covered by such [spiteful] indemnifications. If the constitution can be mutilated in the name of the "supreme national interest" and/or validated under the cover of the "doctrine of necessity", then it could/should be resurrected as well on the basis of the same principles. So-called amnesties, weird constitutional covers and bizarre "LFOs" can be conveniently brushed off exactly as confession under duress has no legal value.

If the sentencing of two Rwandan nuns to long jail terms for their part in the killing of Tutsis in their country in 1994 was an experiment in the exercise of international law against genocide and mayhem, the arrest and extradition of Milosevic to The Hague, and lately the ruling by the Belgian Supreme Court, are ample proofs that now no individual committing acts of manifest murder and other means of persecution is safe from the long arms of justice.

In short, there is a trend -- whether justice is pursued by international tribunals or under national laws -- that despots should not be let off the hook anymore. Therefore it would be a sheer tragedy if we fail to make good use of the emerging understanding that some crimes are so awful that the accused should have no place to hide.

South Asians are patiently waiting for the day when the region's tyrants too will be made to pay for their savagery and would love to see them punished to the legal maximum. No one is above the law; it should be clear to all and sundry by now.

Footnote:

Establishment of the International Criminal Court (ICC) is indeed a step in the right direction, but its jurisdiction will only extend to crimes committed after the Statute of the International Criminal Court is in place. Then, due to adamant refusal of the US to accept the jurisdiction of ICC, it would be premature to have an opinion about its final shape or credibility and impact.

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