

Prisoners at Guantanamo and elsewhere

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Human Rights

The protection of individual rights is one of the pillars of the United States Constitution and due process is the means by which this protection is effectively guaranteed. I have not found a better definition of due process than the one given approximately eight hundred years ago in the 39th article of the Magna Carta (1215) that "No freeman shall be taken or (and) imprisoned or disseised or exiled or in any way destroyed... except by the law of the land." The Fifth Amendment to the US federal constitution, ratified in 1791 states, "No person shall... be deprived of life, liberty, or property, without due process of law." It must be mentioned here that it took the United States another seventy-eight years, a civil war, the assassination of a president (Abraham Lincoln) and a lot of courage on the part of its reform-minded legislators to extend this fundamental right to the people of other races.

In order to invalidate the ignominious Black Codes passed by many of the southern states, which severely restricted the due process rights of the newly-freed slaves, the Congress not only passed the Civil Rights Act in 1866 -- overriding the veto exercised by President Andrew Johnson, who by the way, was the first US president against whom the impeachment procedures were initiated, -- but also ratified the Fourteenth Amendment in 1868 bringing the southern states under federally enforceable due process restraint on their legislative and procedural activities.

The Universal Declaration of Human Rights, which was adopted by the General Assembly of the United Nations in December 1948, would never have been completed and accepted as a Universal Bill of Rights by the world community if it were not for the active support and co-operation of the United States. The Declaration reaffirmed "rights

such as life, liberty, and security of the person; freedom from arbitrary arrest, detention, or exile; right to a fair and public hearing by an independent and impartial tribunal". Article 5 of the Declaration clearly states, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

Until recently, from a legal point of view, there were few countries in the world, where a person's individual rights were better protected than in the United States. The Americans were very proud of this fact -- and quite rightly so. The United States government, is also the self-appointed guardian of human rights all across the globe. In this capacity, it keeps a careful watch on all violations of human rights everywhere in the world and monitors them regularly. If it is comforting to know that the most powerful nation on earth spends so much time, money and human resources to monitor human rights violations everywhere in the world, it inevitably follows that in the first place it protects human rights in its own sphere of influence with equal zeal. Now the question is: Does it really practise what it preaches? The question is even more relevant particularly because of its being a "very Christian nation"

This is neither the place nor the time to discuss whether terrorism can be defeated purely by military means (massive bombing and indiscriminate killing) without addressing the root causes which engender terrorism. However, here, in the context of this article it is relevant to examine the way the United States has treated and is treating the prisoners (some of them as young as 13) at an obscure naval base at Guantanamo Bay in Cuba. Actually, when the first photographs of a number of hooded and shackled (both wrists and ankles) prisoners at Guantanamo were released, people wondered what Cuba (no friend of

Chaklader Mahboob-ul Alam the United States government) had to do with the prisoners captured by the United States in a remote place called Afghanistan.

Although Guantanamo may be considered as an historical aberration, it lends proof to the fact that the United States had nurtured imperial inclinations as early as the end of the nineteenth century. Cuba was discovered by Christopher Columbus during his first voyage in 1492. Very soon the original inhabitants of Cuba (the so-called American Indians) were enslaved by the Spanish settlers under the "encomienda" system. In the eighteenth century, increasing sugar cane cultivation induced the settlers to engage in African slave trade.

By the middle of the nineteenth century, the settler community, which had become enormously rich because of the flourishing slave trade and the success in sugar industry, started claiming political autonomy from the metropolis. Spain responded by increasing taxes and dispatching a sizeable army to the island. Soon the first war of independence broke out. It was at this time that the United States saw its opportunity and started showing increasing interest in the political affairs of the island. It even made several unsuccessful bids to purchase it. On and off the hostilities between Spain and the settlers continued until 1898, when the United States openly entered the war on the side of the Cubans "to liberate" them, (does it ring a bell?) and militarily occupied Cuba.

The Spanish American war of 1898 in Cuba virtually brought the Spanish empire to an end and gave rise to the new American empire, which took control of not only Cuba but also Puerto Rico and the Philippines. Although the Treaty of Paris (1898), in theory granted independence to Cuba, under the Platt amendment (1901), the US retained

the right to oversee Cuban affairs and to establish a naval station at Guantanamo Bay. Thus the American base at Guantanamo came into existence and after a hundred years it is still there. (I wonder how many Guantanos will be established in Afghanistan and Iraq.)

Now eighteen months after the prisoners were forcibly taken from Afghanistan to Guantanamo, their legal status, i.e., no status, remains exactly the same. Recently a court in Washington has ruled that the inmates of the cages in Guantanamo have no legal rights in the United States because Guantanamo is in Cuba and not located in the United States of America. Cuba has no authority over the base. These prisoners exist in a kind of legal limbo. Therefore, according to the US administration, the prisoners at Guantanamo are beyond the reach of any court and so effectively beyond law. They have no rights. The Bush administration has denied them the status of prisoners of war. It has invented a new term called "unlawful combatants" to deny them the protection of the Geneva conventions. Now several questions come to my mind: If Article 6 of the Universal Declaration of Human Rights says, "Everyone has the right to recognition everywhere as a person before the law", does this mean to say that the US does not consider the prisoners as persons or human beings? If they have no legal rights, what law allows them to be held as prisoners? If Article 10 of the same Declaration guarantees everyone "full equality to a fair, and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations, why the prisoners have not been given during this long period any access to "lawyers or any semblance of due process"? Actually during this long period of eighteen months they have not even been given

access to their governments and families.

As far as the human rights abuses are concerned, besides the Guantanamo aberration, there are other disturbing signs in the United States. Some of the provisions of the Patriot Act, for example the prosecutor's power to hold people (often of specific ethnic or religious groups) indefinitely without charges under the guise of "material witnesses" go against the long-cherished principle of due process. The Pentagon's surveillance programme called Total Information Awareness (now renamed as Terrorist Information Awareness) raises the spectre of bygone days of McCarthyism. According to newspaper reports, Bush administration is transferring prisoners to other countries, often with little respect for due process, to conduct interrogations.

I wrote in an earlier paragraph that it was comforting for many ordinary people across the world that the US had appointed itself as the global protector of Human Rights. But now that we have seen that it violates Human Rights on a massive scale whenever it suits its purpose and that it has appointed itself to the sinister position of judge, jury and the executioner with the right to launch preventive wars, it is time to reassess the situation. In the long run, these arbitrary and inhuman acts do not really advance the cause of fighting terrorism, but they definitely undo the achievements made in the field of Human Rights with so much hard work and sacrifice from so many people over such a long period of time.

As Amnesty International has recently pointed out, "What would have been an outrage in Western countries during the Cold War--torture, detention without trial, truncated justice--is readily accepted in some countries today for some people". But it seems that the United States, intoxicated with power, has decided to ignore all this.