

FOCUS

The State of Universal Human Rights

UN Celebrates 50th Anniversary of the Declaration

by Barrister Harun ur Rashid

It appears that the countries are embroiled in contradictions, where they espouse human rights but don't honour them. Unless the civil society undertakes the task of voicing the rights of liberty, equality and fraternity to all regardless of cultural, political and ethnic background, there will be no guarantee to uphold the virtues and rights of humanity.

THE adoption of the Universal Declaration of Human Rights by the UN celebrates its 50th birthday this year on 10 December. Although it is a Declaration and not a Convention or a Treaty of legally binding character, its moral authority is so powerful that no State can afford to breach the fundamental freedoms of individuals enshrined in the Declaration. In 1993, 105 countries re-affirmed their commitments to Universal Human Rights as enshrined within the Declaration at the World Conference on Human Rights in Vienna. One may argue that the Declaration constitutes now a part of customary international law. Many countries have incorporated the fundamental freedoms of the Declaration in their national constitutions. I would argue that the Declaration has since become an international bench mark by which the conduct of the governments is judged.

Background

After the Second World War, the United Nations was set up by the victors. Under the UN Charter, the international community of nations recognised that all members of the human family have equal inalienable rights. The UN Charter will promote "universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language and religion."

The UN Charter provided the foundation of the Declaration. The UN Commission of Human Rights was then entrusted with the task of the preparation of an International Bill of Rights in statement form with the prospect of later adding binding treaties. Mrs. Eleanor Roosevelt, the Chair of the Commission sought "a common standard of achievement for all peoples and all nations." The Declaration was adopted and proclaimed by General Assembly Resolution 217 A (111) of

December 1948; 48 States voted in favour of the Declaration, none against with 8 abstentions. It was the first time that the community of nations had proclaimed International Bill of Rights for the peoples of the world.

The Declaration consists of 30 Articles which touch upon the protection of a person's inherent dignity and certain inalienable rights. Article 1 which lays down the philosophy upon which the Declaration is based reads: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." Article 3 is the corner-stone of the Declaration and proclaims the right to life, liberty and security of person. When the Declaration was adopted, the General Assembly of the UN recommended to governments that the text of the Declaration be distributed in schools and other educational institutions. This Declaration exists in 80 languages. In 1950, the General Assembly invited all States and interested organisations to observe 10 December, the anniversary of the adoption of the Declaration, as "Human Rights Day".

The Declaration led to the preparation of two Covenants—one on Economic, Social and Cultural Rights and the other, on Civil and Political Rights, and the two Covenants were adopted in 1966 by the General Assembly of the UN. Both the covenants came into force in 1976. The Covenant on Economic, Social and Cultural Rights comprises of 31 Articles while the other contains 53 Articles. The States—Parties to the Covenants are legally obliged to comply with the responsibilities in terms of the Covenants. There is a growing

tendency for the UN States and non-governmental organisations to refer to the Declaration in preparing documents in the field of human rights. In 50 years, more than 50 international human rights treaties added legal force to the rights and freedoms set out in the Declaration.

On the 50th anniversary of the Declaration, the question that we should be asking ourselves is: have we made any progress since its inception and how are the countries honouring their commitments as signatories? The simple truth is that human rights are a mine-field of complexities for countries, specially for developing countries where endemic poverty exists among the majority of the populations. Many industrialised countries are reported to be in breach of the human rights and Amnesty International's annual report will indicate this fact. Political oppression, torture, solitary confinement for political beliefs are some of the methods used by the governments nullifying the sacred deeds of faith, trust, nobility, intelligence, courage and compassion towards their nationals.

Rights of Individuals for Reporting to the UN

The UN Commission on Human Rights monitors the conduct of all States in respect of protection of human rights. The Commission foresees that grievances of violation of human rights from individuals would come to the UN Commission. The UN procedures for

presenting grievances/communication from individuals have been widened in scope over the years.

In terms of a resolution (1503) in 1970 of the Economic and Social Council of the UN, individuals can communicate relating to violations of human rights and fundamental freedoms to the UN Human Rights Centre and these communications are provided to the members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities for consideration. The Sub-Commission in turn refers the communications to the Commission on Human Rights if the alleged violation of human rights appears to be a consistent pattern in the country. It may be noted that the grievances from any individual must show that they are inconsistent with the principles of the UN Charter, the Universal Declaration of Human Rights and other applicable treaties and conventions.

Third World's Views

It may be recalled that in 1948 the number of member-states of the UN was very small (less than 60 States) while at present the number is 185. There is a view in some of the developing countries that their inputs and perspective were not considered when the Declaration was prepared and adopted.

The very fact that the adoption of the Covenants took 18 years after the Declaration is a testimony to the divergence of opinions among member-states on what constitutes "human rights and what rights

would be incorporated in the Covenants. There are two polarising perspectives emerging as to what constitutes "human rights". The Western approach for human rights holds to the belief that political freedom (right to vote and holding elections) is the most important.

While the Third World do not totally share with this view and argue that political freedom is meaningless to people who have no economic security (food, shelter and employment). The question arises: whether the right to vote is more important than the right to food? What is the value of political freedom to an individual who has an empty stomach? These are anxious questions which have been debated in many UN forums.

It is acknowledged that the translation of the Declaration's message into everyone's reality is far from having been accomplished. The people of the Third World are being deprived of fundamental rights, such as, right to live, right to work and right to adequate health facilities and there is a growing view in the Third World that the deprivations are caused by the policies and systems introduced by the rich countries.

The dynamics of world-economy is in the hands of the rich countries. The word free market is imperfect and unfair, to say the least. This is not to criticise free markets. Markets are an arrangement between people and this arrangement is inequitable and unjust. The prices of the exportable commodities of the Third World are

determined in the capitals of the rich countries and accessibility of the commodities to their markets are severely restricted.

The major international financial institutions—International Monetary Fund (IMF) and the World Bank—are controlled by the industrialised countries. There is a view that the chief objective of IMF and the World Bank is to protect and preserve their economic interests. IMF's standard prescription is for balanced budgets, cutting expenditures and raising revenues. Stringency imposed by IMF's prescription magnifies the problems of the Third World in their efforts to alleviate poverty leading to the denial of human rights. Recent IMF's prescriptions to Indonesia led to political problems. Malaysia is putting in place its capital control policy against the policy of IMF. World Bank's doses of structure adjustments for Third World led to skyrocketing of prices of basic essentials (fertiliser, fuel), the consequences of which were severely felt by ordinary people giving rise to social tension and political instability in the country.

It was reported sometime ago that Prime Minister Mahathir Mohammed of Malaysia raised the question of the review of Universal Declaration of Human Rights in the backdrop of financial crisis in South East Asia. The thought on everyone's mind in the Third World is that the rich countries value political freedom over poverty and hunger while the rich countries consider political freedom would bring an end to poverty and hunger. They strengthen their position by citing Third world eminent economist Nobel Laureate Amartya Sen's view that in a democratic country, famine rarely occurs.

It can be argued that certain fundamental rights consistent with human dignity should be guaranteed to all persons irrespective of the status of the individuals. All individuals—rich or poor—are equal and should enjoy freedom, justice and fairness. These concepts are universal and know no boundaries. It is imperative all member-states should recognise that the protection of the fundamental rights of the individuals is a part of good governance and any violation of human rights is a legitimate concern of the international community.

Bangladesh people experienced massive violations of human rights and fundamental freedoms during the liberation war in 1971. Furthermore the

The Human Rights Debate

T Ananthachari writes from New Delhi

The important realisation that is dawning on many is that the Police, structured and regulated as they are today, are neither what the Britishers left behind nor is it what would suit today's needs.

T HE police in India, notwithstanding the periodic criticism about the manner of its functioning should be complimented for shouldering the type of responsibilities which very few other Police Forces in the world can boast of. It has also to be conceded that, given the type of socio-political setting in which they are required to function, they have done a reasonable job of the tasks entrusted to them. This is not to say that they are anywhere near what one would expect of an ideal Police. Among the strengths of the police in our country are its commitment to national integrity and security and a ready willingness to introspect and look inwards to ponder over the various shortcomings which surface from time to time.

It is in this context that one should take note of the conscious efforts made by the various State Police organisations to look back and take stock of their performance since independence. The important realisation that is dawning on many is that the Police, structured and regulated as they are today, are neither what the Britishers left behind nor is it what would suit today's needs. The reasons for this unfortunate situation are many—some internal to the police administration and many, external and over which the police have very little control.

These and many other relevant factors came to fore in a recent panel discussion organised by the Delhi Police on the occasion of the Police Martyr's day. The manner in which the subject was titled "Balancing between Human Rights and Law Enforcement" itself gave room for considerable thinking, controversy and debate. After all 'Human Rights' are no figment of anyone's imagination or wishful thinking. It is clearly enshrined in the Constitution and other criminal laws of the country.

Therefore, if there is need for 'balancing' it would automatically mean that the constitutional provisions are not practical in terms of the Indian conditions. Fortunately, none present subscribed to such a proposition even though a view was expressed that the Constitution has provided for more than what the country could chew. It was left to an eminent lawyer, who was part of the diaspora, to bring home the real problem behind 'human rights and law enforcement'. He rightly directed everyone's attention to the maladies of the 'criminal justice system' itself and pointed out that the system would be effective only to the extent the police and judiciary developed mutual respect and appreciation of each other's role and difficulties. Unfortunately, as was pointed out by the speaker, at present this spirit is lacking.

It transpired from the presentations made in the course of the debate, there is a strong

overwhelming majority of people of Bangladesh are the poorest of the poor. (Bangladesh falls into the UN category of a Least Developed Country). Poverty denies many people of Bangladesh the basic human rights, such as right to work, right to safe drinking water, primary health care, clothes and shelter. It is debatable whether political rights precede economic rights in this situation of insulating poverty.

The present system of economic globalisation controlled and regulated by the rich countries reinforces the tendency of free markets to make the rich richer and the poor poorer in the Third World. If the international community is serious about the protection of human rights, massive foreign aid coupled with debt relief to third World is imperative. To put the matter in proper perspective it is noted that the cost of a single fighter plane or a warship carrier could eliminate illiteracy of the children of the entire Third World.

I would argue that the right to life, liberty and equality is humankind's birth right and cannot be alienated and the leaders of the rich industrialised countries should ensure that economic globalisation exists to serve the people of the world, rather than people of Third World becoming victims to the economic globalisation. At the same time the governments of the developing countries should be democratic, open and accountable to the Parliament and to the people.

Conclusion

It appears that the countries are embroiled in contradictions, where they espouse human rights but don't honour them. Unless the civil society undertakes the task of voicing the rights of liberty, equality and fraternity to all regardless of cultural, political and ethnic background, there will be no guarantee to uphold the virtues and rights of humanity.

At the 50th anniversary of the adoption of the Declaration by the UN what is required is the commitment to humanism by the leaders of all countries. Let me conclude by quoting French political philosopher Montesquieu: "The virtues exhibited are always less what one owes to others than what one owes oneself."

The writer is former Ambassador of Bangladesh to the UN in Geneva

The Last Straw: Curtains on Pinochet

For Britain, which way the Pinochet decision goes depends, to a large extent, on what value it places on maintaining cordial relations with Chile, which has been a big buyer of arms from the UK. Chile and Pinochet himself, as Commander in Chief, was a regular buyer of arms from Britain.

the countries to external embarrassment and internal divisions and discord. In other words, it is the balancing of the just cause versus the mutually beneficial one. Britain, US, Chile, even Spain, all are facing some aspects of this dilemma.

All this shall be further elucidated. For Britain, which way the Pinochet decision goes depends, to a large extent, on what value it places on maintaining cordial relations with Chile, which has been a big buyer of arms from the UK. Chile and Pinochet himself, as Commander in Chief, was a regular buyer of arms from Britain. Sales now average only about 1 million pounds (\$1.65 million) a year. And already Chile has cancelled a trip to inspect two frigates, which Britain's Royal Navy wants to sell. The US too, has been working towards a lucrative defense contract with Chile, not least a possible \$600 million deal to renovate Chile's derelict Jet fighter fleet.

This can colour how the US influences its British cousin: also, apart from its lucrative arms deals with the present-day Chilean government, the Americans have had a less than inopportune role to play in Pinochet's past.

As a result, he said, US strongly supported prosecution in both countries by international war crimes tribunals. However, many Chileans believe that in spite of being a democracy with the theoretical possibility of containing within itself institutions like war crimes tribunals, and even something like a Truth Commission to move at least a moral process of accountability. Chile's present government does not have either the inclination nor the political or moral strength to bring to justice war criminals. And many say that the concerted attempt has been more towards a mass and self-induced amnesia. One of these people is Ariel Dorfman.

In other words, its their problem! Rubin contrasted the situation in Chile, which is a democracy where Pinochet's

man, the Chilean writer and playwright in exile. A film based on his play, "Death and the Maiden" deals with the idea of how important it is to the victims to bring the perpetrator of the crime to some sort of public accounting and demonstration of repentance, for the process of reconciliation and healing to start. Just pushing the memory away as if it didn't happen and get on with the national or personal life is wrong, because it merely suppresses hurtful memories, which fester and can erupt later, obstructing true peace.

According to Ariel Dorfman: "Memory is a constant obsession with me. I deal often with people who are fighting against those who would obliterate others. The extreme cases are a woman who was tortured in 'Death and the Maiden', or in 'Windows' it is the case of the missing. The problem is people want to forget what was done to us. Forget the repression and the violence. And 'disappearance' wants to disappear not only the body, but the violence done to the body. It wants to give it no burial place." That is why he believes that "Truth commissions are important... They are able to establish certain truths in a public way, to become part of official history."

The previous regime lived by telling this falsity: "This never happened to you." So it must be established by somebody representative of the society, that these things did happen... Symbolic punishment is important. I would be content if the people who did terrible things to me and my loved ones came to ask for forgiveness, to say that "I will never do this to you again. I am really sorry this happened." But until that happens, I demand they be brought to justice... How can there be real peace and reconciliation without this repentence?

In Chile, neither the generals nor the entrepreneurs are repentant. "In a transition to a democracy as in Chile, Bolivia, South Africa, there are different reasons why people do not want to remember. They say, 'Look, if we keep on stirring up the past its going to destroy us'. This includes many who were themselves repressed, hurt or part of the resistance. The say, 'There's a future ahead, lets turn the page, lets forget this, lets start over again.' This is a desire to reach a consensus about where the country is going, and it means excluding those who continue to remember. But the conflicts are real, they can submerge them but not erase them.

There is another kind of pressure to erase the past. In all the transitions to democracy, people are living in global market economies. This model says: you are what you produce, what you consume... Many of the human rights violations we look at in the world today are created by governments modernising their system, to quell people, to make them afraid, to turn them into mere consumers and producers." Which brings us roundly to the conflict between the political and materialistic priorities of governments and the emotional needs of its citizens. It is the dilemma of governments wanting to keep the vulnerable and uneasy political compromises holding together Chile's fragile democracy. This is also the argument that the Clinton administration is advocating against the extradition process, speculating that the loosely knit left-right accord in Chile could unravel, threatening the country's democratic system. Another silent concern, of course, is that the Pinochet case could create precedents for extradition that could threaten American and other 'world' leaders too, who could become extradition targets if the Spanish initiative is successful.

As much as the government of Chile, the British government

is being debated, with the situations in former Yugoslavia and Rwanda, which lacked internal mechanisms for dealing with those responsible for ethnic violence earlier.

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Real Problem is Not Hartial, but Terrorism Associated with It

by A R Shamsul Islam

Happily, there has developed an urge among various sections of the people like the business community, teachers, lawyers, social workers, cultural activists etc. to bring an end to the destructive hartial. Let it gather momentum...

time or wrong, to press home any demand left unaddressed for long without justification. Equally argumentative is that it is also people's democratic right to respond to or refuse the call of hartial according to people's dictates of conscience and urge of discretion.

But the ground reality is a lot different. In practice, we are lethally robbed of our choice. In most cases hartial is forced upon us by brutal threat. Traders are compelled to clamp down shutter of their stores. Transporters are forced to stay off the roads. Banks, insurance, offices, educational institutions, etc. are coerced to seal.

The open truth is that in most cases hartial is not observed out of conviction or attachment of sympathy but by long hands of force and coercion. Hartial pickets with bombs and crackers are found around to sow the deterrents.

In our country, the practice of hartial has increased with the passage of time. We have few governments that have proved to be even reasonably let alone

pickets from the thoroughfares. Force of the hartial pickets is massively met with the force of anti-hartial activists. It has precipitated a battle of terrorism and may not prove congenial to annulling hartial.

Both the Awami League and the BNP vociferously vowed, during their last election campaigns, to uproot terrorism. In fact, till now, none has proved to be true to this pledge. On the contrary, the activities of both the parties have sharpened terrorism. In observing hartial and resisting it both have appeared with newer brand of terrorism.

In fact, terrorism has fashioned the top rung of politics. If the politics in almost whole of the world has more or less turned into a game of power politics, in Bangladesh it has turned into, say, a game of hyper power politics. The Opposition's five-year tenure too long a period to wait upon for a new ballot battle. It is too long a starvation for power and self. So it embarks upon a policy to disturb the government from

the first day of its office. It smells about if the government chips out an issue, to use it as a populist movement to unseat the ruler. Hartial is a tried and tested weapon to overrule the government. Its application is also most easy as it travels fast with a threat, real or imaginary, warranting compliance. Naturally the Opposition is its ardent worshipper.

Hartial stripped of prevalent terrorism would have practically posed little problem to us. If we like to put a brak on hartial, we need to clip off halo of terrorism from its body. We should unitedly fight against that menace which has practically fathomed myriad of evils of which hartial is one.