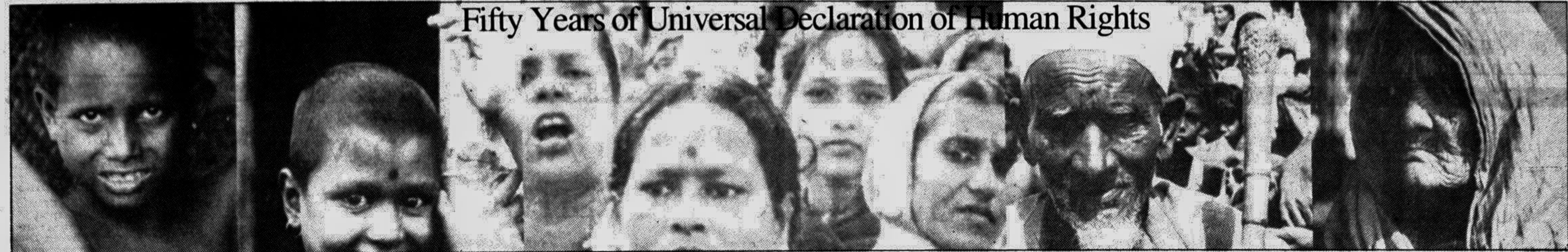


## Law and Our Rights

## Fifty Years of Universal Declaration of Human Rights



## Search for a New Universality

by Adilur Rahman Khan

*The people of the Pacific islands did not have any remedy against the French nuclear testing. People of the relatively smaller countries of South Asia do not know where to seek redress to protect their water and food from contamination brought on by the nuclear tests in Pakistan and India. The children of Iraq could not find any forum to tell their stories of hunger and illness caused by the northern blockade. No one knows how long the international political hypocrisy will continue to resist the birth of Palestine.*

AFTER the dissolution of the Soviet Union and the demise of the cold war era, a new political scenario has emerged in the world politics, called 'globalisation'. The onslaught of this globalisation has further aggravated the divisions between the rich and the poor and North and South. On the one hand the globalisation has opened all the opportunities available in the entire world to the richer, dominant countries of the North, known collectively as the G7 and OECD along with their multi-national and trans-national corporations and on the other hand it has brought miseries to the poorer and dominated countries of the South to whom its onslaught has become a form of neo-colonialism.

Uncontrolled capitalism and its global plundering has put the entire world, except for a few beneficiary countries, into a serious socio-political and economic crisis. CNN, Coca-Cola and Macdonald cultures have become predominant cultures in the world. In the name of 'intellectual property rights' most of the indigenous resources — starting from plant seeds to songs — are being patented in the North. Free market economy has made us open our borders for the North but close it for those in the South. The North desires that there should not be a barrier for Northern products entering into the national economies and markets of the South to compete with our local products with their relatively lower prices. Ironically, manufacturers from the North searching for cheap raw material, frequently target the South as a good source.

Furthermore, the huge production capacity of the former can easily drive away locally produced items leading to the closure of more and more basic local industry, making millions jobless. There are barriers in the present globalised system for so-called 'export oriented products' entering in the markets of the North. This area of the world applies various quotas and restrictions and tariff barriers on the South — meaning us. For example, the European Community (EC) will not buy any goods which might or will compete with a similar product produced in the EC. The basic principles of 'free market

economy' do not apply to us in the South. The North does not recognise free movement of labour from South to North, however, it recognises the free movement of goods. The people of the world are becoming captive in the hands of a few multi-national and trans-national corporations and their unrestricted activities. There is no mechanism available for controlling or supervising their functions.

The World Bank, IMF, MNC, TNC and all their subsidiary agencies are functioning like the East India Company of the time of the British Raj in India. No human rights mechanism under the present Universal Declaration of Human Rights (UDHR) can be made available to address this onslaught because of its old fashioned (out of fashion?) limited guide lines which only cover the citizens of the nation states but are not designed to address the issues beyond.

The people of the Pacific islands did not have any remedy against the French nuclear testing. People of the relatively smaller countries of South Asia do not know where to seek redress to protect their water and food from contamination brought on by the nuclear tests in Pakistan and India. The children of Iraq could not find any forum to tell their stories of hunger and illness caused by the northern blockade. No one knows how long the international political hypocrisy will continue to resist the birth of Palestine.

The world has been divided by the North into two blocks. These are the rich, colonial North and the poor, colonised South. The rich Northern block is the beneficiary of the present order and although having twenty percent of the world population, they have access to eighty percent of world resources. On the other hand, the poor Southern block is facing the pressure of neo-colonialism and although having eighty percent of the world population, it has access to only twenty percent of the world's resources. Moreover, 'the poorest 20% of the world's population receives only 0.2% of global commercial credit, 1% of world trade and 2.7% of global foreign private investment' (M Huq: Reflections on Human Development, Oxford University Press, New

York 1995, p.142). This is total injustice and all the human rights mechanisms, including the UDHR, which only address the issues of human rights and disparity of nation states have become redundant at this present situation.

It is to be noted here that, when I speak about the North, I include the North people and mechanisms in the South and when I speak about the South, I include the South people living in the North. For example, General Suharto was the North in the South and for many years the Irish people were the South people in the North.

The World Bank, IMF and their related organisations and projects have failed to reduce human misery and poverty in the poorer South. This has put a big question in the minds of many about the original intention of these institutions, since almost half the countries of the world are facing serious debt crisis. In many countries, the World Bank and IMF act as 'super governments' and compel the respective state governments of nation states to act according to their will.

The xenophobia of the North has contributed to the emergence of neo-fascist organisations in Western Europe who are now fanning the flames of hatred against the minority Muslims and the prolonged action of powerful Western nations have allowed the Serbs to cause acts of genocide in Bosnia and Kosovo against people identified as being Muslim.

Ever since Samuel P Huntington wrote on 'The Clash of Civilisations' (Foreign Affairs, Summer 1993) in 1993, many Northern countries, including the dominant powers, have taken this article as their hand book and guide of foreign policy. Muslims are now regarded as the 'communist' of the Soviet era and the present function of NATO is to prepare itself to strike against any future force which might rise in the name of Islam — which, according to them, is a potential threat to Israel and Northern civilisation. They have already reconfirmed their position by striking on the pharmaceutical factory in Sudan and by killing about a million innocent men, women and children in Iraq.

The North should understand and keep in mind that human history is the history of

migration. The poor, deprived people always moved towards lands of resources. However, the 'fortresses' of the North are strong and designed to keep the massive poor population of the world out of these lands and from enjoying the resources. They fail to realise that these fortresses will become the targets of the poor, who will ultimately be drawn towards them and who will attempt to scale their walls by the sheer force of their determination and need, if not allowed to enter legally. Total disregard to the 'Rio Declaration' of 1992, regarding reduction of the gap between the rich and the poor by redistribution of resources from North to South and transfer of technology to the South have persuaded Northern 'xenophobic gurus' to look for a new enemy in order to pursue their beneficial economic position and 'jingoism' against the rest of the world by scaring them about their newly invented potential enemy — 'The Islamic Civilisation' (Huntington).

After the demise of the Soviet Era and at the end of the cold war period, many people thought that the arms race would come to an end. However, the world watched with shock and distress as the war-hungry Northern powers and their 'S' tooges continued producing and developing machines of death and destruction and spending billions of dollars in the process to modernise them and make them more 'efficient'.

Selective use of the present instruments of human rights and the lack of scope to address the basic needs of the people — food, water, shelter and other resources globally — has prompted many to search for a new 'universal' under a new declaration of human rights, which the present UDHR failed to provide.

Therefore, to meet the need to confront the aforesaid issues and the present situation of globalisation, a new declaration on the universality of human rights, drafted by all the independent countries and peoples' initiatives have become pertinent to replace the present one which was drafted by the five colonial powers of the North in 1948.

The Writer is an advocate of the Supreme Court of Bangladesh.

## The Influence of the Universal Declaration of Human Rights, 1948

by Dr M Ershadul Bari

HUMAN Rights are universally inherent, inalienable and inviolable rights of all members of the human family which primarily the states are to recognise and ensure for their citizens by providing a well-refined procedure. Human rights and fundamental freedoms are the birthright of all human beings. The General Assembly of the UN adopted and proclaimed the Universal Declaration of Human Rights — the first part of the International Bill of Rights — on 10 December, 1948 — a little more than three years after the entry into force of the Charter of the United Nations on 24 October 1945. The Declaration was adopted without dissenting vote. While 48 out of 56 members voted in favour, the whole of the communist block (Byelorussia, Ukraine, the USSR, Czechoslovakia, Yugoslavia, Poland) Saudi Arabia and South Africa (in total eight) abstained in the vote. Each year since 1950, the anniversary of the adoption of the Universal Declaration of Human Rights

the economic, social and cultural rights which are indispensable for human dignity and the free development of personality. Furthermore, it suggests that these rights are to be realized through national effort and international co-operation and in accordance with the organization and resources of each state. The Universal Declaration of Human Rights, with which began the real history of human rights at the level of international law, is the basic international statement of the inalienable and inviolable rights of all members of the human family. The General Assembly on 10 December 1948 proclaims the Declaration as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and by progressive measures, national and international, to secure their universal and effective

the General Assembly and the Security Council invoked the Universal Declaration of Human Rights in their resolutions or decisions as a yardstick to measure the degree of respect for, and compliance with, international human rights standards. Within the five months of the adoption of the Universal Declaration of Human Rights, on 25 April 1949, the two of the Articles of the Declaration — Article 13 on the right of every one to leave any country including his own and Article 16 on the right of men and women of full age to marry and to found a family without any limitation due to race, nationality or religion — was invoked by the General Assembly as a basis for censuring the actions of the Soviet Union which had refused permission to Soviet women married to non-Soviet nationals to leave their country and join their husbands. Another early resolution of the General Assembly was resolution 290(IV) of 1 December 1949 entitled 'Essentials of Peace' in which the Assembly called

cease forthwith its continued imposition of discriminatory and repressive measures, which are contrary to the principles and purposes of the Charter and which are in violation of its obligations as a Member of the United Nations and of the provisions of the Universal Declaration of Human Rights. In this resolution it further called upon all states whose nationals and corporations were operating in Namibia to use all available means to ensure that such nationals and corporations conform; in their policies of hiring Namibian workers, to the basic provisions of the Universal Declaration of Human Rights.

**Now it "is like a brave banner flying from the highest tower in the world which no one can ignore" and its political authority is second only to the Charter itself. The Universal Declaration has become the Magna Carta of humankind. "The standards of the Universal Declaration of Human Rights have become a guiding star to international jurisprudence and the high tone of its exhortation continues to influence national policies and their legal applications."**

on 10 December is observed internationally as Human Rights day, designated so by the General Assembly.

The Universal Declaration of Human Rights, which consists of a preamble and 30 Articles, is based on the philosophy that "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. The Declaration gives pride of place, and indeed of emphasis, to the basic principle of equality and non-discrimination as regards the enjoyment of all the rights and freedoms set forth in it. Everyone is entitled to the rights 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."

Articles 21 of the Declaration set forth 19 traditional civil and political rights. Articles 3, which introduces Articles 4 to 21 is considered as a cornerstone of the Declaration. For it proclaims the right to life, liberty and security of person essential to the enjoyment of all other rights. On the other hand, Articles 22 to 27 of the Universal Declaration of Human Rights recognize 6 economic, social and cultural rights. Article 22 is another cornerstone of the Declaration which introduces Articles 23 to 27, because, the Article declares, inter alia, that everyone, as a member of society, is entitled to

recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction." In fact, the adoption of the Declaration is one of the greatest achievements of the United Nations as in less than two years, the organization had been able to reconcile the clashing ideologies of Member States regarding the contents of the Declaration.

## Influence of Declaration

The influence of the Universal Declaration of Human Rights is deeper and more lasting than any political document or legal instrument. Since its proclamation in 1948, the Declaration has become one of the best-known and most influential documents of all times. It has exercised a powerful influence throughout the world, both internationally and nationally. It provisions have been cited in various resolutions of the United Nations. Every international and some national documents concerning human rights unfailingly start off from the Universal Declaration or lead logically to it. The provisions of the Declaration have also been incorporated or cited, in national constitutions, municipal legislation, and court decisions.

## Influence on the Resolution of the United Nations

On a number of occasions,

upon every nation "to promote, in recognition of the paramount importance of preserving the dignity and worth of the human person, full freedom for the peaceful expression of political opposition, full opportunity for the exercise of religious freedom and full respect for all the other fundamental rights expressed in the Universal Declaration of Human Rights." Later, on 28 November 1961, the General Assembly adopted a resolution dealing with the racial conflicts of South Africa in which it was stated that:

"the racial policies being practised by the Government of South Africa are flagrant violation of the Charter of the United Nations and the Declaration of Human Rights and are totally inconsistent with South Africa's obligations as a Member State. On 27 October 1966, the General Assembly took a resolution terminating the League of Nations Mandate of South Africa over South-West Africa (Namibia) on the ground that it had been conducted in a manner contrary to the mandate, the Charter of the United Nations and the Universal Declaration of Human Rights."

The Security Council also invoked the Universal Declaration of Human Rights in its decisions, particularly those relating to the situation in South Africa. On 4 December 1963, the Security Council adopted a resolution requesting the Government of South Africa "to

## Influence on Certain Declaration

Since the adoption of the Universal Declaration of Human Rights in December 1948, it has been referred to in some statutes, agreements and declarations. The special Status annexed to the Memorandum of Understanding of 5 October 1954, regarding Trieste provided that "in their administration of their respective areas, the Italian and Yugoslav authorities shall act in accordance with the principles of the Universal Declaration of Human Rights." This was for the first time an international agreement made the Declaration part of its operative provisions. The Declaration on the Granting of Independence to Colonial Countries and Peoples, which was adopted by the General Assembly on 14 December 1960 (by eighty-nine votes in favour, none against and nine abstentions), provides in its seventh and final paragraph that all "States shall observe faithful and strictly the provisions of ... the Universal Declaration of Human Rights." The Assembly used similar language in the Declaration on the Elimination of All Forms of Racial Discrimination adopted unanimously without abstention on 20 November 1963.

The writer is Professor and Dean, Faculty of Law, University of Dhaka.

In the next episode the writer will analyse the influence of the UDHR on other aspects.

## Celebration, for What?

by Ekram Kabir

**When human dignity and social justice are subjected to harassment and intimidation, they also lead, along with other rights-related issues, to overall degradation of human rights. And this is when, we find the half-century celebration of the universality of the Declaration futile.**

THE importance of human rights is felt when one right is violated, otherwise the hue and cry about 'human rights' in Bangladesh is an apparent hype.

So, what are we celebrating? A 50-year anniversary, or the achievements of the last half-century? True, the world said 'never again' to the atrocities of the Second World War and declared in 1948 that all human beings, wherever they live and whoever they are, have rights that must be respected in all circumstances.

Although the United Nations, for that matter the international community, has upheld some exemplary discords since then, yet enough destruction has distressed the human race with 100 more wars after the World War II. To the advocates of human rights, despite some setbacks, human rights have steadily marched forward and the Declaration, still today, stands unrivaled among the instruments men and women use to measure the way governments treat their citizens. But there are some serious questions to be asked: where will we be 50 years from now? Will we still carry the weight of prejudice, intolerance, and injustice of the last 50 years on our backs?

Human rights are very difficult to define because the idea of human rights is very complex depending on global cultural diversity. The latest issue of the TIME magazine says: 'For the industrialised West, expanding exports to China seems to be more important than defending the human rights of its citizens.' Doesn't this policy sound a bit unkind? However, according to optimists, it's possible to establish some broad criteria as

far as the rights are concerned. Broadly speaking, human rights revolve around basic civil liberties: people must have the right to dissent, to not fear persecution because of their social, economic, cultural, ethnic, or religious status.

Well then: how do human rights differ in developing and developed countries? The answer may, again, be: 'they don't!' Basic rights — human rights — are not dependent on a country's level of economic development. What however does differ is the ease with which human rights may be upheld.

Most countries have very strong laws that guarantee the protection of human rights. What is often lacking is the political will to ensure that they are not violated. Part of this will relates to a country's political and economic development. For example, in the US, addressing a Colorado parties nomination of General Lino Oviedo as their presidential candidate (virtually ensuring him electoral victory) recently, a high-ranking member of the judiciary expressed his concern that the people would choose an individual who had attempted to topple a democratically elected government with a military coup. This official traced the problem to a general lack of collective memory and understanding of the fundamentals of politics in the population at large. This perhaps encapsulates the difference between the developed and the developing world with respect to human rights.

Human rights violations do occur, with alarming frequency, in the developed world. The difference is that people know that such actions are wrong, and, more importantly,

are able to ensure that justice is served. In some societies suffering widespread human rights violations, laws forbidding such crimes are not applied because the government is in cahoots with the violators (corruption), or the general population is maintained in a sufficient state of ignorance (through a lack of education) that they simply lack the awareness that they can seek and attain justice. An attendant problem is that governments sometimes feel that human rights and development are mutually exclusive. Some time this year, Russia's Alexander Lebed admiringly cited Chile's General Pinochet, stating that he would follow the General's model because the Chile achieved high economic growth rates, but only had to kill 3,000 of its own people!

The UN (guided by the West?) seems committed in seeking a single, unified global system. But in variety of relationships within this unifiedness, questions loom large: what has been that impact of this global system on nations or communities, especially the less powerful and less prosperous?

The Answer? Well, the existing global system which is still evolving has proven to be unjust and unfair to the majority of the human race. Because the global economy is still controlled and managed by a few elite, corporate bodies and states located in the North. They have done their homework to ensure that their interests would be protected and enhanced even if it's to the detriment of the rest.

Take the example of consumption levels: the North, with about one-fourth of world population, consumes 70 per

cent of the world's energy, 75 per cent of its metals, 85 per cent of its wood and 60 per cent of its food. Now, contrast this situation in the South — over one billion people are mired in absolute poverty, one-and-a-half billion are deprived of primary healthcare with another billion adult are uneducated. What this reveals is that a huge portion of population doesn't enjoy the most basic socio-economic rights.

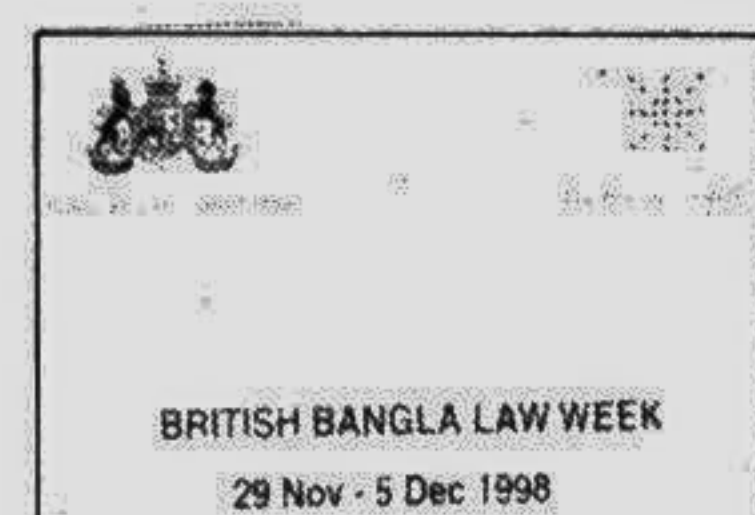
In Bangladesh, unlike the industrial societies, rights here assume different degree. The rights to food, shelter, education, healthcare are the main concerns here, which with a holistic, integrated approach demands an urgent and equal attention to the economic and social rights of the people. For majority here stagger under the poverty line. In spite of some socio-economic progress in a couple of sectors over time, yet the majority don't enjoy those basic rights. Poverty is so severe here that the poor have been captivated in recent form of slavery, like 'deprived labour', 'child labour' and 'child prostitution', which is also one of the direct causes of the cruelty to women labourers in some sectors of our national economy. 'Women and children's rights can't be endorsed if the wealth imbalance in the form of social and class discrimination go on,' says the Universal Declaration of Human Rights.

So, when human dignity and social justice are subjected to harassment and intimidation, they also lead, along with other rights-related issues, to overall degradation of human rights. And this is when, we find the futility of half-century celebration of the universality of the Declaration.

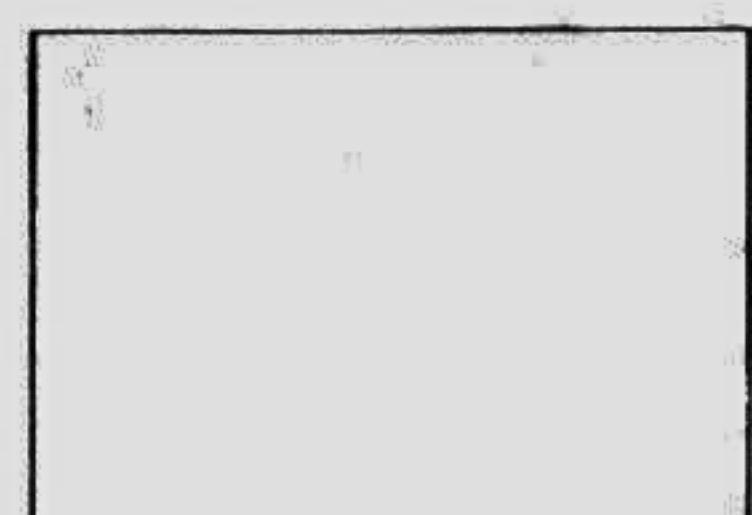
## LAW WATCH

The British Bangla Law Week 1998  
**A Renewal of Commitment towards Human Rights**

by A H Monjurul Kabir



BRITISH BANGLA LAW WEEK  
29 Nov - 5 Dec 1998



The Constitution of the People's Republic of Bangladesh

Bangladesh and UK Perspective

- Gender and the Law
- Alternative Dispute Resolution
- Public Interest Litigation
- Refugees and Migration
- Child Rights
- Ombudsman
- Law Reform
- Prisoners' Rights and Prison Reform
- Human Rights Commission

A good number of academic and experience papers were presented in each session partici-

eleven thematic seminars and a special session on mock trial. A street theatre programme on 'Violence Against Women' also marked the event though in a different way.

The themes of the working sessions include:

- 50 years of Universal Declaration of Human Rights
- Administration of Justice

## Facts File of the British Bangla Law Week

The Law Week was divided into 14 sessions. Except the inaugural and the valedictory session there were as many as