

Law and Our Rights

"All citizens are equal before law and are entitled to equal protection of law"-Article 27 of the Constitution of the People's Republic of Bangladesh

Problems of Implementation of Human Rights and Some Recommendations

by Nazmul Huda Shamim

Some states have become party to human rights treaties, purely for cosmetic reasons. But they have rendered themselves doubly delinquent not only by continuing to violate human rights, but also by their failure to comply with the minimum supervisory mechanism of such instruments.

National Security Doctrine

National security doctrine is also creating problems in the field of implementation of human rights. Often in the developing countries, in the name of national security or stability, political parties and political activities are prohibited and the former ruling elite is disposed of. This situation is certainly against the implementation of human rights. Misuse or improper use of national security doctrine creates obstacles in the path of implementation of human rights.

Problems in Dealing with Inter-state Complaints

Weakness of inter-state complaint system stands as another barrier in the way of implementation of human rights. The existing system for dealing with inter-state complaints is extremely weak. In various human rights instruments, the inter-state complaint system is applicable only on those states who have recognised this system. Thus, provision of prior ratification is one kind of problem in dealing with inter-state complaints. Eventually the same creates problem to implement human rights.

Petition System

Individuals can submit petition to the respective human rights organs in various human rights instruments in the event of violation of human rights. Nevertheless this system is plagued by various weaknesses. About 90 per cent of the world population cannot invoke them because the states concerned have not accepted the competence of the relevant organs in this regard. The 1503 procedure of the ECOSOC rarely produce tangible results. The confidentiality aspect of the 1503 procedure may well be considered as one of its greatest affect. It is carried to such an extreme that the petitioner is not even kept informed of the status of the communication beyond the initial acknowledgement of its receipt.

Defects of Reporting System

Almost all human rights instruments provided with periodic reporting system. But this reporting system is plagued with few problems. Reporting procedures are generally hampered due to late submission of reports by states, poor quality of these reports, delay in the consideration of these reports and lethargic follow up action. Even, some states parties do not submit or fail to submit their reports within prescribed time. These are, certainly creating problems in human rights movement.

Conflict of Jurisdiction

Owing to the proliferation of human rights instruments, the same matter is quite often found to fall within the jurisdiction of several institutions, hence giving rise to conflict of

jurisdiction. The United Nations has not utilized the expertise of its Specialised Agencies in improving its international measures of implementation. There is poor coordination between the human rights bodies of the United Nations and those of the Specialised Agencies. Such scenario also creates problems to implement human rights.

Concept of Available Resource

Implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) is subject to the maximisation of available resources. To fully implement the rights mentioned in the ICESCR, a country must be economically strong and its social condition must also be favourable in this regard. A country which is not economically strong or its social condition is not favourable, cannot implement these rights fully. In practice, worth of all human rights is affected by economic and social conditions.

Double Standards of the United Nations

In the late 1970s and the early 1980s, certain Western countries criticised the UN human rights movement, for following double standards. The basis of the criticism was that, while the United Nations readily and unreservedly condemned the human rights violations committed by authoritarian states like Argentina and Chile, it was indifferent to such violations in totalitarian states like Cuba. Similar criticism has been made in 1990s too. The basis of the criticism is that, while the UN system is quick assertive in taking action against human rights violators like Iraq, it is indifferent to similar violations committed by countries like Turkey. Practice of such double standards becomes an obstacle in respect of the implementation of human rights.

Withering State System

Withering state system is also liable to create problems to implement human rights. States often fail to promote and protect human rights. They themselves also frequently violate these rights. As a result the state system has lost its credibility in a large number of countries. This is particularly true increase of many African, Asian, East European and Latin American countries. Parallel centres of power have come up in these countries. This development threatens the concept of human rights.

Activities of Non State Entities

Non state entities create problems to implement human rights too. Transnational corporation, terrorist organisations, fundamentalist groups and ethnic groups often violate human rights. Such non state entities are creating problems in human rights movement throughout the world. In recent past, in Burundi, Cambodia, Rwanda, Bosnia-Herzegovina and East Timor, human rights

were violated by the non state entities.

Time Consuming Factor

One criticism which can be labelled against the individual application procedures. It is the time duration which an applicant must wait in order to secure redress. Under the ICCPR First Optional Protocol and the ECHR, it is not uncommon for the respective institutions under those instruments to take up to five years to reach a decision. This is hardly speedy, non effective and runs counter to notions of due process, as the human rights instruments needed to administer the demand of the states, those are the parties.

Want of Legal Literacy and Awareness on Human Rights

Want of legal literacy and awareness on human rights and obligations are some of the main problems for the implementation of human rights in many states like Bangladesh, India, Pakistan etc. Moreover, environmental pollution is also one of the main problems for the implementation of human rights. Every now and then the big powers are violating human rights by polluting environment in many ways.

Recommendations

We have previously observed that there are a lot of drawbacks and problems to implement human rights. But for the interest of the people irrespective of their race, colour, sex, language, religion, national or social origin, property or birth, human rights are to be established. So, we have to remove all sorts of problems in this regard. Considering the drawbacks and problems mentioned above, some recommendations are given below:

Human rights need protection by national institutions, which in turn can only grow and sustain in an atmosphere where fundamental democratic norms are respected. Observance of minimum standard is thus part and parcel of the institutions, which can protect and implement human rights. So, all governments have to establish human rights institutions in each and every state, viz Human Rights Commission, Office of Ombudsman etc. Building or rebuilding national infrastructure for the protection of human rights is essential.

2. The United Nations has to take effective and appropriate measures to implement human rights in the world. The jurisdiction of the existing human rights machinery should be increased. The human rights programme of the United Nations receives about 1 per cent of the total budget of the organisation. The financial crisis of the United Nations should be removed. Budget and official staff for human rights programme should be enhanced.

3. Imbalance in the enjoyment of property and natural resources is an obstacle in the field of human rights. Imbal-

ance exists in the enjoyment of property and natural resources between the developed world and the third world. Recently, the Secretary General of the United Nations Mr Kofi A. Annan has expressed his view that the rich countries enjoy 86 per cent of the natural resources of the world, while 80 per cent of the world population who reside in the third world or in developing countries enjoy only the rest 14 per cent of the natural resources of the world. This situation should be changed. It should be considered that human rights are not for the rich or western people only.

4. Some states have become party to human rights treaties, purely for cosmetic reasons. But they have rendered themselves doubly delinquent not only by continuing to violate human rights, but also by their failure to comply with the minimum supervisory mechanism of such instruments. Amnesty International's report states that a number of states parties to the ICCPR have failed to submit their periodic reports to the Human Rights Committee. This tendency of becoming party of human rights treaties for cosmetic reason, should be given up. States parties should comply with the treaty.

5. As mentioned above, at almost all individual procedures, the applicant must wait for a long time in order to secure redress. So in dealing with individual applications, the solution or remedy should be given within a possible short time frame.

6. Global environment should be ensured for the realisation of human rights. Specialised agencies can take important role in this regard. Effective programme can be designed toward the implementation of human rights. In this connection illiteracy should be removed. An environment should be created where minimum standards for human rights can sustain and survive. We must utilise and avail whatever potentialities we have in our societies for the realisation of human rights.

7. It is evident that in a poor country only the government with limited resources and other limitations cannot provide the basic needs to the people. So, NGOs' role in this context should be evaluated. NGOs can undertake legal aid programme in the field of human rights to ensure equality. Many NGOs related to human rights activities can contribute significantly in creating human rights norms by taking research and publication programmes. They can play more active role in ameliorating the prison situation and victims of excessive detention and torture. In this context NGOs' role should be extended in social, economic, cultural as well as in civil and political rights.

8. Implementation of human rights requires integrated efforts of all. The proper implementation of human rights also needs the full cooperation of the government and the governmental agencies. The government is required to be more re-

sponsive to the public opinion regarding the laws in some countries which are contrary to the concept of human rights. Misuse of laws by the law enforcing agencies often happens. So, the weakness of laws should be removed and those laws should be amended or repealed, if contrary to human rights.

9. The United Nations can help States to live up to their human rights obligations. The committees can undertake field missions to understand better, the conditions in which human rights must be protected, to try to defuse situations of tension and to help for developing concrete solutions to problems.

10. Monitoring human rights violations locally, to provide real picture to the international community and to contribute to end a serious situation is another area in which activities of the human rights committees can be given. It will help in the way of implementation of human rights.

11. International cooperation for human rights should be strengthened. The civil society can also take important role in protecting human rights through contacts with non-governmental organisations, the academic community, the press and the publishing community with all United Nations human rights mechanisms, inclusion of United Nations standards in national law and the establishment of national institutions to protect human rights are also essential.

12. The use of nuclear weapon is a curse to humanity. Right to life cannot be ensured, if the use or proliferation of nuclear weapon cannot be banned. The proliferation of nuclear weapon is polluting the environment. In this situation human and other living beings are under threat and danger. So, Comprehensive Nuclear Test Ban Treaty (CTBT) should be signed and observed by all the states.

13. Minorities are, especially vulnerable group, often needing international action to protect their rights. Various measures and actions should be taken to combat racism and racial discrimination at national, regional and international levels. High priority is to be given for providing assistance and relief to victims of racism and all forms of racial discrimination.

14. Violation of individual rights remains an issue of concern. It is to be kept in mind that the whole society will suffer, if the individual rights are not protected. So, protection of individual rights will help in the way of implementation of human rights.

The implementation of human rights is a dynamic process. International community is taking various efforts to 'promote' respect for human rights and to realise them. But in fact, human rights are still being violated. We should keep in mind that protection of human rights of the people is much more difficult than either defining them or adopting declarations, bills and conventions, concerning human rights. The major problem is that neither the United Nations, nor any other organisation in the world has power to face nations to honour all the rights of their citizens. The implementation of international human rights laws depends on the most part on the voluntary consent of the nations.

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Law Watch

Human Rights Day and Our Duties

by Akram H Chowdhury

ON 10 December in 1948, the Universal Human Rights Declaration (UDHR) was adopted at the UN General Assembly. In the last year, the 50th anniversary of this day was celebrated with due honour and festive mood. On the verge of 21st century, the celebration of this day will encourage people of every class to protest the injustice and violation of rights. The independence of Bangladesh is the legacy of blood of 3 million martyrs and chastity of 0.2 million women. The nine month long war was actually the war against human rights violation. After liberation, the Constitutional proclamation on human rights and democracy, acknowledge the freedom of Bangladesh.

In the chapter on fundamental rights (article 26-47) of the Constitution of Bangladesh the fundamental rights of people is recognized. On the other hand, the chapter on fundamental principles describes the rights to food, cloth, accommodation, medicine, and education. In the constitution of Bangladesh, rights are equal irrespective of sex, race, colour...

The article 7 of the Constitution defined the citizen as the owner of the nation. In other article 21 (Kha), it has been reiterated that all public servants are to serve the nation and its people. This means that responsibility towards nation is emphasized. That is if you want to have rights, you are to do certain duties towards society and Nation. In other article no 21(1), it is stated that every citizen is obliged to follow Constitution and law, maintain discipline, perform public duties and responsibilities and to protect the public property.

According to Limberg, democracy means the realization of economic, social, cultural civic and political rights of the people. Therefore, for the sake of democracy and development, awareness on human rights is necessary.



Eleanor Roosevelt, first Chairman of UN Human Rights Commission, drafted UDHR. Other important personalities like Professor FC Chang (China), Rene Cassin (French), Harnama Santa Cruz (Lawyer from Chile), Professor Charles Malik (Lebanon), Omar Lufi (Egypt), Ms Hosa Mehta (India), Ambassador, General Karlos P Remula (Philippine) Bogomolov (Soviet Union). This committee was greatly assisted by Professor John Humphrey, Director of Human Rights Department, 40-state party voted in favour of the UDHR and Soviet Union, South Africa and Saudi Arab.

UDHR having 30 Article is a historical document. This document was termed the Magna Carta for all people around the world by Eleanor Roosevelt, first Chairman of Human Rights Commission. Fundamental human rights have been specified in it with due care. The wise drafter of it has defined social and economic rights along with the rights of economic and civil. This document has truly made these rights universal for the rich as well as for the poor.

After 1948, some newly independent democratic countries of the Asia, Africa, Latin America formulated their Constitutions and as well other UN documents in the light of it. Basically the chapter three of Constitution of Bangladesh was written in the light of UDHR.

The Constitution of Bangladesh acknowledged its citizen as the owner of the state and also identified public service holders as the servant of the citizen. But incidents of violations of rights are increasing in Bangladesh? People succumb to torture by law enforcing agencies. The reasons may be specified as the unawareness of citizen about rights and laws and as well lack of initiative on the part of the Government to include human rights in the educational curriculum. Moreover the true essence of the Constitution of Bangladesh has been less by the repeated amendment of it by different governments. Nevertheless, if people become aware about Constitution, the important legal machinery could be used against the violations of rights and laws. Consequently, a strong challenge is before the human rights organizations to make aware the masses about their rights and existing laws. When people will be aware, violations of laws and rights will be reduced automatically. It is imperative to build up a culture of awareness of laws and rights.

An assessment of the World Bank stated that 95 police personnel out of 100 do not have any training on human rights matters. Only 9 Police personnel were told about freedom of movement and citizens security and 8 about rights to freedom and security. Majority of them do not have enough understanding about fundamental human rights and laws relating to security. For example 50 per cent of them consider torture, as an ideal mode of collecting information. UNDP held, poor rate of literacy, lack of awareness on rights and laws, inadequate and improper initiative from the part of Government and NGOs for making aware people on laws and rights, responsible in above connection.

A statement of World Bank specified that in all cases of arrest under Special Power Act between 1974-1995 (10,231 people were arrested during this period), out of each 10 arrests, 9 were illegal. Women repression in Bangladesh is increasing day by day though the Government has ratified CEDAW. There are laws, but these suffer from difficulties. Due to lack of awareness on laws and rights, rate of human rights violations are accelerating alarmingly. In addition, absence of accountability among the sectors concerned might be held responsible for the violation of human rights. Barrister Amirul Islam, Vice President of Bangladesh Bar Council provided some statistics according to police records on rape, acid throwing, grievous hurt, torture and oppression by other means on women and number of victims of the above matters are: 3646 (1996), 5834 (1997), 7387 (1998) and 4125 (June 1999). Other statistics are as follows:

Event	1996	1997	1998	1999
Rape	525	1336	2959	1639 (till June)
Acids Throw	65	117	130	62 (till June)
Child Trafficking	14	116	128	55 (till September)
Woman Trafficking	77	103	112	46 (till September)

In Bangladesh, 1995-2000 has been declared as the Decade of Human Rights following the decision, taken in the Vienna Declaration in 1993. But on the part of Government, practical actions are not taken till date, for supplementary action in this regard, professionals and human rights organizations might adopt measures to improve the situation. Emphatically, contents about rights and laws should be included in the National curriculum of school and college.

For the improvement of human rights situation, Government, NGOs and political parties should adopt programmes. They should project more activities to enhance and enforce human rights in our country.

The Human Rights Commission should be established as soon as possible. We should try for rights to development to have a better nation.

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Right to Humanitarian Intervention

By A.H.Monjurul Kabir

THE last year of the twentieth century witnessed an unprecedented surge of gross violations of human rights. The genocidal attacks on civilian populations in Kosovo and East Timor, ruthless invasion of Chechnya causing tens of thousands to flee are only a tip of the iceberg. The world is made up of self-interested nation states, which jealously protect their sovereignty. As one of the consequences of such attitude, civil wars are escalating into regional conflicts. Crimes against humanity, war crimes, serious violations of the laws and customs applicable in armed conflict threaten the very existence of humanity. A very significant issue of this critical juncture thus relates to the determination of the right to intervene on humanitarian grounds.

The Dictates of the UN Charter

One of the fundamental aspirations of the United Nations is "To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion [Article 1(3) of the UN Charter]. Article 55 of the United Nations Charter states that the UN "shall promote...universal respect for, and observance of, human rights and fundamental freedoms." Article 56 provides that "All members pledge themselves to take joint and separate action in co-operation with the organization for the achievement of the purposes set forth in Article 55."

With an oblique reference to Clauses (4) and (7) of Article 2 of the UN Charter, "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations." - Article 2(4) states. On the other hand Article 2(7) says: "Nothing contained in the present Charter shall authorize the United Nations

to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter; but this principle shall not prejudice the application of the enforcement measures under chapter 7."

What is clear is that the international community does not confer on any state a right to use force in favour of human rights protection in another country. A response to human rights violations can not be made through violence. In a recent resolution entitled, "The Protection of Human Rights and the Principle of Non-Intervention in Internal Affairs of States", the Institute of International Law took this position. The resolution states that diplomatic, economic, and other measures could be undertaken by a state when acting individually or collectively. A confirmation of the broad normative scope of the prohibition of the armed force in international relations is also found in the Friendly Relations Declaration, adopted by the consensus by the UN General Assembly in 1970 which states: "No state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal and external affairs of any other state. Consequently armed in-

tervention and all other forms of interference or attempted threats against the personality of state or against its political, economic and cultural elements in violation of international law. Seen against this backdrop, the NATO intervention in Kosovo is clearly illegal. The deficiencies of the UN can not establish a new claim of right to drop bombs for humanitarian purposes.

The Dilemma of State Sovereignty and Humanitarian Intervention

It appears from the brief analysis that the limitation imposed by the UN Charter on armed intervention even by the UN "in matters that are essentially within the domestic jurisdiction of any state" does not apply only to the enforcement measures taken by the United Nations Security Council under Chapter 7 of the Charter. Article 39 empowers the Council with the sole power of determining "the existence of any threat to the peace, breach of peace, or act of aggression." It shall, then make recommendations, or decide what measures shall be taken in accordance with Article 41 and 42, to maintain or restore international peace and security. Besides, Article 51 preserves, the inherent right of individual or collective self defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. In fact, the charter has promulgated comprehensive legal regime on the prohibition on the use of force, which has become recognised as jus cogens or rules of a preemptory character.

Theodor Meron, a professor of International Law at New York University argues albeit progressively, "By joining the treaties, most governments have now signed on to the idea that human rights clearly limit their sovereignty, and create obligations to the entire community of states." In fact the principle of non interference with the essential domestic jurisdiction of states simply can not be judged as a protective shield behind which human rights can be flagrantly or systematically violated with impunity. The very principle of respect for sovereignty, territorial integrity or political independence of any state should not be allowed to outweigh at least the existing international human rights regime shaped to confront gross violations of human rights.

Sovereignty does not include the right of mass slaughter or of destroying a rebellious province in the name of pacifying it or launching a systematic operation of torture or forced exodus of the civilian populations in the name of controlling civil strife. Chechnya, East Timor, Kosovo, Bosnia, Sierra Leone, Kashmir; all have experienced appalling human rights abuses that test our preparedness to translate promise into action. Those are the tests we all but failed in different perspectives. One thing remains the same. Human rights become the first casualty. Ominous human rights situation, specially crimes against humanity, clearly amounts to a threat to international peace and security, which permits the Security Council to take enforcement action to remedy the situation, there is nothing in article 2(7) restricting the enforcement action to measures short of the

use of force. As succinctly put by Sir Nigel Rodley, a professor of International Human Rights Law at the University of Essex and the UN Special Rapporteur on Torture, "... human rights violations have simply become over the years matters of international concern and no longer ones 'essentially within the domestic jurisdiction' of states". UN can effectively intervene in any matters that can be a threat to international peace and security. The meaning of such 'threat' no longer belongs to conservative domain of interpretation.

No state or group of states has unilateral or collective right to intervene or use of force against the territorial integrity or political independence of another state. A right to humanitarian intervention does not, as such, exist. Only the UN has or it can authorise such right in due procession however this process has many failings: It can be cumbersome and slow moving. But it possesses the quality of universal legitimacy and it's a forum where every nation can have its voice heard.

Geographical proximity or regional interest does not constitute a proper qualification for intervention except in case of asserting one's right to self-defence. Otherwise the floodgate will be opened to all sorts of subjective claims when intervention is justified. It is essential to recall that, until the Government of Indonesia invited an international force in to East Timor, no government in the world was prepared to offer troops for an early UN intervention.

In quest for an Effective Mechanism

The recent trend whereby courts are increasingly allowing the prosecution of human rights cases, irrespective of

where they occurred or how much time has elapsed is a welcome development. The decision of the House of Lords of the United Kingdom in the Pinochet case was a landmark decision on the potential of national courts to enforce international commitments. The judiciaries of different countries can decide to act firmly to impede the rising occurrences of crimes against humanity.

The newly established Office of the UN High Commissioner for Human Rights can play a crucial role in promoting and protecting human rights. The present trend of using this office mostly for promotional purposes is a sheer wastage of human and financial resources. It should be redesigned as the focal point of UN human rights activism. The office should be allowed to perform a pro-active role especially in cases of systematic pattern of gross violation of human rights. The Office can determine the urgent need for UN intervention and directly refer the case to Security Council for immediate consideration. The preventive strategy will yield better result than simply being reactionary. As rightly pointed out by Mary Robinson, UN High Commissioner for Human Rights "Prevention must be paramount.... Failures of prevention shame us all. Cambodia shamed us, Kosovo shamed us and now East Timor has shamed us. Are we going to be shamed again?"

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Corrigendum

The introduction of the writer of "Legacy Continues" on Dec 6, should read as Director Programmes, BELA.