FOR YOUR *information*



Frequently asked questions on human rights

*LAW Sour rights

LAW DESK REPORT

What are human rights?

Human rights usually refer to those rights that society has agreed are fundamental to people everywhere, such as the right to life, the right to live without oppression, and the right to equal freedom of opportunity. Until World War II it was up to each country to decide what rights to grant its citizens but in 1948 the United Nations adopted the Universal Declaration of Human Rights (UDHR)

Its 30 articles are the foundation upon which all later human rights instruments are built

Human rights are principally divided into two divisions: the civil and political rights and the economic, social and cultural rights. Civil and political rights include the right to life, right to protection of law, freedom of expression etc., while the economic, social and cultural rights include the right to education, right to work, right to a standard of leaving etc. However, the definition of human rights is expanding day by day. Human rights activists now consider issues like environment, right to development, right to good governance etc. as part of human rights.

What is the Universal Declaration of Human Rights?

The Universal Declaration of Human Rights is the primary international articulation of the fundamental and inalienable rights of all members of the human family. Adopted by the United Nations General Assembly on December 10, 1948, the UDHR represents the first comprehensive agreement among nations as to the specific rights and freedoms of all human beings.

Among others, these include civil and political rights such as the right not to be subjected to torture, to equality before the law, to a fair trial, to freedom of movement, to asylum and to freedom of thought, conscience, religion, opinion and expression. The rights outlined in the UDHR also include economic, social and cultural rights such as the right to food, clothing, housing and medical care, to social security, to work, to equal pay for equal work, to form trade unions and to education.

Originally intended as a "common standard of achievement for all peoples and all nations", over the

past fifty years the Universal Declaration has become a cornerstone of customary international law, and all governments are now bound to apply its principles. Because the Universal Declaration of Human Rights successfully encompasses legal, moral and philosophical beliefs held true by all peoples, it has become a living document which asserts its own elevating force on the events of our world.

Which rights are recognized by the UDHR?

The UDHR consists of 30 articles Through these articles the UDHR recognizes 25 human rights of which 19 are civil and political rights and 6 are economic, social and cultural rights.

The civil and cultural rights are the right to life, liberty and security of person (Art. 3), freedom from slavery (Art. 4), freedom from torture of cruel inhuman or degrading treatment or punishment (Art. 5), the right to recognition everywhere as a person before the law(Art. 6), equality before the law and equal protection of the law(Art. 7), the right to an effective judicial remedy(Art. 8), freedom

from arbitrary arrest, detention or exile(Art. 9), the right to a fair trial and public hearing by an independent and impartial tribunal (Art. 10), the right to be presumed innocent until proved guilty(Art. 11), freedom from arbitrary interference with privacy, family, home or correspondence, freedom from attacks upon honour and reputation, the rights and to protection of the law against such attacks(Art. 12), freedom of movement and residence(Art. 13), the right of asylum (Art. 14), the right to a nationality(Art. 15), the right to marry and to found a family(Art. 16), the right to own property(Art. 17), freedom of thought, conscience and religion(Art. 18), freedom of opinion and expression(Art. 19), freedom of peaceful assembly and association (Art. 20), and the right to take part in the government and the right of equal access to public service (Art. 21),

The economic, social and cultural rights are the right to social security (Art. 22), the right to work, the right to equal pay for equal work, the right to form and join trade unions (Art. 23), the right to rest and leisure including reasonable limitation of working hours and periodic holidays with pay (Art. 24), the right to a standard of living adequate for the health and well-being of a person and his family (Art. 25), the right to education (Art. 26), and the right freely to participate in the cultural life of the community (Art. 27)

documents is regarded as International Bill of Rights

What is the UN Human Rights Commission?

The UN Human Rights Commission was created in 1946 as the main vehicle for promoting acceptance of the principles laid down in the Universal Declaration of Human Rights. Its first 20 years were spent drawing up the two International covenants that gave legal force to the Universal Declaration

It was not until 1970 that it was authorised to investigate persistent human rights abuses. Since then its profile has increased and its annual meetings in Geneva each March are attended by hundreds of diplomats and campaigners. Countries will go to great lengths to avoid being criticised.

How are human rights enforced?

A draft of legislation exists to protect human rights, but it much more difficult to ensure states respect the treaties they have signed.

Two covenants - on civil and political rights, and economic, social and cultural rights - were adopted in 1966 to guarantee the rights enshrined in the UDHR. Other treaties - on children's rights, women's rights, racial discrimination and torture - have followed.

Nearly every government has signed up to at least one of these international treaties, with some notable exceptions. The US and Somalia are the only two countries not to have ratified the Convention on the Rights of the

The Organisation of African Unity, the Council of Europe and the Organisation of American States have all adopted charters or conventions to further human rights in their regions. They impose additional binding obligations on signatory countries.

On 1 July 2002, the International Criminal Court was inaugurated in the Hague, Netherlands, following ratification of the treaty establishing it by 70 countries

It has jurisdiction only in cases on the territory of a state which has ratified the treaty, by a citizen of such a state and when the Security Council refers a

the UDHR's emphasis on an individual's rights rather than responsibilities to the community makes it unsuited to Asia

Does Bangladesh follow International Bill of Rights?

Of course. Bangladesh endorses the values of the UDHR. Most of rights set forth in the Declaration have taken place in our constitution. Bangladesh has signed and ratified he International Covenant on Civil and Political Rights. It has signed the International Covenant on Economic, Social and Cultural Rights. It has also signed and ratified many other international conventions on human rights like the Convention on the Rights of the Child, 1989, the Convention on the Elimination of all Forms of Discrimination against Women, 1979 etc.

How Human rights are embodied in the Constitution of **Bangladesh?**

The civil and political rights are embodied in Part III of our constitution. Rights enumerated in this Part are known as fundamental rights as these rights are enforceable by law. The fundamental rights set forth in our constitution are right to equality before law (Art. 27), right regarding discrimination on grounds of discrimination, etc. (Art. 28), right to equality of opportunity in public employment (Art. 29), prohibition of foreign titles, etc. (Art. 30), right to protection of law (Art. 31), protection of right to life and personal liberty (Art. 32), safeguards as to arrest and detention (Art. 33), prohibition of forced labour (Art. 34), protection in respect trial and punishment (Art. 35), freedom of movement (Art. 36), freedom of assembly (Art. 37), freedom of associa tion (Art. 38), freedom of thought and conscience, and of speech(Art. 39) freedom of profession or occupation (Art. 40), freedom of religion (Art. 41) rights to property (Art. 42), protection of home and correspondence (Art. 43) and enforcement of fundamental rights (Art. 44).

The economic social and cultural rights are enumerated in our constitution in Part II as fundamental principles of state policy. Rights embodied in this part are not enforceable by law. However, the state, by placing these rights in the constitution, undertakes an obligation to strive for their realisation. The articles of this part that set forth the fundamental principles of our state policy are Art. 9 (Fundamental principles promotion of loca Government institutions), Art. 10 (Participation of women in national life). Art. 11 (Democracy and human rights), Art. 13 (Principles of ownership), Art. 14 (Emancipation of peasants and workers), Art. 15 (Provision of basic necessities), Art. 16 (Rural development and agricultural revolution) Art. 17 (Free and compulsory education), Art. 18 (Public health and morality), Art. 19 (Equality of opportunity), Art. 20 (Work as right and duty), Art. 21 (Duties of citizens and of public servants), Art. 22 (Separation of Judiciary from the executive), Art. 23 (National Culture) Art. 24 (National monuments, etc.), and Art. 25 (Promotion of international peace, security and solidarity).

Are the fundamental rights enforceable by law?

Yes, the fundamental rights are enforceable by law. One can move to the High Court Division for enforcement fundamental rights. The right to move to the High Court Division for enforcement of fundamental rights itself is a fundamental right (Art. 44).

Can the State make any law inconsistent with the fundamental rights?

No. Art. 26 (the first article of Part III of the Constitution) prohibits the state to make any law inconsistent with the fundamental rights. Clause (2) of Article 26 states "The state shall not make any law inconsistent with any provisions of this Part, and any law so make shall, to the extent of such inconsistency be void.

Can restrictions be imposed on fundamental rights?

There are some fundamental rights on which the state cannot impose any restriction. These rights are absolute or unfettered. These rights are right to equality before law (Art. 27), prohibition of forced labour (Art. 34), right to protection against ex-post facto legislation (Art.35 (1)), and freedom of eligion in educational institutes (Art. 41(2)).

Restriction can be imposed on some fundamental rights. These rights are right to protection of law (Art. 31), protection of right to life and personal liberty (Art. 32), freedom of profession or occupation (Art. 40), and rights to property (Art. 42). Restriction can be imposed on these rights in accordance with law.

There are some rights on which the state can impose restriction on rea-sonable grounds. These rights are freedom of movement (Art. 36), freedom of assembly (Art. 37), freedom of association (Art. 38), freedom of speech, expression and press (Art. 39(2)), freedom of religion (Art. 41), and protec-tion of home and correspondence (Art. 43). The grounds on which restricions can be imposed on these rights are public interest (Art. 36), in the interests of public order or public health (Art. 37), in the interests of morality or public order (Art. 38), in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence (Art. 39(2)), subject to law, public order and morality (Art. 41), and in the interests of the security of the State, public order, public morality or public health (Art. 43).



The Daily Star

Speedy Trial Tribunal Bill passed

The Speedy Trial Tribunal Bill 2002 was passed in the Parliament on 24 November for the speedy trial of five offences. The offences are murder, rape, possession of illegal arms or explosives and cases relating to narcotics and drugs. The Speedy Trial Tribunal Bill was promulgated by an Ordinance issued by the president on 24 October. The Ordinance becomes ineffective as it was passed in parliament. It is the second law of its kind that is passed for the speedy trial for some cases to combat crimes. According to the new law the tribunal will try the cases transferred to it by the government through gazette notification. The tribunal is to conclude a trial within 135 days. It will initially have a 90 days trial period. It will be given 30 days more if the trial is not completed during the period due to unavoidable circumstances. The trial period may be extended for valuable reasons. The tribunal will have to inform both the High court Division and the government in black and white of the extension of time. On the expiry of 135 days the case will be sent back to the court from where it was transferred. The tribunal will follow the summery trial under the Code of Civil Procedure. Trial of a case in a tribunal would be non-stop until it is completed. However, the court may adjourn the trial for a period not exceeding three days. The convicted person may prefer an appeal against the verdict of the tribunal. The government would appoint the special public prosecutors for the tribunal. Each tribunal has to send a note to the Supreme Court stating the number of cases transferred to it; cases heard, disposed of, adjourned and reason of adjournment and judgements within the first seven days of the month. -Daily Star, 25 November.

Retirement Benefit Bill passed

The Private Educational Institutions Teachers and Employees Retirement Benefit Bill 2002 was passed in the Parliament on 25 November. The bill was passed aiming at ensuring retirement benefit to the teachers and employees of the non-government educational institutions. According to the Act a board of 21 members will be set up to distribute the retirement benefit among the teachers and employees of the non government schools, colleges and Madrashas. The Secretary of the Ministry of Education will be the chairman of the board, according to the law. DG and a director of the directorate of secondary and higher secondary education, DG of the directorate of technical education, one deputy secretary each from the education, establishment and finance ministry, eleven representatives of the teachers and three of the employees will be the members of the board. Besides the retirement benefit the teachers and employees will be paid benefits in case of their sudden death while servicing at the institution. The board will raise its funds from government's donation. - Daly Star, 26 November.

Thousands of murder cases waiting for disposal

7885 murder cases are waiting for disposal in the various courts of the country. About 838 murder cases were disposed of by the courts from July 1 to November 20 during the current fiscal year. The statistics was given by Barrister Moudud Ahmed, Minister of the Law, Justice and Parliamentary Affairs while replying a question in Parliament on 24 November. Dhaka topped the list with a total of 971 under trial murder cases while Lakshmipur district lies in the bottom line with only 19 under trial murder cases, according to the minister. -BSS, 24 November.

Girl child abused in the family first

The speakers of a seminar said that girl children were sexually abused by their relatives in the family first. They were abused by the maternal cousin or the paternal cousin whom they were in shy to disclose. The seminar named "The Rights of the Abused Women in Bangladesh" organised by Bangladesh Society for Enforcement of Human Rights and Bangladesh Mahila Ainjibi Samity. The speakers said that scores of girl children in the society were being sexually abused by their close relatives, which they could not speak of. -Daily Star, 26 November.

Criminal case against DCC magistrate

A criminal case was filed to the Chief Metropolitan Magistrate Court against a magistrate and six other officials of Dhaka City Corporation (DCC). The case was filed by Matiur Rahman, Chairman, Bangladesh Muktijoddha Rehabilitation Association, Mirpur, Dhaka. The complainant alleged that the accused persons along with 10 others ransacked the office of the association and houses of the office bearers. They also looted valuables worth about Tk. six lakh. The Metropolitan Magistrate took cognizance of the case after hearing the prosecution lawyer. -Daily Star, 21 November.

Four laws amended

The Parliament has amended four laws. These are the Vested Property Return (Amendment) Act, Arms Act 1878, Explosive Substance Act 1908



case to it.

Kofi Annan, the UN Secretary General, said that the court "holds the promise of a world in which the perpetrators of genocide, crimes against humanity and war crimes are prosecuted when individual states are unable or unwilling to bring them to justice" The US China, Russia and a number of other states have failed to ratify

the treaty because of unhappiness with its powers. The establishment of the court follows limited tribunals for Yugoslavia,

Rwanda, Cambodia, Sierra Leone and Iraq,

At national level human rights are generally guaranteed by the constitution of respective states.

Does everyone agree on what constitutes a human riaht?

Why is December 10 celebrated as "Human Rights Day?"

The Universal Declaration of Human Rights was adopted late in the evening on December 10, 1948. For this reason people throughout the world have chosen to celebrate this date as Human Rights Day. We celebrate not only to mark the achievements of those who came before us, but also to renew our own faith in and commitment to the Universal Declaration and to the principles it sets forth

What is International Bill of Rights?

Star LAW report

The Universal Declaration of Human Rights was adopted on 1948 by the UN. In pursuance of the Declaration International Covenant on Civil and Political Rights and its optional protocol, and International Covenant on Economic, Social and Cultural Rights were adopted in 1966. Another protocol to the Covenant on Civil and Political Rights was adopted on 1989 aiming at abolition of death penalty. The combination of these above-mentioned

There has been disagreement about what constitutes a human right since the signing of the Universal Declaration in 1948.

The West stressed the importance of civil and political rights like the right to choose a government, freedom of expression, conscience and belief.

But the Communist bloc gave priority to economic, social and cultural rights, such as the right to work, housing and access to health care As a result two covenants were adopted in 1966 to give legal force to the

UDHR: g The International Covenant on Economic, Social and Cultural Rights

The International Covenant on Civil and Political Rights

Are human rights really universal?

The Vienna Declaration of 1993 stated: "All human rights are universal, indivisible and interdependent and interrelated... While the significance of national and regional peculiarities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

However, some countries have argued that human rights are culturally relative, and that the Universal Convention on Human Rights amounts to an mposition of Western values on other societies

Malaysia's Prime Minister Mahathir Mohamad, for example, argues that

Who are entitled to these rights?

Some rights are available only to the citizens of Bangladesh while some rights are available both to the citizens of Bangladesh and any person resid-ing in Bangladesh. Rights available to the citizens of Bangladesh are the rights enumerated in articles 27, 29, 30,31, 36, 37, 38, 39, 40, 42 and 43. The rights available both the citizens of Bangladesh and persons residing in Bangladesh are the rights contained in articles 32, 33, 34, 35, 41 and 44.

Are the economic, social and cultural rights set forth in our constitution enforceable by law?

No, they are not enforceable by law, Realisation of the economic, social and cultural rights depends much on resources of a country. On the other hand realisation of the civil and political rights depends on political will not on resources. Considering the limited resources of the country legislators of our constitution have placed the economic, social and cultural rights in Part III of the constitution as fundamental principles of state policy which is not enforceable by law. Though these rights are not enforceable by law, the state has a constitutional obligation to strive for the realisation of these rights. Bangladesh has a responsibility to struggle for the realisation of these rights as a signatory of the International Bill of Rights also. It cannot deny the responsibility on grounds of mere resource constraint.

Source: BBC Online, websites of the UN.

and Narcotics Control Act 1990. Vested Property Act was amended to allow the government more time to return the vested properties. The vested properties would remain under the control of Deputy Commissioner till the Tribunal settles the ownership of vested properties, according to the amended Act. The later laws were amended to make them compatible with the Speedy Trial Tribunal Act 2002. -Law Desk.

Public Safety Repeal Act challenged

A writ petition has been filed challenging the Public Safety Repeal Act 2002 and the High Court Division has issued a rule nisi on the government. A bench comprising Justice Md. Hamidul Hague and Justice Salma Masud Chowdhury has issued the rule asking the government as to why section 3(Ka) of he Act should not be declared unconstitutional and void. As per section 3 of the repeal Act if the government does not withdraw the case which has already been filed, the prosecution would continue. The petitioners challenged the discriminatory power of the government. -Bangladesh Observer, 27 November.

Legal aid for under trial prisoners

The government plans to give legal aid to the 258 under trial prisoners detained in different jails of the country. The decision came on a meeting of the Cabinet Committee on Jail Reform. At least 29 prisoners were in jails without any trial more than the period they would stay if they were sentenced. On the other hand 129 prisoners were detained in jails for quite a longer period than that were stipulated as minimum punishment for their offences. Government will provide legal aid for these prisoners for their bail or acquittal. -Daily Star, 27 November.

Death sentence for Bappi killers

The Third Special Court for Prevention of Women and Children Repression has convicted death sentence to five persons for killing Bappi. The convicts are Shahidul Alam Shipon, Ripon Kumar Roy, Sanjit Sarker, Shanker Raibanshi and Shariful Islam alias Badal, Bappi, a 8 years old boy, student of class III of the Arminotola Government High School was kidnapped by his maternal cousin Shipon from their residence for ransom on August 5 this year. Bappi was killed by Shipon and his accomplices later on the same day The court found Shipon, Sanjit Shanker and Badal guilty under section 7,8 and 30 of the Women and Children Repression Prevention Act 2000 for abducting and demanding ransom and for abetting the murder. Badal was tried in absentia as he has been absconding since the killing. The court also found the convicts guilty under sections 302/34 and 201 of the Penal Code. -Bangladesh Observer, 1 December.

Women repression

Women repression is continuing in the northern districts despite the tough laws. A total of 408 cases were filed under Women and Children Repression Prevention Act in 13 Upazilas of Dinajpur district during the first 10 months of the year. The number of cases filed with the other thanas are 22 in Chiribander, 23 in Khansama, 45 in Birganj, 30 in Nababganj, 13 in Ghoraghat, 22 in Birampur, 19 in Birol, 41 in Kaharol and 16 in Bochaganj. It was reported that eight of the cases were filed in connection with acid throwing. It was also reported that arrest warrant was issued against two police officials for attempt to rape in Natore. - The Independent, 1 December.

Corresponding Law Desk

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Deliberation

We have examined the record and perused the application for appeal. The learned Additional Sessions Judge found the appellant guilty under section 489B of the Penal Code on proof of the seizure of a counterfeit 500 taka note from his

A criminal case related to fake note

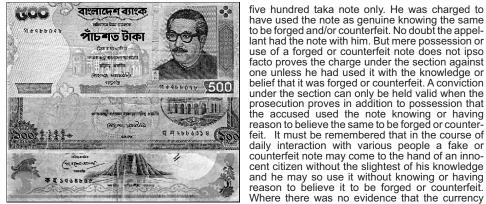
PW-2 and PW-6 have corroborated the informant that the said note was recovered from the possession of the appellant and witnessed the seizure thereof by the police. PW-3 testified that he sent the note to the Bangladesh Bank for

Be that as it may, we shall have to see whether mere possession of a forged or counterfeit note constitutes an offence under section 489B of the Penal Code. Section reads as follows,

489B "Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currencynote or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with mprisonment of either description for a term which may extend to ten years,

found must be forged or counterfeit; ii. one sells to, or buys or receives, or otherwise traffics in or uses such forged or counterfeit note as genuine; and iii. he does so with knowledge or having reason to believe the same to be forged or counterfeit.

is established. The object of the legislation is to prevent using or trafficking in any way in counterfeit or forged notes. The offence as made under the section is no doubt of very serious nature and may entail life imprisonment depending on the gravity of the offence. As the offence is grave so is the care to be taken in dealing with such offence lest an innocent citizen is punished.



Be aware of fake notes

nature or description or look that a mere look at it would convince any person of average intelligence that it was counterfeit or forged; nor any such question was put to the accused during trial, the convic tion and sentence of the accused under the section cannot be sustained in law. Cf. AIR 1979 SC 1705. Even when uneducated rustic citizen in usual course of daily life comes to possess of a counterfeit or forged note, which he finds to be suspicious and try to get rid of it, he cannot be held guilty under

reason to believe the same to be forged or counter

note in possession of the accused was of such

We could not find any evidence whatsoever from the record that the appellant used or tendered the note knowing or having reason to believe the same to be forged or counterfeit. Nor he was ever asked to explain for possession of the note. The prosecution therefore failed to prove the charge against the appellant under the section.

In above view of the matter, we find the judgment and order of conviction and sentence cannot be sustained in law.

Decision

In the result, the appeal is allowed. The impugned judgment and order of conviction are hereby set aside. The appellant is acquitted from the charge Let the appellant be set at liberty if he is not wanted in any other case.

possession Before Justice Mr Justice Mohammad Abdur Rashid and Mr Date of Judgment: November 20, 2002

Background

Almas Miah

The State

High Court Division

The Supreme Court of Bangladesh

Justice Siddiqur Rahman Miah

Result: Appeal allowed

Jail Appeal No. 3363 of 2001 (Narsingdi)

Mohammad Abdur Rashid, J: This appeal was presented under section 420 of the Code of Criminal Procedure against judgment and order dated 02.07.2001 passed by Mr Abul Hossain Khandokar. Assistant Sessions Judge, Court No. 2 at Narsingdi in Session Case No. 36 of 1997, which convicted the appellant under section 489B of the Penal Code and sentenced him to suffer rigorous imprisonment for ten years and also to pay a fine of Taka 1,000, in default to suffer further period of three months.

The prosecution case in short is that on or about 03.02.97 at about 07.30 PM the appellant purchased turmeric worth of Taka 50 from the shop of the informant and gave him a note of Taka 500, which he declined to take as he did not have change. He also doubted the note to be fake. Thereupon, there was an altercation, which was followed by a scuffle. Ultimately, the appellant was captured and handed over to the police with the note. In the trial, the appellant was charged under section 489B of the Penal Code to which he pleaded not guilty and claimed for trial. The prosecution examined 6 witnesses, of them, PW-1 Khorshed Ali is the informant, PW-2 Md Liakat Ali and PW-6 Nazir Hossain witnessed seizure of the note, PW-3 OC Md Qumrul Islam investigated the case and submitted the charge sheet, PW-4 Mofijul Islam and PW-5 Jalaluddin were declared hostile and cross-examined by the prosecution when they testified that they did not know anything about the case

examination and report, which reported that it was forged. We could not however find such report from the record nor the learned Additional Sessions Judge appears to have referred to such report.

and shall also be liable to fine." [emphasis supplied]

Essential ingredients of the offence under the section are; i, the note

When all the ingredients are proved, only then it could be said the offence In the case at hand, the appellant was found to be in possession of one