

Raising human honour

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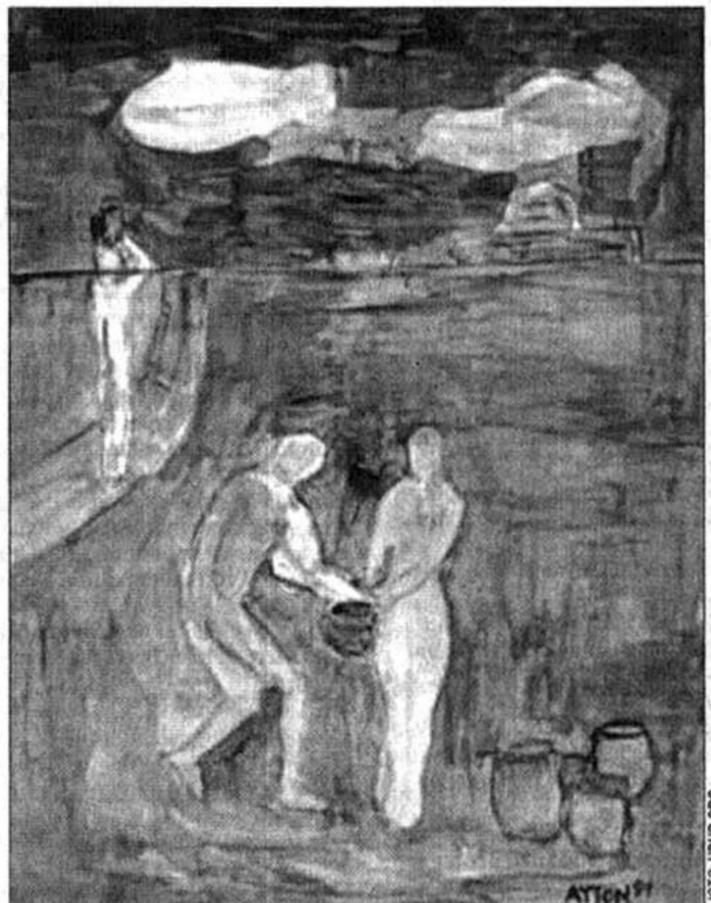


PHOTO: UNHCR/ORG

THE albatross can fly for a year without landing on the ground even once and it is definitely not worried about other albatrosses attacking it. It flies with confidence depending on its own two wings stretched to the limits of the sky. We, humans have penetrated the visible limits of the sky and flown to the oblivion relying on artificial wings and yet we are worried about our existence as we cannot trust our own kind.

Humans pride in being the best of all creations of God as we have this unique rational, philosophical, emotional and complex mental faculty. We have come a long way since time unrecorded to the time when we are thinking of going back to the past as HG Wells dreamt of a 'Time Machine Capsule'. Our imaginations and our endeavours have pushed our imaginations to that far where many of us want to get away from our own fellow human beings and wishes for a 'cast-away' life like that of an 'Alexander Selkirk'. Yet, we were the 'homo sapiens' who with our gifts as an advanced species, formed families which grew into societies, nations and international unions of various nationalities.

Religion, philosophy, politics, science and natural justice have often pushed us to ponder, meditate, love, cherish and on the reverse crush our own fellow travellers of life and our 'colleagues in time'. The inner core of human unity was often shaken by various norms and discords in the shapes of jealousy, rivalry and hate. Buddha went to achieve 'Nirvana' and Jesus Christ spread unconditional 'Love' with the plea to keep the created united in one cord. RK Mission spreads human dignity above all differences within human races. Alas! We remain so far from one another even within the same very core of family lives. Our Prophet Muhammad (PBUH) spread practical means to resolve practical problems of this practical world and sought divine blessings from the Almighty as William Cowper said, 'An oar is not enough to reach the shores. God's air must swell the sails'.

Misconstrued, deviated, derailed and zealous fanatic world leaders and even terrorists vie to obliterate the existence of other nations and religious groups being so far away from the teachings of their ultimate true teachers.

Political leaders and law makers unite to forge League of Nations, United Nations, European Union, ASEAN, SAARC and African Union to stretch the ever squeezing nationalistic sentiments.

Various laws, regulations, treaties, conventions and bills are drafted every year to resolve human differences and to put them in harmony with one another by confirming common grounds of interests by declaring 'justifiable human rights'. But the definition of justifiability remains an unconfirmed and

uncharted territory which loses shape from zone to zone in the world's atlas. Our human race is now challenged with the final frontiers of resolving their own differences.

Human Rights are the rights which humans should enjoy and the state has the positive duty to safeguard their enjoyments and negative duties not to deny them. When these rights are written in constitution we brand them 'fundamental rights'. Various national unions have now reached treaties to combined values and reach multinational treaties and conventions to spill over their rights to other different nations. European Convention of Human Rights 1950 is one as such. Primarily the similarities in race, culture, tradition and historical connections have assisted immensely behind the thought of

such a union but surprisingly religion still plays an important role behind allowing a country into the union which reflected in Pope Benedict's initial opinion against inclusion of Turkey into the Union (www.euractiv.com).

The history of the growth of the concept of Human Rights goes back to the history of human existence. The Code of Ur-Nammu is the oldest legal codex that survives today. The Twelve Tables of the Romans, The Medina Sanad, Bill of Rights of England and USA, The Magna Carta are the initiators of modern day legislations on Human Rights issues. Several other legislations have been enacted apart from the Universal Declaration of Human Rights as a follows:

- Convention on the Prevention and Punishment of the Crime of Genocide (entry into force: 1951)
- United Nations Convention Against Torture (entry into force: 1984)
- Convention on the Elimination of All Forms of Racial Discrimination (entry into force: 1969)
- Convention on the Elimination of All Forms of Discrimination Against Women (entry into force: 1981)
- Convention on the Rights of the Child (entry into force: 1989)
- Rome Statute of the International Criminal Court (entry into force: 2002)

The Geneva Convention 1951 is being used immensely by the lawyers around the world in securing the rights of the migrant refugees in foreign countries. In Europe, Article 3 of the European Convention of Human Rights Act 1950 is being used to secure the rights to live in Europe for an individual who is fled his country against fear for his life and security. This Convention secures the rights of the individuals into two folds: Absolute Rights and Qualified Rights and the Absolute Rights do not require any weighing of other options to safe-guard the interests of the asylum seekers. I tried Article 3 of the Human Rights Act 1998 in England to ensure the medical treatment of a fleeing asylum seeker from Congo which barred the

Government from deporting the failed asylum seeker to his native country as his rights to be treated in UK was incumbent against a forced deportation which would have pushed her to a sure-death situation where the treatment would have been an impossibility (news.bbc.co.uk/1/hi/health/3582322.stm). I also successfully used Article 3 against Parking Fines without any photographic evidence. My latest efforts include the suing of an individual against his ex-girlfriend's decision to keep their relationship a classified information from her fiancé.

Ordinarily we understand Human Rights to be the rights guaranteed by laws. But there are rights and privileges which cannot be enshrined by any legislation.

For example, the rights to be respected by the elderly and the rights to be helped financially by the richer cannot be made mandatory by confirming charity as an obligation. But religion sometimes make moral duties as obligatory and a legal preference is given by confirming punishment otherwise. Islam confirmed many charitable works like that of Zakat and Fitr to be state obligations in order to enforce these moral duties as State laws as well. But in this ever fluctuating political world where we have had to decipher the nations into political zones and restrict human movements, we are challenged to find a third way to climb the high ladder so that we could see more and grow out of our personal views about our ideologies.

SAARC can play an important role by putting important issues on the table which may take several years, sessions and wrangling but will one day be realised. Issues like having a South Asian Human rights Convention as we have a load of similar values, a South Asian Court of Human Rights which would have superseded authority on existing highest courts of the signatory states. The lawyers need to have practising flexibility to ensure representation of individuals in the South Asian Court of Human Rights and we have examples of such courts in Europe Court of Justice (curia.europa.eu). Time has

come not to hide behind the excuse of keeping our obligations away by degrading ourselves as poor. We do not need to be financially well off that much to take these steps rather being rich in confidence will pave the way. Our leading lawyers should focus more in enhancing the practising arena by focusing on what lawyers can do for the nation as lawyers and not as politicians only although lawyers around the world were and are engaged successfully in politics and names of Clinton, Tony Blair, Nelson Mandela, Gandhi, Sher-E-Bangla, Sohrabuddi, Dr. Makal Hossain are among the few of many starry legal luminaries.

But we above all, we need to practise our morality. Our religious leaders, politicians, philosophers, academicians and other leaders in the society need to shed their vanity and sit to draft a national Human Rights Act if not a South Asian Convention immediately, to equip the lawyers to habituate the confused communities of our poor nation so that we practise into being a more civilised society where we already have reputation as being a country where people are flatteredly hospitable to total strangers and we should be confident that a new enactment in the right direction will equally be welcomed. It is true that rights are often denied by the ill-achievers but if we are aware of our basic rights, we will be able to demand it with the development of the socio-political and judicial environment. A true separation of the Judiciary from the Executive will also mean complete renunciation of all black laws and slow but steadily distancing ourselves from hurried Tribunals. We must bring back our confidence in the judiciary and our laws so that we can improve our dignity as human beings with equal rights for all.

My writing has been an endeavour to the patient reader to have a third view towards the issue of Human Rights as we all have a third eye of the mind but we are sometimes required to open it as well.

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RIGHTS corner



Health rights in Bangladesh

The Constitution of the People's Republic of Bangladesh recognises health as a basic necessity of life and one of the 'fundamental responsibilities of the state' to the citizens. Individual citizen irrespective of cast, creed, colour, sex and class has the constitutional right to have basic health service.

The current regulatory framework

The existing regulatory framework for monitoring health service delivery either in the public or private sector remains weak. There are 45 laws related to various aspects of health. For example, laws related to specific diseases/health situations such as Epidemic Disease Act (1897), Prevention of Malaria Ordinance (1978), Eye Surgery (Restriction) Ordinance (1960); laws related to breast milk substitute, quality of food, quality of drugs, use of narcotic, women and children's health, health of labourers, environmental pollution and so on. None of these laws deal directly with patients'/health consumers' rights.

The country adopted a National Health Policy in 2000 with fifteen aims and objectives. These objectives include: development of nutrition and public health, accessible health services for the poor and rural population, primary healthcare for the Upazila and Union Council, reduction of maternal mortality, development of reproductive health, up-gradation and modernisation of health services, introduction of family planning



methods for the ultra poor, special provision for the mentally and physically handicapped population etc.

Bangladesh, with an area of 147,570sq km has a population of 140 million, which is one of the highest densely populated countries in the world with an annual growth rate of 1.48%. The Human Development Index (HDI) for Bangladesh is 0.530, which gives Bangladesh a rank of 137th out of 177 countries as presented in the Human Development Report (HDR) 2006 by United Nations Development Programme (UNDP).

Consumers rights in Bangladesh

This is still a neglected area in Bangladesh and most of the consumers are not aware of their rights. Health consumers are deprived of their rights in Bangladesh and the patients' rights are seriously undermined in the country. Harassment, negligence, abusive behaviour, unethical practices are very common in the health care delivery system. The issue is neglected due to absence of enforcing laws to protect the interests of the consumers. The consumers have not also organised themselves to raise their voices that could create pressures among the policy makers, law-enforcing agencies and the service providers. There are no pioneering consumers' representative organisations in the country except the Consumers' Association of Bangladesh (CAB) that has been persuading for establishing the Consumers' Protection Act since 1995.

Health consumers' rights in Bangladesh

The Ministry of Health and Family Welfare, in 1998 promulgated the Clients' Charter of Rights and the Providers' Charter of Rights. Both the charters have been publicised/circulated to a limited extent since then, but no effective steps have yet been taken to implement the rights mentioned in the charters.

Consumers' rights versus Responsibilities

- Responsible consumer behaviour is essential for realising consumers' rights
- Consumers' responsibilities include:
 - Developing active partnership with providers
 - Open communication with provider
 - Maintaining records properly
 - Following instructions
 - Providing feedback
 - Respecting providers' rights
- Consumers' need also to organise themselves:
 - to work as caretakers of the CPA
 - to provide feedback to appropriate authorities
 - to provide support to affected consumers
 - to participate in consumers' education

- Role of civil society and governments to facilitate establishment and functioning of such groups and the way forward:
 - to implement BMDC Code of Ethics
 - to adopt Clients Charter of Rights
 - to organise Consumer Groups
 - to initiate Private Practice and Private Clinics and Laboratories Ordinance to establish Advocacy Groups

HUMAN RIGHTS advocacy

HUMAN RIGHTS



10th December: Human Rights Day

BARRISTER HARUN UR RASHID

THE observance of Human Rights Day falls on 10th December and all member-states of the UN observe the Day as a commitment to human rights.

The language used in Articles 1, 55 and 56 of the UN Charter presuppose the existence of human rights before the advent of the UN and the Declaration of 1948 is a manifestation of the commitment of the UN Charter to human rights.

On 10th December in 1948, the UN General Assembly adopted a Declaration, known as the Universal Declaration of Human Rights. It was initiated by Ms. Eleanor Roosevelt, the wife of the President Roosevelt who was a champion in pursuing human rights for all human beings.

The Declaration has 30 Articles, setting forth the human rights and fundamental freedoms (liberties) and Article 1 lays down the philosophy of the Declaration: "All human beings are born free and equal in dignity and rights."

The Declaration, according to many legal experts, represents customary international law. This means that all states are legally bound to afford to individuals within their jurisdiction the human rights set forth in the Declaration.

After the Declaration, there has been a gap of 18 years, before two notable human rights instruments were adopted. They are: the 1966 International Covenant on Civil and Political Rights and the 1966 International Covenant on Economic, Social and Cultural Rights. The other instruments are the 1979 Convention on Elimination of All Forms of Discrimination against Women and the 1989 Convention on the Rights of the Child.

The Human Rights Commissioner of the UN monitors the compliance of human rights of all member countries of the UN. Recently one UN Rapporteur has visited Myanmar and inspected jails where the inmates are detained. The idea is that the detainees must be treated humanely.

Origin of the Concept of Human Rights

The concept of Human Rights goes back to



the way they are treated in their dealings with other states and international in general

National institutions for protection of human rights are important in that individuals may claim that their human rights have been violated by governments' action or inaction. Individuals must in all cases attempt to secure redress of their grievances internally. This is known as the exhaustion of the local remedies rule and is of fundamental importance in international human rights law.

A National Human Rights Commission was established in 1993 in India, in Sri Lanka, 1997 and in Nepal 2000. It investigates matters that include violation of human rights or discrimination on the grounds of race, colour or ethnic origin, gender or disability.

The Commission plays a central role in contributing to the maintenance and improvement of a tolerant, equitable and democratic society, through its public awareness and other educational programmes aimed at the community, government and business sectors. The fact that human rights are part of the domestic and international political agenda must reflect a realization by governments that behaviour in this field is crucial to their reputation and standing in world affairs and that it may even affect in a concrete fashion

ment of equality in a society. The Commission may preserve, protect and promote culture and language of all tribal communities including those of Adhvashis.

The Commission may also be given powers, among others, in the following matters:

- To intervene in any proceeding involving any allegation of violation of human rights pending before a Court with the approval of such a Court,
- To investigate into violation of human rights of individuals
- To visit under intimation to government, any jail or any other institution under it, where persons are detained or lodged for corrective treatment and to inquire the living conditions of the inmates and make recommendations thereon,
- To undertake and promote research in the field of human rights and
- To encourage the efforts of NGOs working in the field of human rights
- To education and publicity on human rights
- To review the safeguards provided by and under the Constitution and laws and recommend measures for their review and effective implementation,
- To conduct public inquiry from human rights point of view, such as homeless children inquiry, inquiry into dwellers in slums or women discrimination inquiry
- To provide service on dispute resolution, discrimination prevention, knowledge development, and employment equity.

Conclusion

In Bangladesh the National Human Rights Commission may be set up under a law. It will be an independent autonomous body, composed of individuals of highest reputation, integrity and competence in human rights field. It could even be a three-member body. It is hoped that this day will be reminder to the authorities to establish the National Human Rights Commission.

The writer is a former Bangladesh Ambassador to the UN, Geneva.

Source: Marie Stopes.