



Star LAW report

Star LAW analysis

60 YEARS OF HUMAN RIGHTS FAILURE Governments must apologise and act now

Amnesty International (AI) challenged world leaders to apologise for six decades of human rights failure and re-commit themselves to deliver concrete improvements.

"The human rights flashpoints in Darfur, Zimbabwe, Gaza, Iraq and Myanmar demand immediate action," said Irene Khan, Secretary General of Amnesty International, launching AI Report 2008: State of the World's Human Rights.

"Injustice, inequality and impunity are the hallmarks of our world today. Governments must act now to close the yawning gap between promise and performance."

AI's Report 2008, shows that sixty years after the Universal Declaration of Human Rights was adopted by the United Nations, people are still tortured or ill-treated in at least 81 countries, face unfair trials in at least 54 countries and are not allowed to speak freely in at least 77 countries.

"2007 was characterised by the impotence of Western governments and the ambivalence or reluctance of emerging powers to tackle some of the world's worst human rights crises, ranging from entrenched conflicts to growing inequalities which are leaving millions of people behind," said Ms Khan.

AI cautioned that the biggest threat to the future of human rights is the absence of a shared vision and collective leadership.

"2008 presents an unprecedented opportunity for new leaders coming to power and countries emerging on the world stage to set a new direction and reject the myopic policies and practices that in recent years have made the world a more dangerous and divided place," said Ms Khan. AI challenged governments to set a new paradigm for collective leadership based on the principles of the Universal Declaration of Human Rights.

"The most powerful must lead by example," said Ms Khan. China must live up to the human rights promises it made around the Olympic Games and allow free speech and freedom of the press and end "re-education through labour".

The USA must close Guantánamo detention camp and secret detention centres, prosecute the detainees under fair trial standards or release them, and unequivocally reject the use of torture and ill-treatment. Russia must show greater tolerance for political dissent, and none for impunity on human rights abuses in Chechnya.

The EU must investigate the complicity of its member states in "renditions" of terrorist suspects and set the same bar on human rights for its own members as it does for other countries.

Ms Khan warned: "World leaders are in a state of denial but their failure to act has a high cost. As Iraq and Afghanistan show, human rights problems are not isolated tragedies, but are like viruses that can infect and spread rapidly, endangering all of us."

"Governments today must show the same degree of vision, courage and commitment that led the United Nations to adopt the Universal Declaration of Human Rights sixty years ago." "There is a growing demand from people for justice, freedom and equality."

Some of the most striking images of 2007 were of monks in Myanmar, lawyers in Pakistan, and women activists in Iran. "Restless and angry, people will not be silenced, and leaders ignore them at their own peril," said Ms Khan.

Source: Amnesty International.

MUFASSIL M M ISLAM

WE invented words to express ourselves and establish our mark in the world as the most civilised, rational and articulated living beings. We speak with words and even with various physical, portrayal and vivid expressions. With the exchange of opinions we have made our world more developed and have learnt to exchange information. Laws have been invented to moderate our words when we express our views to other individuals and to the public at large. We even choose, elect and hire others to explain issues on our behalf. The freedom of choice to decipher information and the right to know them are our integral rights as social beings who are always hungry for knowledge. Information can enrich our clearer understandings, learning and formation of wisdom. It is the habit of the wise to remain equipped with opposing views and not to jump to conclusions over any apple of discord.

Freedom of Speech is a notion declared to be a right of all humans in Universal Declaration of Human Rights 1948 (Please refer to Preamble). It is recognised in our constitution. Constitution of the People's Republic of Bangladesh ensured freedom of speech and expression in Article 39 (1, 2).

Some reasonable restrictions found in this Article are as follows-

- (a) Against the interest of security of the state
- (b) Against the friendly relation with foreign states
- (c) Violation of public order
- (d) Violation of decency or morality
- (e) Anything related to contempt of court
- (f) Defamation or incitement to any offence

Hence, the freedom of speech is regulated by the peripherals of law for the greater benefit of the public as a whole. But it does not mean, freedom of speech cannot be exercised in categorical constructive manner, so that a friendly neighbour cannot be advised in case of serious errors in his judgements where his wrongs are affecting us through constructive dialogues with the help of think tanks. This Article of the constitution will be welcomed to deter unacceptable and blatant rebuking of anyone or of any other country or nation without the required level of well-founded facts and evi-

dences.

Many wished to thwart our post-war rights to various issues against the Pakistan Government in the excuse of keeping friendly ties. I do not think a constructive and realistic dialogue with Pakistan with regard to repatriation of stranded Pakistanis, war-damages and other delicate issues at the national level within the very regulations of International Laws of discussions would have jeopardised our rebuilt relationship with Pakistan. Issues are there which include cross border civilian casualties between Bangladesh and India and the Rohingya and fishing issues with Myanmar. A more constructive discussion at the government level with the advice not only from the Advisors in the government but also from the think tanks of the nations would help alleviate the cold-feelings amongst the neighbours and will definitely help rebuild the relationships in the region. European Union has come a long way from the Hundred-Year War (en.wikipedia.org/wiki/Hundred_Years_War) to rebuild a friendly zone keeping their individual entities in tact at the same time. We have to get rid of our 'not possible for us' attitude to move at a faster pace in the world order.

We have seen the abuse of freedom of speech in many examples around the world and we have supported and protested against the issues with and without really researching into the very publications with an open mind. Salman Rushdie's Satanic Verses was the expression of a man who had pre-conceived ideas about Islam. But the best response the Muslims gave to that book was not that in the mass-violent protests in the streets but through the publication of the book Holy Verses from India with a scholarly acumen.

There will be people in the society, who will not agree with the simplest of logics and with the most sacred and there will always be people who will be out there to criticise and rebuke any issue but the best way to challenge any abuse of intellect is with intellect as well, because a suppressed unjust may raise curiosity as to its contents to be true rather than allowing it to face the intellectual challenges from the other side which may destroy the intellectual pillars of the unfounded works.

It is true that in most of the

research works around the world, there will usually be a mark of its regional influence and an example of that is Whittaker's Book of World Facts (www.whitakersworld.com/default.asp) as the writer sets to write a book on important world facts and mentions a list of leading writers/ philosophers/poets of all time but fails to mention Omar Khaiyam, Jalal-ad-Din Rumi and even fails to mention the impact the Islamic culture and science had between 750 CE and 1250 CE. Although the writer tried to justify his writing as not being comprehensive, yet this failure would mislead, the readers unless mentioned at the forefront of the book that it was written from a Western perspective (even that is hard to justify) and hence, after several comprehensive communication between the publishers and librarians, I have now set myself to challenge the circulation of the book with a Public Interest Case as the public has the right to know the truth in an unambiguous manner as to facts of proven history. Mere shouting in the streets and agitating the public to show disgust would not serve the purpose.

The governments around the world formulate laws which are used to discipline the public and it is expected for the lawmakers to keep the interests of the common people in mind and to reflect the public findings in their reading of Bills. We hardly find any examples of opposing viewers to hold healthy debates accessible to public, as they are not really equipped with the art of dialogues in many cases and embark on argumentative fiascos. If a law is being made which primarily affects the women of the country, I wonder why women of the opposing views do not hold dialogues accessible to the public so that we can make up our minds. There has to be a lack of knowledge about the opposing views and ideologies in this matter to keep the feuding sides apart. Holy Qur'an instructs us to call the opposing parties to dialogues (Sura Bakara on Burhan) and we are also aware that our beloved Prophet (PBUH) was in several cases in dialogue with his opposers. If we are concerned that government is engaged in any activity not in favour of Islam, it is the failure of our clergymen to have not taught the true Islamic philosophy to the common people as the government



was elected democratically. If the government is undemocratic and there is no right to freedom of speech, it will be the duty of the scholars to demand their rights to free speech. It is the time for intellectual battle and we have been taught over and over again that Holy Qur'an is the book for the Wise and we seek I'im (wisdom) from Allah. In Europe, there are several laws confirming the freedom of speech and the most mentionable one is the European Convention of Human Rights 1950 where Articles 9 and 10 deal with freedom of rights to thought, conscience and religion and freedom of expression. All these rights are interconnected. But even these rights have been curtailed and influenced by the government media at times. We are aware that during and soon after the Second World War, many of the fundamental rights of UK citizens were curtailed by the British government and even now the Terrorism Act 2006 has set very stringent rules which to some experts curtail the freedom of expression of opinion by experts in the field. We have seen the media in the world exerting

massive influence in forming our opinions for the media's particular leaning to a particular school of thought have always played as a salient teacher in influencing the public in their opinions.

Our country has much applaudable legislation but these legislations need updating. On the other hand mere updating of Acts and laws will not serve the purpose as the common people usually do not fight legal battles against established institutions and suffer. The updating of the Press Council Act or the amendment of regulations of the Bangladesh Bank for the commercial banks will not suffice unless we create an easier accessibility for the common people. In the developed countries, we do not expect a member of the public to go to courts for unresolved administrative error of judgement, as there are Ombudsmen and almost all the public service and consumer related businesses are subject to disciplinary bodies. For example, the OTELO (www.otelo.org.uk) for telephone related complaints,

Independent Police Complaints Commission (www.ipcc.gov.uk) for complaints against the police, the Financial Ombudsmen Service (www.financial-ombudsman.org.uk) for complaints against banks and other financial institutions and the Press Complaints Commission (www.pcc.org.uk) to take up complaints against unfounded press comments are there in UK. These institutions are independent and resolve many complaints. Lawyers and experts in the relevant fields staff these bodies, ensuring high customer care and accountability.

We, the Bangladeshis have always longed for freedom in all respects and we do expect our leaders, lawyers, journalists, teaching professionals, historians and religious leaders to respect our hard-earned freedom and deliver the truth to us keeping their commitment to the public as guides to the future and to keep our heads high at any cost and in any given circumstances.

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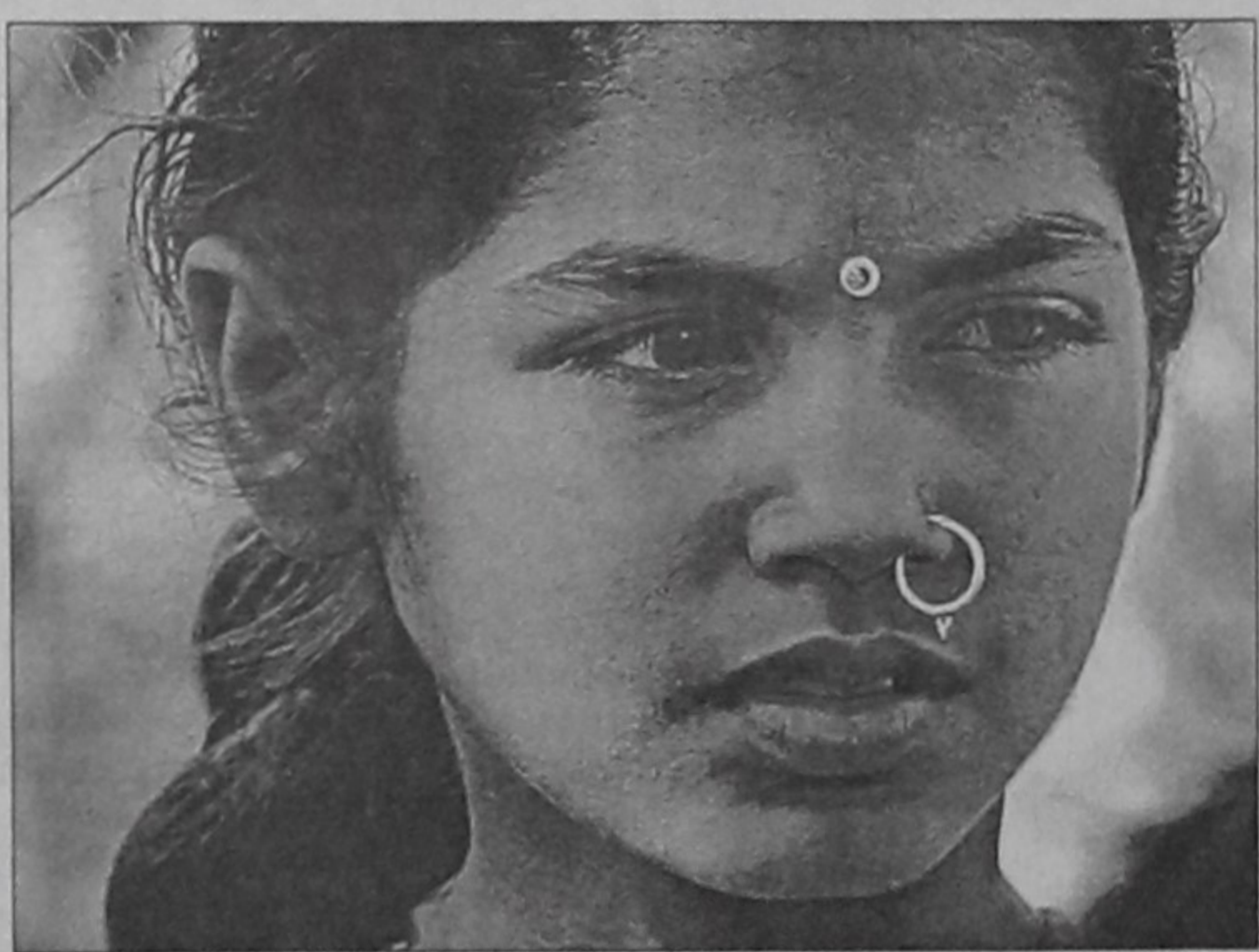
LAWS FOR everyday life

Shedding some light on child marriage

SHAH MD. MUSHFIQUR RAHMAN

RIDWAN is 19 and in a serious dilemma. For the last two years he has been dating with Runa, a girl of the same age. Runa's parents are getting desperate to give her in marriage but will not agree on Ridwan as the bridegroom. Ridwan wants to complete his studies before he gets married but that may cost him Runa. He is worried that if they marry that would constitute a child marriage and implicate him in criminal charges. Is he right in apprehending so? Yes, he is. But who do you think would be punishable for this offence of child marriage? Ridwan? Wrong, Runa would be punished, only if she is tried for it. How come? Yes, this is what our law has to say about child marriage. The law defining child marriage and prescribing punishment for it, happens to be one of the oldest laws in operation, passed back in 1929. It is the Child Marriage Restraint Act.

According to this law, as it is now, a child is a person who, if a male, is under twenty-one years of age, and if a female, is under eighteen years of age. And a marriage involving a child, be it bride or bridegroom or both, is defined as a child marriage. If a male above



twenty-one years of age or a female above eighteen years of age contracts a child marriage, s/he shall be punishable. The punishment would be simple imprisonment that may extend to one month, or with fine that may extend to one thousand taka, or with both. So in the hypothetical story above Runa would be punished. Ridwan would escape as he is still a 'minor'. After all, a minor cannot be punished for marrying a major.

Above surely is an instance of common child marriage. But let's

imprisonment which may extend to one month, or with maximum one thousand taka fine, or with both. Not only them. Whoever either performs or conducts or directs any child marriage shall be liable for the same punishment.

Still the law has its drawbacks which don't allow this law to preclude incidents of child marriage. A first class magistrate can take cognizance of this kind of offence but only upon the complaint filed by the concerned Union Council or Paurashava or Municipal Corporation within whose territorial limits the incident took place. As a result you will not find many cases under the law though one has one year to bring such allegation to the court.

What's in it for general people then? Though they cannot lodge complaint of a child marriage that already took place, they are given the opportunity to invoke court's order to prevent the occurrence of a child marriage. If information of a likely child marriage, by whatsoever means, reaches the Court, it may issue an injunction against all the persons engaged in arranging a child marriage prohibiting such marriage. Before doing so, those persons shall be given an opportunity to show cause against the issue of such injunction. In the

event of breach of this injunction the punishment will get greater but no bigger than three months imprisonment or up to one thousand taka fine, or both. This time the imprisonment can be rigorous, if the court orders so, as contrasted to mandatory simple imprisonment in the other punishable acts under this law.

There is a case of positive discrimination made in favor of women in this Act. They cannot be awarded with imprisonment. Keeping punishments aside let's talk about the consequence of a child marriage. Is child marriage prohibited under this law? No, it just made the act a punishable offence. Every consequence of a valid marriage will follow a child marriage ranging from legitimacy of children to right to inheritance. So, you may wonder what's the point in making such law. There is a potential danger associated with the idea of prohibiting child marriage. It will render scores of kids, born in consequence of child marriage, illegitimate and divest thousands of girls of their marital rights. And it is not prohibited in personal laws too. So it's better to fight the menace in a slow but steady way.

The writer is advocate, member of Dhaka Bar Association.

HUMAN RIGHTS advocacy

No one to turn to

A report released by Save the Children UK shows that children living in conflict-affected countries fear to report sexual exploitation and abuse by UN peacekeeping troops and humanitarian aid workers.

Children told Save the Children UK that they were too afraid to report the abuse, frightened that if they did the abuser might come back and hurt them, that aid agencies might stop helping them, or that they might be stigmatised by their family and community, or even punished by them. This suggests that for every case of abuse that is identified, there are likely to be many more that go unreported. Save the Children UK's research in Ivory Coast, Southern Sudan and Haiti shows that children as young as six are being abused by adults working for the international community. "People don't report it because they are worried that the agency will stop working here, and we need them," explained a teenage boy in Southern Sudan. To combat the problem, Save the Children UK makes three recommendations that are under discussion with the UN Task Force on protection from sexual exploitation and abuse: Effective local complaints mechanisms to be set up by the UN in the countries in which there is a significant international presence, so that children and/or their parents are able to report abuses carried out by those acting on behalf of the international community and get decisive action taken against the perpetrators.

Jasmine Whitbread, chief executive of Save the Children UK, said: "This research exposes the despicable actions of a small number of perpetrators who are sexually abusing some of the most vulnerable children in the world, the very children they are meant to protect. It is hard to imagine a more grotesque abuse of authority or flagrant violation of children's rights."

"In recent years, some important commitments have been made by the UN, the wider international community and by humanitarian and aid agencies to act on this problem. But welcome as these are, in most cases statements of principle and good intent have yet to be converted into really decisive and concerted international action."

The report reveals that the perpetrators of sexual abuse of children can be found in every type of human-

itarian, peace and security organisation, at every grade of staff, and among both locally recruited and international staff. Whitbread continued: "Obviously the vast majority of aid workers are not involved in any form of abuse or exploitation, but in life-saving essential humanitarian work. However all humanitarian and peacekeeping agencies working in emergency situations, including Save the Children UK, must own up to the fact that they are vulnerable to this problem and tackle it head on."

Source: Save the Children UK.

