



Star LAW report

All human beings are born free and equal in dignity and rights

THE UNIVERSAL DECLARATION OF Human Rights



ADOPTED BY THE UNITED NATIONS GENERAL ASSEMBLY AT ITS 1800TH MEETING, HELD IN PARIS ON 10 DECEMBER, 1948



They are: the 1966 International Covenant on Civil and Political Rights and the 1966 International Covenant on Economic, Social and Cultural Rights.

The other important international instruments are the 1979 Convention on Elimination of All Forms of Discrimination against Women and the 1989 Convention on the Rights of the Child.

Mechanics of implementation of human rights

Rule of law is one of the foundations of human rights because it is clear in domestic areas efforts have always been made to secure legal protection for individuals against arbitrary excesses of state power.

Certain fundamental human rights cannot be diminished or curtailed under any circumstances because they are inherent with human beings. In many states the constitutions enumerate those fundamental rights that may be enforced through judiciary.

The Bangladesh Constitution has empowered the High Court Division of the Supreme Court under Article 102 to give directions for the enforcement of any fundamental rights relating to personal security rights, freedom of movement, freedom of assembly, freedom of association, freedom of thought and conscience, expression, freedom of religion and rights to property as described by Part III of the Constitution.

However, economic and social rights, such as right to work, right to education, right to nutrition and right to primary health care as described in Part II of the Constitution under Fundamental Principles of State Policy not judicially enforceable under Article 8(2) of the Constitution.

The setting up of National Commission of Human Rights in Bangladesh is another mechanism through which human rights of citizens are protected, and its functions are different from those of the Supreme Court.

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 on human rights at the community, government and business sectors.

The Commission's functions include in protecting, promoting and making aware of basic human rights, especially to disadvantaged groups within the society.

The programmes of the Commission provide information

and strategies to improve the enjoyment of human rights in a country, the key message being that the elimination of discrimination, harassment and breaches of human rights are pre-requisites for the enjoyment of equality in a society. The Commission is expected to preserve, protect and promote culture and language of all tribal communities including those of Adivashis.

The Commission is empowered to conduct investigation and resolve complaints about breaches of human rights and anti-discriminatory conduct of government or its agencies. The Commission makes recommendations to the government.

Human rights and rule of law

Rule of law is one of the foundations of human rights because it is clear in domestic areas efforts have always been made to secure legal protection for individuals against arbitrary excesses of state power.

Certain fundamental human rights cannot be diminished or curtailed under any circumstances because they are inherent with human beings.

The rule of law is an ancient ideal first posited by Plato as grounded in divine reason and so inherent in the natural order. It continues to be important as a normative ideal, even as legal scholars struggle to define it.

In the Anglo-American legal tradition, rule of law has been seen as a guard against despotism and as enforcing limitations on the power of the state. More recently, the rule of law has been considered as one of the key dimensions that determines the quality and good governance of a country.

The rule of law is interlinked with democratic norm and in a democratic society, the rights and freedoms are inherent to the human person, the guarantees applicable to them and the rule of law form a triad. Each component defines itself, complements and depends on the others for its meaning.

The rule of law does not mean rule by law. Laws are made by states but states are themselves subject to the rule of law. Some laws enacted by parliament may go against the principles of rule of law. Under the rule of law, accuser cannot be at the same time the judge. In some ways it refers to accountability of actions or omissions of public officials.

Challenges for enforcement of human rights

While the concept of human rights

may have an objective quality, their implementation is, to a certain degree, dependent upon a large number of variable political, social and economic factors and accordingly the conditions for the application of human rights vary from state to state.

Reduction of poverty is the mother of human rights and if a person is hungry all other human rights become meaningless. Therefore reduction of poverty is a serious obstacle to implementation of human rights in poor countries.

Lack of education is another impediment of enforcement of human rights. Lack of education leads to lack of awareness of human rights. If a person does not know of what are her/his rights, that individual cannot enforce his or her rights.

Another difficulty of enforcement of human rights is the values conditioned by social and cultural perceptions. For example, marriage of girl below the legal age of 18 is tolerated in the country because it is seen to be socially and culturally acceptable.

Another hurdle appears to be the non-realisation that the human person should be at the center of development. The definition of development underscores a clear link between human rights and development. Where human rights are respected, development occurs. Where transparency and accountability of actions or omissions exist human rights are promoted.

In recent years, human rights and development have been converging. Growing recognition of the crucial links between rights violations, poverty, exclusion, vulnerability and conflict has led multilateral donors to look at human rights more thoroughly as a means for improving the quality of development co-operation.

The strengthening of local self-government is an essential component for the effectiveness of development policies. The key to participatory development means fulfilling the potentials of people by enlarging their capabilities, and this necessarily implies empowerment of people, enabling them to participate actively in their own development. They are integral part of human rights.

Another big challenge for human rights is the prevalence of corruption or misuse or abuse of power. The dictionary definition of corruption is "lacking in integrity or dishonest practices". The

most agreed common definition of corruption is "the misuse of public power for private profit".

Corruption occurs when a public official demands or expects a bribe or gift for doing an act which that public official is ordinarily required to do by law. If politicians or administrators or civil servants misuse their powers to enrich themselves, they will be designated as corrupt persons.

The bottom line is that any decision by corrupted person is flawed or immoral because it is determined by extraneous considerations.

Since extraneous considerations influence a decision, it violates human rights. It violates equality of treatment. That means that the person who was denied an opportunity by the biased decision has not received equal treatment and that amounts to gross violation of human rights.

Another example is when a shallow hand pump that was installed three years ago in a village to provide supply of fresh water is no longer in use because the technician installing it sold a key part of the pump in collusion with a public official. The result in effect denies access to water to individuals that in turn is a violation of basic human rights.

States' record of human rights under international scrutiny

Finally, international concern with human rights is a phenomenon of comparatively recent origin. The institutions for the protection of human rights on national and international area have developed exponentially since the end of the Second World War. Human rights since then have been elevated to a matter of international rather than merely a national concern.

The revamped UN Human Rights Council monitors the record of human rights of the member-states of the UN. The Human Rights Commissioner of the UN attempts to ensure the compliance of human rights of all member countries of the UN.

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 in foreign relations.

The writer is Former Bangladesh Ambassador to the UN, Geneva.

BARRISTER HARUN UR RASHID

THE World Human Rights Day fell on 10th December. It was on this day in 1948 the Universal Declaration of Human Rights was adopted by the UN General Assembly.

All UN member States including Bangladesh observe this Day to commit to themselves to preserve and protect human rights for all persons.

Human Rights belong to individuals simply because they are human beings. Foremost among these is that rights are by nature inherent, universal and inalienable.

Origin of human rights

Human Rights did not emerge suddenly and have long historical, political and philosophical components. History and politics provide the contextual dimension of human rights, philosophy gives them meaning and the law deals with the mechanics of their application.

The concept of Human Rights goes back to philosophy of Greek Stoics. It was later revived and developed during 16th century by Dutch jurist Grotius in natural law jurisprudence. The modern version of human rights is to be found in the English, American and

French experiences of the 17th and 18th centuries.

In the American Declaration of Independence of 1776 drafted by Thomas Jefferson, it stated, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator, with certain inalienable rights, that among those are Life, Liberty and the pursuit of Happiness."

Similar sentiments were reflected in the slogan of French Revolution in 1779 of "Liberty, Equality and Fraternity".

President Roosevelt who conceived the idea of United Nations after the Second World War in 1941 stated four freedoms of individuals: Freedom of speech and expression, Freedom of religion, Freedom of want and Freedom from fear.

The three main pillars on which the UN Charter is based are maintenance of international peace and security, cooperation in economic development and promotion of 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.

Universal declaration of human rights

The Universal Declaration of Human Rights was drafted under the chair of 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." There are six rights in the Declaration:

- Personal security rights
- Due process rights
- Liberty rights
- Political rights
- Equality rights
- Welfare rights

Although it is a Declaration, not a Treaty or a Convention, it is argued that the rights described in the Declaration have become a part of customary international law because of general acceptance by all states, and even some of the states have incorporated many of the human rights in their Constitutions. This means that all states are legally bound to provide to individuals the human rights set forth in the Declaration.

After the Declaration, there has been a gap of 18 years due to difference of views during the Cold War between the West and the Soviet Union, before two notable human rights instruments were adopted.

FOR YOUR information

Be a defender: Stop discrimination

THIS year Human Rights Day, December 10, was celebrated with the theme, "human rights defenders who act to end discrimination".

According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), Human Rights Day 2010 was held to highlight and promote the achievements of human rights defenders and emphasis was given on the primary responsibility of Governments to enable and protect their role. The Day was also intended to inspire a new generation of defenders to speak up and take action to end discrimination in all of its forms whenever and wherever it is manifested. Human rights, a dream word, gives us hope to believe that, "all human beings are born free and equal in dignity and rights". These are the rights inherent to all human beings, irrespective of the nationality, race, sex, ethnicity, religion, language and any other status. All are entitled to enjoy their rights without discrimination. "Denial of human rights and fundamental freedoms not only is an individual and personal tragedy, but also creates conditions of social and political unrest, sowing seeds of violence and conflict within and between societies and nations."

takes risk. This year Human Rights Day recognised and acclaimed the role of human rights defenders.

Navi Pillay, UN High Commissioner for Human Rights, stated, "Human rights

human rights and a commitment to seeing that ideal become a reality."

Yes, we believe every one of us can make a difference. Let's celebrate the spirit of human rights by defending the impu-

Martin Luther King Jr. said, "collection of the facts to determine whether injustices exist" is the first step towards positive change. After getting informed about the facts of human trafficking, we can take actions:

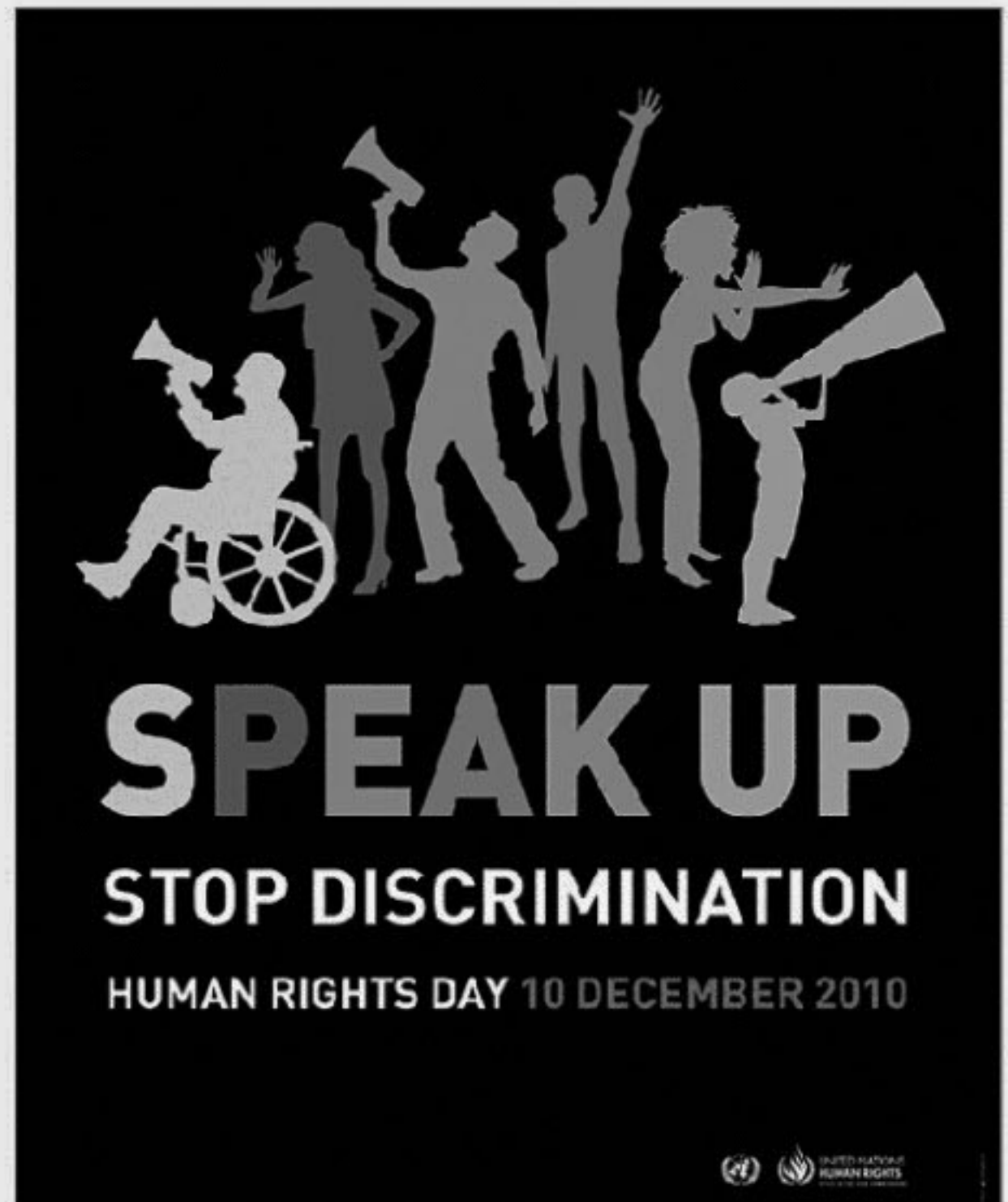
Tell someone: Share your learning about human rights issues with a family member, friend, or colleague.

Support activists: Support activists and organisations that help survivors by volunteering your skill that can be time, language abilities, or professional skills. Donate money, clothes, or equipment to them, and perhaps plan a fundraising event to help an organisation.

Call for change: Email, call, or write a letter to our municipal, government officials, law makers, to ask about what they're doing to address the problem of human rights, and ask them to implement the national and international standards.

Speak up: Raise the issue of human rights violations and discrimination in letters to the social networking sites, editor, at political debates, in the classroom, and discover other innovative platforms.

Report it: And most important be aware of the warning signs of human rights violation in your locality, at work, and even when travelling. Report suspicious activity to your local police.



defender is a title each and every one of us can earn. It is not a role that requires a professional qualification. What it depends on is regard for our fellow human beings, an understanding that we are all entitled to the full range of

nity, advocating non-discrimination, raising awareness and reaching out to our local communities and through all of 2011, let's promise to act differently. What we can do to make a difference?

GOOD NEWS

Landmark enforced disappearances convention to enter into force

AMNESTY International recently called on all states to commit themselves to end enforced disappearances, following news that a landmark treaty aimed at preventing the practice will come into effect.

The International Convention for the Protection of All Persons from Enforced Disappearance (Disappearance Convention) will enter into force on 23 December, after Iraq on Wednesday became the 20th country to ratify it.

The Convention aims to establish the truth about enforced disappearances, punish perpetrators and provide reparations to victims and their families.

"This is an important step in the fight to stop enforced disappearances, which cause horrendous suffering to victims, their families and their communities," said Salil Shetty, Amnesty International's Secretary General.

"However, we are still a long way from banishing this widespread practice to history. Although the 20 ratifications mark a milestone for the implementation of the Convention, almost 90 per cent of the international community have yet to commit themselves to tackling enforced disappearances."

An enforced disappearance takes place when a person is arrested, detained or abducted by a state or agents acting for the state. The authorities then deny that the person is being held or conceal their whereabouts, placing them outside the protection of the law.

The ramifications of enforced disappearances are severe. Those disappeared are often tortured and subjected to cruel,



inhuman and degrading treatment. In many cases, they are secretly killed and their remains are hidden.

Family members and those close to the person disappeared are left not knowing what has happened to their loved one, whether they are alive or dead. Entire communities can fracture under pressure as people fear being associated with those targeted.

States that ratify the Convention commit themselves to conduct investigations to locate the disappeared person, to prosecute those responsible and to ensure reparations for survivors and their families.

The entry into force will also lead to the establishment of a new international

Committee on Enforced Disappearances.

This independent and impartial treaty body will monitor implementation of the Convention and it can receive complaints from or on behalf of victims when the national authorities fail to fulfil their obligations.

However, in order for the Committee to be able to receive and consider complaints by victims or their representatives, their governments must make a declaration accepting it. Fourteen of the 20 states which have ratified the Disappearance Convention have not done this including Iraq.

Amnesty International has campaigned for over a quarter of a century for a convention to prevent and combat enforced disappearances worldwide.

"In the next few years, as part of our Campaign for International Justice we will be campaigning for those remaining states to ratify the Disappearance Convention without delay and to recognize the competence of the new Committee to consider individual complaints," said Salil Shetty.

"We urge all states to review their national laws to ensure that they can investigate and prosecute this horrendous crime before national courts."

The 20 states that have ratified the Disappearance Convention are: Albania, Argentina, Bolivia, Burkina Faso, Chile, Cuba, Ecuador, France, Germany, Honduras, Iraq, Japan, Kazakhstan, Mali, Mexico, Nigeria, Paraguay, Senegal, Spain and Uruguay.

Source: Amnesty International.

