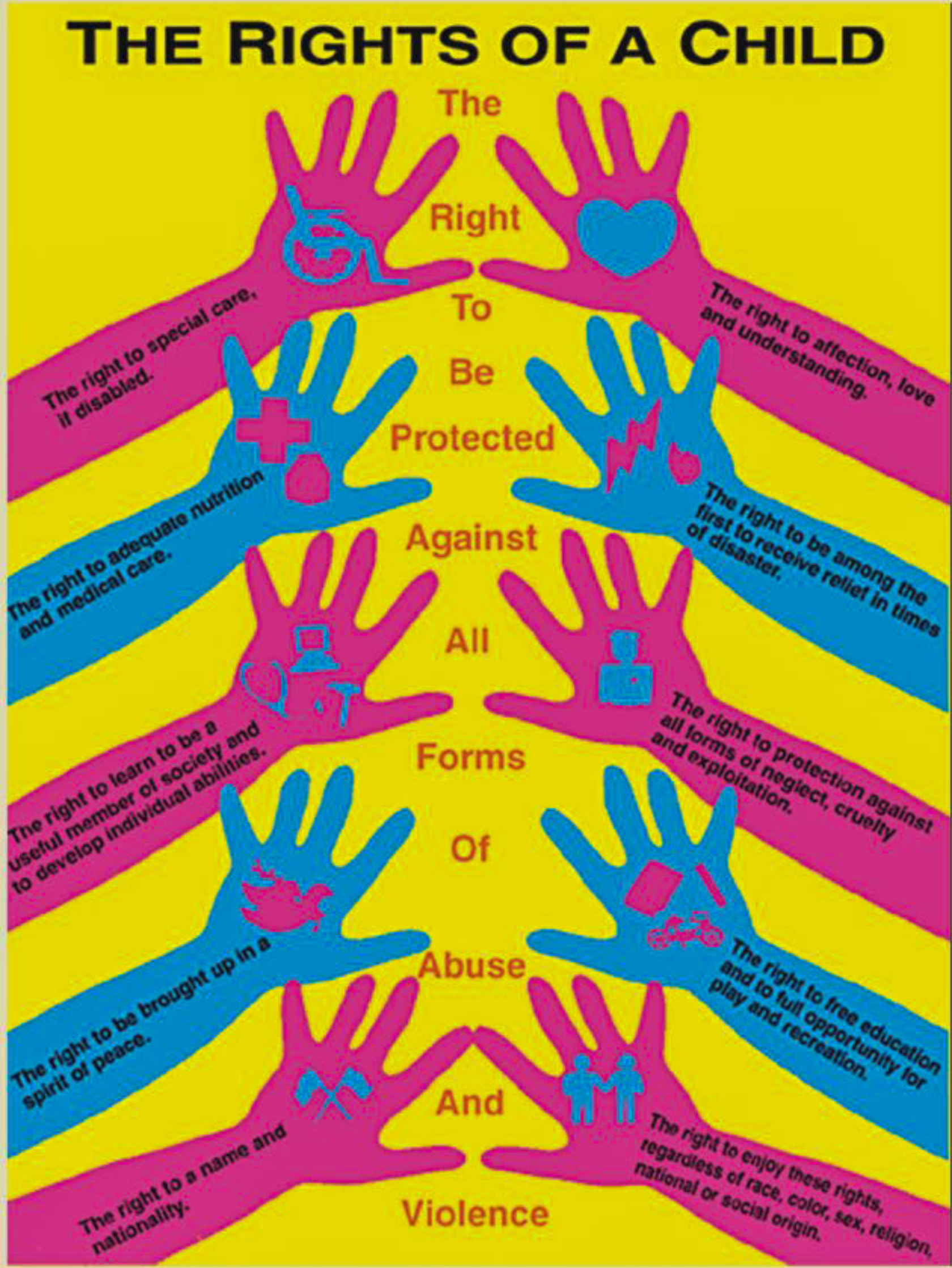




WHAT MAKES US TO BE INHUMANE Towards Children?



MOHAMMAD GOLAM SARWAR

THE continuous ruthless killings, torture and abuse of children in Bangladesh are turning into a daily life phenomenon that we fail to prevent let alone stop. Law is there, trial process is there and the crying for children justice turns into screaming but all these things regrettably end with no results. This is not the ending rather in many cases child abuse is getting new dimensions along with distinctive styles of torture.

While protection of children is supposed to get priority, abuse of children is seeing wider demonstration instead. Here Protection replaces the ill-treatment against children. This is true that immediate trail of the perpetrators can bring solace to the victim's family and warn the potential perpetrators but this cannot ultimately prevent the abuse of children that we are seeing with each passing day.

The underlying cause of child abuse associates not with the behaviour of particular individual only rather it represents how the society views or treats the children and how they receive and react?

Torture in the name of regulation is justified traditionally in our society starting from primary school to university level. What makes the difference is that earlier children by virtue of unawareness were most obedient even being tortured but now they react against any unjust behaviour and consequently they are becoming the victims of brutal torture. Here lies the significance of attitude building not only for the adults but also for the children.

In terms of attitude building children always learn from parents and adults since they cannot make their own decisions. So it is easy to predict that the behaviour what we do against children will be paid accordingly. It is evident that children these days are having difficult times because of the attitude of the adults while statistics suggest that if you treat or protect ten children properly seven of them will come to the right path.

Coming back to the causes of child abuse it can be clearly said after analysing the recent incidents that child labour is the source of child abuse. When a child cannot perform according to the desire of the employer, oppression starts. Here it is obvious that child abuse starts when there is an existence of violation of children rights that is child labour. A single problem generates more problems!

With a view to addressing the problems of children, even the constitution of Bangladesh provides special privileges to the children and it allows the concerned laws to be discriminatory for the sake of ensuring the best interest of the children. Children Act 2013 also incorporates provisions dealing with the protection measures with a view to ensuring children rights. Some provisions of this Act reflect the provisions of Convention on the Rights of the Child (CRC) in order to comply with international standard of child protection.

Though the Act calls for setting up National, District and Upazila Child Welfare Boards, Child Affairs Desk at the police station, establishing sufficient numbers of safe homes and

certified institutes, unfortunately we do not see the implementation of these provisions.

Law cannot function properly in a dysfunctional society in which we are living; law cannot ensure justice when state lacks commitment in terms of ensuring rule of law. Law is certainly meant to be blind when the protector and executor of law turn into violator and perpetrator of law. Amidst of social unrest prevalent everywhere people become intolerant to others even to their beloved kids and they show zero respect towards laws.

To come out from this upheaval, endeavours should march from all corners of the society. Most significantly, the main principles governing child rights: non-discrimination, best interest of the child, parental guidance should be practiced firstly within the family. Parents should not only educate but also edify their children to foster their ideals and values. Any kind of dominance and inhumane attitude instead of positive influence from the parents might results into the denial of their growth. What Kahlil Gibran said regarding the relationship of parents and children deserves to be signified here, in his words, "they (children) come through you but not from you, And though they are with you, yet they belong not to you. You may give them your love but not your thoughts. For they have their own thoughts".

Lastly we should not forget that when we protect our children for a single reason we are actually protecting ourselves and our future.

THE WRITER WORKS WITH LAW DESK, THE DAILY STAR.

YOUR ADVOCATE

Query

My husband and I got married in 2003. Both of us are Muslims and we got married as per the Islamic procedure. The marriage took place at our village in the presence of the Quazi and our family members. Later a small ceremony was held to celebrate the occasion at a community centre. Since then, we have been blessed with 2 kids. Recently we have decided to apply for Immigration to Canada. While making the application, the Embassy informed us that we have to provide the *Kabinnama* of our marriage along with the other documents. After searching for several days and speaking to the rest of the family members, we realised that no *Kabinnama* was prepared following our marriage. Now I have the following questions:

- Is our marriage invalid as there is no *Kabinnama*? Do we have to get married again?
- Can we make a new *Kabinnama* for our marriage that took place in 2003?
- I will be very grateful if you can help us with a reply since my husband and I are now very worried about the validity of our marriage and the fate of our children!

Married and confused.

Response

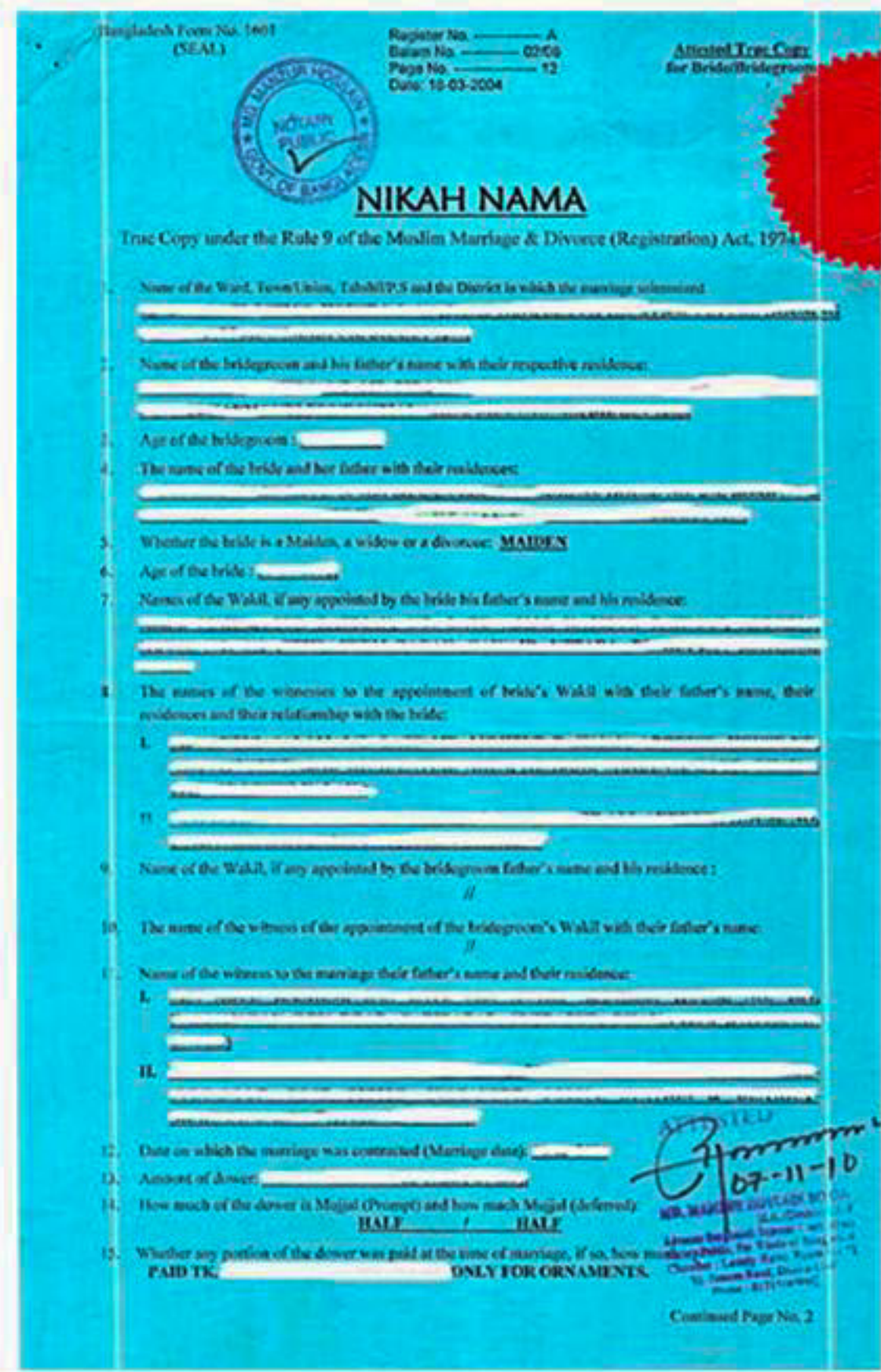
I understand your exasperation at realising after all these years that a *Nikahnama* for your marriage back in 2003 had not been executed. To relieve you of the confusion, allow me to clarify at the outset that the failure to execute the *Nikahnama*, after your marriage had been solemnised by the Quazi at your village, does not make your marriage invalid. I shall first explain the procedure for a valid Muslim marriage, and then move on to explain which steps had not been fulfilled in relation to your marriage in 2003. I shall also focus on the appropriate steps that you and your husband can now take in the given scenario.

In Bangladesh, 'Marriage' is considered to be the social and legal union between a man and a woman in order to live together. Since law is personal in Bangladesh, the provisions of Muslim law regarding marriage are



This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies.

applied to the Bangladeshis Muslims in relation to the procedures of marriage, and the registration of marriages is governed by the Muslim Marriages and Divorces (Registration) Act-1974. Registration of a Muslim marriage has been made mandatory by S3 of the Act. Non-registration of the marriage causes a doubt on the solemnisation of the marriage itself, but does not make it automat-



ically invalid. S5 of the Act further provides that once solemnized, a marriage shall be registered either immediately, or within 30 days if the marriage is solemnized by someone other than the Quazi.

Fortunately, the only effect of failing to

register a marriage is that it amounts to an offence on the part of the person responsible for effecting registration, making him liable to imprisonment of a maximum of 2 years or fine of maximum BDT 3000, or both. There is no other effect stipulated in the Act, and therefore, the way forward for you and your husband shall now be to get your marriage duly registered. The procedure for registration is as follows:

- For the registration to be valid, the *Nikah* Registrar (i.e the Quazi) who undertakes such registration shall be in possession of a valid license granted by the Government. You shall, therefore, ensure that the Quazi who had solemnised your marriage and who will now register it, has a valid licence.
- The *Nikah* Registrar shall then fill up the columns of the Register of Marriage and obtain the requisite signatures.
- The place of registration shall be within the jurisdiction of the particular *Nikah* Registrar who undertakes the registration. As such, you shall ensure that your marriage is registered in the same jurisdiction where it was solemnised.
- On completion of registration of your marriage, the Quazi shall deliver to you and your husband an attested copy of the entry in the register, which shall serve as your *Nikahnama*.

Once you complete the above procedure of registration, your marriage that had been solemnised in 2003 shall become registered. You can accordingly submit the *Nikahnama*, which you shall be provided with subsequent to registration, to the Embassy and proceed with the immigration formalities.

It is sincerely hoped that all your queries have been addressed sufficiently and that the registration procedure has been simplified sufficiently to your satisfaction.

FOR DETAILED QUERY CONTACT:
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LAW OPINION

Postmodern thoughts on 'LEGAL HUMANITARIANISM'



SELIMUL QUADER CHOWDHURY

THOUGH the history of 'legal humanitarianism' from a trans-border perspective is traceable to European times, especially the Enlightenment, and the development thereof is mostly of 'Geneva origin', the jurisprudential facets of this sacred 'canon' underlay the actions that possibly predates written history. Thus, the jurisprudential values of humanitarian law are more anachronistic than the legal documentation thereof.

Wars are untoward but potential in nature. The need of the international legal humanitarianism may run out only if wars disappear forever, not otherwise; because humanitarian law comes on the scene only when an armed conflict breaks out, not beforehand. Though waging wars is condemned, a war may also be a necessity someplace. Wars are bad enough but injustice on an epic scale is worse. Kautilya in his 'Arthashastra' counseled that it is best to wage a war against an unjust king who has no public support.

A beautiful saying goes there in Leo Tolstoy's War and Peace: "If everyone fought for their own convictions, there would be no war".

It is true that very few warriors fight for a higher purpose. Nobody can wipe out the possibility of wars but everybody can make sure he is not going to fight by choice but rather, he is only there to go fighting because of necessity. Sun Tzu truly commented that the victorious warriors win first and then go to war, while defeated warriors go to war first and then seek to win.

Ernest Hemingway, in his 'A Farewell to Arms', showed that fancying love can make a man say his farewell to wars but, in fact, not all people in this world are lovers and also not all lovers are soft enough to yield to the x-factor of their opposite sex.

Maybe the controversies over the legitimacy of wars will never come to any happy conclusion but as long as wars are predictable, sanctioning of the international humanitarian law is a must. It is possible that answers to all questions won't be found in this world. Kant's theory of 'a thing-in-itself' is relevant here. He said that a thing in itself is essentially incomprehensible.

Professor Jennifer Wicke argued that postmodernism regarding legal focuses is a set of historical conditions or descriptions of our current cultural situation.

Henry Dunant spoke of the modern project of International Humanitarian Law by linking it to moral perceptions and the consequent moral outrage at the consequences of war. The honest endeavor by Mr. Henry has attained huge success in promoting humanitarianism as a world-wide movement. As 'Neocolonialism' is a good menace of the synthetic postmodern world, there are both hope and danger arising out of the de facto colonialism for state parties, especially the developing ones.

A sad but true reality is that the implementation of this specialised branch of law is factually in the hands of the armed combatants and around them, when wars actually break out, there remains no one who can force military personnel to obey the wartime humanitarian rules, if they ignore any. Therefore, strict sanctioning of International Humanitarian Law for the belligerent parties is the biggest challenge of the postmodern legal order. This is why the implementation of these norms should not be left to be 'morally or mutually negotiable'.

Another postmodern threat to the International legal Humanitarianism is that it is much reliant on the treaties which are, no doubt, the outcome of the sincere activism of the ICRC but the remarkable setback is that these treaties are often subject to reservations and denunciation. As 1949 Conventions are universally accepted, there should be a new move to reshuffling the contents of the treaties as per the demands of the present times. Compared to other law fields, Municipal law provides a good basis for acceleration of International Humanitarian Law resulting from universal membership in the Geneva Conventions where Bangladesh too is no exception.

We wish no wars to happen in this world, not any longer and nor any further, as wars reflect the baser instincts of humans to other humans. Honorable warriors having a feeling of respect cum humanitarianism for themselves and for others are also very unpredictable. We envisage that the armed conflicts, inevitable in any way whatsoever, will be minimised in the current and the next generation worlds, the combatants will live by a 'Code' and will act in accordance with that Code during wartime crises.

THE WRITER IS LL.M. STUDENT AT THE UNIVERSITY OF DHAKA.

LAW NEWS

WORLD Humanitarian Day (19 August) is a time to recognise those who face danger and adversity in order to help others. The day was designated by the General Assembly to coincide with the anniversary of the 2003 bombing of the United Nations headquarters in Baghdad, Iraq. World Humanitarian Day is also an opportunity to celebrate the spirit that inspires humanitarian work around the globe.

This year, the UN and its humanitarian partners invite all of you to inspire the world's humanity. The theme calls on you to join any of the world's humanitarian organizations and become an active messenger of Humanity.

In his message UN Secretary-General Ban Ki-moon said that we honour the selfless dedication and sacrifice of workers and volunteers from around the world who devote themselves – often at great personal risk – to assisting the world's most vulnerable people.

This year, more than 100 million women, men and children need life-saving humanitarian assistance. The amount of people

affected by conflict has reached levels not seen since the Second World War, while the number of those affected by natural and human-induced disasters remains profound.

On this Day we also celebrate our common humanity. The families and communities struggling to survive in today's emergencies do so with resilience and dignity. They need and deserve our renewed commitment to do all we can to provide them with the means for a better future. Each one of us can make a difference. In a world that is ever more digitally connected, each of us has

the power and responsibility to inspire our fellow human beings to act to help others and create a more humane world.

On this World Humanitarian Day everyone needs to show solidarity as global citizens by signing up to the #ShareHumanity campaign. By donating your social media feeds for just one day you can promote humanitarian action and help to give a voice to the voiceless by sharing their stories of crisis, hope and resilience, he urged.

- COMPILED BY LAW DESK (UN.ORG).

INSPIRE THE WORLD'S HUMANITY



WORLD HUMANITARIAN DAY
19 AUGUST #SHAREHUMANITY

