

SPECIAL SUPPLEMENT ON WORLD HUMAN RIGHTS DAY 2015



Our rights Our freedoms Always

DR. MIZANUR RAHMAN

At the very outset let me, on behalf of JAMAKON - the National Human Rights Commission, Bangladesh, extend heartiest greetings to all the readers on the verge of World Human Rights Day 2015. 67 years ago on 10 December 1948, the UN General Assembly adopted the Universal Declaration of Human Rights - the UDHR. That is why 10 December is celebrated worldwide as the Human Rights Day.

For us in Bangladesh, the day carries a special significance. Our beloved motherland - the People's Republic of Bangladesh is the product of the realisation of one of the most fundamental human rights, i.e. the right of nations and peoples to self-determination. We, as a nation, reaped this harvest of human rights in our month of victory in the liberation war. Human Rights Day and Victory Day are thus intertwined. It is, therefore, only natural that in this month of victory our hearts are filled with never-ending joy, sense of happiness is unbounding, funfair and merriment is overwhelming!

The theme of this year's Human Rights Day is - "Our Rights. Our Freedoms. Always." It denotes that human rights pervade all spheres of human life without a moment of respite. If 'rights' are not ensured, 'freedoms' do not exist and become meaningless; and if 'rights' and 'freedoms' are non-existent, the 'dignity' of a human persons is infringed; and the infringement of human dignity is a violation of human rights. Thus protection of human rights is an imperative in the continuous flow of human life. From this perspective, respect for human rights cannot evolve around any particular day or be confined to festivities or celebrations.

Human rights are inalienable, indivisible, non-transferable. Above all,

human rights are universal, i.e. applicable to all irrespective of space, time, sex, race, colour, creed or faith, etc. In poetic expression, human rights resemble - "Wherever you are, I am your shadow!"

A citizen can enjoy a dignified life only when his/her human rights are well protected and ensured. However, for effective protection of human rights, mere rights-consciousness is not enough. Rights-awareness is important, but duty-consciousness is no less important. As a matter of fact, it has been repeatedly demonstrated that if a person duly fulfills his obligations, his rights are automatically realised.

We are committed to establish such a society where 'human rights culture' will prevail and exist on a strong and solid foundation. For this to be attained, we should appreciate the multidimensional facets of human rights. This entails that for better promotion and protection of human rights, ensuring civil and political rights is not adequate. Parallely, one's economic, social and cultural rights must also be expanded and made accessible. In the opinion of many human rights advocates - in a developing country like Bangladesh - economic and social rights need to be emphasised more. It, however, does not displace the already established truth, that if civil and political rights do not attain a minimum acceptable standard, even if a person's economic-social-cultural rights are well guaranteed - his condition may be compared to that of a "bird detained in a golden cage"!

This is one of the rationales why contemporary human rights jurisprudence evolves around the notion of 'human dignity'. Every human being is 'unique' and endowed with 'unique dignity'. And if there is even a minute infringement of his dignity, violations of human rights become evident.

'Human dignity' is the sum total of a number of rights and freedoms. To this we need to add the surrounding realities

of life so that overall security of a person is not threatened. Back in 1941, the then US President Franklin D. Roosevelt said that "leading a life without fear and needs" is human rights. Thus, on the Human Rights Day, when we appeal to all - "Come, let us build a dignified life through the protection of human rights", it automatically entrusts upon us a duty to ensure such environment wherein all our compatriots - irrespective of caste, religion, sect, belief, opinion, etc. are able to live their life without any fear or doubts.

Killing of the free thinkers, incitement to communal disharmony and hatred, religious extremism, even tacit support to those accused of commission of war crimes and crimes against humanity, etc. - all but adversely affect human dignity. This must be dispensed with.

Furthermore, if we have even a semblance of respect for human rights, we cannot deny the necessity of putting those on trial who are accused of the most heinous crimes and human rights violations. Human rights can never flourish if the perpetrators are not brought to justice.

It is ridiculous to claim the implementation of one's rights by denying or violating similar rights of others. Therefore, in my opinion, instead of asking for 'my rights, my freedoms', we should demand for 'our rights, our freedoms' - not on a temporary basis, but for infinity!

Let us reeducate ourselves in this spirit of human rights. Not for a moment let us forget that it is only through respect, protection and promotion of human rights can we build a 'dignified society' and enable us to materialise the dream of the Father of the Nation - 'Sonar Bangla' (Golden Bengal) - whom we adore and love!

MESSAGE FROM THE CHAIRMAN, NATIONAL HUMAN RIGHTS COMMISSION, BANGLADESH.

Stretching the boundaries of HR

MD. RIZWANUL ISLAM

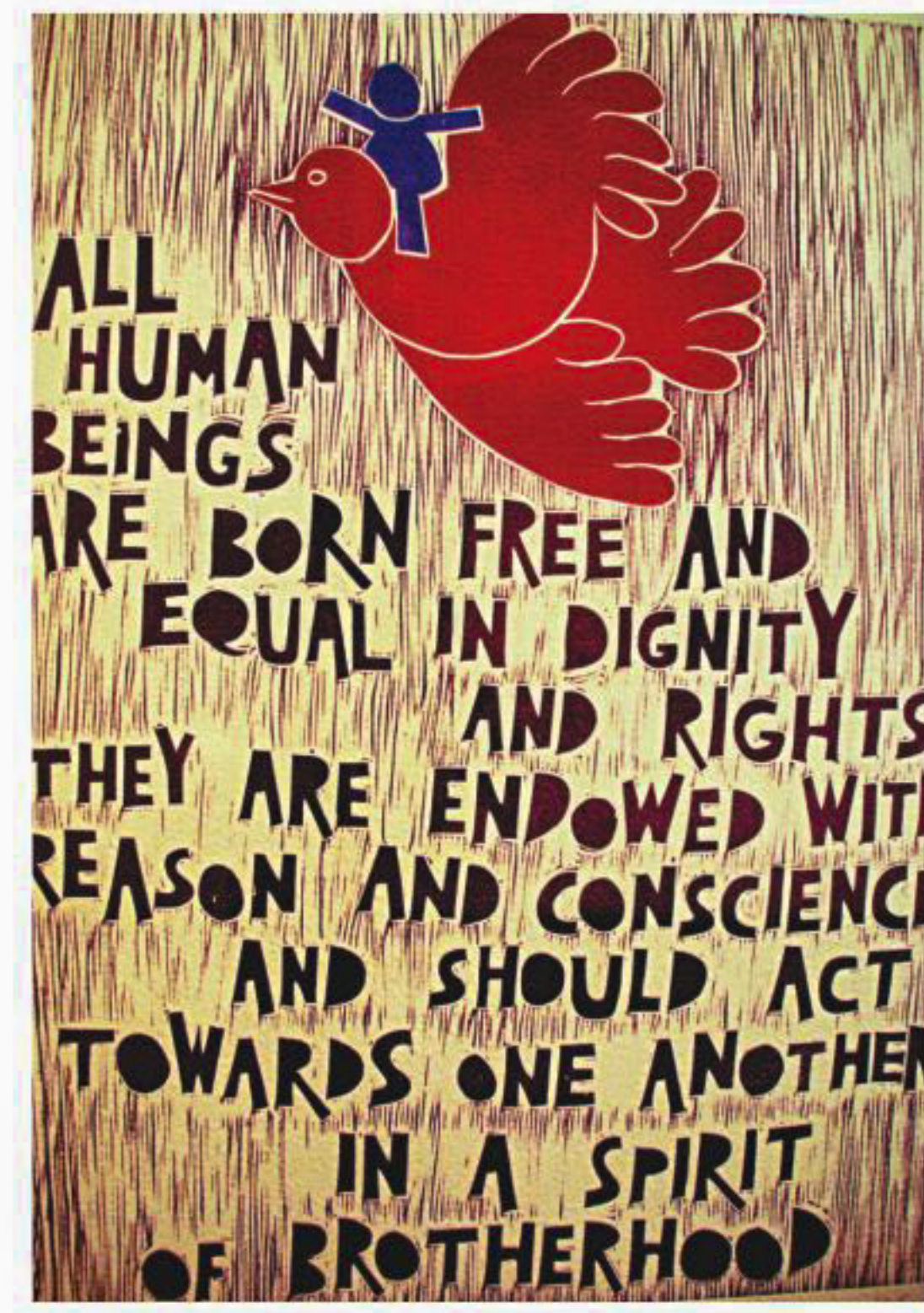
It is common knowledge that authoritarian regimes (both unelected regimes and elected regimes subsequently turning into tyrannies) are guilty of violation of human rights norms in this country. Probably, it is equally common knowledge that human rights activists in Bangladesh have relentlessly fought and are continuing to fight for upholding human rights. However, this brief essay would argue that in the course of their advocacy for protection of human rights; sometimes human rights activists in this country have contributed to the lack of concern and respect for human rights in Bangladesh by an overkill of the concept. And it has happened so often that the very concept of human rights may be on the brink of becoming a cliché to many Bangladeshis.

For instance, it is not uncommon for some human rights activists in this country to cite incidents of crimes and claim that they epitomise violation of human rights. Of course, crimes can sometimes connote a violation of human rights but in and of itself, criminal offences cannot tantamount to such violation. In order to appreciate this phenomenon of over-stretching of human rights and its evils, we may first look back at the origin and basis of the emergence of the human rights norms. In essence, we may note that these norms emerged from the notion of a need to uphold universal human dignity and to limit the state's sovereign rights to treat its citizens in whatever manner it may choose. Thus, the human rights norms were never meant for redressing typical criminal offences; rather it was about putting an end to the territoriality of law in matters of fundamental human dignity.

Hence, by equating typical criminal offences (even those which are perpetrated by members of the law enforcing agencies, unless of course, they are systemic violations with active or tacit state sanction or attributable to state's negligence) to violation of human rights, the biggest danger is probably that the general population receive a wrong message about its nature and scope. In the process, they may become de-sensitised about human rights. This is distinctly dangerous because there being no

world court for the protection of human rights; arguably the biggest defender of human rights is public opinion. And surely no democratic regime can brush public opinion aside and hence, for upholding the norms of human rights it is very critical that public is vocal about it.

In the process of an overreach on human rights, even the activists and organisations may suffer from a loss of sense of purpose and they may become unable to perform functions which they are actually expected to. In other words, their expansive agenda on human rights may militate against their chances of having real impact. It may be argued that this propensity of an expansive (at times bordering on implausible) reading of human rights norms would also have an adverse impact on public



institutions (such as the National Human Rights Commission) who have a mandate to work for the protection and promotion of human rights. It would promote a culture in which such a public institution may feel compelled or at least encouraged to venture into areas which should not be their domain. For instance, they may be relegated to the prosecutor and investigator of a crime. While in terms of the outcome of such an action, there is nothing immoral or questionable; it would beg a question about the efficient allocation of resources. After all,

this would be a function of the police and prosecutors not that of the National Human Rights Commission.

Thus, it may be said that despite the inherently inter-disciplinary nature and philosophical underpinnings of human rights, they are a distinct set of rights for very justifiable reasons and we must remember that in our over-zealous pursuit for protection of rights of individuals or protection of the victims of crimes. Hence, we would do well to keep in mind that not all victims of crimes are by any means victims of violation of human rights. And indiscriminately blurring the line between the two would do a disservice to the cause of the protection of those very rights that the human rights activists seek to protect.

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In the spirit of World Human Rights Day 2015, to make people aware of fundamental freedom and rights, and to provide them a platform to come forward with their opinions, suggestions, ideas, reformations and of course criticisms, Law & Our Rights has organised a legal write-up competition. The responses were overwhelming and among our participants were professionals, rights activists, academics, students and even right conscious ordinary citizens. On today's issue we hence publish the top two write-ups.

Limitation of UN mechanisms

QUMRUNNESSA NAZLY

SINCE ITS establishment in 1945, the United Nations (UN) has been playing the role of a pioneer in institutionalising human rights through setting norms and standards as well as in the development of monitoring mechanisms to ensure the implementation of such. However, there remains a huge challenge in the implementation of human rights through UN mechanisms.

The Universal Declaration of Human Rights (UDHR) 1948 provides the foundation for articulation of various human rights. Since then, the UN has adopted numerous human rights instruments in form of declarations, principles, guidelines, conventions and covenants. By now, it has adopted 9 core subject-specific international treaties elaborating the rights outlined in the UDHR.

The UN Human Rights Council is the principal UN body entrusted with the tasks for the promotion and protection of human rights, which operates through different working mechanisms such as, Universal Periodic Review (UPR), Complaints Procedure Mechanism, and Advisory Committee, etc. Of these various mechanisms, UPR is the most vital monitoring mechanism by which human rights record of each member state is reviewed in every 4 year cycle. Besides, there are independent expert mechanisms to monitor human rights situations in specific countries or territories. The core human rights treaties also have their own monitoring system known as treaty bodies system to monitor the implementation of the treaty obligations by the state parties.

Despite its commendable contribution in setting comprehensive legal human rights framework, in operational level, the UN has not been able to play effective role in implementing human rights because of various reasons. The first and foremost

challenge lies with the inherent nature of international law and basic attributes of human rights denoting relationship between individual citizen and nation state where primary responsibility of the safeguard of human rights lies with the state. The UN system does not have direct enforceability at the state level to ensure the practice of such UN mechanisms. By ratifying the relevant human rights treaties, nation states undertake direct obligations to ensure human rights of their citizens without any discrimination.

UN mechanisms follow a cooperative dialogic approach and the outcomes of all these processes are recommendatory in nature, implementation of which depends on the sole discretion of the individual state to give enforceability to international human rights laws and thus to protect human rights of its citizens.

In the absence of direct enforceability of international human rights laws at the state level, political commitments of the state parties play dominant role in implementation of human rights provisions. However, for the sake of power interest, state parties often fail to show the adequate political commitment to uphold the principles of human rights. Being a political forum of the states, the UN mechanism often takes politically influenced double-standards measures in dealing with human rights. Due to a power-play among the member states, the UN cannot take any strong stance against politically and economically powerful, despite the clear cases of gross violations of human rights. Operations of Guantanamo detention centre, human rights

situation in Afghanistan and Gaza are some awful examples of this failure. The prevalence of bloc politics also dominates the functioning of UN human rights system causing for a more state-orientated approach instead of upholding human rights principles and standards.

Another challenge lies with the absence of effective mainstreaming of human rights across the UN system which hinders the objective functioning of the human rights system, for instance, notwithstanding the firm resolution of the Human Rights Council on a situation of gross human rights violations, the political stand of the UN Security Council could create blockade to the



effect of the resolution of the Human Rights Council.

To conclude, despite their inherent limitations it cannot be denied that the UN mechanisms indeed provide a legal tool for the implementation of human rights. Importantly, the UN mechanism still serves as an important instrument for the creation of political pressure on the recalcitrant governments. Having said this, there is no alternative to strengthening national level human rights enforcement mechanisms following the international standards set by the UN.

THE WRITER IS HUMAN RIGHTS ADVOCATE.

Advocating right to internet access

GOLAM KIBRIA SOURAV

IN today's world, it is next to impossible to think of life without the internet, as it has become an indispensable instrument to impart knowledge and information and brought a revolution in different aspects of modern life. In a report published on 4 March 2014, the Committee on Culture, Science, Education and Media of the Parliamentary Assembly of the Council of Europe, stated that internet should be available to all regardless of age, place of residence or income and governments should recognise this as right both in law and practice. According to the committee,



"the right to Internet access includes the right to access, receive and impart information and idea through the Internet without interference by public authority, regardless of frontiers..."

Realising the importance of Internet, some countries in different ways have recognised access to Internet as a human right or struck down laws encroaching such, e.g. in 2000, parliament of Estonia passed a law ensuring universal Internet access practically giving the status of a human right. In 2009, the highest court of France, i.e. the Constitutional Council, struck down portions of the HADOPI law declaring that violation of freedom

of access to the Internet is an invasion of liberty guaranteed by article 11 of the declaration of 1789. In 2010 Constitutional Court of Costa Rica ruled in favour of Internet access from human rights perspective. In 2010, Finland, as the first country in the world, made broadband a legal right for every citizen. Article 5A of the Constitution of Greece also stipulates state's obligation to ensure Internet access.

In 2002, the government of Bangladesh recognised ICT as a "thrust sector" and we have seen some development in this sector as the government envisions building a 'digital Bangladesh'. According to section 29 of The Bangladesh Telecommunication Act, 2001, one of the objectives of BTRC is to ensure access to reliable, reasonably priced and modern internet-services for the people. But lack of democratic approach towards ensuring Internet access is hindering the development and enforcement of a number of human rights. Instead of taking

adequate measures to enhance Cyber Security, time and again the government has arbitrarily denied people access to Internet partially, if not totally, e.g. the government blocked YouTube on March 2009, September 2012 and banned it for 260 days from September 17, 2012 to June 5, 2013. On 29 May 2010, BTRC blocked Facebook for 7 days. In 2013 the international Internet gateway operators were asked by BTRC to reduce the upload bandwidth of ISPs by 75%. On January 18, 2015 the regulators blocked mobile applications Viber, WhatsApp, Tango, Mypeople for 4 days. On November 18, 2015, Facebook, WhatsApp, Viber

was blocked and there was no Internet for hours. All these were done in the name of public interest or to stop extremism. Ironically, those bans were reported to be innocuous as the government cyber security was not up to the mark, although people in general suffered much.

In 2008, European Parliament urged countries to "avoid adopting measures conflicting with civil liberties and human rights...such as the interruption of Internet access."

In 2011, Frank La Rue, the UN Special Rapporteur, submitted a report at the 17th session the UN Human Rights Council which stated that cutting off users from internet access, regardless of the justification provided, to be disproportionate and thus a violation of article 19, paragraph 3, of the ICCPR. The 30th session of the UN human rights council identified Internet restrictions as a general challenge to participation in political and public affairs. The report further stated that Internet has become an indispensable tool for realizing a range of human rights, combating inequality, and accelerating development and human progress.

At present, Internet access is crucially integrated and interrelated with right to freedom of expression and information, right to education, right to take part in cultural life, right to freedom of association and assembly, right to participate in the public affairs and right to development etc. Even though Bangladesh does not recognise right to Internet access as a human right, hindrance to Internet access directly affects the exercise of the human rights stated above, resulting in violation of those rights.

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