

# SPECIAL SUPPLEMENT COMMEMORATING WORLD HUMAN RIGHTS DAY 2018

## SEVENTY YEARS OF UDHR The fight for human dignity



MOHAMMAD GOLAM SARWAR

**T**HIS year, Human rights day will mark the 70th anniversary of the Universal Declaration of Human Rights (UDHR, 1948), the core human rights instrument which is also

considered the mother document of human rights. UDHR laid down the foundation of human rights by asserting inalienable rights which every human being is inherently entitled to, regardless of race, colour, religion, sex, language, political or other opinion, national or social origin, property, birth or other status. The underlying philosophy of UDHR is to ensure human dignity while fulfilling the mandates of human rights principles and standards. Over the years, UN human rights treaties along with regional human rights instruments and monitoring mechanisms, contributed to widen the scope of UDHR.

The corpus of UDHR, though witnessed significant advancement since its inception and through its evolution, the gaps between 'the ideals of UDHR' and 'current world realities' cannot be overlooked. The discourse of UDHR is criticised for its limited procedures of overseeing and enforcing the universal protection of human rights. Some scholars argue that the content of UDHR represents cultural bias while imposing the ideas of the west across the globe. This has created a significant challenge of enforcement since most of the human rights are not absolute and they reflect the essence of cultural diversity.

While drafting a common set of



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human rights standards, western advocates of human rights referred legal precedents that include the Magna Carta (1215), the United States Declaration of Rights (1774), and the French Declaration of the Rights of Man and the Citizen (1789). These western precedents though represent a universal character but in reality they were manifestations of internal law, the aim of which was to protect the interests of certain classes. However, the universality of UDHR has been accepted because States can agree and work upon together at least on some points. States obligate themselves to protect and promote human rights with a view to achieving peaceful coexistence.

The challenging issue is that in the absence of specification of duties and accountabilities, States being the duty bearers of human rights enforcement

often fail to maintain their obligations. In some cases, States are found to be the worst violators of human rights. With the help of capitalism, statism, and nationalism, State machineries often tend to function unduly going beyond their mandates towards citizens. The economic growth of many countries is significantly increasing but with a sharp rise of inequality. This inequality breeds significant number of insecurities in the societies which appear in the forms of human rights violations.

Coming to the context of Bangladesh, it is observed that the country is experiencing a steady economic growth and in the 2017-18 fiscal year, it has achieved the highest-ever 7.86% GDP growth. However, the human right record of Bangladesh indicates an unequal growth where

dignified well being of common people is yet to be attained. The human rights monitoring reports of the Human Rights Watch and Ain o Salish Kendra (ASK) reveal diverse forms of human rights violations that include noteworthy incidents of violence against women, death in jail custody, enforced disappearance, violence against Hindu community, violence against children, border violence, harassment of journalists etc. Freedom of expression undergoes an overwhelming curtailment as the newly passed Digital Security Act leaves room to suppress any dissent or perceived criticism. Moreover, the family laws of the country fail to uphold the commitment of the international human rights instruments that lead to the perpetuation of discriminatory practices against women.

The recurring incidents of human

rights violations threaten the sustainability of economic growth and question the human rights obligations of the State towards its people and to the international community as well. With a view to achieving sustainable economic growth and ensuring human rights obligations, sustainable development goals (SDGs) emerged that aim to 'leave no one behind'. The goals are significant because they encompass the principles and standards of human rights that are considered instrumental to reduce inequality and discrimination and to achieve a more sustainable future for all. The human rights framework, which has witnessed a wide range of transformation since the evolution of UDHR, obligates state parties not only to ensure equality, justice and human dignity but also to promote greater accountability and participation of and among States to achieve the SDGs.

Bangladesh is also committed to promote SDGs while complying with the human rights obligations. Being a member of UN Human Rights Council for the 2019-21 tenure, Bangladesh can also effectively address the issues and challenges which have international bearings. In addition to obligations of States (duty bearers) along with National human rights institutions, people (rights holders) of a country also have responsibility to become the gatekeepers of human rights protection, to work as promoters of SDGs in order to hold the duty bearers accountable. Only if the duty bearers and the rights holders perform their respective obligations and responsibilities, the true essence of UDHR, that is human dignity, can be realised.

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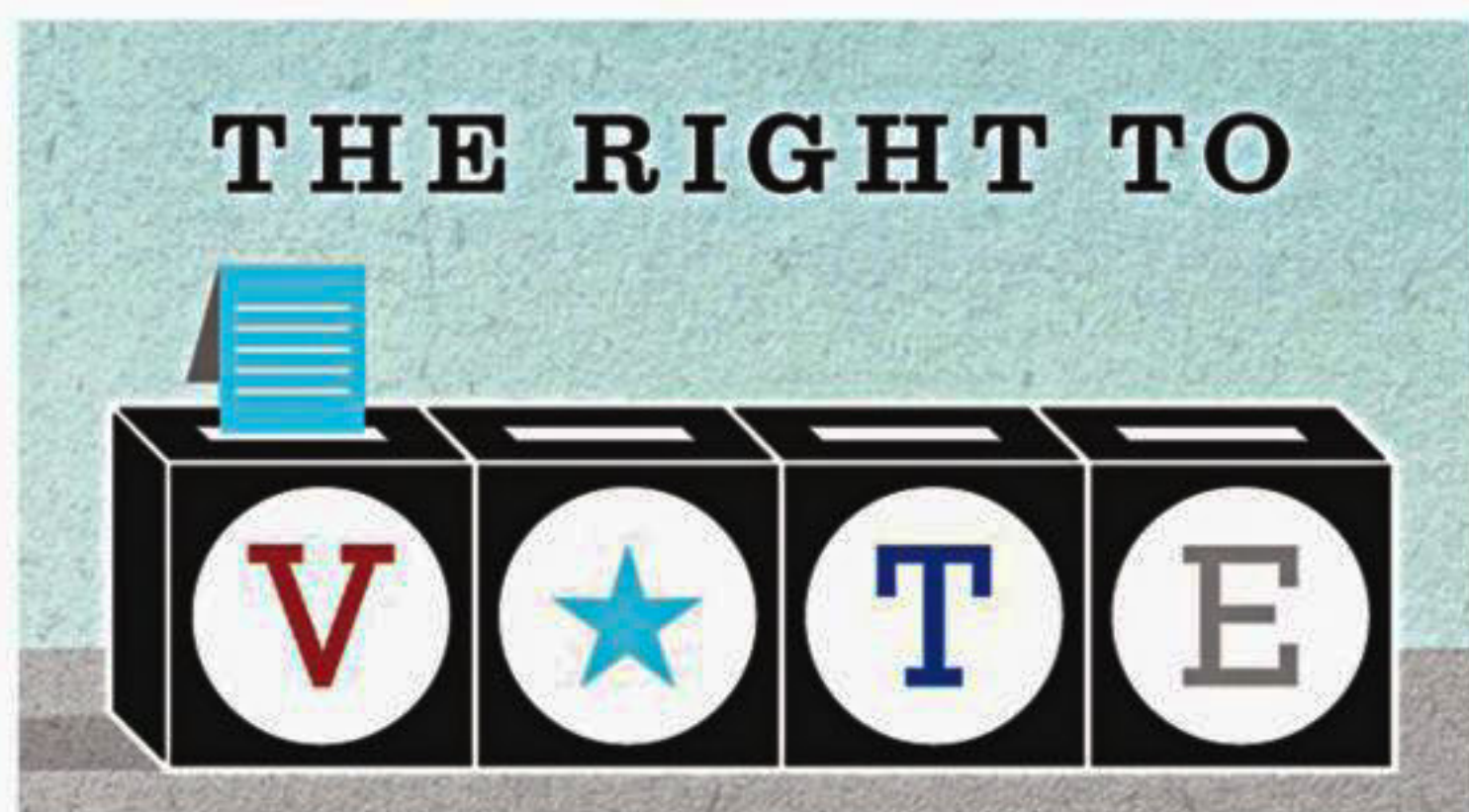
The theme of 2018's World Human Rights Day is 'Stand up for Human Rights.' In the spirit of this theme and to make people aware of fundamental freedom and rights, and to provide them with a platform to come forward with their opinions, suggestions, ideas, and of course criticisms, Law & Our Rights has organised a legal write-up competition. The submissions were overwhelming and among our participants were students, professionals, rights activists, and even rights conscious ordinary citizens from different sectors. On today's issue we hence publish the best three write-ups.

### The constitutional reality of Right to Vote

RAZON CHANDRA GHOSH

**D**EMOCRACY is believed to be one of the most successful political ideas in the present world. Democracy lets people speak their minds and shape their own as well as their children's future. However, democracy works only if people have the right to choose and exercise their rights freely and voluntarily. In the World Forum on Democracy at Warsaw in 2000, it was announced that "the will of the people" is the basis of the authority of any democratic Government thereby meaning that will of the people is ensured in a democratic State through the people's right to vote.

Our Constitution declares Bangladesh as a democratic republic. Supreme Court of Bangladesh has recognised 'democracy' as one of the Constitution's basic features, not amenable to abrogation. The Preamble of the Constitution of Bangladesh states that it shall be a fundamental aim of the state to create through democratic process, a socialist society. The constitutional spirit ensures that



the voice of citizens is not to be kept unrecognised. This is possible only if the people get to elect their own representatives, by exercising their choice. And in furtherance thereof, Article 7(1) & 11 of the Constitution recognise citizens as supreme power holders who may choose their representatives through voting.

Right to vote is an inseparable part of democracy. The word 'vote' comes from the Latin word 'votum', which means 'to wish' - to express one's expression and to choose his representative voluntarily. As a democratic State, people's participation in the

election is the manifestation of the right of citizenship. In Bangladesh, the right to vote is provided by the Constitution and the same is subject to certain disqualifications. Article 122 of Bangladesh Constitution and Section 7 of the Voter List Act, 2009 ensure the right to vote to every citizen above the age of 18.

However, it needs to be stressed that Article 122 of the Constitution provides right to vote on the basis of adulthood, but does not specifically mention the 'Right to Vote'. However, likewise right to privacy, this right as well can be impliedly read to be in the

Constitution even though the same is not explicitly enshrined therein.

Aforementioned provisions have granted the right to vote to all Bangladeshi citizens of sound mind above the age of 18, irrespective of their caste, religion, social or economic status. The citizens can vote in national, district as well as local government body elections - none can be restrained or prevented from voting, unless they fulfill the specific criteria for disqualification.

If any person is declared unsound by a competent court or is convicted for offense under the Bangladesh Collaborators (Special Tribunals) Order, 1972, his participation in vote shall be ceased. However, except for this disqualifications, every adult citizen has the right to vote. If any citizen is deprived of it by an order of election commission, he shall have the right to move the High Court Division under Article 102 of the Constitution of Bangladesh.

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### Artificial Intelligence through the lens of Human Rights

MANISHA BISWAS

**N**OWADAYS, individuals carry out most of their actions with the help of technologies with or without knowing the consequences involved. The use of technology in today's society is so enormously multifaceted that it compels us to comprehend and analyse the relationship between technologies and the protection of human rights. To some extent, using technologies actually helps better protection of human rights through universal healthcare and universal education. But with the emergence of new technology, the protection of human rights in certain areas gets equally challenged.

Most of the companies now show interest in relying on Algorithm-based decision making process which has possibilities of being biased as there remains lack of diversity based inclusion in Artificial Intelligence (AI) design. This

developed and deployed by nations including China, Israel, South Korea and United State. While they are meeting the military necessity and improving their weapons, simultaneously they are being threats to fundamental right to life, the principle of human dignity and has the potential of contravening different principles of the laws of armed conflict.

Universal Declaration of Human Rights first recognised the right to take benefits of science; later on, Article 15 of ICESCR have acknowledged and substantiated the content of the right to the effect that science be used for human benefits and be consistent with fundamental human rights principles encompassing principles of non-discrimination and equal treatment. With the increasing domination of new technology, a resolution was adopted in 1968 to define appropriate standard of protection of human rights against the potential impact of new technology.



AI based decision making process amplifies issues related to discrimination as well. Instances like Google's photo tagging mechanism where it categorised black people as gorillas and Facebook's system of allowing advertisers to pick users on the basis of race, ethnicity, sexual orientation, religion and other categories divided by social AI are like wakeup calls. Furthermore, with AI technology, the possibility of unauthorised surveillance is also increased which is in direct contravention of the human right to privacy.

This technology can also be used in fully autonomous weapons, commonly known as Lethal Autonomous Weapons (LAWs), able to select and engage targets without a human agent. These weapons such as armed drones are being

Recently the UN Guiding Principles on Business and Human Rights are endorsed to prevent companies from violating human rights. In spite of such instruments, technology exposed to unprecedented risk in terms of human right as regulating this technology is difficult for the overwhelmingly extraordinary pace of change that the society today is undergoing. As the modern society is undergoing changes with technology, human rights are also not being static. International community has to come up with the regulatory process that could promote human rights through digital tools and could prevent the conflict of new technology against human rights.

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### SDGs for better protection of Human Rights

TASMA NUR WASHAKA

**T**HE SDGs are built upon the success of the MDGs and they came into force officially on 1 January, 2016. There

delicate equilibrium among them with special focus on eradication of poverty; this makes us to believe that the world leaders were persuaded to believe that poverty eradication must form

of poverty and by implementing this, we can go on to achieve the 2nd goal which speaks for zero hunger. Gradually goal no. 3, 4 and 6 ensure good health and well being, quality education, clean water and sanitation. Clean water and sanitation, as a unit, is of immense significance. Because a healthy life is the manifestation of adequate standard of living, which is one of the basic human rights and the same can be achieved by a proper implementation of the SDGs.

Furthermore, sexual and reproductive health is another important area to work on for SDGs. Subsequently, the gender equality goals come in (goals nos 5,10,16). The 5th goal categorically speaks of gender equality in every sphere of our life which can only be realised through ensuring equal participation of male and female

in all sectors of society. And the 10th goal speaks of reducing inequality(ies) and disparities within the society to promote economic inclusion regardless of sex, race, ethnicity. Goal no. 16 which speaks of peace, justice and strong institutions is significant because without peace, stability and effective governance on the basis of rule of law, the entire structure can fall apart. Goal no. 13 manifests the theme of intergenerational equity.

Only a concerted effort of human rights implementing bodies and activists can directly assess and guide the 17 goals and 169 associated targets of SDGs. And upon successful implementation of the SDGs, we can ensure the fruition of human rights.

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are 17 Sustainable Development Goals in the 2030 Agenda for ensuring sustainable development for our world. If we carefully notice all the goals, we will find a

the basis for conceptualising as well as realising other strategies for better protection of human rights.

The 1st goal speaks of abolition