

The Impact of the Universal Declaration of Human Rights on the Constitution of Bangladesh: A Legal Study

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Abstract

Human Rights are inherent and inalienable rights to be enjoyed by all human beings from cradle to grave without any discrimination of any kind. These rights are to be protected and promoted by law of the land and internationally. Bangladesh constitution provides a set of rights known as fundamental human rights which are also incorporated in the Universal Declaration of Human Rights (UDHR). This Article aims at examining the degree of impact of UDHR on the constitution of Bangladesh. Human rights of women and children are more infringed in Bangladesh in spite of special laws are there for their protection. This is due to misuse of power and also great backlog in disposing of litigation. The Supreme Court ordered the government to amend some laws which are responsible for such infringement and delay. The study reveals that the rights incorporated in the constitution of Bangladesh and the UDHR can be protected and promoted by amending some laws as well as by recruitment and appointment of more Judges and by establishing of more courts at all levels to dispose of cases more speedily.

1. Prelude

The two devastating World War created horrors among the peoples, which claimed huge casualties of life and property. In the Second World War atom bomb explosion in Hiroshima on 6th August and on 9th August in Nagasaki in 1945 in Japan caused large scale massacre killing more than 3 lac people including army personnel and destroying huge properties. This undesirable incident actually shook the conscience of the world leaders who thought seriously as to how repetition of such devastation can be brought to halt. So the wise men having far-sightedness planned to form an effective world organization for the protection of human rights and for the welfare of human beings. This idea led to the foundation of the United Nations on 24th October, 1945 in persuasion of the recognition that “Human Rights and fundamental freedoms were the cornerstone for future maintenance of peace and international security¹.”

The UN has been working relentlessly for the protection and promotion of fundamental human rights by adopting a number of declarations, conventions, covenants, optional protocols and creating the post of High Commissioner for Human Rights and also to fulfill the fundamental requirements of human family. The Universal Declaration of Human Rights (herein after UDHR) was adopted by the General Assembly of the UN in Paris on 10th December, 1948 with the exclusive objective for the protection and promotion of human rights in the world.

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¹Zamir, Muhammad, Human Rights Issues and International Law, Oxford (1984) p.6

2. Background of UDHR

Article 68 of the UN Charter provides that the Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights. So the Economic and Social Council, the most important organ of the United Nations (UN) for protection of human rights, established the Commission on Human Rights in 1946² (later on Human Rights Council). The Commission prepared a final draft of declaration on human rights and a covenant on human rights providing measures of implementation and submitted these to the Economic and Social Council in June, 1948 and it submitted these to the General Assembly (GA) held in Paris in September, 1948. The GA adopted only a Declaration on 10 December 1948 without dissent by forty eight votes and eight States abstained. The GA proclaimed this Declaration as “the Universal Declaration of Human Rights” (UDHR) and as per its decision each year 10th December is observed internationally as the “International Human Rights Day” since 1950. This Declaration is the first written, complete and comprehensive human rights instrument which has been “hailed as a historic event of profound significance and as one of the greatest achievement of the United Nations³.” The Declaration is a common standard of achievement for all peoples and all rights of all members of all human family⁴. Though there is no binding clause in it, but still its provisions are either constitute general principle of law or represent elementary considerations of humanity⁵. The provisions of the UDHR are universal in nature and as such their implementation in its true spirit will ensure the protection of fundamental human rights in all ages without any discrimination as to caste, religion, sex, color, nationality, and profession etc. of any human being. All the democratic states including Bangladesh have inserted in their constitutions the main provisions of the UDHR. Thus the Declaration has a direct impact on the Constitution of Bangladesh.

2.1. UDHR and Bangladesh Constitution

Bangladesh emerged as an independent state in 1971 after gruesome war and it framed its Constitution incorporating almost all the provisions of the UDHR and it came into force on 16th December, 1972. We can examine the impact of UDHR on Bangladesh Constitution.

2.2. Right to Equality

Article 2 and 7 of the UDHR provide that everyone is entitled to all the rights and freedoms of this Declaration without distinction of any kind. Similarly, Article 27 and 28 of Bangladesh Constitution guarantee equality before law and equal protection of law without any discrimination. In *Dr. Nurul Islam vs. Bangladesh* case⁶, the Supreme Court of Bangladesh observed that an aggrieved person is entitled to equality before law. The Supreme Court also observed in *BRAC vs. Professor Mozaffor Ahmed* Case that a complaint of discrimination can be

² Economic and Social Council, Resolution 5(II) of 16 February, 1946

³ Lauterpacht, International Law and Human Rights Law, Washington, 1968, p.394

⁴ Preamble, The Universal Declaration of Human Rights, 1948

⁵ Brownlie, Basic Documents in International Law, Oxford, 1992, p.149

⁶ 33 DLR (AD)201 (1981)

made before the court only by a person whose right to equality has been infringed⁷. So equality before law as provided in UDHR and Bangladesh Constitution has been upheld in Bangladesh. In *Dalia Parveen vs. Bangladesh Biman*⁸, the High Court Division (HCD) of the Supreme Court observed that discrimination on the ground of sex is unconstitutional. In Bangladesh the age of retirement for a steward was 43 while in the case of stewardess it was 35 years. The court eliminated this discrimination.

As per the direction of the Supreme Court of Bangladesh in *Masdar Hossain & others vs. Bangladesh*⁹ case, judiciary has been separated from the Executive. But it is observed that sometimes remand and bail are granted on the basis of other consideration. So judiciary should be free at all levels in Bangladesh as per Articles 2 and 7 of the UDHR and Articles 27 and 28 of Bangladesh Constitution.

2.3. Right to life

Article 3 of the UDHR deals with right to life. Articles 31 and 32 of Bangladesh Constitution also provide that there shall not be arbitrary deprivation of life save in accordance with law. Right to life is an inherent right of a human being. This right has been ensured by all national, regional and international law, custom, usage etc. Death penalty can only be executed in pursuance to a final judgment delivered by a competent court. So Articles 31 and 32 of Bangladesh Constitution have been incorporated in the line of Article 3 of UDHR. But killing by both executives and civilians in the form of extra-judicial killing has not come to halt. Different Medias publish news regularly about killing by both civilians and law enforcement agencies. The former Chairman of the Bangladesh Human Rights Commission expressed his grievances against such killing in different occasions. A victim of custodial violence and in case of death while in custody, his family members are entitled to compensation in addition to the remedy for damages for tortuous act of police personnel¹⁰. Now-a-days law enforcement agencies are not safe. They are also attacked and killed by the miscreants. This is due to the absence of proper and strict implementation of law. It may be worthy of mention of two recent judgments dealing with the punishment for commission of murder. In Sylhet, Sheikh Md. Samiul Alom Razon was beaten to death on 8th July, 2015. In this case Sylhet Sessions Judge, Mr. Akbar Hossain Mridha, delivered the judgment containing 76 pages on 8th November, 2015 within a period of only 123 days, having 17 working days. The court awarded death sentence to four convicts in a crowded court. In a similar case, Rakib, a child laborer, was killed by inhuman torture on 3rd August, 2015 at Khulna. The District and Sessions judge of Khulna, Mrs. Dilruba Sultana, pronounced judgment containing 59 pages on 8th November, 2015 within a recorded time of 93 days and only in 11 working days. This is the shortest period of delivery of judgment in the history of judiciary of

⁷ 41 BLD (AD) (2002)

⁸ 48 DLR 132 (1996)

⁹ 2 BLC(1997) 444; 52 DLR (AD),82(2000)

¹⁰ *DK Basu vs. W.B.* AIR 1997 SC 610

Bangladesh. In this case, two convicts were awarded death sentence.¹¹ The Honorable Chief Justice set a H.C Bench the task of dealing with death reference for those convicts who were awarded death penalty for commission of murder.¹² So it is observed that if cases are disposed of within shortest possible time, crime must be reduced remarkably. This is necessary to uphold the provisions of Constitution i.e. right to life, right to protection of law and right to remedy speedily. It is to be noted that the number of pending cases in Bangladesh up to 31st March 2016 is 31 lac 9 thousand and 967. This is known from the Honorable Law Minister in reply to a question by M.P (Member of Parliament) A. K. M. Jahangir Hossain of Potuakhali-3. The number of pending litigation is 12 thousand and 792 in Appellate Division, 3 lac 99 thousand and 303 in HCD, 18 lac 9 thousand and 461 in Assistant Judge Court to District level Court and 8 lac 8 thousand 411 in Judicial Magistrate Court.¹³

But the present statistics shows that the number of pending litigations all over the country has exceeded thirty five lac; about five lac in higher courts and thirty lac in the lower courts. During the last eight years from 2011 to November, 2018, one crore eighteen lac seventy seven thousand and two hundred ninety nine cases have been filed. Whereas ninety four lac sixty nine thousand and four hundred seventy seven cases have been disposed of. It means, on an average, each year three lac new litigations are filed which is creating huge back log.¹⁴ So litigants are deprived from their right of getting justice recognized in our constitution and by the UDHR. The main reason of such deprivation is insufficient number of judges in different courts.

This backlog can be solved by the establishment of more courts, formation of more Bench in HCD and recruitment and appointment of more Judges. Besides, Cr.P.C (Code of Criminal Procedure) needs to be amended for more speedy disposal of cases.

2.4. Protection against torture, or to cruel, inhuman or degrading treatment or punishment

Article 5 of the UDHR provides that no one shall be tortured, nor inhuman, cruel or degrading treatment or punishment shall be made on any person. Article 35(5) of the Constitution of Bangladesh also provides that no person shall be subjected to torture, or to cruel, inhuman or degrading punishment or treatment. So the language of both UDHR and Bangladesh Constitution is the same. It is implied that the framers of the constitution inserted this Article from the UDHR. So torture in any form is prohibited constitutionally. But it is seen that successive governments have not been implementing these provisions strictly.

Usually an arrested person is tortured in the name of remand granted by the concerned Magistrate when prayed by police officer. During remand under section 167 of Cr.P.C law enforcement agency torture the accused physically and mentally and during interrogation, sometimes the victims become mentally imbalance due to torture. Torture by law-enforcing

¹¹ The daily Amader Somoy, 9th November, 2015; The daily Prothom Alo, 9th November, 2015

¹² The Daily Star, 1st November 2016; Section 374 of Cr.P.C deals with death reference.

¹³ The Daily Amader Somoy (Our Time), 18 July, 2016

¹⁴ The daily Amader Somoy, Editorial, 26th November, 2018.

agency includes-(i) beating with sticks, (ii) kicking with boots, (iii) beating with rifle butts, (iv) electric shocks, (v) inserting needles in hands, (vi) pouring hot water into nose, (vii) throwing chilli mixed water in the eyes and mouths, (viii) pushing hot eggs into the anus, (ix) beating knee-joints and the bottom of the feet, (x) breaking finger nails and forcing the victims to drink urine. But the use of electric shock is common in all cases. This is in contravention of the provisions of the UDHR and Bangladesh Constitution.

It is worthy of mention that the HCD of the Supreme Court of Bangladesh in Public Interest Litigation (PIL) case, *BLAST and others Vs. Bangladesh & others*¹⁶ delivered the judgment regarding the amendment of section 54 and section 167. The High Court Division delivered verdict on 7 April 2003 in which the government was asked to amend sections 54 and 167 of Code of Criminal Procedure, 1898.¹⁷

But no government showed minimum respect to the above landmark rulings of the HCD, rather appeal was made by the then Government led by 4-party alliance to the Appellate Division of the Supreme Court of Bangladesh and it remained indisposed of for a long period but ultimately the Appellate Division of the Supreme Court dismissed the appeal of the Government on 24 May, 2016 and upheld the judgment of High Court Division. In the verdict the Government has been directed to amend or change some provisions of the Code of Criminal Procedure, 1898, Special Powers Act, 1974, Evidence Act, 1872 and Police Act, 1861¹⁸. This is a landmark victory of the victims who would suffer from misapplication of those laws. It is now suggested that the Parliament should enact or amend laws as per the directives of the Supreme Court. By doing this the government can show respect to both UDHR and constitution of Bangladesh as well the rulings of the Supreme Court. It is expected that the present government would come forward to implement the directives of the Supreme Court in order to prevent torture, unlawful arrest and detention by bringing necessary changes in the concerned laws. Bangladesh is committed to stop torture since it has ratified the UN Torture Convention on 5 October, 1998.

2.5. Rights of Women and Children

It is painful that the rights of women and children are violated in the forms of murder, rape, kidnapping and torture in Bangladesh at an alarming rate. As per report of B.S.A.F, (Bangladesh Shisu Adhikar Forum) an N.G.O working for Children, 209 children were kidnapped in 2014, and it was 243 in 2015 which is 16.27 more than 2016; 40 children were killed after kidnapping in 2015. It also reports that one thousand eighty five children were killed in Bangladesh from 2012 to 2015¹⁹. It is to be noted further that a child of five years in Dinajpur was raped and brutally tortured and injured on 18th October, 2016. Many columnists including Pro. Vice

¹⁵ Human Rights in Bangladesh(ASK) 1998, P.50; Amnesty International Report,2003, P. 58; Annual Report (BRCT), 2004 P.92

¹⁶ Writ No. 3806/1998 55 DLR HCD 363 (2003)

¹⁷ *Ibid*

¹⁸ The Daily Star, 25th May 2016.

¹⁹ The Daily Amader Somoy (Ourtime), 4th February, 2016

Chancellor. of Uttara University wrote feature against such brutality²⁰. Bangladesh enacted the Prevention of Repression against Women and Children Act, 2000 with the objectives to prevent violence against women and children. So the govt. is urged to implement the provisions of the UDHR, Provisions of constitution of Bangladesh and the laws in force by taking appropriate and speedy action against the perpetrators to protect the rights of women and children.

2.6 Right to effective remedy against violation of any fundamental rights

Article 8 of the UDHR provides that there shall be effective remedy against infringement of any rights granted by the constitution or by law. In case of violation of any rights contained in Part III of the Constitution of Bangladesh under Fundamental Rights, the victim can file writ petition to High Court Division under Article 44 and 102 to restore his/her infringed rights. But it is costly and as such poor persons cannot avail such opportunity. Government may think any other alternative procedure so that it becomes easy for those who cannot afford the cost of writ petition. However, Article 102 is an aid to citizens of Bangladesh to go to the Supreme Court for restoration of rights infringed by any perpetrator.

2.7. Right against arbitrary arrest

Article 9 of the UDHR states, "No one shall be subjected to arbitrary arrest, detention or exile" Article 33 of Bangladesh Constitution is in the line of Article 9 of the UDHR which provides four constitutional safeguards to a person who has been arrested. The safeguards for the arrested persons are as follows:

1. He or she must not be detained in custody without being informed, as soon as may be, of the grounds for such arrest.
2. He or she shall have the right to consult and to be defended by a legal practitioner of his or her own choice.
3. He or she has the right to be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate.
4. He or she is not to be detained in custody beyond the period of twenty-four hours without the authority of a Magistrate.

However, the above constitutional protections are not to be applicable (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention. It is to be noted in this context that in the original Constitution of Bangladesh, enacted in 1972, there was no provision relating to preventive detention. The framers of the Constitution carefully avoided such type of black provision and the original Article did not leave any scope for preventive detention. But by the *Constitution (second Amendment) Act 1973*, the original Article 33 was substituted by the new one which provides

²⁰ The Daily Ittefaq, 6h November, 2016, Article, Prof Dr. Yeasmin Ara Lekha.

that the safeguards as to arrest and detention will not be applicable to persons arrested under any law providing preventive detention up to 6 months without trial. Section 3 of the Special Powers Act, 1974 deals with preventive detention.

2.8. Right against slavery and forced labour

Article 4 of the UDHR prohibits slavery or slave trade. Article 34 of Bangladesh Constitution prohibits all forms of forced labour. Internationally, slave trade has been prohibited. In Bangladesh direct forced labour is not found. But sometimes it is found in the case of garments workers or housemaids who are indirectly forced to work with a bare minimum wages. Extreme poverty and ignorance of law are responsible for such indirect forced labour in Bangladesh.

2.9. Right to freedom of movement, freedom of thought, conscience, freedom of opinion and freedom of peaceful assembly and association

Article 13, 19 and 20 of the UDHR deal with the above rights. A man is entitled to enjoy all these rights freely. Without these rights a man cannot live like a human being. Bangladesh constitution has inserted these rights under Articles 36-40. Though the above rights are guaranteed in our constitution but sometimes some political parties do not enjoy the rights to freedom of assembly. Section 144 of Cr.P.C is imposed to restrict the assembly. Sometimes peaceful assembly is dispersed by police. Similarly, freedom of opinion, speech and expression and freedom to choose employment are constitutional rights which are enjoyed freely by the people in Bangladesh subject to certain limitation. Anybody can express his thought either through speech or in writing. In Bangladesh Medias have been enjoying this right without any interference. Everybody or any party may express useful and constructive criticism of the government.

2.10. Right to Religion

Article 18 of the UDHR deals with the right to religion. It includes the right to change religion, to manifest religion or belief in teaching practice, worship and observance. Article 41 of Bangladesh Constitution also guarantees this right. In Bangladesh people of different religions live here in peace and tranquility. Here they show respect to the religious belief of others. But recently extra-judicial killing has been taking place due to religious intolerance. People are killed in bomb explosion in Mosque, religious gathering. This is to be stopped in iron hand.

2.11. Right to own Property

Article 17 of the UDHR provides that everyone has the right to own property alone as well as in association with others. Article 42 of Bangladesh Constitution guarantees to every citizen the right to acquire, hold, transfer or dispose of property subject to some restrictions. Compensation is to be paid in case of acquisition of any property. In the case of *Alhaj Mohammad Rahim Uddin*

*Bhorasha Vs. Bangladesh*²¹ Justice Kazi Ebadul Hoque held that the petitioner has the right to hold the disputed property owned by him unless otherwise such right is restricted.

So the people of Bangladesh enjoy this right under Art. 42 of Bangladesh constitution without any hindrance and in case of violation of this right, judicial action is available.

2.12. Right to Privacy

Article 12 of the UDHR reserves the right of everybody regarding his privacy, family, home or correspondence. Unlawful and unnecessary interference is not only undesirable but also punishable. Art. 43 of the Constitution of Bangladesh provides that every citizen shall have the right to the security in his home against entry, search and seizure and to the privacy of his correspondence and other means of communication. But for the security of state, government may impose reasonable restrictions on the above rights. So both the UDHR and Bangladesh Constitution guarantee the privacy of home and correspondence and communication. But sometimes concerned agency violates this guarantee. It is found that police, for example, search in the same passenger transport several times creating annoyance. It is known from Media that sometimes civil dressed police enter the residence of the victim without warrant. This is not desirable. Judiciary may play effective role to stop such interference.

3. Conclusion

It is revealed from the above discussion that the Universal Declaration of Human Rights has covered almost all the rights which must be enjoyed by the members of human family in their respective fields. This Declaration, though it is a mere declaration having no binding clause, was a timely step taken by the UN to unite the divided world. It is universal in nature, because the rights incorporated in it are applicable for all human beings of all ages and in all territories without any discrimination of any kind. Bangladesh Constitution was framed in 1972, long after 24 years of the adoption of the UDHR. Naturally, the framers of Bangladesh Constitution had the opportunity to insert the provisions of the UDHR in our constitution and actually it was done. Like Bangladesh, other states have also inserted the provisions of the UDHR in their Constitutions with a view to ensure the enjoyment of all fundamental human rights. Bangladesh constitution, the highest law of the land, has provided the citizens to enjoy the rights as stated freely and without any hindrance.

A large number of human rights instruments were adopted by the General Assembly of the United Nations in the light of the UDHR. Among them, the important instruments which are binding on the states parties are the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), Covenant on Racial Discrimination, Covenant on Discrimination against Women (CEDAW), Child Convention (CRC), Torture Convention (CAT), and Optional Protocol to the ICCPR, Vienna Declaration and programme of Action. The creation of the post of UN High

²¹ 46 DLR (1994) 130

Commissioner for Human Rights on 20th December, 1993 is an outcome of the UDHR. A state party is committed to implement the provisions of the above human rights instruments in its territory. Bangladesh, being a state party to the above documents, must ensure the rights enumerated in those instruments including the rights ensured in Bangladesh Constitution. But violation of human rights in the form of killing, crossfire, kidnapping and consequent murder, torture in different forms, rape, acid-burnt, eve-teasing etc. have not been reduced due to the absence of rule of law, misuse of powers, political intolerance and hanker after wealth and power. Even law enforcing agents become target of attack. The appointment of more Judges, establishment of more courts in all levels and above all, disposal of litigation within shortest possible time and implementation of punishments without unnecessary delay shall reduce the infringement of fundamental human rights. Under the situation, all of us should discharge our duties with accountability so that our rights can be ensured. This should be a common standard for all irrespective of power or party affiliation. This should be our expectation.