

Civil and Political Rights- the present state of affairs in some parts of the world

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Human Rights day commemorates the anniversary of the adoption of the Universal Declaration of Human Rights by the General Assembly of the United Nations 64 years ago. The General Assembly in 1948 proclaimed the Declaration to be a “common standard of achievement for all peoples and all nations” towards which, individuals and societies should “strive by progressive measures, national and international, to secure their universal and effective recognition and observance.” The declaration, albeit not binding or justiciable, embodies a broad range of political, civil, social, cultural and economic rights and has inspired more than 60 human rights instruments which together constitute an international standard of human rights. The standard laid down by these instruments represents the general consensus of all United Nations Member States on internationally recognized basic human rights, and also emphasizes their relevance in our daily lives.

While the international community has laid the foundation of the “inalienable rights of all members of the human family” as “justice and peace” and has pledged to have universal respect for the “human rights and fundamental freedoms” of all individuals, in the preamble to the Universal Declaration, the question then arises as to the implementation of these norms and their accessibility to the common man.

Take the case of a country such as Bangladesh, which came into existence in 1971, 22 years after the adoption of the Universal Declaration, amidst 9 months of violence which left up to 3 million people dead in the crossfire between the Pakistani Army and the people of East Pakistan. Violence against women raged and millions were forced into squalid refugee camps in India where cholera ran rampant. After months of upheaval and a state of constant violence, the state of Bangladesh was formed, on the 26th of March 1971 after Indian intervention between East and West Pakistan, and the armed conflict finally ended in December of 1971, 9 months after the country’s independence. While you can write off the violence that was the wake of a peoples revolution in Bangladesh, an inevitable result of political upheaval and a strife for the independence of a new country, what of the millions of people that were displaced and the brutal violence that was meted out to them and what of the perpetrators of whom there is a record but no recourse? While those were the violent beginnings of a country in its nascent stages, it is worth ascertaining what the administration of human rights norms are in Bangladesh as they are presently.

In the recent past there has been persistent criticism of Bangladeshi security forces by organizations such as Amnesty International and Human Rights Watch among others for grave human rights abuses such as extrajudicial summary killings and, excess use of force and the use of custodial torture methods, and most notably the functioning of the country’s Rapid Action Battalion, an elite anti-crime and anti-terrorism unit of the Bangladeshi Police that was established in 2004 to stem crime in the country, and which has been implicated in thousands of cases of torture and extrajudicial executions. In early 2012 Bangladesh’s own Human Rights Commission demanded to know whether the

RAB which has also been named one of the most notorious “death squads” had been involved in the disappearance of 40 people including activists opposing Bangladesh’s National Party. The latest outrage, over the functioning of the RAB is now under the scrutiny of the apex judiciary in Bangladesh for arresting a physician without lawful process for running a facebook page criticizing the Bangladeshi actress Meher Afroze Shawon. Members of the RAB arrested Dr. Ehsanuzzaman without any specific case and brought him on remand for 'interrogation'. This incident, which was a gross violation of the existing law of the land, has led to widespread criticism against the RAB by social activists, who have begun to question whether such pseudo-police forces have a legal right to arrest any citizen of the country without the due process of the law.

The Awami Government of Bangladesh has repeatedly failed to use its parliamentary mandate in 2011 to implement policies to protect human rights, instead of prosecuting members of the RAB, the home minister chose to deny that such violations occur even in cases where the internal ministry investigations found evidence of wrongdoing. It has become the norm to disguise extrajudicial killings as “cross-fire” killings and avoid even a ruse to safeguard fundamental freedoms in the country, while new allegations of torture, arbitrary arrest, and enforced disappearances by the police forces continue to emerge. At this stage one has no choice but to consider whether internationally recognized human rights principles have a watch-keeper at all? Where is the justiciability and where is the effectiveness of the apex judiciary as the protector of human rights when it has been 8 years since the formation of the RAB and this latest incident with the RAB is one of the very first times it has come under judicial scrutiny?

The situation in Bangladesh has reached a stage where not only are international norms of human rights not being respected at all, but even policies undertaken by the Government are in name only. The new National Women Development Policy, was published in March in order to eradicate violence against, and oppression of women and children and to provide medical treatment, legal assistance and counseling to abused women and children, however authorities have failed to implement the plan and there have been several reports of victims receiving no support from state institutions. Amnesty International reported human rights defender Shampa Goswami was abducted for several hours by a gang of men in Satkhira in October after she encouraged a female survivor of gang rape to report the incident to the police. The abductors threatened to harm her if she did not stop supporting the victim and initially police ignored her request for protection, however they subsequently promised to protect her following a vocal campaign by national and international human rights organizations.

The abovementioned account is but one example. In Asia alone there are countless incidences such as these, in innumerable countries that just go unheeded. Take the case of Sri Lanka, which has been embroiled in civil war for more than two decades. More than 60,000 people have been killed and over a million displaced in the past 25 years. After decades of civil warfare and an abundance of human rights abuses by the government, the LTTE, and by several other separatist forces, there has still been no hint of accountability for these crimes. It has been almost three years since the defeat of the Liberation Tigers of Tamil Eelam by the Sri Lankan Government and there has been no serious domestic investigation into the thousands of war crimes and the crimes against humanity that were committed during the civil war.

While the Sri Lankan Government's own report from its LLRC Commission published last December includes important findings on reconciliation, and is the precursor to attributing accountability over the conflict, it failed to follow through or seriously address the issues in the report. The subsequent announcement that the army intended to conduct its own investigation into its actions does not hold much promise, as it is not the kind of independent inquiry that is required in such a circumstance. In the absence of a credible investigation into the war crimes and crimes against humanity that have been reported during the years of strife the country was involved in, the United Nations Human Rights Council is possibly the only organization that can be given the obligation to uphold human rights law and international humanitarian law. The UN Report on the matter stated that, "the conduct of the war by both sides represented a grave assault on the entire regime of international law designed to protect individual dignity during both war and peace. The victory on one side has emboldened some to believe that these rules may now be disregarded in the cause of fighting terrorism."

In March 2012, the United Nations Human Rights Council adopted a resolution on Sri Lanka calling on the Government to implement the recommendations of the LLRC (Lessons Learnt and Reconciliation Commission) on the accountability of various factions and the perpetrators of violations in Sri Lanka. The Sri Lankan Government has failed to take heed to the UNHRC's recommendation and instead has denounced the United Nations resolution as interference and has publically threatened local human rights defenders advocating for the resolution. While the Government has since diminished the force of its criticism of the resolution, that does not mean that anything has been done to attribute responsibility for the crimes committed.

The scope of the basic fundamental rights that are universally due to every human being are enumerated in two separate covenants, economic, social and cultural rights, and the other being civil and political rights. While it is argued that economic social and cultural rights impose positive obligations upon the Governments of nations and require affirmative action on behalf of the Governments, they are hard to enforce, whereas it is said that since civil and political rights impose negative duties or governmental restraint, violations of the same are easier to ascertain and are the punishment is therefore more enforceable. The civil and political rights that are guaranteed by the International Covenant on Civil and Political Rights are those that ensure a citizen's ability to fully participate in the civil and political life of the state, free from discrimination or repression, and that protect individuals from unwarranted infringements into those rights by governments or private organizations and other entities without the due process of the law. Most states worldwide have formal guarantees of these rights embodied in their constitutions and other charters guaranteeing these "natural rights" to their citizens. As Thomas Jefferson wrote in his "A Summary view of the Rights of British America" that "a free people claim their rights as derived from the laws of nature, not as the gift of their chief magistrate."

While abuses of these rights occur in various parts of the world, civil and political rights have been successfully implemented in several countries across the world. The mechanism in place to implement the same is multifold. As required by the CCPR, states are obligated to send a report to the Human Rights Committee every five years detailing the domestic laws that are in place to protect civil and political rights, as well as those designed to enhance or inhibit the same and a report is then sent to the UN General

Assembly. Since the Human Rights Committees report on the same are accessible by the international community, states with poor human rights practices and records can be strong armed into improving the state of affairs. Another method to enforce these inalienable rights is guaranteed by Article 41 of the CCPR which declares that “A State Party to the present Covenant may at any time declare under this Article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant.” The Human Rights Committee can then look into the matter and decide the appropriate action that has to be taken. Another method of enforcement is enumerated in Resolution 1503 of the Economic and Social Council of the United Nations, whereby individuals and non-governmental organizations are also allowed to submit complaints of violations of human rights of states. When received, although these complaints are filed, merely for record keeping purposes, if a large enough number of complaints against a certain state are received in a short period of time, the UN may decide to investigate. The last mechanism in place for the implementation of civil and political rights, and the one with the most resonance, places the responsibility of taking action upon the victim himself. Individuals are allowed to complain about human rights violations in their own countries at the international level, if that state has agreed to the Optional Protocol to the Covenant on Civil and Political Rights. This method is probably the most appropriate as it empowers the very individuals whose rights have been infringed upon and gives them a platform upon which to put fourth their claim and it also gives them the advantage that the violations are then dealt with on an international level as opposed to domestically. If a complaint is approved of by the Human Rights Committee, the Committee will then ask for a submission of information from the state and the individual and subsequently the Committee will rule on whether the state has violated the rights set out in the CCPR or not. Although, the Committee’s decision is not legally binding, most states do set out to resolve the situation.

Human Rights in India have sufficient safeguards under our Constitution, which provides for fundamental rights of individuals vide Article 14 [the right to equality], Article 19(1)(a) [the right to freedom of speech and expression], Article 21 [the right to life and personal liberty] and several others contained in Part III of the Constitution. The Constitution under Part IV, also enumerates the Directive Principles of State Policy, or the duties of the state and the socio economic rights that complement the provisions of the ICCPR and the ICESCR. The right to enforce the human rights embodied in the Constitution, is protected through enabling provisions such as Article 226, which empowers High Courts to issue writs such as Habeas Corpus, Quo Warranto, Certorari, etc for the enforcement of not only fundamental rights but other legal rights as well, in addition to Article 32, which in itself is a fundamental right and invests in the Supreme Court of India, the power of judicial review for the enforcement of fundamental rights with the power to issue directions, orders and writs.

The Government of India realized the need to establish an independent body for the promotion and protection of human rights and by virtue of the Protection of Human Rights Act, 1993, established the autonomous body of the National Human Rights Commission headed by a former Chief Justice of India . Subsequently, fourteen Indian states have also set up their own human rights commissions to deal with violations occurring within their states. A broad machinery has been put into effect, bestowing the

Commission with enforcement power, under Section 12 of the Human Rights Act, such as the power to enquire and take *suo motu* action against a public servant against whom a human rights complaint has been registered, the power to intervene in any proceeding involving an alleged violation of human rights pending before the court with the court approval, it has even been given the power to visit any jail or other institution in order to monitor the state of prisons or custodial jurisprudence. While several states haven't yet established Human Rights Commissions of their own, some states have taken the initiative to establish a framework for the protection of human rights taken from the Union's model, which is a step in the right direction.

The problems that we face in the enforcement of human rights are several. Huge delays in our judicial system lead to the natural conclusion that the criminal justice system is painfully slow in the disposal of criminal cases. Victims of crimes end up waiting for an unforeseeable amount of time before they can be tried by the court and the thought of going to a human rights commission never arises at all in the midst of the administrative hullabaloo that surrounds the judicial process in India. Reforms in the justice system must be made in order to make the process of enforcing human rights in India more palatable.

The solution to the problems of inefficiency that our administrative framework faces, lie within the sections enumerated in the Human Rights Act, 1993. The Human Rights Act provides for a somewhat streamlined prosecutorial service for human rights offences. One of the primary objectives of the Act is to establish Human Rights Courts in every district. Section 30 of the Act empowers the State Government to specify a particular Court of Sessions to be a Human Rights Court for the District after concurrence with the Chief Justice of the respective High Courts. The motive behind the provision is the speedy trial of human rights offences at the grassroots level. The West Bengal Government, on the 9th of September 2011 was the first to set up Human Rights Courts in all 19 districts. In addition, public prosecutors have been appointed in each District Human Rights Court as provided by Section 31 of the Act of 1993. While this is not a completely independent prosecutorial service such as the role of District Attorneys in the US, who have a role and function completely separated from the functioning of the local police, in India we have a somewhat difficult conundrum. The Constitution of India lists local police forces, as a state subject, and therefore they have been given the role of investigating offences that occur within the state. In several Human Rights Cases the Supreme Court has ordered the Central Bureau of Investigation, a special Police establishment set up under a Central Law, to investigate human rights abuses, such as the case of the alleged cremations of Sikh men by the Indian police in Punjab in 1996 that was reported by activist Jasswant Singh Khalra. The problem with the involvement of the CBI, is that it has been placed on the Union list in the constitution. In order for the CBI to investigate abuses in states, the state must give consent for the same, which is a hard bargain to sell as the State is itself (or powerful people who have protection of the powers that be) are the perpetrators in many cases. The CBI, in addition, is a specialized agency doing only crime investigation work, whereas the state police perform multifarious tasks and would be more adept at handling the intricacies of human rights abuses. Another relevant point to consider is that the CBI is highly overburdened and cannot be given the added responsibility of being the mechanism for protection of human rights in the country when it has its own important function. If that were done, we would

possibly create another inefficient system much like other administrative agencies in our country instead of a seamless, efficient framework for the protection of human rights.

The possibility that the enforcement of human rights will transcend the red tape that knows no bounds in most developing nations and realize its goal of finally reaching the common man are still in existence. The only impediments are the education of the common man who doesn't know that this is a possibility, and the establishment of a functioning framework for the protection of the same, for which the groundwork has already been laid in numerous legislations. The mechanism established by international bodies like the United Nations to implement universal laws such that they reach the common man have been in existence for 60 odd years, it is probably now time that we oil the bolts of rusty governance and set a system of law and order in motion that is seamless and efficient.