

## STAND UP FOR SOMEONE'S RIGHT TODAY

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*For I was an hungered, and ye gave me meal;*

*I was thirsty and ye gave me drink:*

*I was a stranger, and ye took me in:*

*Naked, and ye clothed me:*

*I was sick, and ye visited me:*

*I was in prison, and ye came unto me.*

*In as much as ye have done it unto one of the least*

*Of these my brethren, ye have done it unto me.*

-Mathew: New Testament

I deem it a great honour and a privilege to be able to make my humble submission before this august body in commemorating this day, when in 1948, the Magna Carta for the Human race was consolidated and articulated in form of Universal Declaration of Human Rights. This charter stems from the experience of countless millennium since time immemorial. It represents the collective aspirations for sustenance, survival and excellence of human race in order to guide and safeguard the human civilization.

Bangladesh being the part of the eternal journey of human civilization emerge as an independent country at its dawn asserting the right to determine its own destiny proclaimed as its birth cry, curving its own assertion, “*in order to ensure equality, human dignity and social justice for the people of Bangladesh<sup>1</sup>*”, as their birth right and to “*...do all other things that may be necessary to give to the people of Bangladesh an orderly and just Government.*”<sup>2</sup>; along with the resolve and its solemn vow, “*to observe and give effect to all duties and obligations that devolve upon us as a member of the family of nations and to abide by the Charter of the United Nations<sup>3</sup>*”, being the maiden commitment to the entire world as part of her birth cry.

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<sup>1</sup>Quoted from ‘the Proclamation of Independence’, Seventh Schedule of the Constitution of Bangladesh

<sup>2</sup> ibid

<sup>3</sup> ibid

Bangladesh's allegiance to the Charter is thus incorporated in its Proclamation of Independence and the pledge to observe the duties and obligations as member of the family of nations along with the promise for her people for establishing 'equality', 'human dignity', 'social Justice' and for establishing an 'orderly' and 'just government' is its universal promise for the people.

This faith in the Human Rights is further reinforced and elaborated in the Constitution by affirming in the preamble that *"it shall be a Fundamental aim of the State to realize through the democratic process a society in which the rule of Law, Fundamental Human Rights and freedom, equality and Justice, political, economic and social will be secured for all citizens. .... so that we may prosper in freedom and may make our full contribution towards international peace and cooperation in keeping with the progressive aspirations of mankind"*<sup>4</sup>

Those rights as are contained in the Universal Declaration of Human Rights (UDHR) are deemed as the first generation Human rights. Subsequent follow up expounding those rights in the covenants (i.e., International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights ICESCR) are second generation rights, followed by right to protection of safe environment, a protection for the health and well being of the mother earth itself along with its improvement are perceived as third generations Human Rights. Our Constitution incorporates third generation right by adding Article 18A as follows:

*"The State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens"*<sup>5</sup>.

There is no dearth of commitment and promises followed in each of our historic struggle reinforced in our sacred parchment but the major challenge is how to realize those goals to be reflected in our day to day conduct and practice reflected in our interaction with our fellow citizens, community and the constitutional authorities.

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<sup>4</sup> Preamble of the Constitution of Bangladesh

<sup>5</sup> Article 18 A of the Constitution of Bangladesh

How to implement those basic norms, promises and pledges into reality, so that people may enjoy the fruits of those rights in their day to day living, is the most challenging task.

In order to internalize our respect for those rights and to understand where these rights stem from and how those rights can be shared in our day to day dealings, it may be worthwhile to trace the source, nature and origin of these rights. In my view all these rights stem from the 'human dignity' which we must share and reciprocate with all human beings to be reflected in all our conducts and interactions in everyday life. This can only be realized through a common belief and sharing those values in our day to day transaction with each other and this quality of sharing the faith in 'human dignity' is a concept which needs to be perceived as an elevated value concept being part of what we call 'divine right' acknowledged by classical Jurisprudence like the ecclesiastical laws.

Allow me to recall one of the deliberations which took place in international jurist conference held in Budapest, back in 1999 under the theme "World Peace in 21<sup>st</sup> Century: Strengthening the Rule of Law in All Nations", organized by World Jurist Association, where I was invited to share the perception of Human Rights from the cultural heritage of the Muslim faith and the origins of fundamental rights. Hon'ble Ram Jethmalani, the former Minister of Justice and Law of India, spoke on the Hindu beliefs and commitment to peace and non-violence, while a jurist from Sri Lanka, Dr. Nihal Jayawickrama of Sri Lanka spoke on the contribution of Buddhism to the rule of law and Mayer Gabay of Israel explained the perception of Judaism and a former judge of USA shared his perspective from the Christian culture.

Budapest being a city of cathedral and catholic churches became a stage for discussing the ways to strengthen the Rule of Law among all nations, with a call for ending the culture of impunity/inaction/non compliance by adopting undiluted concept of humanity practiced by the international institutions and community of all nation states. Let me share my perception from religious perspective as I told in that assembly. As I believe that origin of 'human dignity' goes back to the biblical story depicted in the holy scriptures when God ordained the angels to bow before the first humans Hazrat Adam (Alaihissalam) and Bibi Hawa (Alaihissalam) in heaven followed by the journey started from a blissful innocence towards the planet earth bequeathed for the human race

along with the freedom of choice and responsibilities. The ‘human dignity’ and the inherent quest for knowledge and the power of reasoning led Hazrat Adam (Alaihissalam) and Bibi Hawa (Alaihissalam) from blissful innocence to a world where God granted them the freedom of choice, preceded by ‘human dignity’ making the angels to bow before this human couple in heaven. A host of rights that followed creates and demands responsibilities. *“We are told in our scriptures that human beings are equal and the laws of God and of nature are just and reasonable which is not only our heritage from the Garden of Eden but are preached and taught by our Prophet.”* I also reminded the assembly of Jurists that by granting the freedom of choice encouraged the first humans to take responsibility for what s/he choses. Such right to decide, right to descent along with freedom of thoughts and conscience, Allah made human beings accountable to Him. Accordingly the Muslim faith states the freedom of conscience and religion and respect for other’s beliefs and culture is “a commitment we owe to the origin of mankind” for a renewing faith in humanity with respect for diversity being the part and pattern of the nature creating balance and harmony being the main theme and ethos of creativity. Therefore unity in diversity is the universal pattern in all creatures. This is therefore also a heritage of the mankind including variety of colour, culture, religion, race and ethnicity.

In order to internalize respect for those universal rights and to understand the oneness in the diverse pattern in the nature all around us in this universe, we ought to respect diversity, same being part of the pattern created by the Almighty. We therefore own and respect this pattern, which being part of humanity. This can only be realized by us showing respect for others ‘dignity’ for each individual irrespective of their race, cast, coulour, ethnicity or religions. Such respect ought to be shared and reflected in our day to day dealings with each other and in nurturing the nature in which we learn to live in harmony.

‘Human dignity’ is such a right that every child is born with it. S/he deserves to be so treated by others as well. According to the theological point of view, it’s a divine right. As one could recall from the Holy Scripture, when the first man and woman (Hazrat Adam (Alaihissalam) and Bibi Hawa (Alaihissalam)) were brought to life, the angels were ordained to bow. Thus our ‘human dignity’ was granted to the first human in the blissful heaven, which we genetically inherited those rights and dignity. Allah granted the first human in the heaven to have the freedom of movement and freedom of choice and also warned that there is one fruit in the Garden of Eden

from a particular tree which if they would take, the hazard might fall. This story is interpreted in various ways. My own perception is that the test by the Almighty was to find whether the first human pair created in the heaven is capable of making the choice by themselves to ascertain whether they would be worthy of the journey awaiting for them to inhabit this planet. Is the couple adventurer and explorer, a self motivated learner and inquisitor and a risk taker and capable to making his/her own decision for better or worse, Hazrat Adam (Alaihissalam) and Bibi Hawa (Alaihissalam) passed in all these tests whereupon, this planet was given to them as a 'MAATA' in Arabic word which means 'endowment'.

Hence I consider the 'human dignity' granted to the first human, is a heavenly virtue to be shared with every other person and thus create a forward looking 'order' on this planet enabling everyone to share and respect those rights and 'dignity' bestowed in heaven upon the human race.

In the recorded history, as we look at the modern jurisprudential growth of the state and governance, we trace back to the seventeenth century in the context of the constitutional growth as it grew in England as a continuous urge for liberty from the time of Magna Carta (1215), reinforced by the petition of Rights (1628), later culminating in the Bill of Rights (1688) followed by the Act of settlement in 1701. Common aspiration for those rights are universal for all the people under whatever system they live. The quest for it grew with the awareness and confidence built through the political struggle conducted towards a representative government inspired by the ideas and aspirations articulated by political thinkers and philosophers.

In shaping those concept into enforceable legal norms, a mechanism was devised by the wisdom and statesmanship of Judges, who while administering Justice and interpreting laws and protecting rights, showed profound regard for the principles starting from equality among equals, liberty and Justice as carefully and gradually created, crafted, developed and evolved from case to case basis. Judges following the maxims of Roman pontics developed a right oriented jurisprudence over the years with progressive growth in a dynamic society under a changing social environment. The role thus played by the common law Judges is the genesis to which the modern Constitutional mechanism, human rights and Jurisprudence owes its origin.

In this respect, the American Constitution served as a model for the adoption of Human Rights

based under the first ten amendments to the Constitution. These were further developed in 1948 under the Universal Declaration of Human Rights (UDHR). Those were later adopted in the written Constitutions in almost all the newly independent countries who won their independence since the Second World War. The relevance and importance of human rights was realized when the Second World War came to an end.

The sovereignty of people was reemphasized by vesting all the powers of the Republic to the people. Exercise of powers on their behalf could be effective only under and by the authority of the Constitution.

Article 7(1) of our Constitution thus states:

*(“Article 7. (1)) All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of, this Constitution.”*

In Article 11, "The Republic" was further defined to be "a democracy" in which guarantee of fundamental human rights and freedom and respect for the 'dignity' and worth of human person and effective participation by the people through their elected representatives in administration at all levels were ensured. The concept of State, co-operative and private ownership and control of the instruments and means of production and distribution were also ascertained in Article 13 of the Constitution. The emancipation of the peasants, workers and backward sections of people from all forms of exploitation was made the responsibility of the State empowered by the Article 14 of the Constitution.

In addition, the fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and steady improvement in the material and cultural standard of living of the people with a view to securing for the citizens the provisions of basic necessities of life and living including right to work, right to reasonable rest, recreation and leisure and right to social security in form of public assistance in cases of undeserved want, was guaranteed under Article 15.

In Article 19 of the Constitution, equal opportunity for work and removal of social and economic inequality in order to attain a uniform level of economic development throughout the Republic

was ensured.

Article 22 ascertained the separation of judiciary from the executive and most interestingly, Article 21 of the Constitution declares that it is the duty of every citizen to observe the Constitution and the laws and of every public servant at all times to serve the people.

Furthermore, a chapter on Fundamental Rights is provided under part III of the Constitution.

Concept of 'equality', 'social justice' and 'human dignity' has to be read as the central theme of the Constitution consolidated by the collective will of our people and this supremacy of the will of the people is enshrined in the Constitution by vesting all power to the people but those powers to be exercised in accordance with the mechanism of Constitution, (ie., having the status of Supreme Law of the land) by the elected representatives of the people being one such method for exercising legislative power and the executive being accountable to the Parliament. This supremacy is further strengthened by the fact, that no power can be exercised by any of the organs of the State undermining the basic rights of the people, nor their original rights so guaranteed be encroached. Power to the people can verily belong to the people when we can mobilize them to defend the Constitution and their basic rights.

The inalienable nature of those rights is further emphasized by recognizing the concept of equality before law, non discrimination, equal opportunity in public employment and access to law; right to life, personal liberty, safeguards against arrest and detention, prohibition of forced labour, due process in trial and punishment; freedom of movement, assembly, association, conscience, speech, profession, occupation and religion; rights to property; protection of privacy, home and correspondence. Enforcement of Fundamental Rights itself is a part of our guaranteed rights under the Constitution.

'Equality', 'human dignity' and 'social justice', are the theme of Bangladesh itself. Those were her birth cry articulated in Proclamation of independence and these are echoed in the Preamble of our Constitution. WE THE PEOPLE are committed to a society in which the rule of law, Fundamental Rights and freedom, equality and Justice-political, economic and social need to be secured for all citizens.

When we interpret the enforcement mechanism provided under Article 102 read with Article 44 or talk about the role of the Judges and Judiciary, it is difficult to conceptualize any other role for them other than the one postulated and prescribed under the oath of the Judge that they "will preserve protect and defend the Constitution". A Judge should preserve and protect 'Fundamental Human Rights' for all citizens as promised in the Constitution.

If one has to read and implement and/or expound the Constitution as the Judges do, they cannot escape reading, implementing and expounding the Constitution as a whole. In reading the Rule of 'locus standi' or 'exhaustion rule' it is necessary to take such care so that the cause for social Justice is not obliterated or undermined and that the exhaustion rule is not used to frustrate access to law and Justice. A new Jurisprudence thus evolved under the head "Public Interest Litigation" as is now practiced in our superior courts to conduct a social scrutiny and auditing the compliance and/or violation of the basic rights. Right to move the High Court Division has also been made part of the Fundamental Rights. This has conferred upon the Supreme Court unequivocal power for giving direction and orders to any person or authority for the enforcement of the Fundamental Rights conferred under Part III of the Constitution. (Art.44)

Bangladesh Constitution has thus made rule of law and its enforcement a part of Fundamental Rights, thereby ensuring the right of every person to be treated in accordance with law and only in accordance with law (Art.31), which is part of his or her enforceable rights under Article 102(1) of the Constitution read with Article 44.

Article 7, 11, 26, 31 and 44 read along with the Proclamation of Independence and the Preamble of the Constitution, they create the appropriate backdrop for understanding the role and the extent of judicial review as envisaged under Bangladesh Constitution (Art.102). It has thus become inseparable concomitant of Fundamental Rights as is said in the words of the sponsor of first 10 amendments in the U.S. Constitution, (James Madison, known as the father of Bill of Rights<sup>6</sup>)

*"If they are incorporated into a Constitution, independent tribunals of Justice will*

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<sup>6</sup> (I) Annals of Congress 439.

*consider themselves in a peculiar manner as guardian of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the Bill of Rights."*

The role of judges and the judiciary, as contemplated under the Constitutions of the most of the countries in the SAARC Region, including that of Bangladesh, and modeled after the U.S. concept of Judicial Review under a written Constitution, is of special significance.

*"This historical backdrop" as Justice Iyer highlights "must illuminate the black letter law of our Constitution which, in its value laden humanism, has a message and a meaning beyond lexical literality"<sup>7</sup>.*

The experience of Constitution making in our region (India, Pakistan, Bangladesh, Nepal and Sri Lanka) has not been an even one nor the task at all easy. The trend, however, is towards preserving the basic fundamental rights known as natural rights such as the natural justice and fair play within their specific arena. Economic and social rights as are contained in part II of the Constitution, are of the greatest importance in meeting the challenge of poverty, illiteracy, underdevelopment and injustice.

When we talk of right to life as contained in Article 31 of the Constitution it cannot be looked in isolation from the social and economic rights without which right to life would become meaningless. *"What is guaranteed by this fundamental right is not mere animal existence nor vegetable survival but rightful opportunity to unfold the human potential and share in the joy of creative living"*. (Justice Krishna Iyer)

Justice Felix Frankfurter in search of such insight of the Judge said, "A Judge should be compounded of the faculties that are demanded of the historian and philosopher and the prophet. As the last word about the role of the Judges in protecting rights under the Constitution it cannot be better said than in the words of Justice Krishna Iyer,

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<sup>7</sup> Justice Krishna Iyer: 'Law and the Urban Poor in India', B.R. Publishing Corporation, Delhi 1988.

*"Indeed, the current challenges to our social progress and personal liberties must be recognized by the Judges and International instruments, global declarations and militant ideologies impact on national laws not only in the shape of fresh legislation but in the fresh facets of the thoughts embowed in the old words.*

*Words have life, ideas have wings and winds of change which advance the larger cause of breaking human bondage have access to judicial interpretation. Wigs and gowns are no rigid roles to muffle or stifle but are apparels that proclaim the professional social engineer with state authority chosen to perform the strategic task of dispensing Justice in its dynamic dimensions. If he lapses into legalese and withers into verbalize he misses his functions and vision and betrays the Constitution<sup>8</sup>".*

Though Constitution has vested the power to the people; but we have failed to train and orient our people to be so conscious and empowered intrinsically to be able to exercise this power by building a collective will shared by each individual committed, trained, oriented and motivated to respect rights of others in the society. If the citizens properly groomed at home and schools and are trained and educated and made conscious since the childhood not only of its own rights but side by side learn to respect the rights of others including the immediate to distant neighbours, thus sharing a right oriented culture of 'human dignity', whether in family, school or in the work place or on the street or in an omnibus or on the train or in a market place, there will follow a culture of harmony in the community, respecting each other's right sharing those values in a collective pool in the entire society of mankind.

These basic values are to be harnessed as part of our curriculum, which needs to be developed and practiced in every family and school from the pre primary stage up to the university and be practiced and cultivated in all professions and work place duly reflecting in all transactions so as to be imbued in all political, economic, social and cultural interactions at all levels.

'Human dignity' and respect for the rights stemmed from the heavenly endowment, it should then be cultivated, practiced and preached from the day one, when one is born till s/he enters the grave.

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<sup>8</sup>ibid

I would like to conclude my speech with the words of Martin Luther King, Jr. who was an American clergyman, activist, and prominent leader in the African-American Civil Rights Movement,

*“The whirlwinds of revolt will continue to shake the foundations of our nation until the bright day of justice emerges.*

*But there is something that I must say to my people who stand on the warm threshold which leads into the palace of justice. In the process of gaining our rightful place we must not be guilty of wrongful deeds. Let us not seek to satisfy our thirst for freedom by drinking from the cup of bitterness and hatred.”*

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