



Justice S.K. Sinha

‘Human Rights - Children Rights’

Justice S.K. Sinha
Appellate Division

In the present context that the world is facing global and supra-national problems which threaten the very survival of the planet, demand immediate attention. The United Nations Charter refers to the problem of human rights in six different Articles. The preamble expressed determination "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations, large and small." Of the Articles, Article 13(1)(b) enjoins upon the General Assembly with the duty to make recommendations for the purpose of promoting international co-operation in the economic, social, cultural, educational and health sectors, and assisting in the realization of human rights and fundamental freedom for all, without distinction as to race, sex, language, religion, or nationality. United Nations' General Assembly is like an International Parliament without possessing the binding force of its resolutions. Almost all the states of the world adhere to the Universal Declaration of Human Rights 1948 and the United Nations Convention on the Rights of the Child, 1989. These international covenants have been organized with the principles proclaimed in the Charter of the United Nations stipulating that the children of the world are entitled to special care, protection and assistance. It has been recognized that a child for full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding. The Convention of 1989 considered that a child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations and that "the child by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth." The Convention also recalled the provision of the Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption, nationally and internationally, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict. As most of the states stand in favor of the law provided in their Constitution, it is obvious that the rule of law imposes upon the member states of the United Nations the obligation of its rigorous enforcement. The theme that protection of individual liberty to get preponderance over the loss of protection of the society needs to be addressed in the contexts of the realities prevailing in the present day world. The principle that every citizen is entitled to be informed of what the state commands and stands for, must be followed. The life and liberty of a person cannot be put to peril on an ambiguity.

There is, therefore, a global need for an enforceable international constitution for the settlement of international disputes by arbitration, with effective machinery for its enforcement.

International Law made of treaties, conventions, covenants are directory in nature which lack machinery to enforce the same. Instruments of International law really concern the political decision of the Government and depend on its discretion for their implementation. So it is high time that the instruments of international law should be given a status equivalent to that of the municipal law and should not be left to the discretion of the political government for their implementation. It is necessary for the states.

which ratified the international treaties to foster respect for international law and to embody them in the municipal laws. The treaties should be transformed to have sanctions of the municipal law so that those could be enforced by the municipal Courts.

Fostering respect for international law is a part of our declared policy. In this connection National Human Rights Commission is being created which is expected to come into being shortly. For the custody, protection and treatment of the Children, the Children's Act, 1974 and Nari-O-Shishu Nirjatan Daman Am 2000 have been promulgated. In line with the vision of the United Nations Charter signed in 1945, our Constitution echoes similar provision in Article 25 of the Constitution which reads as follows:

"25. (1) The State shall base its international relations on the principles of respect for national

sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter, and on the basis of those principles shall-

- a) strive for the renunciation of the use of force in international relations and for general and complete disarmament;
- b) uphold the right of every people freely to determine and build up its own social, economic and political system by ways and means of its own free choice: and
- c) support oppressed peoples throughout the world waging a just struggle against imperialism, colonialism or racialism.

(2) The State shall endeavor to consolidate, preserve and strengthen fraternal relations among Muslim countries based on Islamic solidarity.

Article 25 of the Constitution is contained in the chapter "Fundamental Principles of State Policy", which embodies the salutary principles of international law enshrined in the Charter of the United Nations to promote international peace and security, maintain just and honorable relations between the nations, foster respect for international law and encourage settlement of international dispute by arbitration. The Constitution of Bangladesh is the Bible of an ethical civilization committed to human values and directed towards the building up of social order in which justice, social, economic and political; liberty of thought, expression, belief, faith and worship equality of status and of opportunity will be available to all citizens. Throughout the chapter on Fundamental Rights, it elucidates the quintessence of a socio-political order which can well be the pride of any nation. Realizing the difficulty of guaranteeing equality in an unequal society, it authorizes the state to adopt policies which may dismantle age-old institutions of inequality and promote equality wherever necessary through reverse discrimination strategies.

The quintessential role of a Supreme Court in a democracy is to vindicate the Constitutional rights of minorities, of dissidents, of unrepresented, of disenfranchised, of children of unpopular and of underprivileged. "The U.S. Supreme Court, has struck down statutes designed to protect the disabled, children, women, racial minorities, members of minority religion and others who do not have full access to the political process. Yet the same Supreme Court has turned this important role on its head. It has generally vindicated the interests of the powerful at the expense of the rights of the powerless", observed Alan M. Dershowitz in his book "Supreme Injustice". A morally weak Supreme Court of a state poses a danger to its citizens who care deeply about the Constitution and the liberties it protects. The danger may not manifest itself in the immediate future, but a morally strong Supreme Court serves as an insurance policy against unpredictable yet inevitable threats to liberty over time. The superior Courts in many countries, including that of Bangladesh, have enforced international law even though those treaties have not been incorporated into municipal laws. This is not the proper solution. The superior Courts of states, which ratified the treaties, could have applied international law wherever the municipal law is silent. Regarding this the contribution of the Supreme Court of Philippines are significant. If the apex Courts of other members states follow the same path then this will ensure a better and secure life for the next generation.

=====#=====