

ISSUES IN HUMAN RIGHTS

Edited by

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The book entitled **Issues in Human Rights** by Azizur Rahman Chowdhury, Md. Jahid Hossain Bhuiyan and Shawkat Alam contains original contributions in different aspects of human rights. It is the outcome of academic collaborations of 20 academics of Indian jurisdiction.

The right to fair trial in criminal proceedings is one of the basic human rights. In the first article of the book entitled **"The Significance of Fair Trial under Human Rights Law in Matters of Criminal Justice; A Case Study of the Trial of Former Iraqi Leader, Mr. Saddam Hussein"**, the author notes that the Iraq War has raised the question

of whether it was proper for the new Government in Iraq to try the former Head of State, Mr. Saddam Hussein, on certain charges. The author also notes that in case of Saddam Hussein starting from the very first step of the trial to the execution at every step and every stage the established norms of fairness and transparency was the biggest casualty. She reaches into the conclusion that Saddam Hussein was denied the right to fair trial and the entire trial had been concluded in a record span of condensed time which is contrary to the age-old legal maxim that justice hurried is justice buried.

The author in his article entitled **"The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights: Their Implementation and Progress"** argues that the International Covenant on Civil and Political Rights (ICCPR) has so far made more progress, and the rights in it more enjoyed and protected than the International Covenant on Econom-

ic, Social and Cultural Rights (ICESCR). He also examines the inherent differences between the rights, the different implementation procedures and the attitude of the international community to each of the Covenants and offers suggestions to remedy the slow progress of the ICESCR in relation to the ICCPR.

At the global level, moves to strengthen public participation in environmental decision making and the right to information are pillars of any developmental process. The public's right to know is an intrinsic part of informed public debate, which has traditionally been dependent on the freedom to receive and impart information without government interference. Moving ahead with growth, development and industrialization, the world woke up to some hard but practical realities about the exploitation of Mother Nature. The world environment was at threat due to industrial activity. The author in his article entitled **"Ecological Perspective of Right to Information: Need for Participatory Ap-**

proach to Governance" describes the linkages between the right to know on ecological issues concerning man and his environment and explores the need for strengthening domestic legal framework so as to bring about transparency and openness in Industrial governance. However, this is only the tip of the iceberg. There is huge mass of privately held environmental and health risk information that is woefully 'asymmetric'.

The tide of globalisation is considered to be a force which has brought a lot of good to this world. However, in spite of apparent positive effects, globalisation as a phenomenon has been in the midst of controversy. One of the main criticisms is that it has a negative impact on human rights. In the article entitled **"Right to Education in Global Economy (Indian Perspective)"** the author analyses challenges that have been put forth by globalisation onto the Indian education system and shows how education as a tool can be used to combat these chal-

lenges that have been put for our society.

While market globalization may represent in some aspects a golden opportunity for human rights law, it may also pose a threat to the continued effectiveness of human rights law. Since our society is committed to both markets and rights, it is *sine qua non* to incorporate both trade values and human rights values in comprehensive policies respecting both markets and rights. In this context, the authors in their article entitled **"Human Rights and the World Trade Organization A Critique on Compatibility"** express opinion that the incorporation of human rights and international trade values requires some systematic mechanisms for the formulation and evaluation of normative conflicts.

It is contended that Human Rights start with children rights. India through the ratification of the Convention on Rights of the Child (CRC) 1989 on 11th December 1992 gives hope her children to be protected under the international as well as national

legal regime. The author in his article entitled **"Human Rights of Children: A Study of Implementation of CRC in India"** critically examines the implementation patterns of CRC in India in its various administrative and legislative measures. In stating positive and negative aspects of the implementation process of CRC, he suggests the need of action from multiple fronts by international, national, governmental, non-governmental, regional, and local agencies.

The importance of juvenile justice is recognised in different legal systems of the world. The author in her article entitled **"The Administration of Juvenile Justice System in India: Many Miles to Go, Many Goals to Achieve, Many Children to Protect"** traces historical origins of the juvenile justice system in India and argues how Children in Conflict With Law and Children in Need of Care and Protection, that fall within the ambit of the juvenile justice system are devoid of substantive and procedural rights and protec-

tion. Thereafter, the article incorporates suggestions for a more effective implementation of the juvenile justice system to ensure that child protection and child development transpires in a real and sustainable manner.

The history of human rights is clearly linked to World War II and the foundation of the United Nations. The United Nations Organization adopted a number of international human rights instruments to establish and strengthen international peace and rule of law. Through the article entitled **"Role of United Nations in Protection and Promotion of Human Rights"**, an attempt has been made to dovetail the various landmark initiatives of the United Nations to bring the rhetoric of the implementation of human rights into reality.

Non-governmental organizations (NGOs) play significant role in promoting and protecting human rights at national and international levels. The authors in their article entitled **"Role of Non Governmental Organiza-**

tions in the Promotion of Human Rights" note that by undertaking mass awakening strides and importantly aligning themselves with the UN Millennium Development Goals, the NGOs have marched way ahead in upholding human rights.

Human rights education is to do with learning and practice of human rights. It enables them to develop a feeling of being important and being able to defend themselves as well as others. The authors in their article entitled **"Promoting and Protecting Human Rights Education"** argue that every society should give emphasis on human rights education to young people in order to prepare them for a plural society. The article then addresses means and methods required to address issues of human rights education.

The object of criminal justice is to protect the rights of individuals and the State against intentional invasion of criminals who violate the basic norms of society. The author in her article entitled **"Humanizing the Crimi-**

nal Justice System -The Victim Perspective" states that greater respect towards rights of the victims in the investigation and prosecution processes, provision for greater choices to victims in trial and disposition of the accused, is called for if the country wants to protect human rights.

The legal enforcement of human rights in general and constitutionally guaranteed fundamental rights in particular, has been the important hallmark of every constitutional democracy. The Constitutions have recognized enforcement of these rights as fundamental rights as well. The judiciary has been constitutionally empowered to pass appropriate writs, orders and other directions in the arena of protection and enforcement of these guaranteed rights. The authors in their article entitled "**Revisiting Award of Compensation for Violation of Fundamental Rights: An Analysis of Indian Supreme Court Decisions**" argue that Indian Supreme Court has played an important active role in the

enforcement of fundamental human rights in India. It has evolved new relief and remedies courageously and craftily in the event of violation of fundamental human rights. One of the remedies which the Court has come forth with is that of awarding compensation to the individuals whose fundamental rights have been violated. This article also analyses various judgments of the Court in this regard to drive home the point that such a remedy was warranted to highlight sacrosanct nature of fundamental human rights, and to act as a deterrent against such wrongful conduct by the state in future. To the extent that this remedy is enforceable as a matter of right, a new approach either at the level of the legislatures or at the level of Court would be needed. Until that is done, the remedy continues to be a discretionary one, yet importantly benign.

The presumption of innocence principle seeks to provide for a more humane and fair system of trial where the accused is given the benefit

of doubt and the state had to prove guilt beyond reasonable doubt. The author in her article entitled **"The Presumption of Innocence and Fair Trial"** refers primarily to Indian and British common law principles, Indian and American statutes post 9/11, and theories on the origins of this presumption to fashion an argument for the preservation of this basic human right.

The author in his article entitled **"Terrorism and Human Rights: A Saga of Opposites?"** tries to seek a balance between two apparently conflicting ideals – the need for curbing the menace of Terrorism, and the stringency of measures consequential upon such need; and the overarching need for observance of Human Rights standards. In the process, he analyses the different problematic issues like lack of a globally acceptable definition of Terrorism and looks at the issue of non-derogability of the Basic Human Rights, and how very often the Counter-terrorism measures, falling short of the desired stand-

ards, seek the protection of the principles like Necessity and Proportionality and doctrines like Margin of Appreciation that are yet to find a universal legal acceptance.

In recent times, the issue of protection and promotion of indigenous people's rights is considered as an integral part of the international movement for protection and promotion of human rights. The emerging norm of indigenous people's rights is a direct response partly to their demand of separate identity as distinct units of human interaction and partly influenced by the development of universal framework of human rights. Among the strategies for the survival and international legal protection of indigenous peoples, human rights discourse is considered to be the most important one for the empowering them and to enable them to express their legitimate demands. The author in his article entitled **"Indigenous People's Rights and Protection Mechanisms: An Overview"** notes that the necessity for a special regime of

indigenous rights can be explained by the fact that they require special legal protection and institutions to protect them within nation state and international community. Moral and ethical aspects of human rights discourse dictates that indigenous people should be portrayed as groups of human beings with fundamental human rights as well as special kind of rights as remedial measures for historical reasons.

Protection of women's right has been a priority for the United Nations ever since its inception. The author in his article entitled "**Rights of Women under International Law**" attempts to delineate the rights and status of women in various fields, including education, health, employment, protection from sexual and gender based violence, domestic violence, HIV/AIDS and the right to information, communication and technology.

In the light of emerging global concern on domestic violence, the author in her article entitled "**Legal Control of Domestic Violence**

in India in Perspective of International Human Rights Instruments" identifies international human rights instruments that speak of protection of women from violence and examines the adaptation of the same in the Indian Legal regime to domestic violence.

India in the post-UN epoch has achieved substantially in the process of human rights standard-setting and benchmarking. In this age of transparent governance, the author in his article entitled "**Cataclysmic Indian Dialectics of Collective Rights**" addresses particularly in the province of group and collective rights and opines that the half a century old state repression could not bring durable peace and hence, democratic mechanisms like Plebiscites could be suggested in resolving un-addressed national questions in the North-Eastern States.

To protect human rights in the European Union (EU), the leaders of the EU Member States on December 7, 2002, at the European Council meeting in Nice, proclaimed

the EU Charter of Fundamental Rights. The author in his article entitled “**Protecting Human Rights in the European Union: The Charter of Fundamental Rights Perspective**” says that the words contained in the Charter are based on the fundamental rights and freedoms recognised by national constitutions of the Member States as well as international human rights instruments.

He also considers the necessity of a Bill of Rights for the EU, and EU accession to the ECHR issues and also states the views of the scholars regarding the legal status of the Charter and takes position that the provisions of the Charter are not legally binding as the EU Constitution which incorporated the provisions of the Charter has not yet come into force. He identifies that certain provisions of the Charter will be most commonly invoked in competition law cases.

Issues in Human Rights is a valuable contribution in the arena of human rights. The knowledge of the editors and

contributors is well-reflected in the book. It is hoped that the book will be helpful to teachers and scholars of human rights.

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