

Where action doesn't meet word

F.P. 12/12

Waseem Ahmad Shah

Human rights

Dec 10 marked the 49th anniversary of the Universal Declaration of Human Rights (UDHR) adopted by United Nations General Assembly. Being signatory to this declaration, the day was also celebrated by Pakistan in a befitting manner. Special functions, seminars and processions were arranged by various human rights organisations and government departments, pledging to improve the overall human rights situation in the country.

Each year, the day is celebrated in the same fashion. Fresh commitments are made following which the departments concerned go into an year-long hibernation till it is time for another anniversary. Gross violation of human rights continue unabated mostly due to the involvement of government agencies and enforcement of monstrous legislations. Voices, if any, raised against state terrorism remain unheard. Such is the manner in which the government fulfils its commitment to the Charter of Human Rights.

From time to time, governments have enacted laws not only in conflict with the UDHR but also with our Constitution. In the 1973 Constitution, a complete chapter dealing with fundamental rights was incorporated by the framers of the Constitution. Nearly 25 years have passed since, but the successive governments have shown little respect or consideration for that chapter. For 11 long years, a military dictator played havoc with the Constitution and not only the chapter dealing with fundamental rights but the entire constitution remains neglected, adding to our not-so-enviable record of human rights.

The civilian governments continue to use the laws of the land arbitrarily and the discriminatory laws enacted by the martial law governments in particular have become the major source of curtailing the rights of an individual. The rulers have not only stuck to the laws of dictators, rather devised their own legislations for curbing freedom of an individual guaranteed by the Constitution.

The latest addition to these discriminatory laws is the Anti-Terrorism Act, 1997 empowering the police with unbridled authority. Various Constitutional provisions were completely overlooked while framing this brutal law. Misusing its brute majority in Parliament, the present government enacted the law without discussing its pros and cons. A sim-

ple reading of this Act clearly shows that it is violative of article 14 (dealing with dignity of man and privacy of home), Article 175 (separation of judiciary from the executive) and Article 185 (Appellate Jurisdiction of the Supreme Court).

Being a signatory to the UDHR, it is morally binding on the government to legislate laws in line with the articles of this universal charter. Article 3 of UDHR states, "Everyone has the right to life, liberty and security of person". In conflict with this article is section 5(2)(i) of the Anti-Terrorism Act under which an officer of the police, armed forces and civil armed forces could shoot or order shooting of any person or persons committing or in all probability likely to commit a terrorist act or schedule offence. Similarly, under sub-section (ii) and (iii) of the same provision, the police could arrest a person without warrant and enter and search any premises without a search warrant. These provisions are also ultra vires to article 9 of the Constitution which guarantees that no person shall be deprived of life or liberty in accordance with law.

Through the same Act, special courts for conducting speedy trials were created in sheer disregard of the concept of independence of the judiciary from the executive. How can one expect a fair trial in a short span of one week, the time frame given for conducting a trial by the special courts? Just like the previous Benazir Bhutto's government, the present law also legalised confession statement of an accused before a police officer. Under section 164 of the Criminal procedure Code, only a magistrate was empowered to record a statement or confession of a person but through the new act, police officers were delegated the same powers. Such a provision was also introduced by Benazir Bhutto in her Terrorist Affected Areas Act enforced in Sindh, which clearly manifests her interest in safeguarding the rights of an individual.

The Pakistani police is known for its brutalities and cruel attitude meted out to ordinary people. How could such powers be bestowed on the law enforcing agencies when they were completely ignorant of the norms of civilised society. The oppressive law of the Maintenance of Public Order Ordinance, 1960 is still functional and misused by the successive governments. The rulers arrest their rivals under the MPO and

can keep them in detention for a period of three months. Now the higher courts have started taking cognisance of the misuse of this law and entertain petitions under its writ jurisdiction, which has helped reduce and abuse of MPO to some extent.

Since the creation of Pakistan, women and children have remained the most neglected group of people who mostly fall pray to the human rights violations. During the so-called Islamisation drive of General Ziaul Haq, certain laws were enacted directly affecting the freedom guaranteed to females. A set of Hudood Laws was introduced by the dictator, the most controversial one of which is the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. Thousands of women have been languishing in prisons since the enactment of this oppressive law. A large number of women, who contracted marriages with their free will, have been arbitrarily charged by their relatives.

The provision of fake *nikahnama* is now an easier task. Normally the relatives of a female prepare fake a *nikahnama* trying to prove that the lady is already married and contracting *nikah* without getting a divorce from her previous husband is an offence under the controversial law. In most of the cases registered under this law, ladies entering wedlocks were falsely charged by their relatives of committing adultery. Under the same law, punishment of whipping females have been legalised. Interestingly, the Zina Ordinance has often been abused but none of the governments have had the courage to repeal it as they could not afford to annoy the clergy. Rape victims have to suffer in the court of law as circumstantial evidences always go against them. In most of the cases, the victims have been turned into co-accused by the prosecution and convicted.

The military dictator not only introduced the Hudood Laws but also replaced the Evidence Act of 1872 with The Qanun-e-Shahadat, 1984. Under section 17 (2)(a) of the Qanun-e-Shahadat, the worth of an evidence of a woman is half of that of male in matters pertaining to financial or future obligations. The UDHR states that everyone is equal before the law. Likewise, Article 25 of the Constitution of Pakistan envisages that all citizens are equal before law and are entitled to equal protection of law. But under the law of the land, the evidence of a woman is not equal to that of a

man.

The ministers and government departments have been engaged in rhetoric about safeguarding rights of individuals but cannot justify why millions of tribals have been deprived of their fundamental rights. The Black Law of Frontier Crimes Regulations (FCR), introduced by the colonial rulers, is still in practice. Under the Constitution, the rights of the inhabitants of the federally Administered Tribal Areas are not equivalent to those of people residing in other parts of the country.

According to a report of Human Rights Commission of Pakistan more than 75% of jail inmates are under trial prisoners. Due to the outmoded judicial system, cases linger on in local courts mostly due to delay in submission of challenge of the cases and non-availability of witnesses. Apart from these discriminatory laws the police is known for detaining people in illegally. The Constitution guarantees that a detainee should be produced before a court within 24 hours of his arrest but this provision has been brazenly violated by the members of the law enforcing agencies. For weeks and months, people are detained without being brought before the court.

A special human rights ministry has been created on federal as well as provincial level. Despite this development, most of the cases of human rights violation remain unattended by the government. Each year on Dec 10, speeches are offered by the rulers but without any following action. Although the General Assembly has adopted the UDHR, our government has yet to realise the real philosophy behind this declaration. It is a need of the hour that instead of hollow claims, concrete measures are taken for safeguarding the fundamental rights of citizens. Unfortunately most of the citizens have yet to know about what their fundamental rights. This is also an important factor contributing towards gross violation of human rights. Great responsibility lies with the non-government organisations dealing with human rights to educate masses about their rights. These organisations should keep a vigilant eye on cases pertaining to violations of rights of an individual and mobilise public opinion to force the government to abolish all discriminatory laws including the Anti-Terrorism Act, the Hudood Laws, the Qanun-e-Shahadat, FCR, etc.