

Law and Our Rights

Interview

".....we have been able to give a foundation to the activities of the Human Rights Commission." — Justice Ranganath Misra

Today one can clearly discern a trend in many countries in various regions of the globe of establishing national human rights commissions to take care of the promotion and protection of human rights. It is as if these commissions are a well prescribed general panacea for all the human rights problems plaguing these countries. In fact it is a paradox of the modern state that it has become necessary for the state to create entities to ensure that it does not violate human rights. The Government of Bangladesh has also decided to set up a National Commission on Human Rights. It was in the wake of criticism of India for suppression of human rights that the President of India promulgated an Ordinance on September 28, 1993 with a view to providing for the setting up of a National Commission on Human Rights. Later on parliament embodied the provision of the Ordinance into the Protection of Human Rights Act 1993. Justice Ranganath Misra, the first Chairman of the National Commission on Human Rights of India, last week visited Dhaka with a view to sharing the experience of National Human Rights Commission with concerned Bangladeshi officials and NGO activists. In an exclusive interview Mr Ranganath Misra who was also the Chief Justice of the Supreme Court of India, spoke with The Daily Star's Abul Hasnat Monjurul Kabir on the various aspects of the performance of the Human Rights Commission in India.

Daily Star (DS): What is the purpose of your visit in Bangladesh this time?

Ranganath Misra (RM): I have come essentially to discuss with UNICEF, UNDP and the NGOs here as to how a Human Rights Commission can be set up in Bangladesh. For that purpose I had a meeting with the NGOs, a separate meeting with UNICEF people and tomorrow morning, I will meet UNDP people and also with some representatives of the Government of Bangladesh.

DS: You were the first Chairman of the National Human Rights Commission of India. How do you evaluate the performance of the Commission? Are you satisfied with its present trend of action?

RM: I was there for three years and one month as its first chairman. I'm personally happy that we did something very positive and we have been able to give a foundation to the activities of the Human Rights Commission. A lot of things which may not have happened without the timely intervention of the Commission, have happened. The common man has now some perception of human rights. We have taken various programmes on human rights in the media and teaching on human rights has been started. So far as the police, the army or the defense personnel are concerned we have started teaching human rights for the inservice as a pre-service requirement. And the army, the BSF, other paramilitary forces and the state police have all been now acquainted with human rights and their obligation to conform to standard which is stated in the Universal Declaration of Human Rights. Any lapse is being seriously viewed. There have been instances where the police have been penalised, army officers have also been disciplinarily punished by prompt action. The common man in India seems to have developed the sense of confidence in the activities of the commission.

DS: The Government of Bangladesh has decided to set up a National Commission on Human Rights. What suggestions do you want to put before the government for their consideration?

RM: That would depend upon what we will discuss tomorrow. At this moment I don't want to disclose it.

DS: It has been observed by some quarters that the proposed National Human Rights Commission of Bangladesh should have a constitutional mandate. They prefer to set up the commission by a constitutional amendment rather than a statutory decision so that it could be a part of the Constitution. What is your observation in this regard?

RM: In many countries, Human Rights Commissions are not the part of their Constitutions. In other words, their commissions have not any constitutional formation. A special statute can do it. In fact it depends upon how government and the people look at the commission and how far it is able to perform. In Philippines, it's a constitutional commission. In one or two other coun-



tries, there is also similar provision. In South America, in two countries there is a provision that they should be a part of their Constitutions. But ordinarily a standard legislation can be enough. If the people have support for it and the commission people show its respect to people's rights effectively, it is bound to perform well even without constitutional mandate.

DS: What did the Indian Human Rights Commission do to protect the human rights in Kashmir?

RM: Initially, the people of Kashmir did not come to us thinking that if they come to us, they would be accepting the jurisdiction of the commission which is a governmental agency. But as time passed and as they saw that we had taken some suo-motu action without any complaint and the performance was to their satisfaction, gradually complaints came to us one after the other in regard to some army action in the valley. We took serious steps which were accepted by all the people of Kashmir. Thereafter quite a good number of complaints came. We recommended to Government of India that the valley should be opened to the visitors from the west and tourists should also be allowed to come. The International Red Cross should have its own inns within the state. All these have been done in phases. And therefore in stabilising the conditions of Jammu and Kashmir and bringing about normalcy, the Commission played a major role.

DS: How did the controversial Terrorist and Disruptive Activities (Prevention) Act come to end?

RM: The Terrorist and Disruptive Activities (Prevention) Act, popularly known as TADA,

be difficult for the Commission to help human rights situation towards a better condition. The response was excellent. And ultimately government found it difficult to push their bill. The Act lapsed. They wanted another substitute legislation to come in. We raised strong objection to that attempt also. The government, as a result, could not press for that initiative.

DS: Violation of prisoners' rights is a common phenomena in the jails of this subcontinent. Did you deal with this intricate issue of violation of human rights?

RM: Oh yes! I dealt with the violation of prisoners' rights several times. In fact there had been several instances where we first intervened. The first one was over-crowding. We started with the Tihar Jail which is the main jail in Delhi and with our intervention arrangement for accommodation was expanded, new wards were set up and thus gradually the situation is improving.

We found that the facilities for medical treatment were not adequate. The number of prisoners in the jail would be about 3,800 but there was only one doctor and with our intervention the number of doctors became 16. Emergency facility (first-aid facility at night) was wanted. We insisted that there should be three or four doctors living within the jail area or very close to the jail so that they can be called any time necessary on emergency basis. That also was done.

Then we wanted segregation of the children. We also wanted that men should not have access to the women's wards. All that had been done very perfectly in Delhi. Thereafter we wanted the jail officials to understand human rights. That was also done. Then we regulated the food and we ensured the maintenance of standard of food as normal rules of health and hygiene demand.

After Tihar the overcrowding issue was taken up for almost every jail. We found the Prisoners' Act which was enforced was an Act of 1894, that is about more than a century old (!) and was recommended to enforce at a time when India was not independent and the British had made it to suit their colonial purpose. So we took the lead, we called all concerned state officials and ultimately with their assistance a draft legislation was prepared by us and we had already requested the state governments to accept it on principle so that a regular draft bill can be prepared. Prisoners are under states' jurisdiction in India. We wanted central legislation so that there would be one common law for the whole country. For that purpose, as the chairman, I requested all the Chief Ministers to pass a resolution in the state legislatures authorising parliament to legislate — as required by the Constitution of India. Many states have agreed, and the present commission is pursuing it. I expect that by end of this year, there would be a new law substituting the century old colonial legislation.

was such a legislation which we found difficult to entertain because the ethos was contrary to the very concept of human rights. Our embarrassment was that its vices were challenged in the Punjab High Court. The High Court had quashed the Act by saying that it was ultra vires the Constitution, the fundamental rights. But the decision was reversed by the Supreme Court. The Supreme Court upheld the vices of the statute. It was at that time that we had to handle TADA. Hundreds of complaints came before us from jails that cases were not being found, they (the arrested persons) were not being produced before the court as required by the Constitution and the Criminal Procedure Code (CrPC) and long dates were taken, they were not being disposed of in time. Once we started looking into these, we came to be satisfied that objections were valid. And we therefore wanted more of TADA cases to be set up to hear TADA cases. We succeeded. In Bombay, in Delhi and in several number places, a good number of courts were established on account of our intervention. But that itself was not enough. And then we found the Act was being applied to cases where TADA had no application. We therefore started intervening in a serious way. When the Supreme Court upheld its vices we found that it was a temporary legislation. It was expiring on 23rd of May 1995. And the Government had already decided to put in a legislation to extend its period of life. At that stage I wrote a letter personally to each of the Members of Parliament in the two Houses drawing their attention to the fact that this was really a violation of the Universal Declaration of Human Rights and if this law was enforced, it would

Migrant Workers in Malaysia

A Cry for Human Rights

by Irene Fernandez

DURING the last one month, Tenaganita has been handling an increasing number of cases from migrant workers, particularly from the construction and manufacturing sectors. We have handled about 160 cases during the last six months. We expect the situation to become worse as the deadline for the yellow cards falls on August 15, 1997. Migrant workers are being thrown out in the cold by employers especially contractors and sub-contractors in the construction sector and by employers from the small and medium industries.

An analysis of these complaints, indicate a distressing growth in the number of very unethical practices by employers who believe that the authorities are on their side, that there are no laws that will make them accountable and that ultimately it will be the vulnerable migrant worker who will be arrested, detained and deported. At the same time, the immigration authorities seem to aid and abet these unscrupulous employers. An example of this seemingly irrational and inhumane position of the Immigration maybe seen in the statement made by the public relations officer, Enck Mohd Sabry Zainal in the Sunday Mail, Aug. 10, 1997 under the heading "Work permit approvals — no more for foreigners".

He stated, "Foreign workers caught carrying a Photostat copy of their work permit approval letters will be sent straight to Immigration detention centers". This is, according to Enck Mohd Sabry to "discourage employers from holding on to workers permit". He further adds: "It is an offence for an employer to keep the original passport belonging to an employee". Yet the punishment is aimed at the helpless migrant worker, as if he or she had any choice in the matter. Significantly enough there is no mention of any penalty that would be imposed on the errant employer. Our experience seem to indicate that the employer not only is left off the hook, but in fact often uses this strange logic to his advantage when dealing with migrant workers.

Non-legalization of Workers by Employers

In a case involving a company called P K Construction Sdn Bhd, a number of workers paid RM 3,300 each to the employer for the processing of their documents and legalizing them during the amnesty period, late last year. In April 1997, the workers asked the employer to check their legal status. He reprimanded them. The workers took the initiative to check with the immigration department and discovered that they had been not registered.

The employer perhaps knowing that the workers would demand for their documents, dismissed them in June 1997 without any reason. They have not been paid their wages for two months. These workers are without their passports and without work. They are open to arrest and detention. On the other hand, the employer has benefited from the large sum of money that has been collected, apparently with no fear of any action against it from the authorities. The facts seem to indicate that the company has committed fraud.

Furthermore it would appear that the workers cannot seek any redress at the Industrial Relations Department (IRD) nor the Labor Department because in the eyes of the law they are undocumented and are liable for arrest, detention and deportation.

Similarly in another case involving a construction company called Jitu Projek Team Sdn. Bhd., 44 workers paid money to get themselves legalized under the ongoing registration exercise last year. It is believed that the employer had collected over RM 60,000 from foreign workers. In early 1997, the company closed its office in Cameron's Highlands, and left the workers in the lurch. The workers upon their own investigations found out that they had not been registered with the Immigration Department. All their efforts to dialogue with the employer failed. Tenaganita

managed to trace the employer. However he insists that he had only loaned his company's name to a subcontractor. He is not concerned over the plight of the workers and has just denied all responsibilities.

These workers are again without documents, without a job to sustain themselves and are living in constant fear of arrest. They too have no avenue for redress as they are undocumented.

The above two examples are only one scenario of how migrant workers are exploited. Today we are seeing more and more workers being arbitrarily dismissed because many employers have not endorsed the work permits on to the passports of the workers. The yellow card called IMM 13 card was issued by employers during the legalization period in later half of 1996 when employers applied for work permits. The yellow card is an acknowledgment by the Immigration that the work permit application has been approved. Employers are required to use these documents to obtain passports of the workers from the relevant embassies and then get the work permit endorsed in the passports.

Many employers have collected monies from migrant workers or deducted from their wages but have not paid the required fee to the immigration or attempted to get the passports of workers. Again at the end of the day, the migrant worker not only has lost his money but may get detained and deported. It must be noted that it is only the employer (not the migrant worker) who can deal with the Immigration in this matter.

Improper Dismissal of Workers

A company called JPF Sdn. Bhd had a contract at the Kuala Lumpur International Airport. It has completed the project and has dismissed the workers apparently without any valid reason. In another case, two workers were dismissed when they asked clarifications regarding their contract and for a copy of their contract.

In both the cases, the workers have filed their dismissal complaint to the Industrial Relations Department. These cases are now being handled by the IRD. However, they do take a long time before a settlement is reached. The question is: Can the workers get extended visas while waiting for their case to be heard and a settlement reached? And can they find alternative employment as they need to live while waiting for redress. The workers fear very much because the deadline for the IMM 13 cards is Aug. 15, 1997.

These are important issues and questions that the Immigration needs to look into seriously. It will be very unfair and unethical if visas are not granted by the Immigration while their cases are pending with the IRD or if they have been cheated by their employer. A civilized society would not continue to further victimize the victim.

Abuse of Workers by Employers

Tenaganita is also very concerned over how cases of abuse perpetrated by employers have been dealt with recently. We think there must be much more empathy and concern over such cases, especially if women have been abused and sexually harassed by management.

In the much publicized case of the Pakistani women workers working in Twin Advance Malaysia Sdn Bhd, the women had been working seemingly under abusive working conditions. When they decided to take steps to seek a solution to their problems, like complaining to the Labor Department, they were summarily dismissed from service by their employer. We later saw them being repatriated to Pakistan, while three of them were sent to detention, without an opportunity to seek redress. Nothing seems to have been done to the management for their conduct that should not have been condoned if we believe in reducing violence in our society.

Maids who have been abused have come to us for assistance. They are unwilling to make a police report against the abusive employer out of fear of getting arrested, because their documents are held by their employers.

It has been our experience that domestic helpers have little or no avenue to seek redress. For one, they are deprived of practically all areas of protection provided for in the Employment Act of 1955. Further, their documents are almost always held by the employers. When they go to the police to lodge reports, they risk getting arrested and detained.

There seems to be a gap a lack of an avenue for domestic helps and women workers to get redress for abuse. Quite often, as seen from the earlier examples the authorities take the position of detaining and deporting the victims. Such an action is not only unjust but a tacit approval of abuse by an employer.

Accidents at Work

Another major area where more and more workers are being affected are industrial accidents. There have been various reports in the media of such cases. Though the government has been positive in making it a requirement for employers to get insurance for foreign workers, workers who have had accidents find it difficult to get compensation for their injuries.

We are currently handling the case of a migrant worker in the construction sector. In 1995, he lost four fingers in an accident at the work site. While the company paid his hospitalization fees, they did not file an accident report in the Labor Department, thus depriving him of the compensation due to him.

In February 1997, he met with another accident at the work site, while still employed by the same company. His initial medical fees were paid by the company. But the company did not file a report with the Labor Department.

Currently, he is unable to work because of the accident. His yellow card (visa) expires on August 15, 1997. So, the company wants to send him back before the August 15, 1997, deadline. So, the worker's leg is still in a cast and he is still under medical treatment and follow up here. If he returns to the village in his home country, medical care will be inaccessible to him for various reasons. Isn't it unjust and unethical to send him back to his country at this point, and in this way?

When a worker is documented he can seek compensation through the Labor Department. On the other hand, there are many workers who are "undocumented", who have suffered accidents at the work site. They have been either dismissed or have had to return home with inadequate compensation, because of their legal status.

Yellow Cards Expiring on August 15, 1997

In the case of workers with yellow cards, their right to stay in the country ends on August 15, 1997, if their work permit is not renewed and endorsed into the passports. Many employers have yet to complete the process of legalization of the workers. Some employers have begun to demand another RM 1,500-RM2000 for their new work permits. A large number of workers registered themselves only in November or December 1996. They were unaware that the Immigration had backdated the permit to August 1996. Many of these workers are still paying their levy. They have now another big amount to deal with. Where workers find difficulty in getting the money, employers are dismissing them and canceling their permits.

These workers cannot take up an alternative job in order to survive. Though they can complain to the IRD, their position vis a vis their visa and work permit remains vague. They can become illegal and thus risk being detained.

The recent announcement that migrant workers would be issued LDs sounds positive. Though the card will make it easier for the Immigration to

track the legal status of the migrant worker, but we do not know who controls the information input. Will the worker be informed of changes made in relation to information on him and his status? Employers can arbitrarily cancel a workers permit and unlawfully dismiss him. The worker may want to seek redress through the IRD. How will the Immigration then coordinate with the Ministry of Human Resources and manpower?

Deportation and the Worker's Right to Seek Redress

The trend in dealing with foreign workers seem to be to arrest, detain, and deport migrant workers once the employer has canceled their work permit. This is a gross violation of their right to seek redress in the face of abuse, exploitation and fraud. There seems to be a lacuna within the Immigration Department regulations in recognizing workers who have been unlawfully dismissed or made illegal by fraudulent employers and workers who have come into employment illegally.

The Immigration Department should institute a mechanism whereby there will be effective coordination between the IRD, Labor Department and itself. The Immigration Department could issue extended visas for alternative work permits to those who come with letters from the IRD stating their case is being investigated and handled by the IRD or the Labor department.

In this manner, we are respecting the basic rights of a worker to redress and to be heard. It will also go a long way towards making employer more responsible. This would give more substance to the Ministry of Human Resources statement that all foreign workers should be treated equally.

Recommendations

We therefore call on the authorities, especially the Immigration Department to be more humane in the treatment of workers when the deadline for the yellow card renewal expires on August 15, 1997. The authorities should take to task irresponsible employers and mete out deterrent punishment to them.

Migrant workers who have been registered but whose work permits renewal have not been done by the employer should be able to seek redress through our laws, particularly the Industrial Relations Act and the Employment Act. For workers who have registered their complaints with the IRD, their visas should be extended. We propose alternative work permits be given to these workers so that they can survive and meet their basic needs.

The authorities need to relook at the policy relating to the mobility of the migrant worker. Many workers are employed by sub contractors where work gets completed within a year or less. These contractors then undertake projects in new companies. Thus the policy needs to be flexible so that work permits can be transferred to the new employers.

The Immigration Department together with the Labor Department should create a mechanism for workers to lodge complaints provide an opportunity for redress. Through this process, we not only provide better protection for the worker but also keep track of irresponsible employers.

We also propose another amnesty for undocumented workers. Here, as in Sabah, the workers should be given the opportunity to register themselves in stead of leaving it completely to the hands of the employer.

And finally we call upon the authorities to streamline all policies and regulations regarding migrant workers to the ILO Convention 87 on Migrant Workers that the Malaysian government ratified in early 1996.

The writer is the Director of TENAGANITA, Kuala Lumpur, Malaysia, a platform of women's activists.

Debt-Slaves Struggle to Escape the Landlords' Grip

by Prakash Khanai

WHEN 27-year-old Jagatram Chaudhary looks back on his life, he can only remember work — an enormous amount of work, which never finishes. Effectively, he is a slave.

He works for a landowner in western Nepal who takes three-quarters of his crop, and gives him around 700 kilograms of rice a year. It is not enough to feed his family.

His wife, Chulia, also has to do work for the landlord, for which she receives no pay.

"I have to work from 4 am," she explains. "My days begin with cleaning last night's dirty dishes for the Malikba (landlord). Then I clean the cowshed, feed the cattle and, if the crop is ready, go to the field. If not, I cook food for my family."

They and other 40,000 Kamaiya families are trapped by debt.

dants of 60,000 enslaved agricultural labourers who were freed by government order in the mid-1920s. The measure was reinforced by land reform in 1963 which put a ceiling on land-ownership. It was designed to end the zamindar system of powerful landlords with extensive holdings, but many of the larger landlords still find ways of binding agricultural labourers and are still often referred to by villagers as zamindars.

The term is used, for example, for Tara Prasad Chaudhary from Banke district, although he refutes the use of the word. His family's previously extensive land has been divided among four brothers and other trusted people, but together they still "possess" 60 Kamaiya families.

At some time in the past, the need to buy clothes, feed their children or pay for a marriage forced those who are now Kamaiyas to borrow from their landlord. The loan ensured that

they are indebted to the landlord for generations because

1,000 rupee loan when our mother was sick but the land-



however hard they work they can never fully repay it. Some landlords also exploit the illiteracy, innocence and trust of the Kamaiyas. "My father had taken a

lord made it 100,000 rupees, for which, after our father died, we three brothers had to work for 20 years," said a Kamaiya who refused to give his name for fear of reprisals.

Once a year, at the February festival of Maghi, landlords without access to Kamaiya can pay off outstanding loans and take over ownership of debtors. Despite the hardships they

face, Jagatram and Chulia are comparatively lucky. Unlike many landlords who keep Kamaiyas, theirs does not demand sexual submission from Chulia or their 14-year-old daughter.

Khuntal. In addition, Jagatram, who is disabled with a deformed left foot, is benefiting from an attempt by the Unified Marxist Leninist (UML) party and a

group of about 15 non-governmental organisations to tackle the problem.

Exchange rate: \$1=Rs 66

The writer is a freelance Nepalese journalist.

LAW WATCH

HC Direction for Report on Indiscriminate Hill Cutting in Chittagong

A writ Petition was filed by Dr. Mohiuddin Farooque, representing Bangladesh Environmental Lawyers Association (BELA) against the Secretary, Ministry of Housing and Public Works, Chairman, Chittagong Development Authority (CDA), the Director General, Department of Environment, the Commissioner, Chittagong Metropolitan Police and the Secretary, Ministry of Land. The Petition alleged indiscriminate, unlawful and unauthorized cutting and razing of hills within the Chittagong City Corporation and its adjoining areas due to the failure of the authorities in enforcing existing laws.

It was also alleged that the indiscriminate cutting of hills have been continuing unabated posing threat to the natural beauty, environment and ecological balance of the City of Chittagong which is a unique natural heritage of the country. It is evident that the statutory agencies have failed to perform their legal obligations which have interfered and increasingly

denying the legal and constitutional rights of the people creating dissatisfaction among the general people. As such appropriate protection for maintaining the hills and the ecology of the City was of great national importance and public interest.

The Division Bench comprising Mr. Justice Mainur Reza Chowdhury and Mr. Justice M.M. Ruhul Amin heard the Petition and issued notice upon the Director General, Department of Environment directing him to submit within 4 weeks of the receipt of this order a report on alleged illegal and indiscriminate cutting of hills attributing to ecological imbalance and degradation of environment of the City of Chittagong contrary to the provision of the Constitution of Bangladesh, the Building Construction Act, 1952 and as amended by 1990 and the Bangladesh Environment Conservation Act, 1995. The honorable Court also ordered that the said report contain the measures taken by the Government to prevent illegal, unauthorized cutting of hills within the Chittagong City Corporation area.

The learned judges further directed the Secretary, Ministry of Housing and Public Works, Chairman Chittagong Development Authority (CDA) and the Commissioner, Chittagong Metropolitan Police to extend all co-operation and information to the Director General of the Department of Environment for preparation of the Report. The court fixed 28 October '97 for further order on the Writ Petition.