

Law and Our Rights

"All citizens are equal before law and are entitled to equal protection of law"-Article 27 of the Constitution of the People's Republic of Bangladesh

A National Human Rights Commission for Bangladesh

Longing for a Recommendaratory Institution?

By A H Monjurul Kabir

"Bangladesh could do well if it establish its proposed National Human Rights Commission through a constitutional amendment rather than by a statutory Act. If the commission has a constitutional mandate, then it becomes more powerful, effective and would be free from any interference by other institutions or organs of the government."

THE Cabinet of the Government of the People's Republic of Bangladesh at last gave the green signal. On 12 April '99, it approved the draft bill for National Human Rights Commission (NHRC). It also formed a cabinet sub-committee to review the proposed bill. Till today, the subcommittee hold two meetings to examine some of the provisions of the proposed bill. It is learnt that the government is planning to establish the Commission some time in next year after the bill be adopted in a law in the House of the Nation by the Members of Parliament. Still several months to go!

The idea of a National Human Rights Commission in Bangladesh has been around for several years. In April 1995, the Government of Bangladesh approved a project to assess the need for such a body and make recommendations on its establishment. The project entitled 'Action Research Study on the Institutional Development of Human Rights in Bangladesh' (IDHRB) formulated initially at the initiative of Mr K M Haque Kaiser, an attorney at law, was to start in July 1995, but it was reportedly delayed due to the longed political crisis in the country. It was revived in March 1996 when an agreement was signed between the present government and the United Nations Development Programme (UNDP). Under the agreement, the Ministry of Law Justice and Parliamentary Affairs is to supervise, monitor and evaluate the IDHRB project, which formally began in July 1996. The project is separated by the UNDP. The main objective of the project was to prepare the grounds for the eventual formation of a viable institutional mechanism to promote and protect human rights as guaranteed under the Constitution of Bangladesh.

The IDHRB Project formulated a draft bill, The Bangladesh National Human Rights Commission Act 1999. The draft bill proposes that a National Human Rights Commission will be set up "for Bangladesh for the protection, promotion and creation of the conditions for the enjoyment of human rights and for matters connected therewith or incident thereto." Referring to the government's commitment to protect and promote human rights the bill states that an effective mechanism for the protection, promotion and creation of the conditions for the enjoyment of human rights should be evolved to implement the constitutional commitment. The bill specifically mentions about fundamental principles of state policy as enshrined in the second part of the Constitution of Bangladesh. From the preamble of the bill it appears that:

(1) The government is aware of the increasing global concern for human rights and the need for its institutional protection.

(2) It has come forward to set up such institution as part of its constitutional commitment.

However, the human rights commission will not be a constitutional mechanism. Like many other institutions, it will get a statutory footing.

Salient Features of the Proposed NHRC

A brief analysis of the draft bill reveals the following core features:

1. Definition of Human Rights: "Human Rights" includes the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution of the People's Republic of Bangladesh and such rights embodied in the International Human Rights Instruments adopted by the General Assembly of the United Nations which have been accepted to and ratified by the People's Republic of Bangladesh [Sec. 2(c)(d)].

2. Constitution of NHRC: The President in consultation with Committee consisting of the—

- (a) Prime Minister
- (b) Speaker of Parliament
- (c) Chief Justice
- (d) Leader of the Opposition

in the Parliament shall constitute the National Human Rights Commission. The Commission shall consist of a chairperson and four members. At least one member should be a woman. [Sec. 3(1)(2)]

(3) Qualification: The chairperson and the four members shall be appointed from among persons having knowledge of practical experience in human rights [Sec. 3(2)(a)].

4. Term: The term of chairperson or Members of the said Commission will be five years and shall not be eligible for further reappointment. [Sec. 5]

5. Remuneration and Conditions of Service: The salaries and allowances of the Members of the Commission shall be determined by the Parliament and shall be charged in the trust fund. [Sec. 7]

6. Removal: The Chairperson or any other Members of the Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Judicial Council, consisting of the Chief Justice of Bangladesh, and two next senior judges of the Supreme Court, on reference being made to it by the President, has on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Judicial Council, reported that the Chairperson or such other Member, ought any such ground to be removed [Sec. 4(1)].

The President may by order remove from office the Chairperson or any other Member in charge of insolvency, involvement with gainful employment, infirmity of mind or body unsoundness or conviction involving moral turpitude [Sec. 4(2)].

7. Functions: The Commission shall perform all or any of the following functions, namely:

- (a) inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf, into complaint of—
- (i) violation of human rights or abatement thereof
- (ii) negligence in the prevention of such violation, by a public servant;

- (b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

- (c) visit any jail or any other institution under the control of the Government, where persons are detained or lodged for purposes of treatment, reformation, protection or welfare to study the living conditions of the inmates and make recommendations thereon;
- (d) review the safeguards provided by or under the Constitution or any law for the time being in force, for the protection of human rights and recommend amendments or safeguards thereon;

(e) examine the draft bills and proposals for new legislation to verify their conformity with international human rights standards and to ensure the compliance with the international human rights instruments;

(f) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(g) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(h) examine the draft bills and proposals for new legislation to verify their conformity with international human rights standards and to ensure the compliance with the international human rights instruments;

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plaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely:

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish

information on such points or matters in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Penal Code.

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in that behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 102 of the Code of Criminal Procedure, 1898 in so far as it may be applicable.

(4) The Commission shall be deemed to be a civil court for all purposes.

9. Action in aid of the Commission: All authorities, executive and judicial, in the People's Republic of Bangladesh shall act in aid of the Commission. [Sec. 12]

10. Investigation: (1) The Commission shall have its own investigation agency for the purpose of conducting any investigation and may utilise the

services of any officer or investigation agency of the Government.

(2) For the purpose of investigation into any matter pertaining to the inquiry, any officer or agency whose services are utilised may:

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office. [Sec. 13]

11. Independence: (1) The Commission and every member of its staff shall function without political or other bias or interference and shall, be independent and separate from any party, government, administration, or any other body directly or indirectly representing the interests of any such entity.

(2) To the extent that any of the personnel of the entities referred above may be involved in the activities of the Commission, such personnel will be accountable solely to the Commission. [Sec. 16]

12. Annual and Special Reports: (1) The Commission shall submit an annual report to the President and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The President shall cause the annual and special reports of the Commission to be laid before the Parliament for discussion and consideration. [Sec. 19]

13. Finance: The Commission will be financed through a Trust Fund which shall be paid all money appropriated by Parliament and all money donated or contributed to the fund from any source. [Sec. 20, 21]

Some Points to Ponder

The following points need to be clarified or considered before placing the bill in the parliament:

1. Justice VR Krishna Iyer, former judge of the Supreme Court of India, in an exclusive interview with this writer (The Law and Our Rights Page of The Daily Star on 1 June 1997) urged, "Bangladesh could do well if it establish its proposed National Human Rights Commission through a constitutional amendment rather than by a statutory Act. If the commission has a constitutional mandate, then it becomes more powerful, effective and would be free from any interference by other institutions or organs of the government."

2. The draft bill does not require special qualification for the members of the commission except knowledge and practical experience of human rights. It seems the criteria fixed was too broad to specify and comprehend.

3. According to section 13 (1) of the bill, the commission shall have its own investigation agency. But there is nothing mentioned in the Bill about the nature and composition of the commission's own investigation agency.

4. The proposed NHRI would be basically a recommendatory body. Section 10 enumerates as many as thirteen broad functions of the commission including inquiry and investigation, monitoring and intervention whenever necessary. It will also submit annual and special report to the President. But no decision or findings of it has any binding force. So what would be the case if government ignores its recommendation?

5. The recommendations of it should be legally binding upon all. According to section 17(3) it can recommend to the Government or authority for the grant of such immediate interim relief to the victim or members of his family. But the reality testifies that such mere power of recommendation is not enough. It should have powers to ensure effective remedies, including interim measures to protect the life and safety of an individual and free medical treatment where necessary. The commission should ensure that full and prompt compensation is paid and other measures of redress and rehabilitation are taken.

6. In our country defence forces are considered very sensitive and hence remain beyond any public scrutiny. It is not clear from the draft bill whether the commission follows the same suit. The commission should have specific power and jurisdiction to investigate any complaint against defence forces.

7. In India there is specific provision to set up Human Rights court for providing speedy trial of offences arising out of violation of human rights. Shouldn't we incorporate such provision in our draft bill?

8. The result of the commission's investigation should be referred to appropriate judicial bodies without any delay. The draft bill should have such mechanism.

9. The commission should establish and maintain close official relations with non-governmental organisations involved in the promotion and protection of human rights.

Instead of a Conclusion

Human rights commissions are being set up in many parts of the world. While the powers of these institutions in the different countries vary, there seems to be a 'core concept' emerging. In many countries such commissions have not matched the expectations they generated when they were first set up. On the other hand, in some other countries, where the expectations were not so great, the commissions have yielded some positive results. No doubt human rights commissions can be effective consolation, but without power to adjudicate and issue finding commands they may turn to be as rightly termed by Justice VR Krishna Iyer "glorified cyphers and promise of unreality." Only real political will of the government, the opposition groups and as a whole the civil society can help attaining the cherished destination. The decision of the Bangladesh Government to set up a Human Rights Commission is a welcome development. It is the success of the proposed commission will basically depend on true political willingness of the government other than public eye wash.

10. The Commission should have powers to initiate investigations on its own initiative. It should be able to receive communications not only from the complainants themselves but also, if they themselves are unable or prevented from doing so, from lawyers, relatives or others acting on their behalf, including non-governmental groups. Investigations initiated by the Commission should be adequately publicized, especially at the regional and local levels, to enable and encourage witnesses to come forward to testify.

11. The Commission should have full and effective powers to compel the attendance of witnesses and the production of documents.

12. The Commission should have full and effective powers to protect witnesses, complainants, or others providing evidence to the Commission, including bringing about the suspension or transfer of officials allegedly involved — without prejudice pending completion of investigations — to other

13. The Commission should have its own investigative machinery and should have access to expert assistance whenever required to verify alleged violations. It should have adequate facilities to carry out on-the-spot investigations.

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17. The Commission should have powers to ensure that superior officers are held accountable for acts committed under their authority and should be mandated to closely follow subsequent legal proceedings in the case, by monitoring trials, or if necessary appearing before the court to make legal submissions to press for appropriate legal action to be taken within a reasonable time.

18. The Commission should have powers to ensure effective remedies, including interim measures to protect the life and safety of an individual and free medical treatment where necessary; it should ensure that full and prompt compensation is paid and other measures of redress and rehabilitation are taken in all cases it has taken up in which members of the security forces are found to have perpetrated human rights violations.

19. The government should undertake an obligation to respond, within a reasonable time, to the case-specific as well as the more general findings, conclusions and recommendations made by the Commission. The government's response should be made public.

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