

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 Recomendatory 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 1999, 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 to a law in the House of the Nation by the Members of Parliament. Still several months to go!

The idea of 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 (IDHRC) 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 prolonged 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 IDHRC 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 IDHRC 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 incidental 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 the 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 setup 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

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

In view of the close interest of the government of Bangladesh has shown in the functioning of other national human rights commissions in the region including in Nepal, Sri Lanka and India. Amnesty International urges the government of Bangladesh to assess the mandate and the working methods of these commissions carefully; to ensure that such an assessment is based on impartial and independent studies of these commissions; and to ensure that the proposed National Human Rights Commission (NHRC) of Bangladesh does not allow similar shortcomings to limit its work in promoting and protecting human rights.

The NHRC in India has been active in monitoring human rights violations, in raising concern on a broad range of human rights issues, in furthering human rights education, and in addressing a number of key concerns. However, the Protection of Human Rights Act, 1993, under which the NHRC was set up in India, limits its mandate. For example, the act specifies that the NHRC is not empowered to investigate reports of human rights violations by the armed forces. When such violations occur, the act specifies that the commission can only seek reports from the concerned authorities and make recommendations on the basis of such reports.

Amnesty International believes that human rights commissions can play a key role in promoting and protecting human rights in areas where armed forces are deployed, and particularly notes that the Chairman of the State Human Rights Commission in Assam has recommended that the

commission be allowed to investigate human rights violations by armed and paramilitary forces deployed there.

Amnesty International would like to recommend the following standards, as essential elements for consideration in the establishment and functioning of national human rights commissions.

Mandate and Composition of the Commission

1. The Commission should be independent from government and its Charter should reflect this. The Commission should be established by law or, preferably, by Constitutional amendment.

2. The Commission should consist of men and women known for their integrity and impartiality of judgement who shall decide matters before them on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences from any quarter or for any reason. Its members should be independent of government, have a proven expertise and competence in the field of protecting and promoting human rights, and should be drawn from a variety of different backgrounds, including relevant professional groups and the non-government sector.

3. The method of selection of its members should be fair and transparent and should afford all necessary guarantees of in-

situation or any law for the time being in force for the protection of human rights including 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 acceded 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 members 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 trustfund. [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 or

(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 Con-

stitution or any law for the time being in force for the protection of human rights and recommend the adoption of new legislation, the amendment of the existing laws and the adoption or amendment of administrative measures for their effective implementation;

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

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

(g) 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;

(h) encourage ratification of international human rights instruments or accession to those instruments, and ensure their implementation;

(i) assist in the formation of programmes for the teaching of and research into, human rights and to take part in their execution in educational and professional institutions;

(j) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

(k) encourage the efforts of non-governmental organizations and institutions working in the field of human rights;

(l) freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

(m) such other functions as it may consider necessary for the promotion of human rights. [Section 10]

(8) **Powers relating to Inquiries:**

(1) The Commission shall, while inquiring into com-

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

services of any officer or investigation agency of the Government.

(3) 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 functionary or 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]

14. **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 Daily Star on 1 June 1997) urged, "Bangladesh could do well if it establishes 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 proposed NHRI would be basically a recommedatory 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?

3. 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.

4. 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.

5. 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?

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

7. 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 consolidation, but without power to adjudicate and issue finding commands they may turned 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 but again the success of the proposed commission will basically depend on true political willingness of the government other than public eye wash.

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

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Objectives

The foremost objective of the project is to find out ways and means to build a mechanism for protecting, safeguarding of human rights and to provide remedial measure at the grassroots level as enshrined in the Constitution of Bangladesh, leading to the formation of a Human Rights Institution and finally the establishment of National Human Rights Commission at the national level.

The primary task of the project is to undertake research studies on the Human Rights situation at the local level through the Participatory Rural Appraisal (PRA).

The study includes twenty police stations covering over 250 selected Unions in the six divisions viz. Dhaka, Chittagong, Rajshahi, Khulna, Barisal and Sylhet.

Action oriented programmes would be developed in due course to achieve these objectives with primary focus on education and training on raising social awareness on the subject. The study involves:

i) Examination of Human Rights & legal issues.

ii) Identifying problems & constraints

iii) The frame work to be based on the needs of the people through

a) Village Courts

b) National Human Rights Commissions at local levels.

Target Beneficiaries

The target beneficiaries of the project include the local communities and victims of human rights violations in general.

The project team had so far carried out related PRA exercises in eighty-two villages at Manikganj, Comilla, Narayanganj and Munshiganj Districts. The team will conduct their furthering PRA with the aboriginal/indigenous people — Garos, Koach and Hajong in the districts of Tangail, Mymensingh and Sherpur.

Major Findings

It is through these PRAs that the major incidents of human rights violations as well as the problems related to human rights issues of the area are identified.

Emphasizing on some of the major issues as depicted by the villagers, the problem related to dowry which they have prioritized as the most pain-staking and burdensome problem of all. It is to be noted here that the project provides special emphasis on the rights and violations of rights related to women and children.

10. The scope of the Commission should be principally and clearly defined in terms of state obligations under international human rights law. Its time and