A National Human Rights Commission for Bangladesh

Some Critical Thoughts before Adoption

by A.H. Monjurul Kabir

THERE are several cogent pecially of secrecy. reasons for countries in I the Asian and pacific region to consider seriously the establishments of national institutions specially charged with the promotion and protection of human rights. Perhaps the most important of them relates to the role of national institutions in educating and awarding individuals that they have rights, which Governments, the private sector and other individuals must respect. But if the very piece of legislation fails to overcome some typical flaws and institutional limitations, created intentionally with a bid to weaken proposed institution(s), this very purpose may prove a distant reality or even a disaster. As a consequence, public confidence in any such institution, be it human rights commission or ombudsman, bounds to be eroded very soon. History of Bangladesh replaces with similar frustrating experiences, e.g. Anti-Corruption Bureau.

Some Points to Ponder The following points need to be clarified or considered before placing the bill in the parlia-

1. Justice VR Krishna lyer, former judge of the Supreme Court of India, in an exclusive interview with this writer ('Law and Our Rights', The Daily Star. 1 June, 1997) urged that, "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." It seems the Government ignored this idea for reasons best known to them. A statutory footing is fine as long as it assures that the Commission can be independent and autonomous. This means having the independence to have its own personnel, especially its own investigators and a budget that does not come through the bureaucracy that make its own decisions or through a ministry that can bully it. Its budget must be reasonable in comparison to other ministries and should come from a consolidated fund. its operation must be transparent rather than secretive. It should not give reports to the government, which the gov-

ernment may or may not pub-

lish. Its commissioners should

be on the scale of high public

servants but should not be

2. The definition of human rights in the draft bill is not comprehensive. It should specifically include basic economic and social rights and the rights of women should be recognised as human rights. Its preamble can make this explicit otherwise people will argue over it forever.

3. The draft bill does not require special qualification for the members of the Commission except knowledge of, and practical experience in, human rights. This qualification is quite vague. There must be some previous experience of public work or public record that shows that the person has a commitment to human rights. The word 'demonstrable' should be inserted before 'knowledge' in the draft bill. If the person cannot show from the public record that she/he has a commitment to human rights how can this qualification be verified? Without some defining category that can be tested before the public and a selection process that relies entirely on politicians, the commission's appointments will again be a place for political bargains and

4. An appointment in the Commission disqualifies a person from further government appointment. Ideally a person appointed to the Commission should not be eligible to hold other office afterwards because this removes any temptation to play the government's game. But it also means that many people would not want to be in the Commission knowing they cannot do anything more with the government afterwards.

5. 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." There has to be money allocated; numbers defined; training needs specified. The Commission can do this. But if this is so then it is all the more necessary that the Commission has a strong and credible leadership, which is seen to

be so by the public at large. 6. The proposed Commission 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



Containing political violence or violating the fundamental

human right to demonstrate? would be the case if government ignores its recommendation? The South African Human Rights Commission has a mangovernment department each done to promote human rights in their work. This is really a great provision. It allows the Commission to look at the functioning of each department to make a sort of human rights assessment. This is linked to the performance of that department. In India, obeying the orders of the Commissions has become a convention though it is still a pretty border line case. The recommendations and orders of the women's commission of India, however, are routinely ignored.

7. The recommendations of the Commission 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 and a court is just designated as human rights violation, or life and safety of an individual a human rights court in a dis- failure by any person, group, bound by civil service rules, es- has any binding force. So what and free medical treatment trict with the same delays and organisation or public servant

where necessary. The Commission should ensure that full and prompt compensation is paid and necessary measure of redate to get a report from each dress and rehabilitation is taken. The government will year to find out what they have have to make sure that any recommendatory reports and annual reports are public docu-

ments and not dependent on be-

ing placed before parliament

before they can become so. 8. In Bangladesh, 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. In a democracy they can not remain above the

9. In India there is specific provision to set up Human Rights Courts to provide speedy trial of offences arising out of the proposed bill. But considermay prove to be a pretty useless authority to conduct investigacialised training for the judges of victim/s - into allegation of

the same judges who know nothing about human rights. We need more than the mere setting up of a human rights court. But there is an issue here: how far can 5 people sitting in Dhaka reach out to people in need? In India, the NHRC has 30,000 cases in arrears already. And yet 90% of the country doesn't even know who they are. If a Commission is to be known and effective, it must travel, or have outposts, across the country. The Indian commission is appointing special rapporteurs and reviving human rights cells in police stations but without adequate infrastructure and training, they end up using the same people of the bureaucracy who in another two years after going back to their posts will be the violators.

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

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

Reactions from the **Human Rights**

Community The human rights commu nity at the non-government level has been watching the process carefully since its inception. The IDHRB project has, so far, arranged a number of public programs to generate awareness and interest on the proposed national institution in different segments of civil society. Unfortunately they have not attained much success due to lack of meaningful and adequate participation by all stakeholders of human rights, The project directly controlled by the Ministry of Law, Justice and Parliamentary Affairs of the Government of Bangladesh. failed to create needed enthusiasm in public domain. Some of the mainstream legal and human rights NGOs expressed their concern, as they were not properly consulted in the process. Political parties also expressed their apprehension of creating another pro-government institution to defend and justify government acts or violation of human rights. This omission. The home ministry, idea can also be incorporated in reportedly suggested dropping of a provision that would give ing the Indian experience, it the proposed commission the provision if there is no spe- tion-suo motu or on application

in preventing violation of human rights The ministry also opposed the idea of "encouraging NGOs in human rights activities" and instead proposed " provisions to ensure proper monitoring and control of NGO activities" (The Daily Star, 7 March 2000). Such vested attempts to make the proposed human rights body 'a puppet instrument' create great concerns among the human rights community.

Towards a Pro-People Commission: Still an Illusion?

National human rights institutions are being set up in many parts of the world. While the powers of these national institutions in the different countries vary, there seems to be a "core concept" emerging. In many countries, such national institutions 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, national institutions have yielded some positive results.

No doubt national human rights institutions can be effective consolation, but without power to adjudicate and issue binding commands they may be turned to be "glorified ciphers and promise of unreality" as rightly termed by Justice Krishna lyer. The real political will of the government, the opposition groups and the civil society as a whole, can help reach the cherished destination. At the same time, we cannot solely depend on political will of the ruling class. We need a good process, which will ensure that the Commission is born properly and can grow independently as a people's commission and not a quasi-governmental body.

The decision of the Bangladesh Government to set up a National Human Rights Commission is a welcome development. The question is: when will it see the light of the day? The recent political development does not give us much hope that it be established soon. The reported bureaucratic move to make it a "toothless institution" has also alarmed human rights activists and NGOs about the ultimate outcome. Any such institution without required power; authority and logistics in accordance with international standards ("Paris Principles"), if installed to serve the purpose of the government, will not gain any public confidence.

nal case pending against him.

On 12 April, 2000, he was

granted bail by the District and

Sessions Judge, Kushtia. On 13

April, 2000, when his bail bond

was sent to the District Jailer,

he was scheduled to be released

from the jail custody. But, there

in the Jail gate he was served

with a notice of detention under

the Special Powers Act for 30

days issued by the District

had been declared illegal and

without lawful authority by the

High Court Division of the

Use of Public Safety Act

leader of Krishok-Shromik-

Janata League and the younger

brother of Kader Siddiqui, was

arrested by Tangail Police on 24

May, 2000 under the Public

Safety Act for creating violence

and making obstacles to deposit

Murad Siddiqui, a central

Supreme Court of Bangladesh.

Where later, the detention

Magistrate, Kushtia.

(Concluded)

Towards a Tidy Traffic System

We all, more or less, are familiar with the infamous traffic jam of our beloved Metropolis. While travelling, one might turn out to be the victim of such heavy traffic anytime, anywhere irrespective of any vehicle. And many a times the cause of such jam appears to be a trivial one, such as a very responsible(!) person has kindly parked the vehicle anywhere in the road for the reason best known to him/her. Or while passing a road leading to any school at any odd hours (say at pack up time) one invariably has to wait for eons to get through those few yards as vehicles have been parked along that road as most of the schools do not have any parking place. Then again while travelling in a public vehicle for example the buses (not those AC ones) one may discover he/she is riding in one of those trains which halts at each and every station. The only difference is, these buses don't need a station, but a bang on the bus's body by any one to signal the driver who in turn complies (halts) that obediently. And it never occurs to the driver or the passenger that the vehicles following the bus may face an accident.

We all are familiar of such happenings. But we are not aware of the offences attached to these acts and related penalties existed for each illegal maneuver.

The Metropolitan Police Ordinance, provides penalties for the following acts. Penalty for wrong driving and violation of traffic

Whoever, when driving a vehicle along the street, without sufficient reason fails to keep on the left side of such street and when passing any other vehicle proceeding on the same direction fails to keep on the right side of such vehicle or violates any traffic regulation made by the Police Commissioner shall be punishable with fine which may extend to two hundred taka.

Penalty for wrong parking.

Whoever leaves or parks any vehicle in any of a street or public where parking is prohibited by the Police Commissioner shall be punishable with fine which may extend to one hundred

Penalty for obstructing a footway.

Whoever drives, rides, leads, propels or leaves on any footway any vehicle, other than a perambulator, so that the same can stand across or upon such footway shall be punishable with fine which may extend to one hundred taka. Penalty for causing obstruction in street or public places.

Whoever causes obstruction in any street or public placea) by allowing any vehicle which has to be loaded or unloaded, or to take up or set down passengers, to remain or stand therein longer than may be necessary for such purposes;

b) by leaving any vehicle standing therein. shall be punishable with fine which may extend to one

hundred taka. Penalty for making or repairing vehicle in street or public

Whoever in any street or public place makes any vehicle or part of a vehicle, or except when in the case of an accident repairing on the spot is unavoidable repairs any vehicle or part of a vehicle, or carries on therein any manufacture or operation

or work so as to be an impediment to traffic or annoyance to the public or neighbouring residents shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand taka or with both, and such vehicle shall be liable to be confiscated to the Government. Penalty for keeping or storing building materials or other

articles in streets or public place. Whoever causes obstruction in any street or public place by keeping or storing building materials or other articles therein shall be punishable with fine which may extend to two thousand taka, and such materials or articles shall be liable to be confiscated to the Government

DIA HAVE ASSUINCE PERVASIVE DEOPORTIONS, IN

The Jaffna Civilian Between the Devil and the Deep Blue Sea

As fighting continues in Jaffna, the cries of the civilian victims of this bitter conflict are silenced. The Tamil civilian has been caught in the pincer between the LTTE and the Sri Lankan Army. As of 1 June 2000, international aid workers estimate that as many as 150,000 people have left their homes in the Jaffna peninsula. As of 24 April, over 400,000 civilians were cut-off from the rest of the island because of fighting in the North and the East. Sadly, the international community has in the main, disregarded the plight of the non-combatants in this ongoing conflict.

The government claims to operate shelters to sustain the internally displaced persons. Major General Sarath Munasinghe, Commissioner of Essential Services, informed diplomats from donor countries that the government has supported 8,352 people in government welfare centres. However, even conservative estimates put the internally displaced population from the present round of fighting at 50,000 people. The Sri Lankan Government shelters are grossly inadequate protection for the displaced people in the northern region. Reliable sources from Sri Lanka have informed SAHRDC that many civilians are being made to do forced labour to carry

supplies to Sri Lankan troops. Both sides have also restricted the movement of civilians who are fleeing war zones. Although the UNHCR has set up camps for the internally displaced of this 17-year battle, many civilians cannot reach the camps or have been stranded in the midst of the fighting. On 27 May 2000, the LTTE claimed to have issued a cease-fire order to enable the civilian population to evacuate the Thenmarachchi region near Jaffna. However, the Sri Lankan government claimed that it had no information about the cease-fire. As a result, 70,000 people are believed to be stranded in a battle-zone. On 1 June 2000, the government admitted that the conflict over Jaffna has caused many people to lose their homes and to become refugees. Sources from Doctors without Borders report that many people have moved into churches, temples and mosques with little food and the cold cement floor for bedding. These makeshift shelters have few toilets, little water, and inadequate electricity to support

the flood of refugees. The US Under Secretary of State, Thomas Pickering has called attention to the need for humanitarian assistance in the northern regions. However, the US has not taken a position as to whether it will provide such aid.

The conflict in Jaffna poses a potential refugee problem for India. Over a thousand refugees have already arrived in the Indian state of Tamilnadu since the fighting broke out. The less than normal flow of refugees to India has been due to several factors. Firstly, Sri Lankan army imposed strict curfew in the Jaffna district. The Sri Lankan navy and army have intensified their vigil in order to avert any possible LTTE intrusion. The Sri Lankan navy has fired upon fleeing refugees.

This violence against non-combatants is in flagrant violation of the Geneva Conventions of 1949 and its Additional Protocols. The UN Security Council Resolution 1265, adopted in 1999, expresses severe condemnation of deliberate attacks on civilian populations during armed conflict. There have been consistent and flagrant violations of the provisions of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-

International Armed Conflicts (Protocol II). UN Secretary- General Kofi Annan has called for international action to prevent human rights abuses in Sri Lanka, particularly the "disappearances" caused by the army and armed opposition groups. Sri Lankan sovereignty does not invalidate international intervention to protect civilians from these acts. Specifically, Common Article 3 of both Geneva Conventions protects non-combatants from harm in armed conflicts. Article 3 states that "persons taking no active part in the hostilities...shall in all circumstances be treated humanely." Hostage taking, torture, and extrajudicial executions are all expressly prohibited by the Geneva Conventions. It also states that "the wounded and sick shall be cared for." Clearly, all of these principles have been violated in the conflict in Sri Lanka.

Civilians must be protected from being ravaged by civil war. Yet, disappearances, bombings, rape and torture of innocent civilians have not been focus of the international community. Although diplomatic solutions are being explored, diplomacy alone cannot protect the helpless civilians. Like pawns in a game of chess, the civilians in Jaffna are being sacrificed for larger political and ideological interest. International community including the media that accepts "censorship" by the Sri Lankan government contributes to the growing misery of the civilians in Jaffna.

-Human Rights Features

Case Studies on Human Rights: January - June 2000 tained in June 1999, in a crimi-

by Odhikar

71THIN the first six sought criminals. Though instances of wide spread human rights violation through out and human rights violation, the people of this republic was accorded with a new law, but before they could find any shelter under that law some of them were subjected to the maltreatment and abusive power of that

creased, remained more or less the same. Odhikar a coalition for human rights has tried to depict the present situation of human rights in Bangladesh by citing certain case studies of reports those in recent days published in different dailies of Bangladesh.

Law and Order Situation

On law and order situation, the Police Authority, on 19 June 2000, at Police Head Quarters in a meeting, told the Home Ministry, "Average 10 people were killed and 8 women were raped every day". With this information, a news report says that, Home Minister himself is worried about the law and order situation of the country (Daily Janakantha June 20, 2000). The report further adds that more than nine thousands offences have been committed in the country only in May 2000 which is higher than the pervious month's record. In the month of May 2000, only under Public Safety Act 146 cases have been recorded, besides cases of offences of 93 robberies, 105 hijacking, 288 murders. 254 rapes those committed in the country.

Killing during Hartal

Even in the new century, people bore the same brunt of hartal culture as earlier. In the month of February alone three people lost their life in hartal matters. Apart from political activists involved in the agitation programs, innocent bystanders or tempo drivers were not been spared from the rowdies of Hartal.

Killing by Police

One Md. Ahmed Hossain Sumon (23) was shot in his house by DB police on the Feb 9. 2000 at 3.30/ 3.45 am and he succumbed to injuries. The DB Police went to arrest some listed criminals at Sumon's place. They identified Sumon and his brother Shahadat as

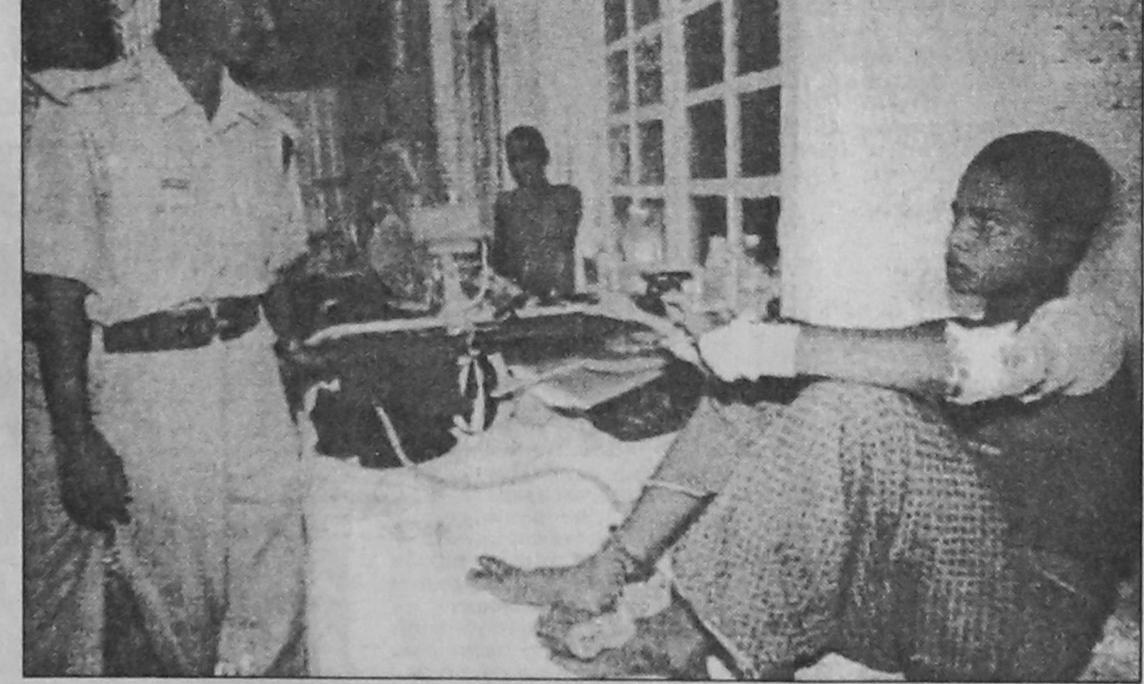
months of the new Sumon, his brother and rest of V century, there were the members of the family informed the Police that they were on bail, yet the DB police Bangladesh. To check terrorism officials who accompanied some identified local terrorists. shot Sumon in their presence. When Sumon's elder brother Shamim went to save him, DB police also shot him. There, Tuli (12), niece of Suman, also got bullet hit in that police shootout. Sumon died on the Police atrocities if not in- way to DMCH, while his injured brother and niece survived after a long treatment.

Three cases on this issue were lodged by DB police (Shyampur PS case no - 12, 13, 14 all dated 9. 2. 2000) accusing Sumon and members of his family along with others. On the other hand, when Sumon's brother went to the police to file a case against DB police, then relevant police authority refused to accept that case. Alternatively, he had to file a petition in the court of Chief Metropolitan Magistrate (No. 581/2000), accusing said DB police and identified local terrorists accompanied them. It is alleged that Sumon's family was victim of enmity of some local vested interest groups.

Police Torture

Unchecked police brutality remained one of the major factors in the deteriorating human rights situation in Bangladesh. The two of the following case studies show that even minors could not escape from the police atrocities. As a common practice, Police often detain and torture members of the opposition group as and when they are ordered to raid an area.

i) Jhenidaha Police on 13 Jun 2000 picked up Belal, a 12 years old boy of Jhenidaha, for no conclusive reason. After the picking up, police started an innovative and brutal form of torture on him. Besides beating with stick, they kept him hanging from a tree while tying a 2.5-kg brick with the private part of his body for an unspecifted time. On finding the victim's condition deteriorating. local people became agitated and compelled the police to shift Belal to a hospital for treatment. On that night, though he was admitted to Jhenidaha Sadar Hospital, but his family was being pressurized not to file any case, even not to disclose these facts to anyone. Though the concerned policeman was closed after the incidence, yet no case had been filed by the police or by anyone



Is he old enough to be implicated under the Public Safety Act? against any offender.

ii) Jewel, a 12 years old boy and resident of 277, Pargandaria, Dhaka was fleeing from an impending danger from a melee, but was seriously injured by some miscreants. But subsequently police accused him in a case (Demra PS case no 3, date 2.5.2000) under The Public whereas, the Jail authority did Safety Act. Arrested injured not comply with that order. Af-Jewel was admitted to Dhaka ter one month, in mid January Medical College Hospital as an under trial prisoner. He was with handcuff on since he was admitted there. Several reports were published in national dailies showing his subhuman condition in police custody. Then upon prayer of a legal aid organization, the High Court Division ordered the authority to remove the handcuff immediately and they obeyed that

accordingly iii) Habib-un-Nabi Sohel, President, Jatiotabadi Chatra Dal (JCD) and Nasir Uddin Pintu, General secretary, Jatiotabadi Chatra Dal (JCD) Central Committee, are renowned student leaders of the main stream opposition party. Both of them were arrested from a procession in front of BNP Central Office on 17 December

1999. They were taken to Motijheel Police Station where they fainted for serious injury of police torture. On the next day, they were taken to the CMM court. Upon prayer of their lawyer, the court ordered the Jail authority to ensure proper riod medical treatment for them. 2000, without said treatment, they were taken to police remand where besides usual torture methods, beating and kicking, the tortures included putting chilled water through the nose and ice treatment too. Sohel was taken to remand for three times while Pintu for five times for the same type and

doses of torture. Pre-trial Delays

rested in 1985 in connection to would be. some irregularities in allotting loans. For last fifteen years he is being detained as an under on New Charges trial prisoner in the Chittagong District Jail. Forty-five cases of same nature had been filed against him, out of that he already got bail in forty-one of Jatio Samajtantric Dal (JSD)

of rest of the four cases are yet to be heard. If he were convicted under the Anti Corruption Act, then his maximum punishment would have been a jail term of ten years only, whereas, he is in the fail for more than that pe-

Rubel Murder Case

One of the sensational cases of 1998 was Rubel murder case that had remained in the cold storage for the last 2 years. The trial of Rubel murder case is at the stage of examining of prosecution witnesses. Out of 65 prosecution witnesses, only 13 have, so far, been examined. But, the accused persons are in custody. The trial has been commenced, at this stage, normally without any influence from either of the parties. Nobody knows when the trial Majharul Islam, was ar- would conclude and how fair it

Released but Rearrested

Mahmud Hassan (Sachu), the Elected Chairman of Haripur Union Parishad of Kushtia District and a member cases. His petitions for the bail Kushtia District Unit was de-

Death in Jail Police and D.B. Custody (January 1- June 30, 2000) Chittagong Rajshahi Khulna Barisal Sylhet Division Division Division Division Division Division Total Jail 29 Police D.B. Total

tender and demanding toll on 9 May, 2000. After the arrest, he was taken for remand for 3

Attack on press

1. Aminur Rahman Taj. a senior reporter of The Daily Ajker Kagoj was arrested by Morshed Alam, Asst. Commissioner of Police, DB with the help of Police of Ramna Thana. On 29 May, 2000 at 11am, he was detained without any warrant at Ramna Thana, for publishing a report regarding irregularities of transfer and appointment of police and the abuse of women by the police-

A defamation case against Kaji Shahed Ahmed, Editor, Ajker Kagoj and Taj was also filed in the CMM Court at 1 p.m. on that date. Same day at 5 p.m., Taj was produced before the CMM Court but upon prayer of his lawyers, he was enlarged on bail by the Chief Metropolitan Magistrate, Dhaka.

2. The police, at a stage, beat the students of Kuwait Moitree Hall those held a procession in front of the Vice Chancellor's Office for some demands. As Kazi Borhan Uddin, Chief Photo Journalist of Daily Manab Zamin was photographing the scenario and the police atrocity; police also subjected him to the same treat-

This report is not intended to dig down the dark patches or to be skeptical on anything. This has been prepared to focus on the spell of despondency that has caste over us for the reluctance of the concerned authority for their unchecked admin-Istrative practices.