Human Rights Day Special

"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

Bangladesh – A Country without A National Human Rights Institution

By A.H. Monjurul Kabir

IN South Asia, clearly Bangladesh has teamed with Bhutan, Maldives and Pakistan, at least, in making sure that there exists no national human rights institution within its frontier. But unlike Pakistan, Maldives and Bhutan, Bangladesh has been continuing a costly exercise of establishing a national human rights commission and an office of ombudsman for quite a few years. Yet the draft bill for establishing a national human rights commission has not been finalised. It has been remaining pending before a cabinet sub-committee for about one and half a year. The Constitution of Bangladesh envisages the idea of an office of ombudsman in 1972. An enactment in this regard is in place since 1980. Unfortunately nothing happened in last 20 years. On numerous occasions the present government pledged to set up these two important institutions for ensuring good governance and human rights. All those promises seem to be mere political rhetorics as there is no indication that the government is truly willing to establish any of the institutions.

Identifying National Human Rights Institutions

National human rights institutions are a relatively recent development among mechanisms for the promotion and protection of human rights. They have been developed as a means where states can more effectively work to guarantee human rights within their own jurisdictions. They do not replace the role of the courts and judiciary, legislative bodies, relevant government agencies, parliamentary committees, political parties or religious or non-governmental organisations. They are independent authorities established by law to protect the human rights of the people of their country. The structure and number of national human rights institutions largely vary between countries. The majority of the existing national human rights institutions can be classified together in two broad categories; 'human rights commissions' and 'ombudsmen' although, classically, the latter do not have an explicit human rights protection function. Another less common, but equally important variety are the "specialised national institutions" which function to protect the rights of particular vulnerable group such as ethnic and linguistic minorities, indigenous populations, children, refugees or women.

A human rights commission is a state sponsored and state-funded entity generally set up under an act of parliament or under the constitution, with the broad objective of protecting and promoting human rights. National and local human rights commissions have been established in several parts of the world. The first human rights commission was set up in Saskatchewan in 1947.

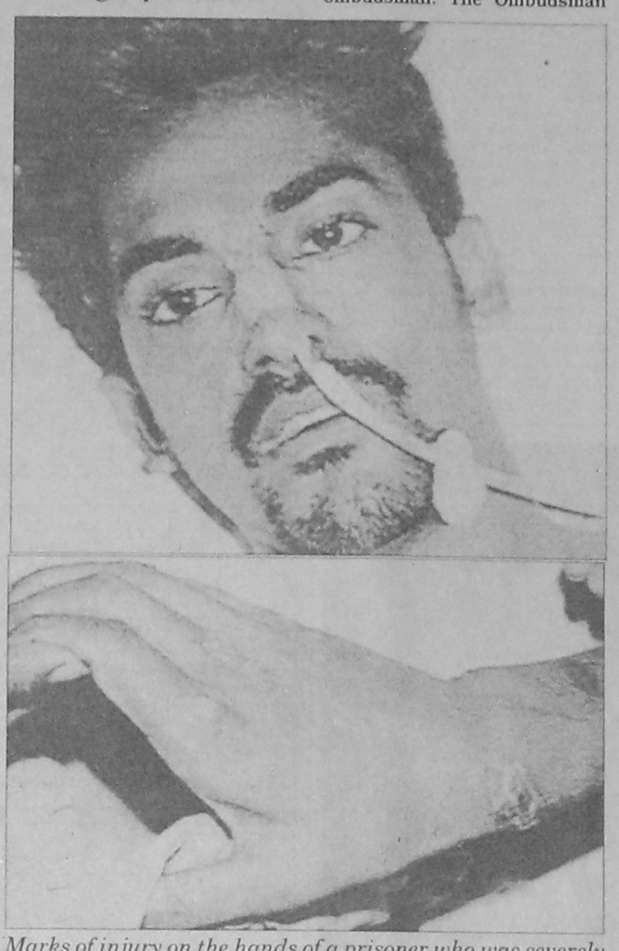
The institution of ombudsman is a public office, created by an act of parliament or under the constitution, responsible for monitoring the actions of public authorities and dealing with complaints and problems encountered by citizens of a country in their contact with and treatment by, those authorities. The office of ombudsman was created first in Sweden in 1809.

The traditional ombudsman model is not concerned with human rights except insofar as this relates to their principal function of administrative oversight. However, some of the more recently created ombudsman offices, especially those in Eastern Europe and Latin America 'defensor del pueblo', have been given specific human rights protection mandates sometimes in relation to rights enumerated in constitution or other national one or more specific functions directly related to the protection and promotion of human rights. In the words of Mary Robinson, United Nations High Commissioner for Human Rights, "I have become increasingly convinced of the necessity to focus on preventive strategies. This has convinced me of the importance of creating strong, independent national human rights institutions to provide accessible remedies, particularly for those who are most vulnerable and disadvantaged. Frequently these institutions are "human rights commissions," but in many countries, drawing on traditions originating ... in Sweden, they are related to or identified as a human rights "ombudsman" or "ombudsperson." ...

It is precisely their capacity to contribute substantially to the realisation of individual human rights, which makes independent institutions so significant

By definition, national institutions are creations of government. Increasingly governments across the Asia are adopting this "new species" of human rights mechanism. The decision of a government to establish an institution can be motivated by diverse factors not solely related to protection and promotion of human rights. However, even stiff critics have been surprised by the ability of certain human rights institutions to take on a life of their own, distancing themselves from both the government and from the mixed motivations which lay behind their establishment. India, Indonesia, the Philippines, Sri Lanka, Malaysia and Nepal now have their own national institutions. Thailand has also joined the trail. As already mentioned, theoretically Bangladesh decided to follow the suit long ago. But in practice, it has not depicted an iota of true political willingness to install any national human rights institution.

The Ombudsman: The Saga of Silence



Marks of injury on the hands of a prisoner who was severely tortured after his arrest. Governments in Bangladesh have failed to implement safeguards against torture. Could a national human rights institution make a difference?

Article 77 of the Constitution of Bangladesh provides that parliament may by law establish the office of ombudsman. Until 1980, however, no attempt was made to establish the office of ombudsman. The Ombudsman Act was passed in 1980 providing for the establishment of the office of ombudsman. The Act empowered the government to bring it into force by notification in the official gazette. The use of the term "may" in the Act, as in Article 77 of the Constitution, makes the establishment of the office ombudsman optional. Twenty years have passed since the enactment of the Act; still it remains an unfulfilled goal of the Constitution and the Act. The present government publicly expressed its determination several times to institute the office of ombudsman. The Ministry of Law, Justice and Parliamentary Affairs has initiated a danida-sponsored project to assess the overall context of the proposed office of ombudsman. A number of study-tours was undertaken. Unfortunately no real progress has been made. The government is keeping absolute mum on its very attempt to establish the office.

From "Action Research" to "Cabinet Sub-Committee"

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)' was revived in March 1996 when an agreement was signed between the government and the United Nations Development Programme (UNDP), Bangladesh. 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 IDHRB project has, so far, done considerable groundwork in terms of assessing the grassroots level human rights situation and understanding institutional mechanisms existing in other countries. On 12 April 1999, the Cabinet of the Government of Bangladesh approved the draft bill with certain amendments for the establishment of a National Human Rights Commission as submitted by the IDHRB Project. The cabinet also formed a cabinet sub-committee to review and suggest improvements in the bill. The sub-committee so far held several meetings to examine some of the provisions of the proposed bill. Yet the fate of the long waited legislation for establishing a human rights commission' remains uncertain. It is learned that the government initiative has been facing sharp resistance from the sub-committee headed by education minister. Instead of improving the substantive contents of the bill, the sub-committee is, in fact, hindering the whole process. Such deliberate attempt to block a proposed human rights institution by a cabinet sub-committee is deplorable. It is, rather, a betrayal of public commitment, proclaimed so many times by a public official no less than a Prime Minister.

Making Human Rights Affordable

Human rights are ultimately a profoundly national, not international, issue. In an international system where government is national rather than global, human rights are by definition principally a national matter. Though human rights transcend the barrier of domestic jurisdiction, international and even regional human rights mechanisms are simply inaccessible to the vast majority of the world's population. Indeed individual rights and freedoms will be protected or violated because of what exist or what is lacking within a given state or society. States are holders of the obligation under the international human rights treaties to uphold and realise human rights of people within their respective territories. Hence the concept of national human rights institutions gained currency all over the world.

Paradoxically, the credibility of a national human rights institution, created and funded by the state, depends on its ability as an independent body, to monitor and scrutinise the state's performance against human rights criteria. In many countries national human rights institutions failed to fulfil the expectation they created when they were first established. On the contrary, in some jurisdictions where the expectations greeted with profound suspicion, the institutions made explicit difference. While national institutions are not necessarily the 'ideal type' of human rights mechanism, if autonomous and appropriately structured, they can be a useful means for promoting a dialogue between governments and their citizens. It can, at least, offer the people in difficult situation, an affordable alternative to seek justice.

In a country like Bangladesh where the violations of human rights by state agencies are rampant, the expectation from any such proposed institution, thus minimal. But at the same time, it does not make any sense to spend donor money in a sector where the government is politically unwilling to do anything. Forming sub-committee or undertaking research study or making foreign trips to delay the process is a sheer mockery of the government with its international obligation and national commitment towards human rights.

From Legal Education to Justice Education

By Dr Mizanur Rahman

EVER since the disintegration of the primitive communist society into a society with antagonistic classes, i.e. with the emergence of the 'state', law has been playing a crucial role in not only keeping the antagonistic conflicts of classes within a tolerable limit, but also ensure a process of socio-economic and political development. In this process, together with 'law' as the 'manifestation of the will of the economically dominant class of the society' inadvertently the lawyers became the key actors. Therefore, the significance of legal education in all epochs has been primary.

In modern times, however, legal education, at least in a country like Bangladesh, has been a 'dismal failure'. Traditional legal education, construed as a discipline dealing with rights and obligations of different entities in different spheres and in different degrees, fails to grasp the fundamental changes that have taken place in the nature of law and legal education. Today, legal education may be better, and more accurately, portrayed as 'justice education'.

'Justice is perceived as not just a scheme based on a set of rights and duties, but as an inter-relational experience to be structured according to societal values and to be measured in terms of willing obedience to law and respect for human rights. However, there may be different ways of achieving this transformation from legal education to justice education.

One way of doing it is to look at the society around, identify the major problems which contribute to injustice and address the role of law, lawyers and courts in containing them. This is the needs-assessment-cum-problem-solving approach.

A second approach is to articulate the goals of legal education from the constitution and from accumulated experience and relate them to the perceived functions of a justice-oriented law school. Here also, there is scope for innovation in objects and methods, towards increasing the justice content and social relevance of education. This is the goal oriented, trial and error approach.

A still another approach could be to look at what is being done in some of the reputed law schools around the world and pick some of those aspects appealing to one's perception of justice education and structure a curriculum and an international framing for the job in hand. There are, needless to say, situational constraints which impinge not only on the choice of the model but also the extent to which it can be operationalised.

For a justice oriented legal education the following issues generally appear to be relevant which has been, as a matter of general policy and practice neglected in traditional legal education:

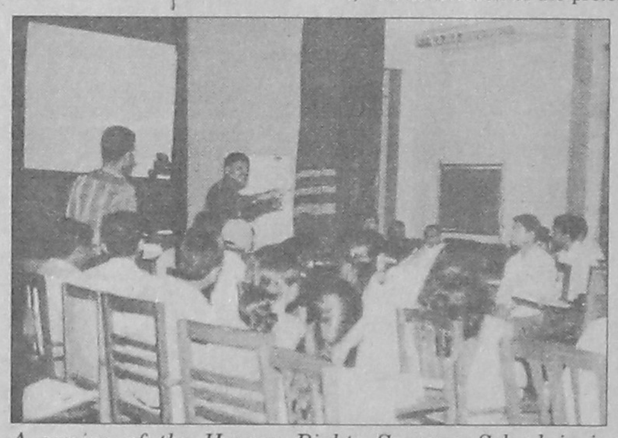
a) Human rights education and scholarship are presently concentrating almost exclusively on civil and political rights, neglecting social, economic and cultural rights on which satisfaction of basic needs of the majority of population is dependent.

b) A lingering feeling among some academics that practical training (clinical education) is not the legitimate function of the law school, it consumes disproportionate resources and its pursuit is not conducive to true legal scholarship.

c) Continued inability of law schools to integrate law study with study of social sciences and to mould a research led learning process in law schools, which alone can facilitate true study of law in context or law in society.

d) Lack of value orientation in the teaching of law. It is manifest in the argument that lawyers should be emotionally or ideologically detached from the issues they handle which sometimes tend to disregard the public interest dimensions of litigation.

e) The domination of the profession by persons belonging to one gender has also inhibited the way lawyering was perceived by people. It did have some distortions which are imperceptibly operating in justice dispensation and in the delivery of legal services.



A session of the Human Rights Summer School is in progress.

How does one go about in organizing the transition to justice education which is not just a matter of changing the curriculum and clinicalising legal education. The objects have to the reformulated, standards of evaluation have to be redrawn, a lot has to be unlearnt and re-learnt by teachers in a process of redressing the prevailing mind set and creating an academic climate conducive to justice education.

One should be cautions enough not to get carried away by the fascination of the subject, and so lose sight of what continues to be the essential element in justice education. Let us consider justice: it is an abstract concept, and even if everyone has dreamed of it, no one has ever really encountered it. But we have all of us been face to face with injustice. More relevantly, when it comes to human rights, the features of women or men who have been tortured and all of us have known such people of starving or oppressed children, provide a measure of that necessity, of the urgency of their demands. That is the genuine face of human rights. What we really need, in the matter of human rights and justice education, is not so much speeches and promises as action and dedication, not so much philosophers or jurists, as militants.

Justice education may be the breeding ground of human rights militants. The meeting platform of those souls who by contemplating human rights victims, those men, women and children, can speak from the realm of ideas to our harsh and sometimes cruel world, as it really is. Legal education only then will have social relevance thereby completing the transition to justice education. The initiatives taken in the form of Human Rights Summer School (October, 2000), Community Law Reform (November 2000) or the upcoming Street Law Programme seem to be developing in the right direction. Tremendous success of the above mentioned first two programmes demonstrate that increase of justice component in legal education has been the urge of the students. Students of law have demonstrated their preparedness to accept the changes in legal education. It is now for the policy makers and the teachers to match the expectations of the stakeholders. This is ultimately a question of social, professional and ethical responsibility of the teachers. Are they prepared? Only time can answer!

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The Proposed Asian Human Rights Charter

No Rights at the End of this Tunnel

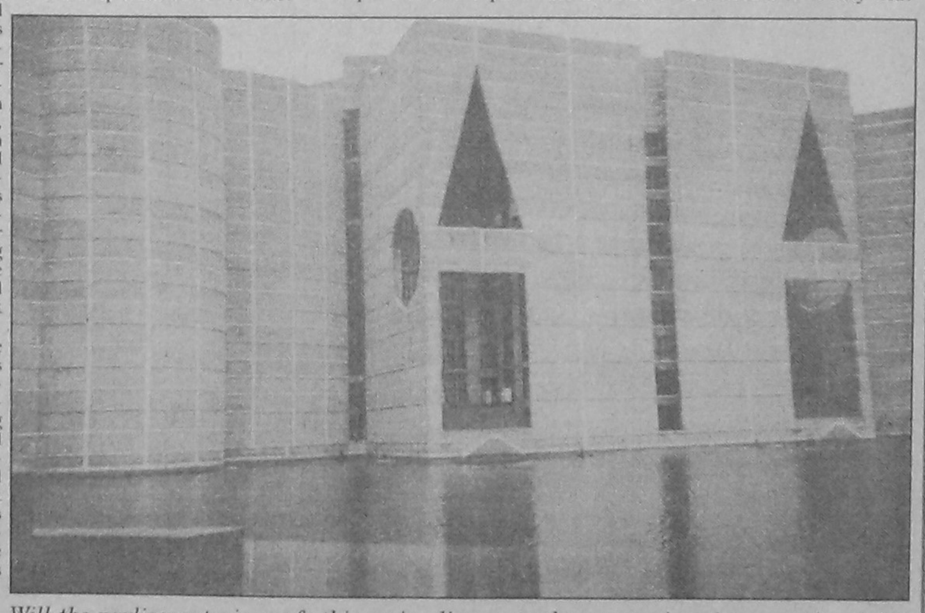
IN the third week of January 2001, the Association of Asian Parliaments for Peace (AAPP) is scheduled to hold a conference in the Cambodian capital, Phnom Penh, to adopt a proposed Asian Human Rights Charter. The Asia-Pacific is the only region in the world without a regional human rights charter. Three efforts have been made to formulate one. The Hong Kong-based NGO, Asian Human Rights Commission drafted the first one; the Bangkok-based NGO, Forum Asia attempted the second for the ASEAN region. The third, and most recent attempt of the Association of Asian Parliaments for Peace was appropriately thumbed down at a meeting of Asia-Pacific NGOs held in Cambodia in the first week of October 2000. In certain government circles, however, the AAPP draft has an audience for all the wrong reasons. To the dismay of NGOs from the region, certain United Nations agencies are helping the AAPP effort.

The AAPP Draft Charter is ridden with problems. First, the AAPP has positioned itself as the monitoring and enforcement authority of the charter. The preamble hints at this arrangement, and other provisions make it explicit.ÊThe preamble states: "The member states of AAPP..., [b]eing resolved, as the Parliaments of Asian Countries ... to take the first steps for the collective enforcement of the rights stated in the Universal Declaration... [h]ave agreed as follows...."Ê The AAPP's decision to invest itself with controlling authority is apparent in other sections.ÊArticle 20, for example, describes the creation of an Asian Commission of Human Rights, the members of which "shall be elected in a personal capacity by the general assembly of the AAPP".

The lack of political legitimacy and the pragmatics of these provisions have met with NGO protests.ÊThe AAPP was established very recently -- in late 1999Êand, despite a Charter of Association and other documents, aspects of its composition and purpose remain cryptic.ÊThe AAPP's self-proclaimed entitlement to represent and control a regional mechanism raises troubling questions about the relevance and efficacy of such a charter, and the reasons for it being drafted.

A major point of concern is the timing of the initiative. Few Asian States have signed or ratified key international human rights instruments and most show no indications of doing so in the near future. Those that have signed up are yet to demonstrate a true commitment to implementing or abiding by these instruments. Founding members of the AAPP include China, Iran, Iraq, Jordan, Kuwait, Lebanon, Qatar, Syria, and Yemen, all of which have a very poor human rights record. Accordingly, the attempt to draw up a genuinely human rights-oriented charter at this point is futile, if not dangerous.Ê It mainly serves the interests of those who want to create an instrument that is inconsistent with international standards and, at the same time, serves to avert international criticism of domestic human rights practices.

Any regional charter must take the international standards of human rights as its starting point and build up from there. It must reaffirm not only the Universal Declaration of Human Rights (UDHR) (as the draft charter mentions), but also the other major international instruments, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Elimination of All Forms of Discrimination against Women.



Will the parliamentarians of this region live up to the expectations in promoting Asian notions of human rights?

Many of the dangers posed by the AAPP's draft charter lurk in its substantive provisions.ÊThe association's ad-hoc technique of selectively taking and often modifying provisions of various international instruments has produced a Charter that regresses from several international norms. Areas that abrogate accepted human rights standards notably include provisions for fair trial (Article 7 of the Draft Charter, in contrast to Articles 9, 14 & 15 of the ICCPR and freedom of movement (Article 14 of the Draft Charter, in contrast to Articles 12, 13 & 14 of the ICCPR). Despite objections by NGOs, there are also conspicuous omissionsÊ such as no provision for independence of the judiciary or for human rights education (compare UDHR, Article 26; African Charter on Human and Peoples' Rights Articles 25 & 26).ÊFinally, the Draft Charter contains a retrograde sovereignty provision:ÊArticle 3(4) provides that no international action can be taken regarding the gross violations of human rights "except with the unequivocal and explicit concurrence of that nation or society with regard to each and every issue".Ê In short, the Charter threatens to become a device for Asian governments to legitimise particular human rights abuses and, more generally, to evade scrutiny for persistent international human rights violations.

The AAPP hopes to adopt the Draft Charter at a conference to be held in the Cambodian capital, Phnom Penh, in January 2001. During the five-day conference, Bangladesh Prime Minister and AAPP President Ms. Sheikh Hasina is due to move the Charter along with another document, entitled the "Millennium Declaration." New members are expected to join the AAPP, with Bangladesh also proposing to establish a permanent secretariat of the association in Dhaka.

What is curious is the support of some UN agencies to this ill-advised initiative. Given the trenchant NGO criticism of this effort, it is hoped that the UN agencies in their quest for the holy grail of an Asian Charter of Human Rights do not pick up this poor impostor.

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Human Rights Organogram at the UN