



A National Human Rights Commission for Bangladesh?

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BOTH Awami League and Bangladesh Nationalist Party (BNP) have pledged in their respective election manifesto to establish a National Human Rights Commission for Bangladesh if they will return to power through the forthcoming parliamentary election 2001, which they did not do in their regimes in past. However, they have not spelled out their plan. The last government did almost all the necessary exercises except the fundamental one: to establish the Commission! Following a 'six year long' preparation, the Cabinet of the Government of the People's Republic of Bangladesh on 12 April 1999, approved the draft bill for establishment of a National Human Rights Commission. Nothing has happened afterwards.

Down the memory lane

The idea of a national human rights institution in Bangladesh has been

in the parliament:

1. The Commission will be formed by an Act of Parliament. 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 makes 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 government may or may not publish. Its commissioners should be on the scale of high public servants but should not be bound by civil service rules, especially of secrecy.

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 recognized as human rights. Its preamble can make this

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 even 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 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? The South African Human

redress and rehabilitation is taken. The government will have to make sure that any recommendatory reports and annual reports are public documents and not dependent on being placed before parliament before they can become so.

8. In Bangladesh, defense 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 defense forces. In a democracy, they cannot remain above the law.

9. In India there is specific provision to set up Human Rights Courts to provide speedy trial of offences arising out of violation of human rights. This idea can also be incorporated in the proposed bill. But considering the Indian experience, it may prove to be a pretty useless provision if there is no specialized training for the judges and a court is just designated as a human rights court in a district with the same delays and 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 does not 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 organizations involved in the promotion and protection of human rights.

Not a panacea

National human rights institutions 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 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 VR Krishna Iyer. Only the very political will of the government,

the opposition groups and the civil society as a whole can help reach the cher-

ished destination. The belated pledge of the major political parties to set up a

National Human Rights Commission is a welcome development. 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.

Will they do it?

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 acceded to and ratified by the People's Republic of Bangladesh [Sec. 2(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, and practical experience in, matters relating to 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 misbehavior 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 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 case of judgment 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 Constitution 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 instrument;

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

(i) assist in the formation of programs 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. Independence:

(a) 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.

(b) 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)

9. Annual and Special Reports:

(a) 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 until submission of the annual report.

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

10. Finance:

The Commission will be financed through a Trust Fund, which shall hold all money appropriated, by Parliament and all money donated or contributed to the fund from any source. (Sec. 20, 21)

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 the fundamental principles of state policy enshrined in 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; and

(2) It has come forward to install 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.

Points to ponder

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

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 qualified 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 deals.

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 can not do

Rights Commission has a mandate to get a report from each government department each year to find out what they have done to promote human rights in their work. This is really a great a 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 borderline 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 life and safety of an individual and free medical treatment where necessary. The commission should ensure that full and prompt compensation is paid and necessary measure of

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 VR Krishna Iyer. Only the very political will of the government, the opposition groups and the civil society as a whole can help reach the cherished destination. The belated pledge of the major political parties to set up a National Human Rights Commission is a welcome development. 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.

Will they do it?

the Secretary-in-Charge got notice published in the Daily Bangladesh Observer dated 14.11.2000 asking him to appear before the tribunal on 29.11.2000 but the OP did not turn up.

On 29.11.2000 the matter was taken up but the tribunal, for ends of justice, adjourned the matter for order today, the 18.1.2000. The OP also did not turn up today.

The Bar Council as well as this Tribunal issued many notices upon the opposite party in his address available in the record of the Bar Council to compel his attendance both before the Council and before this Tribunal. It is on record that the father of the opposite party, who is also an advocate informed the Bar Council by a letter dated 5.5.98 that his son is out of Bangladesh since January 1996 but he refrained supplying any address of the O.P. advocate.

Procedure

This Tribunal is to follow generally and to the extent practicable the procedure provided in the Civil Procedure Code.

According to Order V Rule 15 of the Code of Civil Procedure, the notice or summons upon an adult member of the family is a valid service. When the father of the opposite party advocate has received the notice and made a reply by his letter dated 5.5.98 as has been recorded in the order sheet of Bangladesh Bar Council on 14.5.98 we are satisfied that the notice has been validly served upon the OP advocate. Over and above, this Tribunal also published a notice in the National English Daily, the Observer on 6.11.2000 asking him to appear before this Tribunal on 29.11.2000 and kept disposal of the matter until today. As such it can be concluded that the OP advocate having sufficient knowledge about initiation of the instant proceedings avoided appearance before this Tribunal intentionally and as such this Tribunal has the authority to decide the matter in absence of the OP advocate.

The only point before the tribunal is whether the Opposite Party advocate is guilty of professional misconduct.

Findings

Form the perusal of the petition of complaint filed by the Secretary, JRC National Council of the Bar, UK. It appears that while applying for permission to practice in the UK the O.P. advocate submitted 5 case-report

reported in DLR 1996 in which he by means of forgery, inserted his name as conducting advocate of those cases substituting the names of the advocates who conducted the case in order to prove his experience, which is a requirement in the matter. We have perused photo copy of the case-reports, sent by the J.R.C. It appears that in the case of Abu Sama Vs Abu Syed reported in 48 DLR (1996) at page 141, Mr Faruque Ahmed, Advocate appeared for the petitioner, from the copy of the report submitted by the OP before the JRC (enclosed with the complaint) we find that the said page has been photocopied in a different manner, and "Ashraf Hossain" has been substituted in place "Faruque Ahmed" which is apparently seen to be forged. We have also perused the contents of the reported case but we find that the contents of the original and the copies submitted by the O.P. advocate before the J.R.C. are the same but the name of the advocate appearing in the beginning of the report, in paragraph No 6, "Mr Faruque Ahmed" has been replaced by the word "Mr Ashraf Hussain" and in paragraph No.10, "Mr Faruque" has been replaced by "Mr Siddiky" though in the beginning of the report the word "Siddiky" finds no place after the name "Mr Ashraf Hussain" at page 141. So it is clear that the name of the OP Advocate has been inserted