

LAWvision

The proposed National Human Rights Commission-Abandoned again?

A. H. MONJURUL KABIR

THE '4-Party Government' led by the Bangladesh Nationalist Party (BNP) promised during electioneering in September 2001 that it would install a human rights commission if voted to power. They included specific commitment in their *election manifesto* to establish a National Human Rights Commission. Surprisingly, Awami League also included the same pledge though they had not established one in their 5 years' regime and no explanation was provided in the manifesto for such inaction. The present government apparently initiates the process again, so far, without tangible progress. The previous draft bill with some changes was placed before the cabinet on 4 February 2002. Unfortunately, following the previous government trend, the cabinet decides to send the draft for further scrutiny to a cabinet committee. Since then, the committee has been reviewing the draft for about four months and there is no indication that it will complete its task soon.

Words of Contradictions

There seems to be divergence of opinion in the hierarchy of the government on national human rights institution. Finance and Planning Minister of the present government and an influential member of the Standing Committee of the ruling BNP M. Saifur Rahman questioned the relevancy of human rights commission and ombudsman in Bangladesh and branded these institutions as 'western institutions' at the launching programme of Japanese Grant Aid Project for Human Resource Development Scholarship at the NEC auditorium, Dhaka on 21 April 2002. The minister expressed his reservations about some emerging terms such as 'civil society', 'ombudsman', and 'human rights commission', saying these are external concepts with less applicability and relevance to Asian practices. "The term ombudsman is not known to many countries, perhaps not heard in Japan also. It's a Scandinavian concept," the minister said, citing the hollowness of the post in a South Asian country. Referring to Bangladeshi experience about sweeping scepticism, he asked how the post of Ombudsman or Human Rights Commissioner could be accepted to all since the reputation of a former chief justice and that of a chief election commissioner could be questioned by certain quarters. "Then who will hold those posts? I could not choose persons for proposed commissions for income and expenditure," the minister told his audience, saying that the country's constitution and laws safeguard human rights well enough. (UNB/The Daily Star, 22 April 2002).

Astonishingly, Saifur Rahman in his written, formal address made at Bangladesh Development Forum in Paris on 13 March 2002 assured the development partners of Bangladesh of taking concrete steps in promoting good governance and human rights. He reiterates, "Steps are underway now to set up a National Human Rights Commission. The Ombudsman Act, 1980 has recently been made effective through a gazette notification. The Office of the Ombudsman will be operational soon. The Government has undertaken some specific measures to establish an independent Anti-Corruption Commission. The government has formed a high-powered inter-ministerial task force to determine an effective strategy to prevent corruption. The government has been undertaking necessary measures for a strong and independent judicial system and separating it from the executive. The rules for constitution of separate judicial service commission and judicial pay commission have been drafted." The full text of Minister's speech is available at the World Bank's website. Some other stalwarts of the ruling party also made identical statements (often confusing for different contents) at different forums echoing government election commitment to set-up different national human rights institutions including human rights commission and ombudsman.

Deeds of Contradictions

First phase: Changing the old draft

The present government did not include the promise of setting up the Commission in their '100 days' programme. The Ministry of Law, Justice and Parliamentary Affairs has already re-written the draft bill (hereinafter 'changed draft') prepared earlier by the Institutional Development of Human Rights in Bangladesh (IDHRB) project, funded by the UNDP. An eight-member Cabinet Committee, headed by the Law, Justice and Parliamentary Affairs Minister Barrister Moudud Ahmed was formed. It was reported that the process of rewriting the draft bill had actually taken away some power and authority originally included in the earlier draft. (hereinafter 'old draft'). The Law Minister circulated the changed draft among selected people including leading lawyers. The result of such circulation and indirect consultation could not be known. A brief comparative look at the first draft and changed draft reveals a clear picture:

Constitution of NHRC: For appointing Chairman and members of the proposed Commission, the changed draft intends to minimise the Presidential consultation with the Chief Justice alone, which seems to be inconsistent

with the exiting clear constitutional arrangement for President of the Republic of taking prior endorsement of the Prime Minister for almost all decisions. The provision of the old bill obliges the President to consult with (a) Prime Minister (b) Speaker of parliament (c) Chief Justice (d) Leader of the Opposition in the Parliament for appointment.

Investigating Agency: According to the old draft, 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 changed draft reportedly has emphasised on taking service from existing dilapidated investigating agencies instead of forming its own investigating agency or cell.

Violations only by public servant: The proposed Commission is aimed at containing human rights violations by public servant. It is a pity that even at the 21st Century, when the non-state actors become powerful violators of human rights all over the world, the government wants to limit the Commission's power to public servant. It is also not clear whether the term 'public servant' includes members of the defence forces and the intelligence agencies. In Bangladesh, defence forces are considered very sensitive and hence remain beyond any public scrutiny. It is not clear from the draft bill

President on the recommendation of the Parliamentary Standing Committee on the Ministry of Law, Justice and Parliamentary Affairs. The Chairman of the Commission will enjoy the status equivalent to Chief Justice. The Commission cannot investigate any matter which is pending before the court. However, from press reports and other official sources, the extent and nature of the comprehensiveness of the proposed 'Act' are not clear. The power, function and jurisdiction of the newly proposed 'Protection of Human Rights Act' have not been made available in public. In fact, it raises serious questions regarding the justification of the prolonged and costly exercise for enacting a law to establish a National Human Rights Commission. Whether the 'Act' will conform to the UN sponsored 'Paris Principles' again remains to be seen.

Any hope for early enactment?

The Local Consultative Group (LCG), a local platform of the donors, had a two and half-hour meeting with Finance and Planning Minister Saifur Rahman on 11 June 2002. The issues discussed by the donors included proposed independent anti-corruption commission, human rights commission, office of ombudsman, reform and decentralisation of administration, strengthening of local governments and establishment of rule of law, it is learnt. These are among the ruling BNP's election pledges and also mentioned in the new budget document. The donors also urged the government to set up independent institutions and separate the judiciary from the executive without any delay for a positive impact on governance. They also reminded the government that they want action from it on its declared agenda and want to see some result, sources said. The Finance Minister informed, "They (donors) asked us to set up an independent anti-corruption commission and other institutions and separate the judiciary (from the executive) immediately. Those commissions are no problem for us, but the problem is finding persons acceptable to all." (The Daily Star, 12 June 2002). Clearly, the Minister, in his response, did not reflect the ground reality, at least for National Human Rights Commission and Independent Anti-Corruption Commission. The government has not yet even completed the draft bill(s). Finding acceptable persons for national institutions comes later.

In fact, there is no hope for early enactment of any Act pertaining to protection of human rights. It is really disappointing to see that the successive governments frequently changed their policy on national human rights institutions. The process of setting up such institutions, in fact, began in late 1994 during the then BNP regime. The IDHRB project was formally launched in 1995. The work of drafting a law was continued during 1996-2001 under Awami League government. The new 4 Party Government led by BNP initially decided to continue the process. Suddenly the cabinet committee came up with the new idea of enacting a comprehensive law on the protection of human rights instead of legislating a bill for instituting a National Human Rights Commission only. It crystallises the internal policy instability of the present government.

The process has been continuing for last 8 years. It has already created resentments in both national and international human rights fraternity. The simple question of the day is: how long the game of National Human Rights Commission continues? How long the government will take to establish a National Human Rights Commission?

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whether the proposed commission will follow the same suit.

No Human Rights Court: There is no provision for specialised human rights court in both the drafts. 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.

Power and Jurisdiction: It is also reported that the Government attempts to take away the power of the proposed Commission to act as a civil court to issue warrants for questioning the witnesses and examining the documents. A statutory footing for the Commission 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.

Second phase: Drafting a new comprehensive (!) law, all again?
On 16 February 2002, the Cabinet Committee in another meeting chose to enact a comprehensive law for protecting human rights in Bangladesh ('Protection of Human Rights Act'). In a major policy shift from earlier position and international trend and practice, the committee decided not to enact an act solely devoted to establish a National Human Rights Commission. A Commission will be formed under the new comprehensive Act on the protection of human rights. The 5-member Commission will be appointed by the

REVIEWING the views

Filling a void

MUHAMMAD A. HAKIM

THE ignominious dethroning of H. M. Ershad through an irresistible movement of the opposition parties and professional groups in December 1990 marked the beginning of a new era of Bangladesh politics. The prime logic behind making such argument is that while the armed forces were instrumental in all previous successions of power in this country, in 1990 a quasi-military regime was overthrown by a civilian upheaval. This makes me tempted to predict that December 1990 was the beginning of the end of militarised politics in Bangladesh. Politics in Bangladesh entered into a new phase with the country's reversion to parliamentary system in 1991 after operating for sixteen years within the framework of a presidential system introduced by the fourth amendment to the constitution in 1975. Since the reintroduction of the parliamentary system the parliament of Bangladesh, known as *Jatiya Sangsad* (JS), has acquired a new significance. The *Parliament of Bangladesh*, published recently by Ashgate Publishing Limited (U.K.) and authored by Dr. Nizam Ahmed of the University of Chittagong, explores the implications of this new beginning in parliamentary politics.

Nizam Ahmed has unrivalled reputation for his extensive and scholarly publications on the Bangladesh legislature. Although Rounaq Jahan and M. Mufazzalul Huq "have examined some aspects of the working of the first parliament (1973-75), many of its activities, however, still remain unexplored. Nor do we have any published works on the activities of the parliaments elected subsequently. There is not a single book-length research on the parliament of Bangladesh. Even the 'new' parliaments the fifth parliament (1991-95) and the seventh parliament (1996-2001) elected amid public and political expectation that they would herald a new 'era' in parliamentary politics, do not remain an exception" (p.vii). This book by Ahmed is a serious endeavour to fill this void. The book attempts to examine the nature of working of the Bangladesh parliament in the 1990s. "It specifically probes into the operations and activities of the 'new' parliaments ... focusing on a number of issues such as the types of laws they have enacted, the methods they used to scrutinise the working of government and administration, the types of constituency issues that their members raised in the House and the nature of government response to them" (pp.21-22). The author has also attempted to identify the nature of opposition politics and the role of the ruling party backbenchers in the parliament.

The author has sought to answer a plethora of interesting and significant questions. Some of them are: "What types of laws does the JS make? How does the government establish and maintain its dominance in the legislative process? How do the private members perceive the dominance of the government in the legislative process? Does the legislative behaviour of the government and the private member vary significantly? How does the government perceive the initiative of the private member in the legislative field? What scope exists for parliamentary scrutiny of the activities of the government? Did the use of surveillance techniques by members of the 'new' parliaments differ significantly from their counterparts in the earlier

JSs? Which of the several oversight techniques are 'more' effective and why? How does the government respond to the quest of the MPs to inquire into its activities? Does the presence of a large number of opposition MPs make any difference? Which issues separate the government and the opposition along different paths and which promote collaboration between the two? How do the government backbenchers perceive their role in the parliamentary process? Are they contented cogs or they seek to assert authority and independence?" (p.22). I take it as my pleasant duty to argue that the author has proved his academic excellence in answering these vital questions and I find no reason why any reader of the book would differ with me in this regard.

The book provides evidence to show that the parliaments elected in the 1990s were comparatively more effective than their predecessors, especially in resolving many issues that divided the nation for a long time and introducing many reforms to strengthen the parliament. Yet notwithstanding the reforms, the institutionalisation of the parliament remains a difficult task.

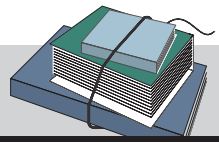
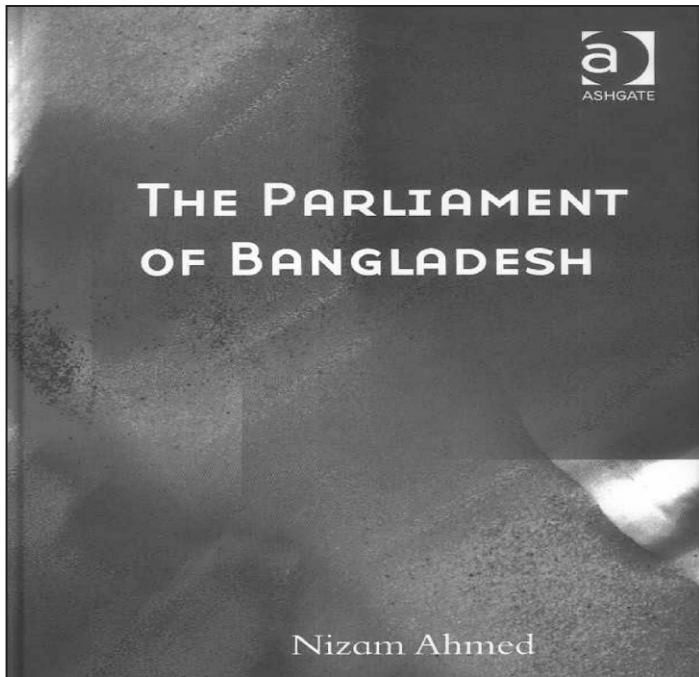
The intransigence of the ruling and opposition parties in the fifth and seventh parliaments made this vital institution virtually ineffective. The expectations of the nation have been substantially dashed as the two major political parties are constantly at loggerheads with each other, occasionally over insignificant issues. The book explores the factors that influence the main parties and actors behave the way they do. It also identifies and examines the factors that discourage the institutionalisation of parliament.

The book is well-organised. It contains ten chapters including the introduction and the conclusion. An extensive research has been undertaken to give the book its present shape. The author's arguments are quite logical and they are based on facts that he has accumulated in the book. His ideas, opinion and analyses are excellent and these would certainly help substantially anybody who aspires to understand any aspect of the nature and working of parliament in Bangladesh. Frequent references to parliaments in the U.K., the U.S.A., Australia, New Zealand, Canada, India, Sri Lanka and Nepal have given the book a comparative flavour, although its main focus is on the parliament of Bangladesh. It is quite evident from different chapters of the book that the author had to go through the painful process of collecting wide-ranging materials for giving this work its present shape. The comprehensiveness of the research and the contents of the book is indeed laudable.

This book is a valuable contribution to our knowledge about the parliament of Bangladesh which has long remained a neglected field of academic inquiry. Future researchers on parliament and related topics will certainly find this book an invaluable source of information, analysis and argument. In fact, anyone interested to comprehend the legislature of an emerging country like Bangladesh should be delighted to find this book an indispensable reading.

Nizam Ahmed, *The Parliament of Bangladesh*, Aldershot (England), Ashgate Publishing Limited, June 2002, £ 45 (hbk), xi + 282 pp. ISBN 0 7546 1889 7.

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LAW opinion

Ending bias in the human rights system

ANNE BAYEFSKY

KOFI Annan, the United Nations secretary general, is searching for a new high commissioner for human rights to replace Mary Robinson, whose term expires at the end of the summer. In naming a new commissioner, he needs first to recognize the office's flaws and then to look for a leader who can address them and seize the office's opportunities.

The high commissioner, whose post was created by the General Assembly in December 1993, operates in a largely undefined space. The commissioner was intended to be a moral leader for the United Nations, a spokesman for protecting human rights and an advocate for limiting state sovereignty who would treat all states with an even hand. Achieving this goal, however, is difficult. The scope of the job is so broad that its actual focus can become too dependent on the biases of the individual in the position, which in turn can be magnified by the high profile of the office.

One way to avoid this trap is for the office to do more through the legal mechanisms that are currently underused. The operations of the office, based in Geneva, are divided among law-oriented facilities focusing on human rights treaties; staff servicing the intergovernmental Human Rights Commission and its subsidiaries; field operations; and other technical assistance.

United Nations member states control much of this apparatus, either directly in the Human Rights Commission or indirectly through funding decisions. Nevertheless, many people turn to the high commissioner for help with their individual grievances. Each year more than 100,000 letters about human rights violations are addressed to the United Nations. Many describe sad tales of abuse at the hands of government or officially sanctioned thugs. These letters, faxes, postcards and electronic messages go into piles in the cellar of the Palais des Nations in Geneva and stacks in the high commissioner's office in Palais Wilson.

In response, the annual Human Rights Commission session, which ended last month, was able to agree on resolutions concerning the conduct of just 11 of the 189 member states. This is not uncommon because in almost all cases commission members seek to avoid directly criticizing states with human rights problems, frequently by focusing on Israel, a state that, according to analysis of summary records, has for over 30 years occupied 15 percent of commission time and has been the subject of a third of country-specific resolutions.

As an alternative to the politicized commission, the legal side of the high commissioner's office has the potential to offer redress. Since the United Nations began, six major human rights treaties have led to the creation of what are called treaty bodies committees that monitor implementation of the treaties. Four such bodies, three of which are based in Geneva, offer individualized attention to human rights grievances through a complaint mechanism. But almost none of the 100,000 pleas for help sent to the United Nations make it to a treaty body for consideration for various reasons, some as mundane as a lack of clear guidelines about directing mail to the proper

desk and some more substantive, like the insufficient number of staff lawyers who could help transform complaints into viable legal cases that could be pursued.

In theory, this "petition system" is supposed to provide a means for one and a half billion people to complain about human rights violations over the right to vote, freedom of expression and of religion, and discrimination on any ground. But there are fewer than 100 cases registered by this system annually. Not one has been registered from Chad or Somalia, for example, and just a couple from Algeria and Angola. The treaty body on women's rights, which has been empowered to receive complaints for the past year and a half, has still not registered a single case.

The new high commissioner must press for reform of the treaty system so individual cases are encouraged and accommodated. This means placing emphasis on treaty obligations their universal application and their implementation in internal United Nations budget battles, in contacts with governments, and in raising funds from states and foundations. It also means finding a way to have complaints read, sorted and brought into a working legal system.

The failures of the United Nations human rights system have led many human rights advocates now to pin their hopes on regional systems like the European Court of Human Rights (part of the 44-nation Council of Europe), the Inter-American Commission and Court of Human Rights (part of the Organization of American States), and the African Commission on Human and Peoples' Rights (under the Organization of African Unity). But these regional alternatives have limits, and there is no regional system at all for what the United Nations calls Asian countries including China, Indonesia, India, the non-African Middle East and Iran.

Nongovernmental organizations like Human Rights Watch and Amnesty International the natural partners for a high commissioner offer another avenue in which human rights grievances might be aired. But such organizations have often mirrored the intergovernmental system by allowing the choice of states and issues they tackle to be politicized. They have at times also shown a disturbing inability to sort worthwhile grievances from declarations of prejudice, as when the nongovernmental organization forum at the United Nations conference against racism in Durban, South Africa, was turned into a platform for anti-Semitism.

A United Nations high commissioner for human rights will always need to withstand political pressure from member states to engage in a highly selective application of human rights norms. To succeed, a high commissioner must be guided by the principle of universality, yet root his or her work in the rights of the individual person. The appointment of someone with such abilities is an important challenge for Mr. Annan at a time when the evenhandedness of the United Nations is widely doubted.

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