LAW *campaign*

Human Rights Commission: Out of agenda again?

ABUL HASNAT

THE Government might deserve primary commendation, at least, for placing the much talked (In)dependent Anti-Corruption Commission in the parliament expeditiously in the last budget session of the 8th Parliament for whatever motivation. Whether it is or will be substantially independent one is a different discourse. Interestingly, the Government is keeping absolute mum on the question of two other critical institutions i.e., Ombudsman and Human Rights Commission. Particularly in case of human rights commission where the present government reportedly completed the process of drafting the legislation, nothing has happened so far to approve the bill in Cabinet and present it in the Parliament.

Making human rights accessible

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.

The United Nations uses the broad term "institution" to describe a domestic human rights mechanism. This term initially includes "virtually any institution at the national level having a direct or indirect impact on the promotion and protection of human rights." Subsequently the definition was narrowed down to include those institutions that have the following functions: educational and promotional activities; provisions of advice to governments on human rights matters; and investigation and resolution of complaints of violations committed by public (and occasionally also private) entities. A national human rights institution has been described as "a body, which is established by a government under the Constitution, or by law or decree, the functions of, which are specially defined in terms of the promotion, and protection of human rights."

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 might not be seen justified to spend donor money in a sector where the government is politically unwilling to set up the commission. Forming sub-committee, involving in prolonged discussion, or undertaking research study to delay the process underplays government's international obligation and national commitment towards human rights.

PHOTO: STAR

Human Rights Commission: No hope for early enactment?

It seems there is no hope for early enactment of any Act pertaining to protection of human rights through national institutions. It is 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 Institutional Development of Human rights in Bangladesh (IDHRB) project was formally launched in 1995. The work of drafting a law was continued during 1996-2001 under Awami League government. However the Awami League Government did not establish the Commission due to lack of political commitment.

The 4 Party Government led by BNP initially decided to continue the process. The present cabinet at its regular meeting on December 10, 2001 formed the committee headed by law minister Barrister Moudud Ahmed to examine the prospect of setting up of the commission. Communications Minister Barrister Nazmul Huda, Post and Telecommunication Minister Barrister Aminul Haque and Information Minister Dr. Abdul Moyeen Khan are the other notable members of the committee. The cabinet committee came up with the 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 (thereby scrapping the Awami League draft). In about 18 months since its formation, the sub committee held numerous meetings to finalise new draft legislation all over again!

The process has been continuing for last 9 years. No other country has so copiously researched the necessary parameters of an effective National Human Rights Commission. However, despite the work of the IDHRB, the Government's effort to establish such a Commission has been half-hearted. Those Bangladesh NGOs, which are critical of the Government's performance on the protection and promotion of human rights, have allegedly been excluded from the process. It remains to be seen whether the numerous high level seminars and study tours were designed to teach the government how to set up an effective commission, or are merely a part of the Government's strategy to create a toothless tiger - it also remains to be observed whether the bill will incorporate the UN Paris Principles appropriately on national human rights institutions.

Concluding remarks

The ruling BNP led coalition's attempt to establish a National Human Rights Commission should not be a political exercise to differentiate it from its predecessors, Bangladesh Awami League. The process should be aimed at strengthening civil liberties and nascent democratic institutions in the country. The Bangladesh Government needs to make its position clear. It has already created resentments in both national and international human rights fraternity. The simple question of the day is: how long the government will take to establish a National Human Rights Commission for Bangladesh?

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HUMAN RIGHTS *monitor*

Human rights under siege worldwide

HUGH CORTAZZI

Terrorism is a serious threat to our societies and way of life. We must give top priority to combating it, but if we ignore or undermine the protection of human rights in the process we shall endanger the principles of humanity for which we are purportedly fighting.

To gain Russian support over Iraq and Iran, the Americans and the British have downplayed Russian repression in Chechnya. Because they recognise the growing power of the Chinese economy, they generally refrain from criticising the Chinese. In Iran, the focus is on the country's nuclear programme rather than on the students and other dissidents who are persecuted by religious zealots.

Member governments of the Association of Southeast Asian Nations are reluctant to take tough measures against the military despots in Myanmar. British criticism of Zimbabwe's President Robert Mugabe is not backed up by international action. In most Western democracies, there have been failures in upholding human rights.

In the United States, Attorney General John Ashcroft appears to be a neo-conservative authoritarian who will go to the limits allowed by the US Constitution as interpreted by the Supreme Court. The legal rights of citizens seem threatened by some of the measures that he has introduced. Internees at Guantanamo Bay, Cuba, have been denied access to lawyers and fair trials. Their conditions of imprisonment appear to be highly restrictive.

The revelation that among the internees there are some adolescents has surprised and appalled many observers. In Iraq it seems clear that US forces have not done enough to restore law and order and the military often seem to have been trigger-happy.

In Britain, Home Secretary David Blunkett has been criticised for his attempt to influence the judges and to use Draconian measures against refugees. British prisons are overcrowded and rehabilitation efforts are

inadequate. In the rest of Europe, the police have a reputation for being highhanded and redress against the police is difficult to obtain. Italian Prime Minister Silvio Berlusconi has persuaded Parliament that he should be exempt from trial on serious charges while in office. French President Jacques Chirac managed to brush aside complaints about improper behaviour while he was mayor of Paris.

The maintenance of the death penalty in the US and in Japan is a real cause for concern among human rights campaigners. The death penalty has been abolished in European Union countries. There is no evidence that it deters murderers, and there are real dangers that on occasion people later proved to have been innocent have been executed.

The establishment of the International Criminal Court should help to ensure that future despotic leaders are more circumspect in their behaviour, but the US refusal to support the court and their efforts to ensure that their nationals will not be subject to prosecution in the court has undermined the value and prestige of the court.

Amnesty International is not popular with authoritarian politicians who may have guilty consciences. But it and other organisations supporting the victims of torture and the reform of prison conditions have an important role in reminding all of us that human rights are being constantly impinged even in purportedly democratic countries. Their reports deserve to be taken seriously and given due publicity. We must also ensure that our politicians are called to account and forced to take remedial measures where necessary and appropriate.

Japanese politicians should take early steps to reform the Japanese prison system, which is a shameful blot on Japan's reputation as an upholder of human rights. Japanese prisons should be open to independent inspection.

Hugh Cortazzi writes for The Japan Times.

LAW *opinion*

Ghost of supersession haunts the Supreme Court

M.MOAZZAM HUSAIN

ON the 12th instant Mr. Justice M.M.Ruhul Amin is appointed Judge of the Appellate Division of the Supreme Court of Bangladesh superceding Mr. Justice Syed Amirul Islam, the most senior Judge of the High Court Division. The appointment sparked off popular discontent at the bar and beyond. Supreme Court Bar Association abstained from giving traditional felicitations to the new appointee and boycotted the Appellate Division. Later, on the 14th instant Supreme Court Bar Association sat in an emergency meeting massively attended by lawyers regardless of their political affiliations.

This unity of lawyers is a new development in many years prompted by their shared concern and continuous struggle for independence of judiciary, rule of law and democracy and their firm stand against executive interference in the judiciary. In the past there were supersessions and non-confirmations amid protests and althrough lawyers viewed upon it as an interference into judicial independence. The present Chief Justice himself is a victim of supersession during Awami League Government and no one knows better than him the impact of unbridled executive power in selection, appointment and confirmation of judges of the supreme court in the independence of judiciary.

There is no specific guideline or criteria provided by any law governing this area so crucial for the judicial independence. Article 95 of the Constitution says, inter alia-(a) A person shall not be qualified for appointment as a judge unless he is a citizen of Bangladesh and-(b) has, for less than ten years, been an advocate of the Supreme Court; or(c) has for not less than ten years , held judicial office in the territory of Bangladesh; or (d)has such other qualifications as may be prescribed by law for appointment as a judge of the Supreme Court. No such law as is contemplated by the Constitution has as yet been enacted. The constitutional binding for the Government to consult with the Chief Justice in matters of appointment of judges of the Supreme Court is deleted by the 4th Amendment of the Constitution. Virtually selection, appointment and confirmation of judges remains by and large to be an Executive discretion.

Any person who has been an advocate of the Supreme Court for 10 years may be appointed as a judge irrespective of his eligibility for the post, or any person whose name continues in the Bar Association Register as an advocate for ten years having no standing practice as contemplated by the Constitution may be appointed as a Judge. So is the case with the persons coming from subordinate judiciary as there is no guidelines for selection. Separation of judiciary, if could be effected, would have gone a long way in resolving the issue.

Directives given by the Supreme Court in Masdar Hossain's case for effecting separation of judiciary followed by the Government's pledges to take necessary steps accordingly kindled some hope in the mind of the legal community and the conscious section of citizens. No one possibly doubted the intention of the Government so far in effecting the separation of judiciary notwithstanding that over and over again it took time from the Supreme Court for the purpose. More than thirty one years have elapsed since our independence but no effective steps towards fulfillment of this basic constitutional mandate was seen to have been taken by any of the governments.

Skepticism began to lurk into the mind of the people about the commitment of the Governments. The situation is further worsened by a recent comment of the Law Minister which essentially meant that separation of judiciary is exigent upon so many factors and more 6/7 years time will be required for it to take shape. In the background came the supersession in a gesture of defiance to the growing concern of the lawyers and of the people struggling for independence of judiciary.

Lawyers in their meeting emphasised on the crucial role of the Chief Justice in this critical juncture and called upon him to rise to the occasion for ensuring judicial independence. They also urged upon him not to send more names of the High Court Judges than is required for filling the vacancy in the Appellate Division. The practice of sending two names against one vacant post of the Appellate Division or four names against two vacant posts therein gives the Government a handle for arbitrary choice.


PHOTO: STAR

It is understandable that the absence of Constitutional authority of the Chief Justice to be consulted and laws providing specific criteria and guidelines in matters of appointment of the judges has made his position precarious and vulnerable and consultation with him by the Government has turned into an empty formality. Government may or may not go by the recommendations made by the Chief Justice in matters of appointment and confirmation of judges nor is there any transparency in the process. It is the Constitutional convention that leads the Governments to revert to the Chief Justice for consultation. But question of its effectiveness remains always questionable. Nevertheless the Chief Justice remains to be repository of our hope and confidence in matters of defending judicial independence. To say otherwise is to allow the Government to go escort-free to the detriment of the independence of judiciary.

The ongoing movement of the lawyers for separation of judiciary ignited by the recent incident of supersession is a sequel of their long struggle for judicial independence short of which rule of law, democracy and for that matter our national development will lapse into misnomer. Both Mr. Justice MM Ruhul Amin and Mr Justice Syed Amirul Islam are most eminent judges, exceedingly competent to be appointed as judges of the Appellate Division. Not that appointment of Mr. justice MM Ruhul Amin as judge of the Appellate Division has diminished the otherwise sublime position of the apex court but that supersession of Mr. Justice Syed Amirul Islam, the senior most judge tends to disturb the even tempo of the judges' mind and undermines the institutional sovereignty of judiciary. Over and above the embarrassment of the superseding judges in the peculiar circumstances can not be overlooked.

We all are sailing in the same boat. Neither the politicians who are running the Government nor anyone else outside the Government can afford to see the democratic institutions being destroyed. Therefore, the sooner the impasse is resolved the better. As I understand for independence of judiciary to be ensured, there is no alternative of restoration of the consultation clause of the Constitution, enactment of law providing specific criteria and guidelines for appointment of judges of the Supreme Court and implementation of separation of judiciary and if those are done upon a consensus of the judges of the Supreme Court, senior members of the Bar and the Government, would be the best.

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LAW *news*

US links military aid with war crimes exemptions

The United States will suspend military aid to about 35 countries that didn't exempt U.S. troops from prosecution before the new UN international war crimes tribunal. Among the countries cut off is Colombia, the main supplier of cocaine and heroin to the United States, where some assistance for fighting drugs and terrorists could be in jeopardy.

White House spokesman Ari Fleischer said the military aid cut-offs are "a reflection of the United States' priorities to protect" its troops. "These are the people who are able to deliver assistance to the various states around the world and if delivering aid to those states endangers America's servicemen and servicewomen, the president's first priority is with the servicemen and servicewomen," he said. Overall, about $48 million in aid will be blocked, said State Department spokesman Richard Boucher.

Congress set a July 1 deadline for most recipients of U.S. military aid to exempt U.S soldiers and other personnel from prosecution before the new UN International Criminal Court. President George W. Bush's administration fears the court could leave U.S. personnel subject to false, politically motivated prosecutions.

Created under a 1998 treaty, the court was established to prosecute genocide, war crimes and crimes against humanity cases against nationals of countries unwilling or unable to try the cases themselves.

Former president Bill Clinton's administration signed the treaty but the Bush administration nullified the signature and has sought a permanent exemption from prosecutions. Those efforts have been blocked by the European Union, though the UN Security Council last year gave the United States a second one-year exemption.

U.S. diplomats have pressed allies to approve bilateral agreements exempting Americans. Advocates of the court have accused the U.S. administration of trying to bully weaker countries and undermining an important advance in human rights.

Under the law approved by Congress last year, at least 27 foreign states were exempted from the military-aid cut-off, including the 18 other members of the NATO military alliance and the two largest recipients of military aid, Israel and Egypt. Bush also could exempt countries if he deemed it in the U.S. national interest.

The Bush administration did not identify the countries whose aid will be suspended. Boucher said the list would be provided first to Congress. The U.S. State Department has identified 44 of the more than 50 countries that have signed agreements to exempt Americans from prosecution. Not all of the 44 countries were military aid recipients or are participating in the court.

The White House identified six countries that received full waivers: Gabon, Gambia, Mongolia, Senegal, Sierra Leone and Tajikistan. Sixteen more received waivers until November 1 or January 1 to give them time to complete their ratification processes.

Mongolia, Senegal, Botswana and Nigeria received waivers though the U.S. State Department had not identified them as signing exemption agreements. The State Department did not say why they were included.

The aid suspensions are not likely to have a dramatic effect right away. Not all military assistance programs are affected. Also, with only three months remaining in the U.S. government fiscal year, most of the money budgeted for 2004 has already been spent.