



GOVERNANCE update



National Human Rights Commission sees the light of the day

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THIS year before the Human Rights Day the council of advisers approved the National Human Rights Commission Ordinance 2007. The cabinet approved the ordinance to set up the long-awaited National Human Rights Commission (NHRC), which will work like a national human rights watchdog. This NHRC was in the top priority of the successive political governments for long to ensure that any rights violator is brought to justice. This NHRC can investigate human rights violations but is empowered to only settle issues or refer them to the court. This ordinance was passed when the state of emergency was going on.

Composition of the NHRC
The selection committee will be headed by an appellate division justice, to be nominated by the chief justice, and will include the cabinet secretary, attorney general, comptroller and auditor general, chairman of the public service commission, and law secretary as members.

The chairman and members of the human rights commission will be appointed for three-year tenures and for no more than two consecutive terms, according to the proposal. Their salaries will be between 50 and 72.

The chairman must have outstanding contributions made in protection of human rights, welfare of the humanity, and social work. One of the members will be either a serving or a retired judge of the Appellate Division of the Supreme Court.

Function of the NHRC
The functions of the commission will include investigating any allegation of human rights violation received from any individual or quarter, or the commission itself can initiate investigation into any incident of rights

violations. The commission would be empowered to investigate particular human rights violation allegations brought forward by citizens or discovered through their own monitoring. If a human rights violation has been proved, the NHRC can either settle the matter or pass it on to the court or relevant authorities.

Background

In late 1994 the process of establishing this institution was initiated. 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. Later BNP-led alliance government on December 10, 2001 formed the committee headed by the law minister to examine the prospect of setting up of the commission. They proposed to enact a comprehensive law on the protection of human rights instead of legislating a bill for instituting a National Human Rights Commission only. After a series of meetings on January 23, 2003 committee finalised the draft and sent it to the Cabinet Division. Since then, the bill has not been placed before the cabinet meeting.

In an international conference in 2004, the former law minister informed that difference of opinion among the ministers was delaying the constitution of the institution. In the previous tenure of Awami League, their law minister was also promised to establish the institution during their tenure.

The draft bill stipulated a five-member commission led by a retired judge of the Appellate Division of the Supreme Court, which must have one woman member. The commission is supposed to investigate any human rights violation and recommend actions. It could probe any such incidents by the defence forces.

The human rights commission was also a demand of the international donors who thought good governance critically depends on the rule of law. The process has been continuing for last 12 years. May be the first country in the world that is taking this long time to establish an effective institution. The non-governmental organisations and the civil society who were critical about the progress of this institution are also keeping their views confined in seminars and meetings with the international organisations. After coming to office on January 11, 2007, the present council of advisers pledged to establish the commission to honour and institute human rights in the country. Foreign ministry placed a draft to this effect before the council of advisers on September 8. The council in principle approved the draft and asked a seven-member committee headed by the law secretary to finalise the draft proposal and submit it in the shortest possible time for its consideration. The law, justice and parliamentary affairs ministry accordingly submitted the revised proposal, which the council of advisers approved on December 09, 2007.

The role of national governments in the realisation of human rights is particularly important. Human rights involve relationships among individuals, and between individuals and the State. Therefore, the practical task of protecting and promoting human rights is primarily a national one, for which each State must be responsible. At the national level, rights can be best protected through adequate legislation, an independent judiciary, the enactment and enforcement of individual safeguards and remedies, and the establishment of democratic institutions. In addition, the most effective education and information campaigns are likely to be those which are designed and carried out at the national or local level and which take the local cultural and traditional contexts into account.

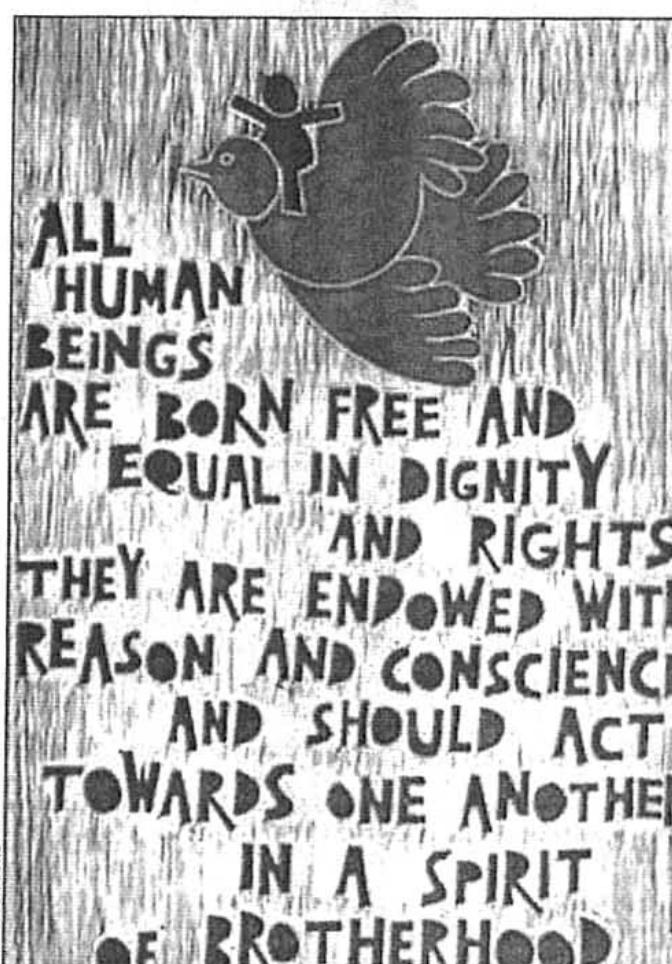
UN approach
The establishment of a National Human Rights Commission consistent with the Paris Principles relating to the status of National Human Rights Institutions for the promotion and protection of human rights could have served as an effective mechanism to address gross and systematic human rights violations. The concept of national human rights commission/institution is, however, very more specific referring as it does to a body whose functions are specifically defined in terms of promotion and protection of human rights. The national institutions considered here are all administrative in nature--in the

sense that they are neither judicial nor law making. As a rule, these institutions have on-going, advisory authority in respect of human rights at the national and/or international level. Their purposes are pursued either in a general way, through opinions and recommendations, or through the consideration and resolution of complaints submitted by individuals or groups.

From the experience of the various national human rights commissions United Nations realised that no single model of national institution can, or should, be recommended as the appropriate mechanism for all countries to fulfil their international human rights obligations. Although each nation can benefit from the experience of others, national institutions must be developed taking into account local, cultural and human rights orientation of that region and legal traditions as well as existing political organisation.

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Concluding remark
National human rights commission will be the uppermost domes-



tic mechanism and can contribute a remarkable role in UN mechanism. We hope this long waited commission can raise voice against the human rights violations and, force the state to be more accountable and comply with the international norms and standards. This establishing a NHRC is not only a moment for celebration and self-

congratulation but is also a very crucial time with challenge--the challenge of making rights real, of closing the gap between the promise of the Universal Declaration and the performance of government and other actors to uphold human rights in Bangladesh.

-From Law Desk.

HUMAN RIGHTS monitor



Forced marriage, woman oppression and bringing the foreigner to justice

OLI MD. ABDULLAH CHOWDHURY

THERE are reported incidents of forced marriage each year though all incidents did not get attention of media. Consents of both bride and groom are really important though the right of a vulnerable person to be heard is often violated. There is a general notion that potential bride coming from abroad becomes victim of forced marriage. However, people with disabilities become victim of forced marriage and perpetrators are often their family members.

People with disabilities have right to be heard like other human beings. Often, their rights are violated and members of their families are frequently the first violators. Recently, there is an alleged case of oppression against women in the court of Sylhet and a person was arrested in this regard. The man charged with the offence is a British citizen and he used his disabled son as a tool. The perpetrator not only exploited his disabled son in the name of marriage, but also oppressed women. The incident was reported in The Daily Prothom Alo (Saturday November 19, 2006) and also in other national and local newspapers.

The accused person subsequently arranged marriage of three women with his son suffering from mental and physical disabilities. After deceiving those women and their families in the name of marriage, the perpetrator did not resist himself, he harassed and maltreated women married to his son. With money and power, alleged Md. Abdul Karim evaded justice until he was arrested by police at Dhaka Airport Station (GD No. 597; 15/10/07) on October 15, 2007. When the accused was taken before Chief Metropolitan Magistrate, it was revealed that there were already two arrest warrants issued against him.

A good number of people hailing from different parts of Sylhet division are settled in UK. Parents often bring their children for the purpose of marriage in Bangladesh as marriages are arranged by families with the consent of both parties. However, there are reported incidents of



manipulation by the parents. Incidents were recorded where relatives tried to force potential bride or groom to marry person of their choice. There are perpetrators among those who used person with disabilities as their tools even.

There is a section in Foreign and Commonwealth Office (FCO) of British government to deal with the issues of forced marriage. "A forced marriage is one where people are coerced into a marriage against their will and under duress and duress

includes both physical and emotional pressure" as it is defined in the official website of FCO. However, their services are exclusively for British citizens. When there is a report of possible forced marriage in case of British citizens, officers from FCO intervened and helped potential bride or groom in establishing rights.

However, there are little remedies when victim is a citizen of Bangladesh. Where FCO even categorise the victim if necessary, there is hardly any support from Bangladeshi people when one

becomes victim of forced marriage. If full consent were sought, many occurrences of forced marriage could have been prevented. Consent of women is the right described in Article 16 of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), "State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage and (b) The same right to freely choose a spouse and to enter into marriage only with their free and full consent". State parties have obligation under this convention to ensure full consent during marriage and both Bangladesh and UK are state parties under this convention.

Furthermore, it has been stated in Article 16 (1) of Universal Declaration of Human Rights (UDHR), "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution". Full consent of parties has been echoed later in Article 16(2), "Marriage shall be entered into only with the free and full consent of the intending spouses". Successive human rights conventions though pin down the need of full consent from women, reality is different as deception is widely practiced by perpetrators in case of marriage.

Even though groom suffers from multiple disabilities in the mentioned case, parents were lured by the accused. According to the charge sheet framed by the police officers of Baniabazar Thana, Sylhet, the alleged person arranged a marriage of his son with the sister of complainant. Knowing the fact that his son suffers from a number of disabilities, perpetrator hide the fact to the bride and her family and also promised to take the bride to UK. When the bride realized the condition of his son, the alleged perpetrator attempted to rape her. The wedding took place on November 14, 2006 and officials of RAB-9 rescued

her.

Police officers in Baniabazar, Sylhet had launched an investigation against the perpetrator and found him guilty. Police framed two separate charge sheets against him and the number of charge sheets is respectively 26 and 27 under Baniabazar Thana of Sylhet. He was accused under Section 10/30 of Prevention of Oppression against Women and Children 2000 in the charge sheet. He was also accused under Section 9(1)/23 in a separate charge sheet.

Again, human rights groups widely hailed the piece of law when Prevention of Oppression against Women and Children 2000 came into force. "Whoever commits rape with a woman or a child shall be punished with rigorous imprisonment for life and with fine" is stated in Section 9(1) of Prevention of Oppression against Women and Children Act. Punishment has been further illustrated in Section 10 of the said Act. "Whoever to satisfy his sexual urge illegally, touches the sexual organ or other organ of a woman or a child with any organ of his body or with any substance, his act shall be said to be sexual oppression and he shall be punished with imprisonment for either description which may extend to ten years but not less than two years or rigorous imprisonment and also with fine" is stated in Section 10(1). In the case of assault or indecent gesture, the act elaborates the provision of punishment in Section 10(2) "Whoever, to satisfy his sexual urge illegally, assaults a woman sexually or makes any indecent gesture, his act shall be

deemed to be sexual oppression and he shall be punished with imprisonment for either description which may extend to seven years but not less than two years of rigorous imprisonment and also with fine". Still, accused persons on a number of occasions escaped justice where there were lack of sufficient evidence against perpetrators.

Not only these three women were victims of abuse, there was a specific accusation of violating the rights of the child against the person. The perpetrator even tormented little child when he forced his daughter to divorce her husband. Although the victim filed a General Diary (GD No. 829) with Sylhet Kotowali and later filed a case (Case No. 49 on July 18, 2006) under Section 100 of Bangladesh Penal Code, alleged Abdul Karim managed to escape justice on that occasion too.

When Bangladesh submitted 5th periodic report, the CEDAW Committee called on the State party to ensure the effective implementation of the existing legislation to combat all forms of violence against women and children.

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All citizens are equal before law and are entitled to equal protection of law" is stated in Article 27 of the Constitution of the People's Republic of Bangladesh and the constitution is the source of all laws prevailing in Bangladesh. Violators of the rights of the women often escape justice as the oppressed are often from marginalized communities. Since judiciary has been separated from executive, hope for oppressed lies with the court.

The writer is a human rights activist.

LAW opinion



Balance to powers between president and prime minister Case of Pakistan

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Constitution (Seventeenth Amendment) Act, 2003 of the Constitution of Pakistan is seen as landmark formula for striking balance of powers between President and Prime Minister.

It is a record fact that Pakistan began its journey as an independent dominion with the British constitutional monarch as head of state represented by a Governor General of Pakistan until its Constituent Assembly, after long nine years of exercises, adopted a parliamentary democracy with a President as head of state in the constitution of 1956; this constitution was not a reflection or copy of Westminster model, rather a combination of a number of models including those of South Africa, USA, Canada. President was made a ceremonial head of state largely in line with the concept of British constitutional monarch and his power to dismiss the Prime Minister followed by the dissolution of Parliament (National Assembly in Pakistan context) was also made subject to the advice of Prime Minister.

But before its official putting into operation in 1958 martial law was declared and General Ayub Khan, then Chief of the Army, took over. A new constitution was framed in 1962 mainly modeled on that of the United States of America, and continued until the institution of a parliamentary system in 1973 under the direct supervision of ZA Bhutto, the person who romantically coined the concept of 'two majority party' in the context of post 1970 elections to National and Provincial Assemblies of Pakistan that also played a role in the bifurcation of Pakistan.

ZA Bhutto, then President of Pakistan, won the plurality in the Parliament and became Prime Minister of truncated Pakistan. This constitution did not create a balance of powers between President and Prime Minister and it was again put in abeyance by the 3rd martial law by the Army Chief General Zia-ul-Haq in 1977, and continued until his death in a plane crash in 1988. Election to the National Assembly, as promised by Zia-ul-Haq in 1985, after the referendum held in April 1985, took place in October, 1985 and Md. Junejo became Prime Minister and then Pakistan National Assembly, to give validation to the functions of the martial law regime of General Zia-ul-Haq, followed by the dissolution of Parliament (National Assembly in Pakistan context) was also made subject to the advice of Prime Minister.

a. It formalized the President's order No 14 of 1985 which revived the constitution of 1973 that contained a parliamentary system.

b. It struck a so-called balance of powers between President and Prime Minister by adding, under the head 'reserve power', a new sub-clause (b) to clause 2 of Article 58 in the constitution as follows:

Notwithstanding anything contained in clause (2) of Article 48, the President may also dissolve the National Assembly in his discretion where, in his opinion, a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the constitution and an appeal to the electorate is necessary.

With this provision, administration took a shape of semi-presidential system.

It is really interesting to see that Junejo government became the first victim of the article 58(2)(b) because, on charges of mal-administration, corruption etc, President Zia-ul-Haq dismissed him followed by the dissolution of National Assembly in 1987. Golam Ishaq Khan, Chairman of the Senate, after the sudden death of Zia-ul-Haq, became President and elections to the PNA were, as scheduled during Zia's time, held in 1988. Benazir Bhutto, leader of the Pakistan People's Party and daughter of ZA Bhutto, became Prime Minister who also met with the same fate of Junejo of being dismissed within two years in 1990. Benazir was defeated in the election of 1990 and Nawaz Sharif became Prime Minister and met with the dismissal followed by dissolution of Parliament in 1993. Benazir Bhutto again became Prime Minister after elections in 1993 and she was also dismissed in 1996. Then in the elections of 1997 Nawaz Sharif became Prime Minister for a second time. Then, in 1997, National Assembly passed the Constitution (Thirteenth Amendment) Act, 1997 that also omitted sub-clause (b) in clause 2 in Article 58.

On October 12, 1999 fourth martial law, overthrowing the Nawaz Sharif government, was declared by the Army Chief General Musharraf putting the constitution in abeyance. On June 20, 2001, he took the title of President of Pakistan. He was the chief executive from October 12, 1999 to November 23, 2002 (de facto till 14 October, 1999 and de jure till from October 14, 1999). Elections were held on October 10, 2002 leading to the return of the position of Prime Minister.

In 2003, the newly elected National Assembly, validating the Martial law regime of General Musharraf, passed the Constitution (Seventeenth Amendment) Act, 2003. This time again giving a weight to the office of the President sub-clause (b) of clause 2 in Article 58 was revived in an amended form with a check on the use of President's 'Reserve power' or discretion to dismiss the Prime Minister (also calling for a new election) subjecting it to the Supreme Court approval or veto within thirteen days of the dismissal. In the language of the constitution it reads as follows:

The President in case of dissolution of the National Assembly under paragraph (b) of clause (2) shall, within fifteen days of the dissolution, refer the matter to the Supreme Court and the Supreme Court shall decide the reference within thirty days whose decision shall be final.

In fact, the 17th amendment can be considered as an accommodative democratic formula for creating a balance of power not between President and Prime Minister with the Supreme Court of Pakistan as the final watchdog, it also creates a balance among the three branches of the government. The contents of the 17th amendment to the Constitution of Pakistan may efficaciously be taken into account by our politicians, lawmakers, constitutional experts, political scientists and thinkers and others to strengthen the office of the President of the People's Republic of Bangladesh.

Elections to the PNA and PAs are scheduled to be held on 1 January, 2008 under the revised amended Constitution of 1973 that also contains the Constitution (Seventeenth Amendment) Act, 2003. Now it is a matter to be seen in future that how the lawmakers in the ninth Parliament of Pakistan view this amendment or whether they devise a formula to replace it.