

DHAKA TUESDAY FEBRUARY 24, 2009

NATIONAL HUMAN RIGHTS COMMISSION

From good intention to good action



DR. ABDULLAH AL FARUQUE

THE National Human Rights Commission (NHRC) of Bangladesh - which started its journey on 1st December, 2008 came into existence through National Human Rights Commission Ordinance, 2007 - is a long awaited but bold step in the protection and promotion of human rights in Bangladesh. The establishment of the Commission has created great expectations among the people that the Commission will work towards the establishment of a society that respects human dignity, social justice and equal opportunity as enshrined in the Constitution of Bangladesh. The Commission is the outcome of a protracted movement of the civil society, and the government of Bangladesh's commitment to the international human rights' treaties which it has ratified or acceded to. Before going into detailed discussion on the NHRC, it will be pertinent to reflect on the context of the formation and the guiding principles of such an institution in a broader perspective.

Contexts of National Human Rights Commission

Traditionally, a strong and independent court system is regarded as an ideal mechanism for the protection of human rights. But the increasingly newer forms and types of human rights violations and the ever expanding human rights law, the court system is often not in a position to deal with human rights issues. In particular, establishment of NHRC is necessary for the following reasons:

- Victims of human rights violations are reluctant to institute a case before the court;

- Complex procedures and evidentiary rules of proof inhibit the access to the courts;

Traditionally, a strong and independent court system is regarded as an ideal mechanism for the protection of human rights. But the increasingly newer forms and types of human rights violations and the ever expanding human rights law, the court system is often not in a position to deal with human rights issues.

- Promotional function is usually better carried out through national institution rather than courts;

- Litigation is expensive which many victims cannot afford. Compared to the courts, there are few formalities and very low financial costs for pursuing complaints before the Commission.

- Individual legal actions, even where successfully undertaken, might be insufficient to change widespread human rights problems.

The functions of a human rights commission generally include some or all of the following: investigations of individual complaints of human rights violations, advising and assisting government in the formulation of policy and legislation on human rights, encourage ratification and implementation of international human rights treaties, conducting research, undertaking human rights education to sensitize public officials and the public at large. Some national commissions have the power to review legislation in any area affecting human rights, rather than being confined to review of, or recommendations concerning, specific human rights legislation. While terms of reference vary markedly from one commission to another, there is discernible trend suggesting that national human rights institutions do not have legally binding authority or

enforcement mechanism to rectify injustices or violations and their authority is recommendatory in nature.

Pre-conditions for effectiveness of the Commission

Establishment of Commission may reflect good intention, but its' good action depends on number of contributory factors. Given the vulnerability and weakness, the NHRC should be given sufficient safeguards within legal framework. The Paris Principles outlines six effectiveness factors generally applicable to all National Human Rights Institutions: independence, defined jurisdiction and adequate powers, accessibility, cooperation, operational efficiency and accountability. But there are other factors that contribute to the effectiveness of the NHRC: the democratic governance structure of the state; behaviour of the government in not politicising the institution and in having a receptive attitude towards its activities; and the credibility of the office in the eye of the populace. While it should be borne in mind that NHRC should be suited for indigenous social and political conditions, it must adhere to these universal criteria of effectiveness.

Independence

Sometimes institutions are tailor-

made to fulfill specific political purposes and provide a mere cloak of legitimacy to the government and play a perfunctory role. In this regard, independence is one of the vital issues for the effective functioning of national institutions. It denotes that institutions should enjoy autonomy from the government. Independence includes legal, structural and fiscal autonomy. Legally, it should be set up by a legislation or constitution so that its existence itself is not subject to the arbitrary exercise of power by any authority, including government, political party or any private entity. Structural autonomy means that the government should not interfere or should have only minimum degree of control in the process of appointment, determining terms and conditions of the personnel, process of removal and objectivity in selection criteria. For this purpose, legislation may itself spell out these criteria and procedures. Independence of the institution is also enhanced by giving the members security of tenure and independent investigation power and reporting process.

In developing countries, failure of the national institutions are generally attributed to four 'C's e.g. collusion, corruption, clientism and caprice. To avoid these evils, appointment pro-

cess should be transparent and non-partisan so that it may not suffer from favouritism and nepotism. It should also have freedom to draw its working procedure to enable it carry out its objectives without interference from any government agency. The fiscal autonomy indicates formation of separate and secured fund of the institution through budgetary allocation and absence of executive control in the operation of the fund. The fund should be adequate and continuing. To avoid conflict of interest, the fund should be independent and should not be linked to the budget of a government department or ministry. The legislation should clearly indicate source and nature of funding.

Well-defined and broader jurisdiction and powers

A NHRC should be given broader jurisdiction and powers that are sufficiently strong to enable it to accomplish its mandate effectively. It is important that the jurisdiction of the institution be defined precisely to avoid jurisdictional conflicts with other state institutions. The jurisdiction of the office should be made as wide as possible to include the police, security forces, defense forces, prisons and other detention centres, which are often the sources of human rights problems and need civilian-oversight mechanisms.

The institution should also be given adequate powers to conduct investigation. This is important to enable cases of human rights to be addressed.

Accountability

Establishment of an institution is not an end in itself but means to attain specific goals enjoined by the legislation.

CONTINUED ON PAGE 45