



HUMAN RIGHTS *advocacy*

Expectation from National Human Rights Commission

DR. UTTAM KUMAR DAS

OVER the last week two developments related to the National Human Rights Commission (NHRC) have been headlined in news reports. The President of the People's Republic of Bangladesh has appointed a Chairman and six members to the NHRC on 22 June. It is likely the NHRC is to get a long waited and full-fledged body. This is hopefully to contribute full functioning of the newly established apex body in charge of protection and promotion of human rights in the country.

Just a day before the appointment, the outgoing Chairman of the NHRC, Justice Amirul Kabir Chowdhury disclosed (on 21 June) that most of the complaints (total 147) the agency has received during the last one year are against the law enforcers. The veteran Judge urged for proper training on human rights for the member of the law enforcement agencies. (Source: The Daily Star, June 22, 2010). The issue needs serious attention of all concerned.

Let me start with focusing on the newly appointed Chairman and Members to the NHRC. The Chairman, Dr. Mizanur Rahman who has been a prominent Professor of Law at the University of Dhaka is a well-known personality as well in the arena of human rights education in Bangladesh and beyond. He has been a proponent of "justice for the poor" through expanding human rights education and activism in Bangladesh.

Professor Rahman has established a landmark in human rights education through organizing a two-week annual summer school under the auspices of the Empowerment through Law of the Common People (ELCOP). This has been an innovative and effective

initiative to introduce human rights as an integral part of legal education in the absent of a formal opportunity to do so. The course has drawn interest from meritorious students from the SAARC region and beyond. I had the opportunity to be part of the initiative over the years [while serving with the United Nations High Commissioner for Refugees (UNHCR) and International Organization for Migration (IOM)].

During the last one year, I had been affiliated as a Hubert H. Humphrey Fellow (Fulbright Scholar) with the Human Rights Center at the University of Minnesota Law School in the United States. Among other activities, I have closely monitored the activities of an academic institute (i.e. University of Minnesota) and a state organ (Minnesota Department of Human Rights-MDHR) in promoting and protecting human rights.

The MDHR introduces it as a "...neutral state agency that investigates charges of illegal discrimination, ensures that businesses seeking state contracts are in compliance with equal opportunity requirements, and strives to eliminate discrimination by educating Minnesotans about their rights and responsibilities under the state Human Rights Act." Its values are: quality, timeliness, efficiency service, fairness and respect. So, the implementation mechanism of human rights is through educating people about their rights and responsibilities among others.

Then, the question of human rights education comes in. In this regard, let me look into the role of the University of Minnesota. The University's Law School has an International Human Rights Law concentration among others in courses (i.e. LL.M. and J.D.). Around five clinics (out of 17) focus



on human rights issues. The Human Rights Center at the Law School has been pioneering in running online Human Rights Library, programs incorporating human rights in the school curriculum, and training teachers, practitioners, and activists among others.

Apart from that, the College of Liberal Arts has a comprehensive Human Rights Program for undergraduate and graduate students. It has been directed by Professor Barbara A. Frey who has been a pioneer in human rights activism in the U.S. and beyond, and a former UN Rapporteur. [I had the opportunity to be taught a course on Human Rights Advocacy by

her]. Throughout my academic and professional experience in the area of human rights, I got a simple understanding that it (human rights) is a matter of culture and practice. It starts from individual (including myself). One could orient him or herself on the concept of human rights through education and training. Then, the point of practice comes in.

It is hardly possible to protect, promote and implement human rights unless we start to practice it at our individual level. Political stunts hardly work. That is why the initiation of human rights education Bangladesh should be the priority. This is not a subject for law students only. It (human rights) has

various dimensions alongside the legal one.

It should be for mass education. That means human rights should be incorporated in the curriculum starting from the primary and secondary levels. There should be opportunity for advanced studies and research on human rights. Thus, we could build up a culture of human rights in our future generations; will have professionals as well. This would contribute to establishing rule of law, accountability and strengthening the democratic processes and institutions.

However, unfortunately, the traditional donor agencies or development partners hardly pay attention to the institutional educational aspects of human rights in Bangladesh. So, far there is no single institution in the country which could claim any significant initiative or contribution in human rights education, research and practice. Forget about centre of excellence.

The Law Schools are also likely ignorant and reluctant in this regard. Without a better human rights education, we could not expect pro-human rights lawyers and judges. This is a hard reality. However, the good thing is that the newly appointed Chairman of NHRC, Professor Mizanur Rahman has been an active academic himself. He has already acknowledged (in an interview with BBC) the necessity of expanding opportunity for human rights education and training in the country. Now, how it comes to real implementation that is a point. Prominent Human Rights Advocate, Adilur Rahman Khan (in an interview again with BBC) highlighted some issues as a matter of priority for the NHRC. The alleged extra-judicial killings by the members of the law enforcement agencies topped the list.

This extra-judicial killing is against the constitutional provision of the country and obligations under international human rights treaties as well. This is not a crime against the individuals or their family only; it is also a serious and gross human rights violations. A pro-active initiative of the NHRC to knock the government to stop such practices is badly needed. Mere so-called investigation would not suffice unless it is independent, professional, accountable, and finally there is no exemplary punishment for the responsible one and compensation for victims' families finally.

Recently, I have interviewed Ms. Carolyn Abong, the Head of the Research, Policy and Legal Affairs Unit of Kenyan National Human Rights Commission. She had been a Humphrey Fellow along with me. According to her, the National Human Rights Commission establishes a legal-foundation for protection and promotion of human rights in a given country. Though the Human Rights Act in Bangladesh has certain limitations, however, there are lots to gain if it is implemented effectively. The good thing is that the Act has endorsed those as human rights which are guaranteed in Part III of the Constitution and those are also guaranteed in the international treaties ratified by Bangladesh and subsequently adopted through domestic legislation.

The NHRC in Bangladesh has jurisdiction over receiving complaints and investigations; visiting and monitoring of human rights situations in hospitals, jails, detention and correctional centres; reviewing and studying of national and international laws, and putting forward recommendations; researching human rights, and organizing related professional and institutional trainings; pub-

lishing and publicising on human rights; coordinating human rights activities by public and private organizations; organizing related conferences and symposiums, and providing legal aid.

Comparing the mandate of the NHRC in Bangladesh with that of Kenya (which is internationally considered as a model institution), I find that ours is wide and expanded. It is comparable with that of India (there is similarity as well). The NHRC in Bangladesh has the mandate even to investigate the matter of an extra-judicial killing [Section 11 (i) (a) of the Human Rights Act]. However, it might not be in a position right now to do so with regard to its logistics and technical capacities. That is why it is the responsibility of the government to ensure necessary support to the NHRC so that it could perform full-fledged. Respective donor agencies, non-governmental organizations, civil society and professional groups and media among others could joint hand and play an pro-active role so that the NHRC could work effectively in promoting and protecting human rights.

Going back to the Minnesota Department of Human Rights, it organizes an annual conference in early December to mark the adoption of the Universal Declaration of Human Rights. It showcases activities of various partnering public and private organizations alongside parallel seminars and workshops on various issues of human rights. [I have attended such a gala event this year on 4 December]. Our NHRC could also consider such events not only in the capital but also at districts levels. It could be over a period of time.

The writer is an Advocate in the Supreme Court of Bangladesh, a Hubert H. Humphrey Fellow (U.S.A., 2009-2010).

LAW *campaign*

WEB OF TERROR

Cyberstalking and the law

SHAHMUDDIN AHMED SIDDIKY

WHILE it is difficult to deny the massive impact the internet has had on our lives, the cyber world can be a frightening place. We live in an era where the web is a mirror of the real world, and consequently it contains electronic versions of real life problems. Cyberstalking, for instance, has become a major cause of concern globally. To make the situation worse, an alarming portion of internet usage remains unregulated by law.

Not many people are acquainted with the concept of cyberstalking. Even where they are, it is almost always the case that they do not appreciate its gravity. It is easy to be fooled into thinking that since it does not involve physical contact, it is not as serious as physical stalking. As the internet becomes an even more integral part of our personal and professional lives, stalkers

can take advantage of the ease of communications, the net's intrusive capabilities, as well as increased access to personal information. Moreover, the ease of use and non-confrontational, impersonal, and sometimes anonymous nature of internet communications encourage such acts all the more. Whereas a potential stalker may be unwilling or unable to confront a victim in person, he or she may have little hesitation sending harassing or threatening electronic communications to a victim, using some virtual alias as a shield. Finally, as with physical stalking, online harassment and threats can often develop in more serious behaviour, including physical violence.

Cyberstalking is a relatively new concept, and in Bangladesh, as in most parts of the world, the hand of law has yet to reach that far. It is thus not surprising that no specialised law exists in Bangladesh to this

effect. Nonetheless, the victim has, at his disposal, some remedies that can be obtained indirectly.

Tort law, through its remedy of injunctions (under the Code of Civil Procedure, 1908, for temporary injunctions and the Specific Relief Act, 1963, for other injunctions), could well be availed by the victim (either real-world or online) against a stalker. The apprehended damage must involve imminent danger of a substantial kind or injury that will be irreparable.

It is also possible to bring a civil action against the stalker. This allows the victim to sue him or her for any damage they have done for emotional harm, etc., and may entitle the victim to exemplary damages.

However, they are unlikely to be as effective in practice. Firstly, the sheer expenses involved could easily discourage litigation. Further, it is necessary to know the identity of the stalker to be able to institute the proceedings. This is a major problem since in most cyberstalking cases the stalker remains anonymous. In addition, the onus is on the victim of the stalking to lead evidence and make out a case without the aid of the law enforcement infrastructure for investigation. This would also be at a time when he/she is undergoing the harrowing experience of being stalked. This is more so in a case of cyberstalking where unless the victim is technologically aware he/she will not be in a position to make out a good case with sufficient evidence of harassment in the virtual world.

Under criminal law, proceedings can be brought under sections 323 and 325 of the Penal Code for voluntarily causing hurt or grievous hurt. Section 319 defines "hurt" as follows: "Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt". The crucial words here would be "disease" and "infirmity", since neither is qualified with the word "physical". Stalking incidents may only leave mental and psychological scars on the victim

without causing any sort of physical manifestation. Could these be brought under "causes... disease or infirmity"? This is a tricky question for the judiciary. It is important to bear in mind that judicial precedent in this area is almost non-existent. Also, one must remember that judges may be reluctant to tread so far on a path that has rarely been tread upon.

Alternatively, section 351 (which deals with "assault") of the Penal Code could be invoked. This is dependant on the definition of "criminal force" found in section 349 since it states, "Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault".

However, the real issue is that of defining the phrase "person present". Does this have to be physical presence? One would assume so considering that the victim must have seen the "gesture or preparation" as a result of which he/she is apprehensive of the application of criminal force. Thus, in the case of many stalking incidents such as obscene/blank phone calls as well as cyberstalking, this section would not apply directly, as it contemplates the presence of both the accused and the victim at the same place at the same time. The context does change a bit in the age of instantaneous communication of the telephone, the fax and the internet, and their potential misuse. The Penal Code was drafted in 1860. Does the meaning we attribute to the word "presence" then need some updating? Perhaps virtual presence should be brought within the definition?

In conclusion, the law has yet to develop in this field. In the meantime, we can hope that the current inadequacies would compel the lawmakers to take some steps in this direction.

The writer is a Barrister-at-Law.

LAW *news*

Rough justice, World Cup style

TICKET-scalpers, mini-skirted Dutch blondes, a man who stole a duvet cover on a freezing night and a British man who accidentally wandered into the England team's dressing room. These are among the defendants in South Africa's special network of World Cup courts a unique system of rapid-fire justice that is generating controversy and headlines around the world. Swift sentences of up to 15 years imprisonment, mostly to foreigners, have been handed down by the special World Cup courts. Some of the trials are as short as 20 minutes. The courts run for 15 hours a day, in two shifts, with some 260 prosecutors assigned to the 56 courts. The judicial experiment has ignited a furor of reaction. Some observers are touting them as an efficient solution to South Africa's notoriously high crime rate. Others warn that the system is much too harsh, arbitrary and tilted in favour of the corporate interests of FIFA, the governing body for world soccer.

In the most controversial case, two Dutch women will appear in court on June 22, 2010 on charges of "ambush marketing." They were arrested after 36 young blondes were spotted in the stands at a World Cup match, wearing the bright orange mini-dresses of a Dutch brewer, Bavaria. The brewer's logo was barely visible, but the women were accused of violating the monopoly of the official FIFA sponsors. They could face six months in prison.

In an equally bizarre case, the special courts have scheduled a trial on June 18, 2010 for a British fan who stumbled into the dressing room of the England soccer team while he was searching for a toilet. The fan, 32-year-old Pavlos Joseph, said a stadium steward had pointed him in the direction of a tunnel at Green Point stadium

when he was seeking a toilet after a goalless draw between England and Algeria on June 18, 2010 in Cape Town. After wandering around the tunnel, apparently breaching three separate security points without anyone challenging him, he opened a door and found himself in the England team's dressing room.

Most of the other cases at the special courts are linked to petty crime against World Cup fans. In a trial that took fewer than 20 minutes, for example, a South African man was hit with a five-year jail sentence for stealing a cellphone from an Argentine fan.

Others are worried that the special courts are ignoring the legal rights of the defendants. They ask how a fair trial can be held in 20 minutes, and how a defendant can be sentenced to prison only three days after the crime.

There was also criticism from the Foreign Minister of the Netherlands, who said it was "disproportionate" to arrest the two Dutch women and put them on trial for breaching the monopoly of a World Cup sponsor. Another issue is the cost. Most of the 1,500 officials at the special courts are sitting idle as they wait for cases to arrive. Only 25 cases have been heard by the courts so far, and one South African newspaper has estimated that each conviction is costing about \$240,000 in court costs.

While the special courts are handing down harsh prison sentences to some people, the World Cup security system in general has been dangerously lax. Many fans and journalists are entering the World Cup stadiums without anyone checking their tickets or bags. When security guards and stewards went on strike, they were replaced by police who seemed to have no training in how to check tickets or bags.

Source: UN Wire.

