



Bangladesh's NHRC holds B status.

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How independent and effective is the NHRC?

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The National Human Rights Commission completes a decade this year. Formed in order to investigate human rights violations and address discrimination in law, it is meant to be a state-funded but independent body. The upcoming selection of the NHRC will take place next month, making this an opportune time to look into how the commission operates and who it is made up of.

The National Human Rights Commission Act, 2009 states that the commission should be a statutory independent body. Yet, in many aspects, it acts as a watchdog. While it has the power to investigate complaints of human rights violations, it does little beyond basic fact-finding, writing a report, and does not follow through until official investigations end or are brought to a satisfactory close.

The commission is made up of seven members—a chairperson, another permanent member, and five honorary members. The present commission, which until June 30 was chaired by Kazi Reazul Hoque, was

formed in 2016. This, in itself, was illegal as section 6.3 of the NHRC Act, 2009 categorically states that “a person shall not be appointed for more than two terms as a Chairman or a Member of the Commission.” Hoque was previously a permanent member between 2010 and 2016.

Each commissioner is appointed to a three-year term. Hoque had to retire at the end of last month as he turned 70 (the maximum age of the commissioner prescribed in its founding act), two months before his tenure was set to end.

Selection

The selection committee of the NHRC is weighted heavily on the side of the government—composed as it is by the who’s who of Parliament—the speaker, the law minister, the home minister, the chairman of the law commission, the cabinet secretary, and two MPs. One of the two MPs has to be a member of the opposition, but s/he too has to be nominated by the speaker. Other than the makeup of the committee and term

limitations, the act makes no specifications of how selection takes place—as such, the process is opaque to outsiders.

However, only four members make up the quorum of the selection committee, meaning that selection can take place without the input of a member of the opposition. Or, for that matter, any independent member. The current commission has only one representative from civil society, that too an honorary member. Human rights activists point to international examples—in Malaysia, for instance, three out of five members of the NHRC selection committee must be representatives of civil society. In Thailand, the selection committee is even broader—with five representatives from higher education institutions, 10 representatives of human rights organisations, five representatives of political parties, and three representatives from media and business organisations respectively.

But the NHRC selection process in Bangladesh happens largely out of the public eye—with no open calls or advertisements for recruitment, for example. There is no public consultation with civil society. Who nominates the candidates and how the committee decides on the members are a mystery, say members of civil society and human rights organisations. “We never know who the alternatives for the positions are. At the very least, two names should be nominated for each member’s position,” says Sayeed Ahmad, Asia coordinator of Front Line Defenders, a global human rights organisation. Section 7.4 of the act also states that two names be recommended by the selection committee against each vacant post.

In a roundtable discussion held on June 30, titled “What kind of NHRC do we want”, Ain O Salish Kendra brought together multiple civil society representatives and UN and donor bodies to discuss their concerns regarding the selection process of the NHRC. There, political nominations were raised as a threat to the independence and effectiveness of the commission.

Bangladesh’s NHRC holds B status, as accorded by the Global Alliance on National Human Rights Institutions (GANHRI). Twice, once in 2011 and then in 2015, the commission has been assessed on how compliant it is with the Paris Principles, the international benchmark for national human rights institutions. Both times, NHRC Bangladesh has been denied A status, meaning it does not fully comply with the principles. Neighbouring countries Nepal and India, for example, have obtained A status.

Why does the NHRC still have ‘B’ status? The GANHRI sub-committee on accreditation report in March 2015 cited it’s because the commission still had a limited mandate in investigating allegations of human rights violations, including against law enforcement agencies and security forces; the selection committee is largely comprised of government appointees and the selection process is not transparent or participatory; and that senior staff of the commission is by deputation from other government ministries.

When the government handpicks their own officials to fill up positions at the NHRC, especially at the top level, it means that the commission is inherently not independent.

“Those who come from the government have loyalties to the government in some way or the other,” says Tamanna Hoq Riti,

author of a December 2018 report by Ain o Salish Kendra (ASK) titled “National Human Rights Commission, Bangladesh: Existing Challenges and Expectations of Civil Society”. “We need to look into whether the political will of the commission’s leadership is a major factor in how they act.”

But what is, arguably, the biggest challenge for the NHRC is this—investigating rights allegations against security or law enforcement agencies. It is criticised for not investigating rights violations when the state and law enforcement agencies are involved.

How did the NHRC fare last year?

The year 2018 was tumultuous to say the least. The quota reform and road safety movements saw students, teachers and journalists attacked while trying to protest peacefully or covering the protests, pre and post-election violence, and extrajudicial killings in an anti-narcotics drive by security forces which claimed the lives of around 300 people.

One of those was the killing of Teknaf municipality councillor Akramul Haque, which was recorded in several audio clips released by his family who were on the phone with him when he was killed. In this case, the NHRC visited the family of the victim and called for an investigation into the killing by sending a letter to the Ministry of Home Affairs. They did not undertake their own investigation or release any information about what investigation is happening, if any.

In its 2018 annual report, all the NHRC states is, “Despite many major achievements of government in promotion and protection of human rights, extrajudicial killings allegedly done by some members of LEAs [law enforcement agencies] is creating image-crisis for the government.”

The commission possibly came under the most criticism when its report found no relation between the assault and gang-rape of a woman in Subarnachar in Noakhali because she voted for an opposition party candidate. Its report said that it found no connection with the polls and that the rape happened because

of “previous enmity”, stating—“There are no proofs that the woman was assaulted and raped for voting for ‘sheaf of paddy’ in the 11th parliamentary election. No evidence was found that the accused belong to Awami League or was she tortured and raped by any Awami League activist.”

This was directly refuted by both the victim and her husband in statements immediately after the incident as well as after the NHRC’s report. She said to *Prothom Alo* after the commission’s report, “If I had previous enmity with them, they would have attacked me earlier. I don’t belong to any political party. But, I voted for ‘sheaf of paddy’ as per my judgement.” In her interview with the commission itself, she also mentions the threats she faced at the voting centre earlier on the day she was raped and assaulted. The commission’s actions, once again, constituted writing to the home ministry to take action against the rapists.

In the case of the detention and torture of award-winning photojournalist Shahidul Alam, his wife Dr Rahnuma Ahmed appeared at the NHRC the day after he was abducted to present her complaint on the torture Alam faced on the night of August 6. The NHRC sent an order to the home ministry the same day asking for an investigation in the matter and the steps taken and directions given by the law enforcement agencies within seven working days.

Recently, the High Court observed that the commission did not approach the courts even though its “orders were repeatedly violated”. Barrister Abdul Halim, a Supreme Court lawyer, and his rights organisation Children Charity Bangladesh Foundation had filed a writ petition against the NHRC for not taking necessary action in the 2013 case of then 12-year-old domestic help Khadiza Akhter, who was tortured by her employers.

On October 21 last year, Dr Ahmed wrote once again to the NHRC that months had passed by since that order, with no response from the home ministry. The NHRC responded



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only on January 27 this year, stating that since Alam’s case is ongoing, the commission has no jurisdiction over pending investigations.

In response, Dr Ahmed again wrote mentioning:

“The NHRC already took steps in relation to my complaint while the case against my husband was under investigation and thus the statement now that the NHRC has no jurisdiction appears contradictory to earlier actions.”

“The NHRC should have taken up a case such as this because he [Alam] is a human rights defender,” says Ahmad. If national human rights institutions do not ensure the protection of human rights defenders, who will? **What can the NHRC actually do?** When it comes to allegations of human rights violations against law enforcement agencies, the NHRC claims that its hands are tied in investigating themselves and it can only ask for reports from the government. It refers to section 18 of the 2009 act which outlines the procedure to be followed in case of ‘disciplined force’—that the commission can ask for reports from the government, make recommendations, etc.

However, legal and human rights experts say

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that this does not impede the NHRC from conducting investigations against law enforcement agencies. Previous sections 12 to 17 grant the commission the same powers as a civil court—it can summon witnesses, call for information from the government and relevant authorities, or start an investigation *suo-moto* [on its own].

For example, in the case of the murder of Nusrat Jahan Rafi earlier this year, the NHRC undertook a probe six days after she was attacked and presented its findings on April 16, 10 days after her attack. It linked her sexual harassment with the attack that eventually killed her and cited the negligence of the local administration and the madrasa authorities in her death.

However, even when the commission undertakes investigations, it culminates in a probe report which includes observations and general recommendations on the government can take. Then, of course, comes the inevitable bottleneck at the home ministry, where the commission’s letters go unanswered or they receive a perfunctory reply stating that an investigation is ongoing. “Then what? They’re not raising issues in the media. They could hold a public hearing or a public inquiry,” say ASK’s Tamanna Hoq Riti.

ASK’s report also notes that the commission’s letters to the home ministry seeking reports go unanswered—citing that between 2012 and 2016, the commission sent 185

such letters, of which 154 were regarding cases of enforced disappearances and extrajudicial killings where law enforcement agencies were involved. In a recent report in *The Daily Star*, then chairman Hoque said about investigating individual cases, “The responsibility is to point out the gaps in the system.”

According to its 2018 annual report, the NHRC received 728 complaints, 589 of which were ‘disposed’ of. But what does the term ‘disposed’ mean when it doesn’t follow up till the end?

The commission itself states in its 2018 annual report that the “Government needs to come forward to streamlining [sic] the selection procedure of the Chairman and Members of the Commission empowering it with enough power as to investigate the human rights violations committed by the law enforcement agencies (LEAs).”

ASK’s report refers to enforced disappearances, extrajudicial killings, torture, and freedom of expression as human rights issues of particular importance in the country. It states, “It appears that the NHRC has not been working actively on these issues. However, as a state institution, they have greater opportunity and power than non-government organizations to work on these issues. The Commission has consistently failed to make use of this opportunity.”

Barrister Halim is the author of a 2015 book titled “Jatiyo Manobadhikar Commission: Problems and Expectations” which looks at the NHRC’s performance over six years since its founding. In it, he compares the NHRC to the information commission which, at its founding and first terms, instituted guidelines on how it would deal with complaints and set fines when its orders to government ministries weren’t followed. The NHRC, however, does little beyond sending a letter and waiting for a response.

“In 10 years, the NHRC hasn’t instituted any such guidelines. It should be following up with the ministries, see whether the investigation is happening properly, follow up with the police, recommend compensation to be allocated, all within a deadline—they need to exert this power. So far, they haven’t yet applied these steps in one case.”

The commission should be making useful recommendations, particularly compensation, argues Barrister Halim. “It [the NHRC] is not powerless, it is not exercising its power—negligently, willingly, and deliberately to the detriment of enforcement of human rights in the country,” he states.

In his book, he expounds on the NHRC India which not only recommends crores in compensation annually but also departmental action against the perpetrators—neither of which is yet to be called for by its Bangladeshi counterpart.

One such case, eerily familiar to Bangladeshis, is the 2015 order by the NHRC India for the Indian home ministry to pay five lakh rupees to the family of Felani Khatun, the 15-year-old Bangladeshi girl killed by the Indian Border Security Forces (BSF) while crossing the border in January 2011.

An independent and effective NHRC can be more than just a mouthpiece. The selection next month will prove which way the government is leaning—a stilted organisation with no real impact or an independent and effective organisation holding the government and other institutions accountable, and standing up for human rights in a country which sorely needs it.

“The NHRC should be a bridge between non-government organisations and civil society organisations and the state,” says Ahmad.