

DHAKA TUESDAY FEBRUARY 24, 2009

Amended RPO: A groundbreaking reform



STAR ARCHIVE

Bangladesh Nationalist Party registration.

SHAKHAWAT LITON

ACK of transparency has long been a feature of country's political parties' collection of fund and their expenditure patterns, particularly during the elections. There was, in fact, no effective legal mechanism to hold them accountable. There was no one to ask them to disclose the sources of their election funds and how those were spent.

In the absence of accountability, some top leaders of major political parties including the Awami League and BNP had engaged in what came to be known as nomination business. They allegedly took large amounts of money from mostly businessmen ostensibly for the purpose of filling the election coffers and awarded them with party tickets to contest parliamentary elections. Such beneficiaries would claim unethical favours when the party assumed power through elections. Keeping most of the party rank and file in dark, only a few top leaders of the parties used to deal with election funds. In fact, the entire process of collection and utilisation of finances were never discussed at any party forum.

Therefore, there had been a crying need for legal mechanism to bring an end to this political culture that save birth to corruption and favouritism. Civil society members and many politicians also were demanding for long the enactment of laws to end the culture for the sake of institutionalising democracy and good governance. But none of the successive governments heeded the demands as both ruling and opposition parties seemed had a common stake in the continuation of the practice.

Amidst such a gloomy political situation, the incumbent Election Commission (EC), reconstituted in February 2007 following the failure of erstwhile EC to hold the parliamentary election in the previous month, moved

But we can't still say everything has been achieved. The EC will have many things to do to improve the political culture and the government will have to extend allout cooperation to the EC with an open mind to bring an end to the nasty legacy of our political culture. Future of the country's democratic process largely depends on the EC and behaviour of the political parties. If the election administration is strengthened enough to conduct the polls freely and independently, and political parties come out of the hang-ups of the past culture of mistrust that gave birth to the caretaker government system, then the wind of change might ultimately blow and place democracy on a sounder footing.

to bring sweeping reforms in the electoral laws, and electoral system as well as.

Under the leadership of ATM Shamsul Huda, the EC held a series of talks with the political parties seeking their opinion on reforms and sent proposals to the caretaker government to translate those into laws. The immediate past caretaker government brought amendments to the Representation of the People Order (RPO) in August last year in efforts to bring changes in the procedure of country's national of elections.

Of the changes brought to the RPO, political parties' mandatory registration has been a vital reform measure. The parties which in the past had vehemently opposed any registration system however agreed to get registered with the EC for being qualified to contest the parliamentary elections and also brought necessary changes in their constitutions to meet the criteria for registration.

As per the RPO, the parties which contested the December 29 parliamentary election were required to submit reports to the EC in three months, specifying the sources of election funds and their expenditure. The registered political parties must

have their funds audited annually and submit copies of the audit reports to the EC.

The new electoral laws allow the parties to receive a certain amount of donations from individuals and institutions, by way of giving a legal cover to collection of funds. In absence of specific legal mechanism, there was no transparency in collection of political parties' funds in the past.

Similarly, the new electoral laws fix a ceiling on parties' expenditure on the basis of number of candidates they nominated in the election.

According to the electoral laws, the EC will make public the political parties' reports on election expenditure and of their sources, and also their yearly expenditure, giving people an unprecedented opportunity to have a close look into their finances.

The new laws curtailed the absolute authority of the parties' parliamentary boards to pick up candidates for the Jatiya Sangsad elections. The laws empowered party's grassroots level committees to prepare panels of nominees and forward those to the central parliamentary boards that will pick one for each constituency from the panels.

The provision was aimed to end the

political culture of the central parliamentary boards giving party nominations by taking donations from aspirants. The new provisions imposed restrictions on newcomers to contest the parliamentary elections before three years since their joining a registered political party.

Similarly, ex-civil and military bureaucrats lost the undue advantage of being able to contest the parliamentary elections immediately after retirement from the services. The new laws say they must wait for three years after their retirement to be qualified for the polls. In the past, the bureaucrats misused their offices at the fag end of their tenure for preparing grounds to contest elections immediately upon retirement.

In the wake of a massive campaign and persistent demand for keeping the war criminals away from contesting the elections, the new laws have imposed a permanent ban on them. Now, if the AL-led government moves to hold trial of war criminals of 1971, the new electoral laws will enable the EC to keep the convicted war criminals out of the electoral process.

Moreover, all the candidates are to submit information about their educational qualifications and police records to comply with the new laws. The EC is

to make their details public enabling voters to know about the candidates contesting parliamentary elections. The new laws provide the voter with the option to cast 'no vote' if they do not like any of the contesting candidates in a constituency.

The provision for disclosure of candidates' particulars was also introduced in the elections to city corporations, municipalities and upazila parishes.

To register with the EC, the parties had to scale down their links to front organisations like those of students, teachers and labours. They had to pledge to allow running of the latter's activities as per the provisions stated in their respective charters, which were ignored to a great extent in the past. The efforts aimed at ensuring democratic practices in political parties.

Besides, the new electoral laws discourage political parties that exist only in name from contesting national elections. In the past, participation of a large number of political parties, most of them name-only, made election management and other jobs in the run-up to the election difficult for the election officials. The small political parties had failed to win any seat and they got a meagre number of votes in previous elections. It has been alleged many a time that such parties often sell out to major political parties' candidates during elections. It is some kind of a status symbol for some people to head such parties.

The EC had initiated steps to discourage the political parties that exist only on paper from taking part in 2001 general election. But the efforts fell through, as the commission could not make the provision of registration mandatory in the face of fierce opposition from the major political parties. Actually, registration was then made optional and thirty minor political parties applied for registration while

CONTINUED ON PAGE 43

DHAKA TUESDAY FEBRUARY 24, 2009

Policracy, bureaucracy or meritocracy

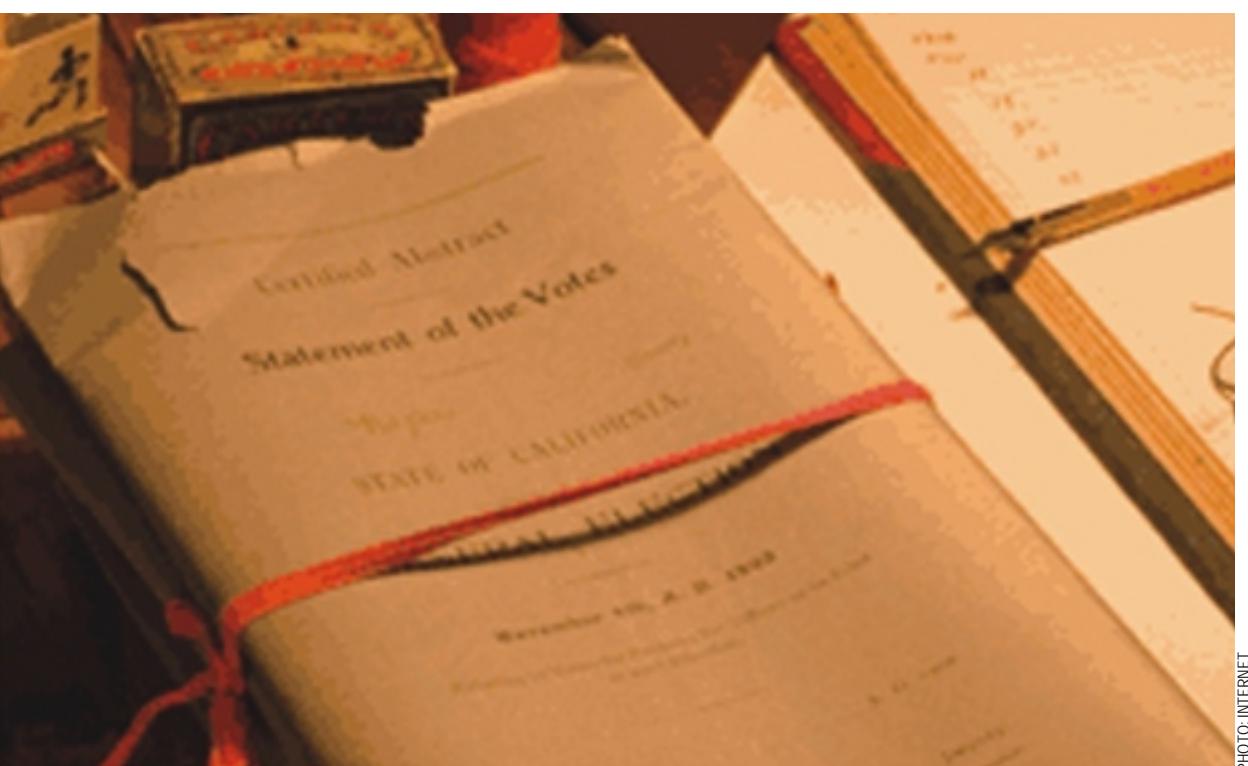


PHOTO: INTERNET

The solution is in the hands of vigilant leadership in the executive and legislative branches, and solution is essential if our society has to attain the status of 'the good society', as defined by that eminent intellectual, John Kenneth Galbraith. We have to eliminate 'policracy,' diminish the role of 'bureaucracy' and establish the superiority of 'meritocracy.'

MAHBUB HUSAIN KHAN

AS I write this column, the first session of the newly elected Jatiya Sangsad has started. With this first step taken by the newly elected government, we are moving towards a new beginning in this new millennium. The consensus of 1991 had evolved into the confrontation of 2006, which brought into power in 2007, the interim government of January 11, and which has now resigned to set the stage for the fresh beginning of the newly elected democratic government. As my readers know, Arvind Adiga's novel *The White Tiger* won the Man Booker prize for this year, which was announced just over two months ago. The novel is a shocking and furious portrait of Indian corruption and social injustice. And what is a portrait of the Indian society and its administrative system is also a reflection of our socio-political scenario as of now.

The social, political and economic realities faced by the developing nations like ours are very different from those found in the economically advanced nations. But they are in many ways similar to the conditions faced by reformers in the USA, about one hundred years ago. Corruption and influence peddling are widespread here. Patronage is often the norm: many get jobs or are promoted because of their connections, not their abilities. The civil service and the public sector, the courts and police departments as also other service organisations of the public agencies are not fully independent of political control. As such legal prosecution of corruption is difficult. We have to pick and choose our innovation strategies to rid the administration of corruption and politicisation. The core strategy is to consider here relates to the conduct of elected officials and their top appointed officials whom we may call "policrats", and how to marginalise this.

After our Liberation, a predominantly provincial administrative set-up had to be suitably transformed to take on the desired characteristics of a national administration. Within this general consideration, the specifics included the merging of the erstwhile central government offices and provincial government departments and the most important and knotty problem of merging of the central and provincial service, and the remodeling of the goals and aspirations of a young nation. While the central services inher-

ited by Bangladesh had a recognisable and operationally tractable structure, the provincial services had as many as 24 regularly constituted services classified as generalist, specialist and functional services. There were four classes of government employees, along with senior and junior classes in class I and II service.

Obviously, the integration of various services into a unified cadre was going to prove cumbersome and open to much criticism whatever the formula adhered to. The changed socio-political environment in particular the birth of the country through a sanguinary nine month war did not favour the continued dominance of an elitist Civil Service. Though other socialist countries in general tended to have monolithic bureaucracies and our neighbour India retained the bureaucratic legacy of British rule under their leader Jawaharlal Nehru, Bangladesh, the latest entrant to the socialist brotherhood of nations, did not reconcile itself to an over-emphasised role of the civil bureaucrats. One of the initial ideas revolved around recruiting and training political cadres to take over the administrative leadership and coordination roles at various tiers of field and secretariat administration. To this end, recruitment was made in 1973 to BCS administration cadres, through only a *Viva Voce* examination, of 408 civil servants. Another 263 were recruited in various other cadres, including 157 in the Police Service. It was only in 1979 that the first properly organised BCS examinations were held by the Public Service Commission. Over the years, though the intake was variable in quality, the general standards were higher than those recruited in 1973. Some of the 1973 entrants became secretaries to the government before retiring but not many of them were really fit to hold these posts. The malaise created by politically dominated appointment in that year has now caused many problems in the smooth running of the government, and donor countries are complaining about problems of interaction with some of these officers at the higher levels of bureaucracy.

During the BNP government, officers in the police were recruited by considering political loyalties. And then we had the makings of another debacle in recruiting officers to the highest levels of the bureaucracy, by implementing various types of quotas and through political manipula-

tions, the aftermath of which is still continuing as the adversely affected candidates are embarking on a movement including programmes of fasting unto death.

The three democratically elected governments in power during the 1990s were reluctant to undertake significant reform. With elections every five years, short run political calculations have dominated decision-making. The political leadership perceived the immediate political costs of reform to outweigh the longer run welfare benefits.

As of now, the functioning of the public service reflects a pervasive 'clientelism' operating within clearly defined hierarchies. In this Bangladesh is far from unique; these are problems that every society must struggle with at some point in its development. And, as in all societies, Bangladesh has a number of well organised interest groups that largely determine political decisions: in particular: the military; the public bureaucracy; private business; the trade unions; religious groupings, the NGOs; and the donors. Some of the activities of interest groups are legitimate, while some (bribery, extortion, harassment and use of musclemen) are not. Competition among special interest groups is the hallmark of a well functioning democracy, which always provided the special interest groups, with frequent resort to illegitimate methods.

However, these groups are by no means monolithic. On the contrary, interest groups tend to be fractious and are frequently divided and overlapping. This fragmentation results in much contention and distrust, which affect the day-to-day administration at all levels.

The political leadership and the elected legislature have to choose between an efficient and talented pool of professional civil servants and diplomats on the one hand, and a group of politically pliable yes men who would be giving misdirected advice and effecting partisan administrative strategies, on the other.

It has to be realised right away, and this brooks no delay, that only a just and efficient government under a strong political leadership and non partisan administrative machinery can deliver the fruits of socio economic development to the people in the new century. The solution is in the hands of vigilant leadership in the executive and legislative branches, and solution is essential if our society has to attain the status of 'the good society', as defined by that eminent intellectual, John Kenneth Galbraith.

We have to eliminate the 'policracy,' diminish the role of the 'bureaucracy' and establish the superiority of the 'meritocracy.'

Mahbub Husain Khan is a former civil servant and freelance journalist.

DHAKA TUESDAY FEBRUARY 24, 2009



Regulatory reform initiative

SAMIR ASAF

LAWS are approved by the parliament, while "regulations" are authoritative rules dealing with procedure, rules, or orders issued by an executive authority or regulatory agency of a government having the force of law. In this sense, regulations and rules are subordinate to laws. We will adopt the broader definition of "regulatory reform" to include laws as well as rules.

From an economic or social development standpoint, we all support an enhanced investment and regulatory climate in Bangladesh. With the formation and operation of the Regulatory Reforms Commission (RRC), we have taken a positive step towards such enhancement.

Regulation is necessary for governing and promoting the welfare of citizens within the broader context of the need to maintain discipline and order in a country. These laws, rules, and procedures together govern individual and institutional activity.

Too much regulation suffocates economic activity, thwarts innovation, and increases the cost of doing business thus limiting national competitiveness. And regulation is not always the answer for a policy problem. Over-regulation throughout most of the 20th century was no longer the appropriate model for economic efficiency in a globalised information age characterised by hyper-competition, and a general propensity for investor friendly business climates, regulatory efficiency and simplification.

Thus the latter part of the 20th century saw a wave of attempts to modify some existing regulatory structures and systematise the creation and

review of new ones. A part of this was the deregulation movement with ongoing programmes to review regulatory initiatives with a view to minimising, simplifying, and making more cost effective regulations.

Bangladesh's regulatory landscape has improved significantly in the last three and a half decades. Progress has been achieved in financial sector deregulation, trade and commerce, environmental laws, privatisation, women's rights, independence of the media and judiciary, and in other areas. But in the context of hyper-competition and pressures of globalisation, much greater progress has been made by other developing countries such as Thailand, Malaysia, Korea, Indonesia, and India.

The business operating environment in Bangladesh continues to be characterised by excessive regulations that are often ad hoc, unclear, inaccessible, inefficient, inconsistent with government's policy priorities, irrational, outdated, and suffers from broad non-compliance and lack of transparency. Regulatory uncertainty resulting from sudden issuance of regulation with limited or no prior consultation catches the stakeholders by surprise and negatively impacts business confidence. In many areas, regulations are non-existent where in fact they are required.

The regulatory landscape in Bangladesh is therefore not satisfactory. Its development is not inclusive by way of a process. Public accountability and private sector engagement are not yet within an overall strategy of regulatory management and reform. We are not maximising the net social welfare because the balance between regulatory and non-regulatory approaches has not been optimised. Therefore, continued regulatory

A forward-looking policy and regulatory framework is required in Bangladesh. By adopting RIA, we will have taken an essential step toward a rational decision-making framework for regulation that uses empirical data and analytical techniques to quantify potential impact on social and economic costs and benefits, and which is inclusive in terms of greater participation from civil society members and relevant stakeholders.

reform should be high on the government's agenda.

Doing business in Bangladesh is frustrating. There is wide non-compliance both at national and sub-national levels. There are approx. 15,000 SROs in Bangladesh today. That's too many. Many laws are well over 100 years old and have not been modified. The Industrial Policy regulation that industrial enterprises must reinvest at least 40 percent of tax-free income (clause 7.2) is unreasonable and needs to be abolished.

The stipulation that expatriates working in Bangladesh are entitled to repatriate only 50 percent of their wage (clause 14.5) negates the very premise of promotion of foreign direct investment in the country. Bangladesh Bank, perhaps the only central bank in the world that does this, fixes CEO salaries of Banks and Financial Institutions! Banks cannot buy or lease cars for their executives or board members if its cost exceeds Tk. 26 lacs! A no-visa-required seal from a Bangladeshi consulate abroad requires a referrer whose TIN number and latest copy of tax returns must be submitted.

Here are some additional data points from IFC's "Doing Business Report 2009" relating to the actual time and effort required in various stages of operating a business in

Bangladesh. In Bangladesh, it takes 73 days to start a business, 245 days to register property paying 10% of property cost, 302 hours to work through the cumbersome tax payment procedures, 28 days (on average) to export and 32 days to import, and 1,442 days to recover commercial debt through the courts. The cost to enforce a contract is on average 63% of the value of the claim. Companies pay a relatively high tax rate 37.5%. In addition, non-management employees need to be paid 24 months of salaries if they are laid-off.

Other countries are also making progress in regulatory reform. According to IFC's Doing Business report, top 10 reformers include Azerbaijan, Albania, Kyrgyz Republic, Belarus, Senegal, Burkina Faso, Botswana, Colombia, Dominican Republic, and Egypt.

Bangladesh has made positive reforms in the areas of registering property and starting a business, while the RRC has already achieved progress in a few areas. The RRC has made 38 recommendations, all of which are at various stages of implementation. RRC's tenure has been extended until 29th Oct 2010.

RRC's noteworthy achievements include computerisation of a total of 8,995 SROs category-wise; ongoing E-registry development; modernisation

and computerisation process for Land Management Administration System. The RRC recommended general pre-publication of all gazettes, but the government chose to apply this on an "if and when necessary" basis. Based on an RRC recommendation, the time taken for issuance of Location Clearance Certificate and Environment Clearance Certificates have been halved by the Department of Environment (DOE).

The duty drawback and exemption system has been computerised, and forms simplified. Capital machinery import clearance process has been simplified through introducing risk based assessment by NBR. Bonded warehouse licensing process has been opened to all; Ministry-level RRC focal points have been operationalised; and a diagnostic evaluation and assessment of all regulatory bodies will be implemented by RRC shortly.

I am hopeful that RRC will be made a permanent body and that its recommendations will be effectively implemented by the concerned ministries.

Notwithstanding RRC's achievements, Bangladesh needs to adopt Regulatory Impact Assessment (RIA) as a tool for enhancing regulatory effectiveness, particularly as it relates to the issuance of new regulations. In the

CONTINUED ON PAGE 43

DHAKA TUESDAY FEBRUARY 24, 2009

Caretaker government system: A critique

SYED GIASUDDIN AHMED

THE prospect of ushering in a process of consensual politics under the reintroduced parliamentary democracy beginning in 1991 was to subsequently face a great peril due to a long and protracted impasse over the then opposition's demand for holding elections under a neutral caretaker government. The issue came to the fore in the context of the alleged rigging in Mirpur and Magura by-elections in 1994 by the then ruling party, Bangladesh Nationalist Party (BNP), which had come to power after the February (1991) election under the leadership of its chairperson Begum Khaleda Zia. Political developments following such controversial by-elections seriously hampered the functioning of parliament as well as undermined the credibility of holding free and fair elections by a party government.

Initially, the BNP government (1991-1996) did not pay heed to the opposition's demand for holding election under a caretaker government. But the prolonged boycott of and subsequent en masse resignations of the Awami League (AL) led opposition members from parliament compelled the BNP government to dissolve the Fifth Parliament and then hold elections for Sixth Parliament in February 1996. Although all the major opposition parties had boycotted the elections, the results of the election in effect enabled the BNP to enact the Constitution (Thirteenth Amendment) Act on 28 March 1996 in line with much of the opposition's demands. The BNP had secured more

than two-thirds of seats in the so-called newly elected Sixth Parliament.

The 13th amendment included provisions for holding all future general elections under a non-political caretaker government. It also has conferred certain additional but real powers on the presidency. This amendment purports to serve the cause of free and fair elections by combating vote rigging, proxy votes, election fraud and corruption which

Shahabuddin Ahmed was widely regarded as free and fair. In fact, the success story of this election provided the rationale for the opposition's demand for holding all future general elections under neutral caretaker government.

The 13th amendment inserted a new article (i.e. Article 58A) on the application of Chapter II as well as a new chapter (i.e. Chapter IIA) containing a number of new provisions specified in Article 58B, C, D & E in

advisers drawn from amongst non-political persons of high social and professional standing.

The idea of the non-party caretaker government seemed exemplary for many Third World countries in quest of credible means to restore public confidence in their election results. But the 13th amendment seems to have unduly put the president in charge of the caretaker government with the sole authority to appoint and remove the chief adviser

president to gain absolute control over the defence forces during the tenure of the caretaker government. This power of the president over the armed forces seems to have undermined the ability of the caretaker government in maintaining law and order at the time of elections. In Bangladesh, where force, not ballots, have often been the preferred mode of changing government, the vesting of such power in the president has had a wider ramifications.

The 13th amendment has conferred some real and absolute powers on the president to which the latter is not entitled during the term of a party government. In other words, while exercising powers stipulated in the 13th amendment, the president seems truly beyond the reach of the caretaker government and being not directly elected, not accountable to the people either. The 13th amendment thus transforms the 'titular' president to a 'real' president, effectively introducing an interim presidential form of government during the tenure of the caretaker government.

The 13th amendment has conferred some real and absolute powers on the president to which the latter is not entitled during the term of a party government. In other words, while exercising powers stipulated in the 13th amendment, the president seems truly beyond the reach of the caretaker government and being not directly elected, not accountable to the people either. The 13th amendment thus transforms the 'titular' president to a 'real' president, effectively introducing an interim presidential form of government during the tenure of the caretaker government.

were rampant in Bangladesh, especially during the period from 1975 to 1990. As a matter of fact, the idea of free and fair elections under a neutral caretaker government received its greatest momentum from the incidents of fraudulent elections held during the Ershad era (1982-1990). Following the overthrow of General Ershad in December 1990, the February (1991) election held under a non-party caretaker government headed by Acting President Justice

Part IV of the constitution. These fresh constitutional provisions deal with the formation of a non-party caretaker government to govern the country and conduct the general elections during the interim period extending up to the date on which the new prime minister is sworn in after the general elections. This caretaker government is to be composed of a chief adviser who among the retired Chief Justices of the Supreme Court retired last, including ten

and his advisers. Both the chief adviser and the ten advisers have been made collectively responsible to the president. Articles 48(3) and 61 of the constitution have made the president as the ceremonial commander-in-chief of the defence forces a power to be exercised on the advice of the prime minister pursuant to the practice of the Westminster system of parliamentary government. The 13th amendment amended Article 61 enabling the

It is not always necessary that the means of holding free and fair elections under a caretaker government be contrary to the constitution. The means could well be based on a foundation of strict respect for the basic constitutional spirit as well as of long tradition and established practice, as in Britain and its older Dominions (Canada, Australia & New Zealand) and also in India - that the party in power

CONTINUED ON PAGE 46



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 legisla-

tion.

CONTINUED ON PAGE 45

DHAKA TUESDAY FEBRUARY 24, 2009

Amended RPO

FROM PAGE 33

the major parties kept away, prompting the EC to scrap the process for registration on that occasion.

This time, the EC's firm stance on registration system compelled the parties to accept it. Resultantly, the EC could successfully keep the name-only parties away from taking part in the December 29 parliamentary election, thereby enabling it to conduct the national election in a more disciplined way.

Fourteen political parties participated in the country's first parliamentary election held in 1973, but the number rose to 96 in the parliamentary election in 2001. In the second parliamentary election, held under military rule in 1979, the number of political parties climbed dramatically to 29 while the third parliamentary election in 1986, which was boycotted by BNP-led alliance, saw 28 parties taking part in it.

Boycotted by the major opposition parties -- AL, Jamaat-e-Islami, left alliance, and others -- political parties participating in the sixth parliamentary elections held on February 15, 1996 totalled 43. The number stood at 81 in 1996 election.

But only 39 political parties got registration with the EC for being qualified to contest the December 29 parliamentary election. Of them, 38 con-



Awami League registration

Fourteen political parties participated in the country's first parliamentary election held in 1973, but the number rose to 96 in the parliamentary election in 2001. In the second parliamentary election, held under military rule in 1979, the number of political parties climbed dramatically to 29 while the third parliamentary election in 1986, which was boycotted by BNP-led alliance, saw 28 parties taking part in it.

tested the polls. But as many as 25 parties performed badly in the election, prompting the EC to bring further amendment to the electoral laws to deregister the parties for very poor performance in the elections.

Apart from political parties' registration system, loan and utility service bill defaulters will not be entitled to get undue favour, something they enjoyed in the past to contest the parliamentary elections, as the new electoral provisions imposed restrictions on them. The new laws do not allow them to contest the election by rescheduling the defaulting loans just before filing nomination papers. An individual will be disqualified from contesting the polls if he becomes defaulters in rescheduling the loan six months before filing application seeking candidacy in the polls.

Some more changes in the country's

electoral culture were noticed during the latest parliamentary election, also polls to upazila parishads, four city corporations and nine municipalities. Almost all the candidates and political parties contesting the December election more or less abided by the electoral code of conduct in carrying out their electoral campaign.

They did not put up posters nor drew graffiti on the walls of establishments belonging to the government and individuals in the cities, thanks to the strict code of conduct. What was the scene in previous elections? One may easily imagine it. Every wall of the establishments was full of posters and writings. Owners of the buildings were helpless in preserving the beauty of their establishments. This time, they got relief.

Candidates were seen extra cautious in carrying out their electoral campaign.

They feared losing candidacies as the EC has been empowered to cancel them on grounds of gross electoral irregularities.

But it does not mean none of the candidates exceeded the ceiling of election expenditure fixed by the EC on the basis of the number of voters in their constituencies and none of them violated the electoral rules. Of course, some sporadic incidents of violation of electoral code of conduct during the upazila parishad elections. It also warned the immediate past speaker, Jamiruddin Sircar, for violation of electoral code of conduct in the December 29 parliamentary election since he misused his office in his electoral campaign.

In a bid to strengthen the EC, the immediate past caretaker government freed the EC Secretariat from the control of the Prime Minister's Office, by promulgating an ordinance. Now, the EC Secretariat has become independent to carry out its decisions.

The present EC seems to be more confident compared to the predecessors in upholding the dignity of the commission by discharging their constitutional duties neutrally. For the first time in the contemporary history, the EC filed a case against a cabinet minister for violating the electoral code of conduct during the latest upazila parishad election.

No matter what the outcome of the case, it is the bold stance of the EC that dared file the case against a minister that matters. Apart from this, the EC also warned mayors, and a number of ruling party lawmakers of violation of electoral code of conduct during the upazila parishad elections. It also warned the immediate past speaker, Jamiruddin Sircar, for violation of electoral code of conduct in the December 29 parliamentary election since he misused his office in his electoral campaign.

The EC's bold stance encouraged people to keep confidence in it again. The erstwhile EC led by Justice M Aziz completely destroyed the integrity of the constitutional body. The then BNP-led government and later Iajuddin Ahmed-led caretaker government did not care to protect the image of the EC as they made controversial moves driven by partisan interests.

The present EC has been able to come out of the sordid past. It has

brought unprecedented reforms in the electoral roll that was a centre of maximum controversy in the past. None could raise allegation of casting fake vote in the latest elections to parliament and upazila parishads

But we can't still say everything has been achieved. The EC will have many things to do to improve the political culture and the government will have to extend all out cooperation to the EC with an open mind to bring an end to the nasty legacy of our political culture. Future of the country's democratic process largely depends on the EC and behaviour of the political parties. If the election administration is strengthened enough to conduct the polls freely and independently, and political parties come out of the hang-ups of the past culture of mistrust that gave birth to the caretaker government system, then the wind of change might ultimately blow and place democracy on a sounder footing.

Given the initiatives taken in last around two years, we can say it's just a beginning to bring the desired changes and by and large, a good one at that. Now, the government, the EC and political parties will have to build on this to improve upon the standard set by the last parliamentary elections.

.....
Shakhawat is a senior reporter of The Daily

Regulatory reform

FROM PAGE 36

lifecycle of a law or regulation, the process of its creation will largely determine its ultimate effectiveness, and that is where RIA helps most. RIA's potential benefits in Bangladesh are significant, and need to be integrated within a broader regulatory strategy framework, and recognised by the government, the business community, and the broader civil society.

The RRC supports adoption of RIA in Bangladesh. RIA has been around for 35 years, pioneered in the OECD countries. It has been a successful tool in Serbia, Tanzania, Taipei, Indonesia, USA, UK, and most of the OECD countries, assisting policy-makers to make an intelligent prior assessment of the likelihood of net socio-economic gain for the country from introduction of a particular new regulation.

The South Korean experience provides us with an example of the benefits from adopting RIA within a broader reform strategy, with institutional capacity building, political will, and broad popular support. Korea reduced

The recent global financial turmoil may lend legitimacy to another wave of re-regulation worldwide, but we need to be careful so that we are not consumed by this wave. The governing dynamics of regulatory reform in Bangladesh will be unique to our specific circumstances. RRC will lead the way and has got the wheels in motion. The private sector has to play its part in terms of pursuing ethical business practices and regulatory compliance. And we must embrace this journey individually and collectively.

the number of regulations from approx. 11,000 down to 5,000 and adopted the RIA approach including mandatory public consultation and disclosure practices. Their Regulatory Reform Committee in Korea is a permanent body with decision-making authority and 3% private sector membership, and supported by a Regulatory Reform Office (RRO) under the Prime Ministers' Office.

A pilot project could be seen as a practical method to test RIA in Bangladesh on concrete examples in the regulatory system, with the aim of broadening and generalising its use subsequently. The Ministry of law, Justice, and Parliamentary Affairs needs to enhance its capacity for RIA assessment, and become geared toward a social cost-benefit mindset regarding regulation.

A forward-looking policy and regulatory framework is required in Bangladesh. By adopting RIA, we will have taken an essential step toward a rational decision-making framework for regulation that uses empirical data and analytical techniques to quantify potential impact on social and economic costs and benefits, and which is inclusive in terms of greater participation from civil society members and

relevant stakeholders.

With the political uncertainty now in hibernation, and with the RRC having gained some traction, the basic groundwork is now prepared for a take-off stage in terms of accelerated regulatory reform and investment climate improvement in Bangladesh. Now it is all about graduating to the next level of economic development through better strategy, regulation, and governance.

The recent global financial turmoil may lend legitimacy to another wave of re-regulation worldwide, but we need to be careful so that we are not consumed by this wave. The governing dynamics of regulatory reform in Bangladesh will be unique to our specific circumstances. RRC will lead the way and has got the wheels in motion. The private sector has to play its part in terms of pursuing ethical business practices and regulatory compliance. And we must embrace this journey individually and collectively.

Samir Asaf is a member of the Bangladesh Better Business Forum (BBBF).

DHAKA TUESDAY FEBRUARY 24, 2009

Intention to good action

FROMPAGE 40

Accountability should be infused in NHRC so that they can work as credible institution. The institution should develop a system of accountability that is necessary for its responsible functioning. Indeed, accountability should be seen as corollary and supplementary to the independence of the institution. Accountability of the institution can enhance its acceptability to the government as well as public at large. A sort of synthetic check and balance in the legislative framework may also ensure its accountability. For example, its activities must be open to public scrutiny and evaluation and constructive criticism by the civil society. One of the ways of public scrutiny is that national institutions like the NHRC should publish annual report that will elaborate upon their activities and specific recommendations to rectify the wrongs and injustices by the government agencies.

Considering the fact that the reports of the human rights commission are recommendatory in nature, they have only moral significance. However, wide dissemination of the report may play a valuable role in having a strong impact upon the government for policy reform and taking punitive measures. Dissemination of reports may also clarify the general expectation of the people regarding the national institution. Indeed, people have legitimate right to be informed about the functioning of the NHRC. In this way, the report may bridge the gap between the people and the institution. National institutions should not only publish their annual report but also make available their financial statement to ensure transparency in operation of fund. But mere publishing annual report and financial statement will not serve the purpose of accountability. Submission of annual report to parliament for deliberation is considered an additional mechanism of accountability.

Accessibility

In many countries, institutional set-ups are plagued by bureaucratic attitude due to the colonial mindset and lack of organisational cohesion. This precludes people from associating with a sense of belonging with the institution. Therefore, accessibility is sine qua non for success of the institution. There should be specific programme to make institutions people friendly. In our country, where high level of illiteracy and low level of awareness still exist, human rights commission can hardly function meaningfully. Access to the human rights commission is dependent on the knowledge of members of the public of its existence, and knowledge as to how they can be approached. Awareness programme about existence and functioning of institutions may play a vital role in providing access to the institution for the disadvantaged, marginalised and disempowered section of the people. NHRC should also develop creative means of ensuring its visibility among people whose interest it promotes. Accessibility does not necessarily mean merely some awareness programmes; it indicates that its activities are visible to the public. For that reason, its annual report, data, information and working procedure should be available to all. This may help to gain people's trust and credibility in the institution.

Physical accessibility is another important dimension. Decentralisation of the NHRC may facilitate its accessibility to the people of remote areas and particular regions. Therefore, local offices may be established to provide a full range of services so that it can act as a communication channel or consultant point between the population of the area and headquarter of the Commission.

Representative composition of the NHRC may indirectly contribute to accessibility. The composition of the commission should be of a genuine representative nature to reflect diversity as well as pluralism of the society. When plural representation is ensured, in particular of women, disabled people, religious, ethnic minority groups, and civil society e.g. NGOs, are accommodated in the composition, respective section of the people whose rights have been violated, will be encouraged to forward their grievances to the Commission. This will provide a feeling that the appropriate authority hears their voice.



UDHORG

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Cooperation and interaction with civil society

Because of its unique character, NHRC can hardly act in isolation. Co-operative relationships and collaborative efforts with like-minded organisations may facilitate it to achieve the desired goals. NGOs, media, universities and other public bodies can play significant role in this process. Resources of NGOs in terms of expertise and support may be valuable for the Commission. Similarly, it may share its experiences and also benefit from the expertise of human rights NGOs which have already evolved some mechanisms and skills for addressing human rights violations. As NGOs possess greater operational flexibility and work with grassroots people, they will be able to provide the Commission detail information on the domestic human rights situation and on structural and legislative inadequacies. NGO's complaints about human rights violation can be extremely useful in enhancing the visibility of the Commission as people are generally unwilling to approach any official body directly to seek redress. The Commission may also co-operate and collaborate in areas of education, training and information dissemination. In this way, NGOs can be seen as intermediaries between the people and the Commission.

Apart from this, civil society can also play the role of watchdog by constructive criticism, evaluation and recommendation. To that end, the Commission should also be receptive and responsive to the needs of civil society. It can engage civil society in many ways e.g. initiate public debate in the media and mobilise people's support using technique evolved by NGOs. Civil society may also be involved in the appointment process of members of the Commission so that it cannot solely be an executive concern.

Adequate human and financial resources

Operational efficiency requires that the Commission's structures are given adequate financial and human

resources, that the institution is given the freedom to select and employ its own personnel, and that the institution has appropriate internal working and evaluation procedures. **Integrity of the members**

It is extremely important to appoint an individual, or individuals, to head the National Human Rights Commission who have wide expertise in human rights, have integrity and credibility in the eyes of both the government and the public. The office should not be politicised. Impartial investigation of wrong doings can give it credibility and legitimacy in the eye of the public.

If NHRC is to be an effective body, its membership should be broad-based and must include persons who have been human rights activists. The NHRC will be of some consequences only if the government reforms the system of justice and administration.

Major Criticism of the Legal Framework

- The select committee is overwhelmingly dominated by government officials. There is no representation from the civil society or minority groups.

- The composition of the Commission does not truly reflect pluralist representation as it has only three members. Such small size of the commission precludes a fair representation of the most discriminated groups, such as the socially excluded, the ethnic and religious minorities and women.

- The Commission can only recommend legal measures to the government. It does not have any power to start independent proceedings against human rights violators.

- Provision for mediation/conciliation is fraught with conceptual difficulty regarding appropriateness of mediating certain human rights violations such as extra judicial killings, custodial torture by state agencies. Even if it is accepted that some forms of human rights violations are amenable to conciliation, the law is not clear about the status of the negotiated settlement. The Ordinance is silent about the enforceability of the agree-

ment reached through mediation or conciliation. The determination or agreement reached through mediation should be enforced through accessible and effective means. Conciliation or mediation for reaching amicable settlement of disputes should be held on the basis of confidentiality.

- Bangladesh NHRC has no jurisdiction to investigate cases which are already pending in a court or with Ombudsman or Administrative Tribunal. The NHRC should have power to intervene in legal proceedings in order to bring relevant principles of human rights law to the attention of the court.

- The Ordinance should adopt wider definition of human rights to include indigenous people's rights, migrant workers' rights and minority rights.

- Pluralist representation in the composition of the Commission should be expressly mentioned in the law.

- The jurisdiction should include monitoring and reporting on Bangladesh's compliance with international instruments on human rights. NHRC should be involved in the preparation of country reports under human rights treaties. Vesting it with powers to implement international human rights standards may help avoid the current tendency of bureaucratic process of formulation of report under different human rights treaties which Bangladesh has ratified or acceded to.

- The Ordinances prescribes that the annual report to be submitted to the President. But for the sake of transparency and accountability of the Commission, it should also be submitted to the Parliament. Furthermore, the recommendation and reports of the Commission should be publicly available.

- The NHRC should have mandate on human rights training for government officials including the police and military in order to build a culture of human rights wherein human rights violations are less likely to occur.

- The NHRC should also be mandated to conduct public inquiries of

human rights problems of a more general nature and make recommendations for their solution.

Main Challenges before the Commission

- Political willingness and commitment is of paramount importance to the effective functioning of the Commission. A responsive political government is crucial to the effectiveness of a national human rights commission.

- Adequate human resources should be pulled to carry out the functions of the Commission smoothly, in particular, for handling complaints and rendering legal aid to the aggrieved persons.

- Rules to be formulated on urgent basis for going into full fledged operation of the Commission. The Rules should highlight the operational and administrative procedures and policies of the Commission.

- In order to make the Commission effective, its existence should be made widely known to victims and potential victims of violations of rights, to government agencies, and to the disadvantaged groups of the society.

- The Commission has to devise complaints procedures, which should be simple, accessible, affordable and speedy.

Conclusion

It may be fair to comment that effectiveness and efficacy of NHRC depends much upon the political willingness of the government that what kind of institution that it seeks to establish and also the degree of credibility attached to the institution itself. Thus, mere passing of legislation with noble aims may seem to be a self fulfilling exercise unless it is effective enough to function in a given social and political reality. Similarly, mere establishment of NHRC will be futile if the conditions and criteria of institution building process are ignored. Inner excellence of operation, fairness and justice in procedure and human resources with commitment to carry out goals are imperatives for success of the institutions. Efficacy of national human rights commission is also dependent on variety of national measures such as effective rule of law, independence of judiciary, freedom of information and well-functioning democracy. A NHRC can never be a substitute of the judiciary. Rather NHRC should be seen as an institution capable of existing side by side with the judiciary and assisting it in ensuring better protection of human rights.

It is expected that the Bangladesh NHRC should function with a genuine desire to provide better protection of human rights, not merely the desire to meet the criticism leveled against Bangladesh by the human rights organisations or to satisfy the donor agencies. The NHRC will enjoy public legitimacy when it is seen to stand up for the right of the powerless against powerful interests and act fairly in treating issues within their purview.

.....

Dr. Abdullah Al Faruque is an Associate Professor and Chairman, Dept. of Law, University of Chittagong, Bangladesh.



Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

DHAKA TUESDAY FEBRUARY 24, 2009

18th

ANNIVERSARY OF
The Daily Star

Caretaker government system

FROM PAGE 38

hardly interferes in the election process.

The non-party caretaker government envisaged under the 13th amendment may work well if the president is also non-political. But in the constitution nowhere it is stipulated that a party in power should elect someone non-political to the office of the presidency. One rather gets an impression that the existing presidential election procedure leaves a scope for an open initiative to elect a partisan president. And it is the BNP, voted to power twice after the overthrow of General Ershad in December 1990, which took full advantage of this leeway by choosing so far three partisan presidents (viz. Mr Abdur Rahman Biswas, Prof A.Q.M. Badruddoza Chowdhury and Prof Iajuddin Ahmed).

Two of these three persons proved unusually loyal to their promoters and on two occasions their loyalty stretched too far to cause serious problems of law and order as well as volatile state of administration in the country. On the first occasion, between 18-20 May in 1996, just three weeks prior to the June (1996) election under the caretaker government, the then president (Mr Abdur Rahman Biswas) removed the army chief and two other senior military commanders unilaterally and arbitrarily without any consultation with or advice of the caretaker government - presumably under directives from his promoters, thereby he brought the country to the brink of a

serious type of intra-military conflict.

On the other occasion, the incumbent president Prof Iajuddin Ahmed was personally responsible for creating a state of uncertainty in the country after he had stepped into the office of the caretaker government's chief advisor on 31 October 2006. He then placed in his dual role as president and chief advisor took whimsical decisions one by one reportedly under the directions of the BNP high-ups.

It is noteworthy that the last AL government (1996-2001), formed in June 1996 under the prime ministership of Sheikh Hasina, showed an exemplary boldness in choosing for the post of president a 'neutral' personality like Justice Shahabuddin Ahmed. At that time the people of the country did applaud the AL leadership for this prudent decision. It indeed bolstered AL's credibility as a political party adherent to the values of the parliamentary democracy. Moreover, the decision as such ultimately helped the caretaker government (2001) transact its business without much difficulty during the interim period as well as to hold the October (2001) election in a free and fair manner. However, it was quite unfortunate that the AL leadership later criticised Justice Shahabuddin Ahmed as the party lost in the October (2001) election.

Finally, at this point of time Mr. Zillur Rahman, the senior-most presidium member of the Awami League has assumed the office of President. As a close associate of Bangabandhu,

Mr Rahman has contributed much to this country's efforts in nation building. His contribution to the liberation war is also remarkable. The nation also remembers his sacrifice for the politics as his wife was brutally killed in the AL public meeting during the last BNP regime. Moreover, at the critical juncture of politics, during the

tenure of the army-backed caretaker government, this veteran leader led the party efficiently and effectively in absence of the AL president Sheikh Hasina. So, no doubt, he deserves the position as has been offered. But our only hope is that, despite his old age and frail health, Mr Rahman will always try to act remaining above all

politics. We do not want to see any partisan president. Whoever comes to this position he should be the president of all -- not of any particular party, class or group.

.....
Syed Giasuddin Ahmed is Supernumerary Professor, Dhaka University.

