

Human Rights

The Government has announced the establishment of a Human Rights Commission; the timing of the announcement was probably determined by the need to make some show in time for meeting of the UN Human Rights Commission in February 1994 in Geneva. The Commission will be expected to look into cases of human rights violations and will be composed of retired judges; that is all we know for the moment.

*A similar Commission has been set up in India. We publish below extracts from an article in the **Economic and Political Weekly**, published from Bombay, pointing out the many deficiencies and weaknesses of India's Human Rights Commission to really protect human rights and punish the perpetrators of violations. These will need to be taken into account when the government actually spells out the details of its intentions. We certainly do not need a replica of the Indian Commission.*

ONE MORE ORNAMENTAL COMMISSION

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The Protection of Human Rights Ordinance, 1993 issued by the President of India defines human rights as "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution of India or embodied in the international covenants and enforceable in India." The constitutional rights referred to are fundamental rights and directive principles, the former justiciable and the latter non-justiciable. The international covenants are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The former is analogous to fundamental rights and the latter to the directive principles. Then there is the rider that they must be enforceable by courts in India. And the only rights enforceable in India are the fundamental rights. It means that the 'human rights' defined in the ordinance do not expand or deepen the rights which already exist in India. So what one has to examine is whether the mechanism set up by the ordinance leads to better and more effective enforcement of the existing rights. In this respect the composition of the National Human Rights Commission assumes importance. Unless there is firm commitment to human rights on the part of the members of the commission and the government, which is ultimately the implementing authority, the commission will end up as another ornamental body like the other three commissions for scheduled castes and scheduled tribes, minorities and women.

The commission will have eight members; (a) a chairperson who has been a chief justice of the Supreme Court, (b) one member who is, or has been, a judge of the Supreme Court, (c) one member who is, or has been, chief justice of a high court, (d) two members having knowledge of, or practical experience in, matters relating to human rights. The chairpersons of the National Com-

mission for Minorities, the National Commissions for Scheduled Castes and Scheduled Tribes and the National Commission for Women will be ex-officio members of the commission. In none of the cases does commitment to human rights seem to be a criterion.

The ordinance lays down that members of the commission will be appointed by the President on the recommendations of a committee. The committee will consist of the Prime Minister, the Speaker of the Lok Sabha, the home minister, the leader of the opposition in the Lok Sabha, the leader of the opposition in the Rajya Sabha and the deputy chairman of the Rajya Sabha. As things stand today, four of the six members of the committee belong to the Congress and the remaining two to the BJP. There is no reason to believe that members belonging to either of these parties have any particular commitment to human rights. The BJP, the recognized opposition party in parliament, goes even to the extent of demanding that the demographic composition of areas where there is no Hindu majority be changed through shifting and resettlement of population. The lack of commitment on the part of the Congress and the BJP is reflected in the appointment of Ranganath Misra as the chairperson of the commission. One may remember that Justice Misra had headed the commission which enquired into the massacre of Sikhs in 1984 and he had done his best to absolve Congress big-wigs of responsibility for the pogrom.

Even if the commission were genuinely committed to human rights, it would be rendered ineffective unless it had an independent investigative machinery, appointed by and accountable to itself. According to the ordinance, however, the central government will, on request, make available to the commission police and investigative staff

under an officer not below the rank of a director-general of police. The allegations of violation of human rights are invariably against the police. It is too much to expect that the same police will investigate and bring their colleagues to book.

One of the functions of the commission is to visit jails and other places where prisoners are kept. But this purpose is vitiated by the stipulation that the state government should be informed of such a visit in advance. Prisoners are likely to be intimidated and tell-tale signs wiped out before the commission arrives on the scene.

The main function of the commission is to enquire into violation of human rights, or negligence in the prevention of such violation, by a public servant. It may be noted that the bill introduced in parliament empowered the HRC to investigate violation of human rights "resulting from the terrorist acts committed by any section of the people" and to "make appropriate recommendations there". In the ordinance this has been practically given up; instead the commission has been enjoined to "review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures...."

There are other functions which the commission is mandated to perform. They are: to intervene in court proceedings involving violation of human rights, review safeguards for the protection of human rights and recommend measures for their effective implementation, study international instruments on human rights with a view to their effective implementation, undertake research in the field of human rights, spread human rights literacy and encourage the efforts of non-governmental human rights organisations. How much the commission will succeed in discharging these responsibilities will also depend upon how much importance the government gives to the commission.

The commission has the power to summon witnesses and documents. The ordinance is silent on whether the commission will conduct its enquiry in public or not. The main purpose of the commission being to ventilate and highlight violations of human rights with a view to preventing its recurrence, it is very important that the commission's enquiries be held in public and all the relevant documents are made public.

When an enquiry discloses violation of human rights, the commission may recommend that the government initiate prosecution against the accused. The commission may

also recommend interim relief to the victims. The action taken or proposed to be taken by the government on the recommendations will be intimated to the commission ordinarily within two months. The commission will publish its enquiry report with its recommendations and the action taken or proposed to be taken thereon. The past record of the government is not very reassuring that the commission's recommendations will be acted upon.

The commission can be effective only if it has its own prosecutors and legal staff to proceed against violators with no need of previous sanction of the government. But this is not provided for in the ordinance. Besides, it is doubtful whether parliament can enact such a law at all. Violations of human rights being criminal acts, they come within the realm of public order. As public order is a state subject, only the state legislatures can enact laws on matters of public order. Now this need not be an impediment in the way of enforcement of human rights. In a vast country like India the power to implement human rights has to be decentralised and state human rights commissions can play an important and effective role. The ordinance in fact expects the states to do this.

The main flaw in the ordinance is that the military and para-military forces like the BSF and the CRPF are virtually excluded from the purview of the commission. It has no authority to investigate allegations against these forces. Today the main areas of concern are Kashmir, the north-east and Punjab where it is mainly the armed forces who are dealing with problems of law and order. There are allegations galore against the armed forces in all these areas.

There is a concerted and deliberate attempt to make a holy cow of the armed forces and to put them on a high pedestal beyond the pale of ordinary laws. This is done in the name of the unity, integrity and security of India. The objective is to create 'sacred' entities at whose altar the people of India can be sacrificed with impunity whenever it suits the interests of the powers that be. The propaganda about the armed forces reminds one of George Orwell's 1984. Torture, rape and murder become acts of patriotism, while attempts to expose them before the general public become anti-national and unpatriotic.

- Courtesy: *Economic and Political Weekly*,
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FROM A COUNTRY OF CORPSES

Accept this gift
in my cupped hands,
a water with history.

Take it gently,
this memento of who we are
and listen to it breath,
and hear the buried men from our earth,
and from somewhere within , deep,
you will hear the lament of birds
for the abducted.

You will also gather
through this water, heavy and cheerless,
of exhausted nights
when dogs howled with bullet wounds,
when stars stopped twinkling, protesting
against government guards,
some in boots, some silent as black cats.

You will hear too
of days and days of mutilated men,
scattered headless near *bo* trees,
of streets where common birds inhaled an infected air, thick, boasting smells
of burning bodies, bodies with beating hearts.

O yes, I can offer you more and more,
moments stored in the heart of this water,
moments that moved within the clammy palms
of the dogs eating corpses,
parish dogs.

So please, accept these tears.

A. M. Macan Marker