

# Flaws in Human Rights Commission Bill

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AFTER a couple of false starts in the '90s, the Pakistan establishment has taken a fresh step towards creating a National Commission for Human Rights (NCHR). A bill has already been introduced in the National Assembly. It is essential that while welcoming the move the contents of the bill should be thoroughly scrutinized in a public debate across the country, particularly because some of the flaws in the draft could greatly undermine the usefulness of the proposed institution.

Since Pakistan is a late-comer in this field, it should be proper to learn from the experience of comparable societies in Asia-Pacific as official human rights commissions have been functioning for quite some time in Australia, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, Philippines, Sri Lanka and Thailand. Islamabad has itself recognized the value of the regional experience by basing its National Commission for Human Rights Bill almost entirely on India's Protection of Human Rights Act of 1993, although the few deviations from the Indian law are of a fundamental nature.

The usefulness of an official human rights commission is judged, in the first instance, by the roster of its functions. The Pakistan bill is quite comprehensive in this regard.

The commission will be required to issue rejoinders not only to UN bodies/Rapporteurs but also to national and foreign human rights NGOs.

All state commissions on human rights generally function as judicial tribunals for the adjudication of cases of infringement of human rights. They are also required to promote human rights through non-judicial actions. The composition of a commission is, and should be, influenced by an assessment of the special conditions and needs of the society concerned.

For instance, the very composition of the Australian commission, called Human Rights and Equal Opportunity Commission, indicates priority target areas. The commission includes a race and discrimination commissioner, an aboriginal and Torres Strait Islander commissioner, a sex discrimination commissioner, privacy commissioner, and a

er has to be a sitting / retired chief justice of a high court.

The authors of the Pakistan bill do not seem to be sure of their priorities. The head of the NCHR may be a retired judge of the Supreme Court or an eminent person of known integrity and competence and 20 years' experience of human rights whatever that may mean. One of the two members from each province may be a retired high court judge or qualified to be a high court judge or a bureaucrat who retired in grade 21 or higher. The partiality to retired persons steeped in the official outlook is obvious.

Pakistan apparently favours a large commission, a chairperson and 19 members. Only the Indonesian decree of 1993 envisaged a larger body — a chair, two vice-chairpersons, 25 members — and Malaysia put the limit at no more than 20 members. All other countries in Asia-

Pacific have smaller commissions. Perhaps the dominant view is that obesity is not necessarily a guarantee of efficiency. In Pakistan where the strength of even the Supreme Court is 17, the decision to have a 20-strong NCHR will have to be justified, unless the members are not supposed to be full-time public servants.

Far more important than the composition of a state human rights commission is the designation of the appointing authority, which has a direct bearing on the independence of a commission as well as its democratic character. Various devices have been employed in the Asia-Pacific region to lay down a selection process that inspires confidence. In India, the chairperson and

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The authors of the Pakistan NCHR bill have chosen to disregard the Asian models and penned down a single sentence to describe the formation of the commission: "The president shall appoint the chairperson and the members and for that may seek nominations and recommendations through the federal government." This text is ambiguous enough to permit the selection of nominees by more than one agency.

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The proposed NCHR will have the power to inquire into complaints of human rights violations; intervene in court proceedings relating to human rights abuse; visit jails / reformatories and report on conditions there; review laws (including those on terrorism) that impinge on human rights and recommend remedies; review provisions of the constitution and the laws that offer protection of human rights and suggest improvements; make recommendations for effective implementation of international HR instruments; assist in drafting and execution of HR education and research programmes; conduct an HR awareness programme; encourage and help HR NGOs; and such functions as are considered necessary for the prevention of violations of human rights and / or their promotion.

The 10 functions listed above have been taken from the Indian law (the language is largely unchanged). The Pakistan NCHR will also encourage ratification of international instruments and ensure their implementation. However, two additional functions of the proposed NCHR that are not found in the Indian legislation have a sinister ring and are unlikely to be approved by independent critics at home or abroad. First, according to Section 11(k) of the bill, the Pakistan NCHR will "contribute to the reports which Pakistan is required to submit to the United Nations bodies and committees pursuant to its treaty obligations, and where necessary, may express an opinion on the subject with due respect for their independence". Secondly, Sec. 11(m) defines a function of the NCHR as "pursuing or defending issues, complaints, representations and matters for and against Pakistan relating to human rights before any official or non-governmental organization, body or forum in Pakistan and, in consultation with the Foreign Affairs Division, before any international organization and foreign government or non-governmental organization".

A more blatant elaboration of the apology-making role of the NCHR is difficult to imagine.

disability discrimination commissioner.

The New Zealand commission also includes a member to function as the race relations conciliator and privacy commissioner. In India, the heads of three statutory national commissions — for minorities, for women, and for scheduled castes and tribes — are deemed to be members of the National Human Rights Commission. These arrangements clearly reveal an essential realization by the law-makers of the areas of greater concern in regard to HR violations. The Indian law also provides for the constitution of HR commissions in the states of the union, an admission that in a federal-type polity HR issues need to be tackled at the level of constituent units (states in India, provinces in Pakistan).

The bill on Pakistan's NCHR acknowledges the existence of provinces (two members from each province), the Islamabad capital territory and Fata (one member each), minorities (two members), and women (two members). Of course, there will be a member from the National Assembly and another from the Senate. It seems the idea is to respect the state's power structure and some features of division of population and leave the commission to discover for itself the major HR realities. However, possibilities of linking up the commissions on women and minorities (one hopes they are alive) with the NCHR could still be explored.

Despite the importance attached to the judicial functions of national human rights commissions only two states in Asia-Pacific region, India and Nepal, provide that the commission must be headed by a retired judge — a former chief justice of the supreme court in the case of India and a retired chief justice or judge of the apex court in Nepal. Of all the countries in the region, India's preference for judges is the most prominent. Besides the chairperson, who must be a former chief justice of the supreme court, out of the four regular members one should be a sitting / retired judge of the supreme court and another

members of the NHRC are appointed by the president on the recommendation of a committee comprising the prime minister (chair), the Lok Sabha speaker, the home minister, the opposition leaders in the Lok Sabha and the Rajya Sabha, and the deputy chairman of the Rajya Sabha.

In Fiji, HR Commission head and members are appointed by the president on the advice of the prime minister who consults the leader of the opposition and the house standing committee on human rights. Mongolia follows a unique selection procedure. The HR Commission members are appointed by parliament out of candidates nominated by its speaker on the basis of respective proposals made by the president, the standing committee on legal affairs, and the supreme court.

The members of the HR Commission of Sri Lanka are appointed by the president on the recommendation of the Constitutional Council and in its absence on the recommendation of the PM made in consultation with the speaker and the leader of the opposition. One of the members is named chairperson by the president.

The president and members of the National HR Commission of Thailand are appointed by the king after they have been nominated by a committee comprising the president of the supreme court, the president of the supreme administrative court, the attorney-general, the law society chairman, and representatives of academia, HR organizations, political parties and the public media. Out of them (22), the senate elects 11 members by secret ballot. The senate president sends their names to the king for royal orders and counter-signs these orders.

All these formulas reflect a growing realization that members of national human rights commissions should not attract doubts about their independence of the executive. The practice of associating the parliamentary opposition for filling key state offices, which include election chiefs and heads of statutory