

(Unofficial English version)

Act No.53 of 2009

An Act to establish National Human Rights Commission

Whereas protection, promotion and providing guarantee of human rights have been enshrined in the Constitution of Peoples Republic of Bangladesh as the main aim of the State; and

Whereas it is expedient and necessary to establish a National Human Rights Commission and make provisions in this behalf for protecting, promoting and providing guarantee of human rights properly;

It is hereby enacted as follows:

CHAPTER 1

PREAMBLE

1. Short title and commencement:

- (1) This Act may be called the National Human Rights Commission Act, 2009.
- (2). It shall be deemed to have come into force on the 1st September, 2008.

2. Definitions: In this Act, unless there is anything repugnant in the subject or context,

- (a) “Commission” means the National Human Rights Commission;
- (b) “Chairman” means the Chairman of the Commission and the person acting as the Chairman of the Commission;
- (c) “Public servant” means the public servant as defined in section 21 of the penal code;
- (d) “Penal Code” means the Penal code, 1860 (XLV of 1860);
- (e) “Rules” means the rules made under this Act;
- (f) “Human Rights” means Right to life, Right to liberty, Right to equality and Right to dignity of a person guaranteed by the constitution of the People’s Republic of Bangladesh and such other human rights that are declared under different international human rights instruments ratified by the People’s Republic of Bangladesh and are enforceable by the existing laws of Bangladesh.
- (g) “Discipline force” means the discipline force stated in the Article of 152(1) of the Constitution of the People’s Republic of Bangladesh;
- (h) “Member” means a Member of the Commission and also includes the Chairman;
- (i) “Evidence Act” means the Evidence Act, 1872 (1 of 1872);
- (j) “Constitution” means the Constitution of the People’s Republic of Bangladesh.

CHAPTER-II

ESTABLISHMENT OF HUMAN RIGHTS COMMISSION

3. Establishment of the National Human Rights Commission:

(1) After the Act comes into force, a Commission to be called as the National Human Rights Commission shall, as soon as possible, be established for carrying out the purposes of this Act and in accordance with the provisions of this Act.

(2) The Commission shall be a statutory independent body having perpetual succession and the power, among others, to acquire, hold, manage, dispose of property, both moveable and immovable, and shall by the said name sue and be sued.

(3) The Commission shall have an official seal, which shall be kept under the authority of the Secretary of the Commission.

4. Office of the Commission: The Head office of the Commission shall be situated in Dhaka and the Commission in case of necessity may establish offices in the Divisions, Districts and Upazillas.

5. Formation of the Commission:

(1) The Commission shall consist of a Chairman and Members not exceeding six.

(2) Chairman and one Member of the Commission shall be full time and other Members shall be honorary.

(3) Among the Members at least one shall be woman and one shall be from the ethnic group.

(4) Chairman shall be the Chief Executive of the Commission

6. Appointment, terms of office, resignation, etc of the Chairman and Members of the Commission:

(1) The President shall, upon recommendation of the Selection Committee, appoint the Chairman and Members of the Commission, provided that, no person shall be qualified for appointment to the post of the Chairman or a Member of the Commission if he is less than 35 years of age and over 70 years of age.

(2) The Chairman and the Members of the Commission shall, subject to the provisions of this section, be appointed from amongst the persons who have remarkable contribution in the field of legal or judicial activities, human rights, education, social service or human development.

(3) The Chairman and Members of the Commission shall hold office for a term of three years from the date on which he enters upon his office; provided that a person shall not be appointed for more than two terms as a Chairman or Member of the Commission.

(4) The Chairman or any Member of the Commission may, before completion of his tenure as stated in sub-section (3), resign his office by writing under his hand addressed to the President.

(5) If a vacancy occurs in the office of the Chairman or if the Chairman is unable to discharge the function of his office on account of absence, illness or any other reason, the Full Time Member of the Commission shall act as Chairman until a newly appointed Chairman holds office or until the Chairman resumes the function of his office, as the case may be.

7. The selection Committee:

(1) To make recommendation on the appointment of the Chairman and Members, a selection Committee shall be constituted consisting of the following seven Members:

- (a) Speaker of the parliament who shall also be its Chairman
- (b) Minister, Ministry of Law, Justice and Parliamentary Affairs
- (c) Minister, Ministry of Home Affairs
- (d) Chairman, Law Commission
- (e) Cabinet Secretary, Cabinet Division
- (f) Two Members of the Parliament, nominated by the Speaker of the Parliament, out of whom one shall belong to the Treasury Bench and the other from the opposition.

(2) The Ministry of Law, Justice and Parliamentary Affairs shall provide the Selection Committee with necessary secretarial assistance for discharging its function.

(3) The presence of four (4) Members shall constitute the quorum of the Selection Committee

(4) For the purpose of making recommendation on the appointment of the Chairman and Members, the Selection Committee, Shall recommend two names against each vacant post on the basis of the decision of the majority of the votes of the Members present, and in case of equality of votes, the person presiding over the meeting shall exercise casting vote.

(5) The Selection Committee shall determine the procedure of its meeting.

8. Removal of the Chairman or a Member:

(1) The Chairman or any Member of the Commission shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court.

(2) Notwithstanding anything contained in sub-section (1), the President may remove the Chairman or any other Member from his office, if he -

(a) is declared insolvent by any competent court; or

(b) in case of Chairman and Full Time Member engages himself in any post extraneous to his own duties during his term of office for remuneration; or

(c) is declared by a competent court to be of unsound mind; or

(d) is convicted of any offence involving moral turpitude.

9. Vacancies to the post of Members not to invalidate any act or the proceeding of the

Commission: No act or proceeding of the Commission shall be invalid or called in question merely on the ground of existence of any vacancy in the office of the Member or defect in the constitution of the Commission.

10. Salaries, allowances etc of the Members:

(1) The Chairman shall be entitled to get salaries, allowances and other privileges as a Judge of the Appellate Division of the Supreme Court.

(2) The Full Time Member shall be entitled to get salaries, allowances and other privileges as a Judge of the High Court Division of the Supreme Court.

(3) The Honorary Members shall be entitled to get Honorarium and allowances for discharging their duties including attending Commission Meeting at the rates as determined by the Commission.

11. Meeting of the Commission:

(1) The Commission shall, subject to the provisions of this Act, determine the procedure of its meetings.

(2) The Chairman shall preside over all the meetings of the Commission and in his absence the Full Time Member shall preside over the meeting.

(3) The presence of the Chairman and at least three Members shall constitute the quorum of a meeting

(4) For taking decision in the meeting of the Commission each Member shall have one vote and in case of equality of votes, the person presiding over the meeting shall have a second or casting vote.

(5) There shall be at least one meeting of the Commission within two months.

CHAPER-III

Functions of the Commission

12. Functions of the Commission:

(1) The Commission shall perform all or any of the following functions, namely:

(a) to inquire, suo-moto or on a petition presented to it by a person affected or any person on his behalf, into complaint of violation of human rights or abetment thereof, by a person, state or government agency or institution or organization;

(b) to inquire, suo-moto or on a petition presented by the person affected or any person on his behalf, into any allegation of violation of human rights or abetment thereof or negligence in resisting violation of human rights by a public servant;

(c) To inspect any jail or any other places where persons are detained or lodged for the purpose of correction, custody, treatment, or such other welfare, and to make recommendation to the government thereon for the development of those places and conditions;

(d) To review the safeguards of human rights provided by the Constitution or any other law for the time being in force and to make recommendation to the government for their effective implementation;

(e) To review the factors, including acts of terrorism that inhibit the safeguards of human rights and to make recommendations to the Government for their appropriate remedial measures;

(f) To research or study treaties and other international instruments on human rights and to make recommendation to the government for their effective implementation;

(g) To examine the draft bills and proposals for new legislation for verifying their conformity with international human rights standards and to make recommendations for amendment to the appropriate authority for ensuring their uniformity with the international human rights instruments;

(h) To give advice to the Government for ratifying or signing the international human rights instruments and to ensure their implementation;

(i) To research into the field of human rights and to take part in their execution in educational and professional institutions;

(j) To publicize human rights literacy among various sections of society and to promote awareness of the safeguards available for the protection of those through publications and other available means;

(k) To encourage and coordinate the efforts of Non-Governmental Organizations and institutions working in the field of human rights;

(l) To enquire and investigate into complaint related to the violation or probability of violation of human rights and resolve the issue through mediation and conciliation.

(m) To advise and assist the Government by providing necessary legal and administrative directions for protection and promotion of human rights.

(n) To make recommendation to the Government so that the measures taken through the laws of the land in force and administrative programs are of international standard ensuring human rights;

(o) To assist and advice the organizations or institutions working in the field of human rights and generally the civil society for effective application of human rights;

(p) To raise public awareness through research, seminar, symposium, workshop and relevant activities and to publish and disseminate the outcomes.

(q) To provide training to the members of the Law enforcing agencies regarding protection of human rights;

(r) To provide legal assistance to the aggrieved person or any other person on behalf of the aggrieved person to lodge a complaint before the Commission;

(s) To undertake such other functions, as it may consider necessary for the promotion of human rights;

(2) Notwithstanding anything contained in sub-section (1), the following matters shall not be included into the functions or duties of the Commission, such as:

(a) Issues relating to the cases being tried before a court;

(b) Issues being considered by the ombudsman under the ombudsman Act, 1980(XV of 1980);

(c) any issue relating to the service matters of the public servants of the Republic and any employee engaged in the service of a statutory government authority which is triable in any Tribunal established under the Administrative Tribunals Act, 1980(VII OF 1981)

13. Reference from the Supreme Court:

(1) The Supreme Court may send any issue derived from an application made under article 102 of the Constitution, to the Commission for submitting report after enquiry.

(2) The Commission shall, after making an enquiry into the matter under sub-section (1), submit the report to the Supreme Court within the time frame, if any, mentioned in the reference.

14. Steps to be taken in case of revelation of Human Rights violation:

(1) If any human rights violation is revealed from the enquiry of the Commission, the Commission may take steps to resolve it through mediation and conciliation.

(2) If the mediation and arbitration under sub-section (1) does not succeed, the Commission shall-

(a) Recommend to the appropriate authority to file case or take any proceedings against the human rights violator;

(b) Recommend to the appropriate authority or person to prevent or to take remedial measures for protecting the violation of human rights.

(3) The Commission shall not make any recommendation under this section without giving opportunity of hearing to the person who has been accused for violation of human rights or who is about to violate human rights.

(4) The Commission shall send a copy of the recommendation of the Commission under this section to the complainant.

(5) The Commission may require the person or authority, to which the recommendation is sent for action, to send a follow up report on the measures taken according to the recommendation and it shall be the duty of the person or authority to send the report required.

(6) If any person or authority to whom recommendation was sent under this section from the Commission, fails to submit the report required, or if the Commission considers the action taken or proposed to be taken as insufficient, the Commission shall, if it considers appropriate, send the full description of the issue to the President and the President shall take necessary measures to lay a copy of that report to the Parliament.

15. Appointment of mediators or conciliators:

(1) If any issue is sent under this Act for mediation or conciliation, the Commission shall appoint one or more persons to mediate or conciliate between the parties.

(2) The procedure of appointment and power of the mediator and conciliator shall be determined by rules.

(3) The Commission may order the concerned parties to be present before the mediator or conciliator for mediation or conciliation.

(4) The sessions of the mediators and conciliators may be held in open or in camera.

(5) If the issue is not resolved through mediation or conciliation or any party objects for the mediation or arbitration, the mediator or arbitrator shall inform the matter to the Commission.

(6) If there is a settlement through mediation or conciliation, the mediator or conciliator shall inform the matter to the Commission.

(7) In order to execute the settlement made under sub-section (6), the Commission may, along with other instructions, give instruction of imposing fine as it deems appropriate.

16. Powers relating to inquiries: The Commission shall have the following powers of the Civil Courts as specified in the Civil Procedure Code, 1908 (Act no. 5 of 1908) for the purposes of investigation and inquiry under this Act, namely:-

(a) Summoning and ensuring the attendance of witnesses and examining them;

(b) Summoning for giving written or oral evidence by oath.

(c) Summoning any person living in Bangladesh to give evidence being present before any meeting of the Commission and to produce any document which remains in his possessions;

(d) Providing authorization for or against the public participation in an investigation or inquiry.

17. Investigation into complaint:

(1) The Commission, while investigating into the complaints of violation against human rights, may call for the report or information from the Government or any authority of the Government or any other organization within the time specified by the Commission.

(2) If the Commission does not receive the report or information within the time specified under Sub-section (1), the Commission may, on its own, start investigation.

(3) On receipt of information under sub-section (1) if the Commission

(a) is satisfied that there is no necessity of further investigation; or

(b) The Government or the Authority, as the case may be, has taken proper action or has started initiative to take up proper action –

then the Commission will not proceed to make any inquiry into the matters.

18. Procedure to be followed in case of disciplined force:

(1) Notwithstanding any other provision of this Act, the Commission on suo-moto or on the basis of any application may call for report from the Government on the allegation of violation of human rights by the disciplined force or any of its members.

(2) If any report is called for under Sub-section (1), the Government shall submit the report to the Commission.

(3) On receipt of the report under Subsection (2), the Commission

(a) if satisfied, would not proceed in the matter any further.

(b) if it deems necessary, may make recommendation to the Government for actions to be taken into the matter.

(4) On receipt of the recommendation under subsection (3) the Government shall inform the Commission in writing about the action taken into the matter within six months from the date of receipt of the recommendation.

(5) On receipt of the report under sub-section (4) the Commission shall furnish its copy to the Complainant or his representative, as the case may be.

19. Procedure after inquiry:

(1) Notwithstanding anything contrary contained in the Act, if the Commission finds the complaint is true, after concluding the inquiry, the Commission may,

(a) recommend to the Government to initiate proceeding for prosecution or take such other legal action against the concerned person and, at the same time, shall describe the type of case or other appropriate legal proceedings in the recommendation.

(b) submit or cause to submit a petition before the High Court Division of the Supreme Court on behalf of the aggrieved person if it is competent to pass order or to give instruction under Article 102 of the Constitution.

(2) The Commission may under sub-section (1) recommend to the Government or concerned authority to sanction such amount of temporary grant to the victim or his family as the Commission may consider appropriate.

(3) The Commission shall provide a copy of the inquiry report to the aggrieved person or his representative.

(4) The Commission shall send a copy of the inquiry report with recommendations made under sub-section (1) and (2) to the Government or to the concerned authority and the Government or the concerned authority shall, within a period of three months from receiving the report, inform the Commission about the action taken or proposed to be taken thereon; provided that, if the Government or the authority contradicts with the Commission, or fails or denies to take decision according to the recommendations of the Commission, the Government or the authority shall inform the Commission about the reasons of such contradiction, inability or denial within the aforesaid time limit.

(5) The Commission shall publish the summary of its inquiry report and its decision or recommendation on the report, in such manner as it thinks fit; provided that, if the Commission is satisfied that it is necessary to publish the whole or any part thereof for general information considering its importance, it shall publish the whole or any part of the report, as the case may

be; provided further that, if the Commission is satisfied that, it is not necessary to publish the summary of any report, it shall not be necessary to publish anything of the said report.

(6) The Commission shall have the right to intervene in any proceeding involving allegation of violation of human rights pending before any court or in any legal proceeding.

20. Privileges of the witness giving evidence to the Commission:

(1) The person who gives evidence to the Commission shall have the same privileges of the person who gives evidence to the court.

(2) No suit or prosecution shall lie against any person for his statement or speech that is recorded as evidence before the Commission and that statement or opinion shall not be used in any proceeding of criminal or civil nature; but he shall not be absolved of any offence for false evidence; if there is any, in his statement or speech.

21. Execution of summons:

(1) Each summons under this Act shall be issued with the signature of the Chairman or any Member or an officer of the Commission authorized by it for this purpose.

(2) Each summon will be issued and dispatched to the person described in it and, if not possible, to the last residential address of that person by delivery or by registered post.

(3) The person to whom the summons is served, shall be present before the Commission in the time and place mentioned thereon and that person shall answer all the questions asked by Commission and, in accordance with the spirit of the summon, also submit all the documents which are in his possession.

22. Annual report of the Commission:

(1) The Commission shall submit an annual report to the President regarding its activities of the previous year within 30 March in each year.

(2) There shall be a memorandum with the annual report under sub-section (1), in which, among other things, the reasons of not taking necessary action or steps by the Government or concerned authorities in accordance with the recommendations of the Commission, as far as known to the Commission, will be written.

CHAPTER-IV

Officers etc of the Commission

23. Officers and employees of the Commission:

- (1) There shall be a Secretary of the Commission.
- (2) The Commission may, under this Act, appoint such officers and employees as it considers necessary for the efficient performance of its functions.
- (3) Salary, allowances and other terms and conditions of the services of the Secretary and other officers and employees of the Commission shall be determined by rules; provided that the salary, allowances and other terms and conditions of the service of the Secretary and other officers and employees shall be determined by the Government until such rules are made
- (4) The Government may, on request of the Commission, appoint any officer and staff of the Republic to the Commission on deputation.

24. Human Rights Commission Fund:

- (1) A fund to be called as Human Rights Commission Fund shall be formed for carrying out the purposes of the Act.
- (2) The Management and administration of the Human Rights Commission Fund hereinafter referred to as the Fund in the section, shall, subject to the provisions of this section and of the rules, be vested on the Commission.
- (3) Salary, allowances and other monetary facilities in accordance with the terms and conditions of the service of the Members, officers and staff of the Commission and other necessary expenses of the Commission shall be disbursed from the fund.
- (4) The following money shall be deposited to the Fund, such as
 - (a) Annual grant allocated by the Government;
 - (b) Grants provided by the local authorities.

25. Financial Freedom of the Commission:

- (1) The Government shall allocate specific amount of money for the Commission in each fiscal year; and it shall not be necessary for the Commission to take prior approval from the Government to spend such allocated money for the approved and specified purpose.

(2)The provisions of this section shall not be construed to have prejudiced the rights of the Auditor-General under Article 128 of the Constitution.

26. Audit and Accounts:

(1) The Commission shall maintain its accounts properly and prepare annual statement of its accounts.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General of Bangladesh, hereinafter referred to as the Auditor-General, every year and a copy of the audit report shall be submitted to the Government and to the Commission.

(3) For the purpose of an audit under sub-section (2) the Auditor General or any person authorized by him in this behalf shall have accesses to all records, documents, cash or deposited currency to the bank, securities, stores and other property of the Commission, and may examine any Member of the Commission or any other officer or staff of the Commission.

27. Public Servant: the Chairman, Members, Secretary, other officers and staff and every officer assigned to work under this Act by the Commission shall be deemed to be public servant as it is defined under section 21 of the penal code.

28. Delegation of Power: The Commission may delegate any of its powers to the Chairman, Members or Secretary, subject to such terms and conditions as it may determine.

29. Protection of action taken in good faith: No suit or prosecution or other legal proceedings shall lie against the Government, the Commission, any Member, officer or staff of the Government or the Commission for any publication, report or any other activity of the Government and the Commission, for anything which is, in good faith, done under this Act or the rules made there under, for any damage caused or likely to be caused by such thing.

30. Power to make rules:

The Commission may, with prior approval of the President and by notification in the official Gazette, make rules for carrying out the purposes of this Act.

31. Publication of English text:

(1) The Government shall, after the commencement of this Act, by notification in the official Gazette, publish an authentic text of authorized translation in English of the Act.

(2) In the event of conflict between the Bangla and the English text, the Bangla text shall prevail.

32. Provision as to saving:

(1) Anything done or any action taken under the National Human Rights Commission Ordinance, 2007 (Ordinance 40 of 2007) hereinafter referred to as the aforesaid Ordinance, shall be deemed to have been taken and done under the provisions of this Act.

(2) Notwithstanding the cessation of the aforesaid Ordinance under the provision of Article 93(2) of the Constitution of the People's Republic of Bangladesh any act done or action taken in continuity shall, subject to the provisions of this Act, be deemed to have been done or taken under this Act.

Ashfaque Hamid

Secretary