RIGHTS *investigation*

An articulate compilation on law enforcers and extrajudicial killings

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EXTRAJUDICIAL killing by the law enforcing agencies is becoming a common incident in our country. Such indiscriminate killings in the name of crossfire cannot be justified by any legal system. Every person is entitled to the protection of law. A person may be a criminal but that does not give law enforcers a licence to kill him just ignoring the judicial process.

In the year 2004, we spent an evening with Abdullah Abu Sayed, head of Bishwa Sahittya Kendro, in a programme at Rajshahi University. At that time, RAB was very popular. On enquiring about his opinion of RAB, he said "When you had no alternative but to face the present demand you have to do something which gives you an instant result. However, this cannot be a permanent solution."

Rights groups and human rights defenders have questioned the legitimacy of this kind of killing and RAB as a whole. They were also opposed to the Jatia Rakkhi Bahini when it was formed in 1972 which, as claimed by victims, alienated 30,000 leftwing political activists. However, governments are always indifferent in this regard.

We have attempted to briefly discuss three of Odhikar fact-finding reports to find out whether all the victims who were killed in so-called crossfire were criminals and, if so, whether they were killed in the exercise of due judicial process.

From Odhikar's documentation it was found that from January 2001 to December 2005, law enforcers were responsible for a total of 872 extrajudicial killings. These killings were officially recorded as 'death' by 'encounter', 'suicide' or 'heart attack'.

A table of reported incidents of extra-judicial killings from January 1 to August 31, 2006 is given below. The victims were all in the custody of the law enforcing agencies: Death caused by Law Enforcing Agencies: (January 1 - August 31, 2006) [from Odhikar's documentation]

Month (s)	By RAB	By police	By others	Total
January	7	21		28
February	12	5		17
March	13	11	2	26
April	7	20		27
May	20	14		34
June	25	9		34
July	19	9	4	32
August	11	19	6	36
Total	**114**	**108**	**12**	**234**

Case study-1

Ismail Hossain, a business man was killed in 'crossfire' in the Kamrangir Char area on May 21, 2006. His family members learnt that Ismail's body was in the Mitford Hospital morgue but police did not allow them to see it. A reporter from electronic media (NTV) informed them that Ismail was killed in crossfire while he was in fetters. The dead body was handed over to the family at 5 pm on May 22, 2006. There were fetters on Ismail's feet at that time.

Abdul Matin, Officer in Charge of Lalbagh Police Station, informed Odhikar that Ismail was a dangerous criminal. On May 21, 2006 he was brought in on two days' remand (although the court granted one day remand). Based on his statement, a police team took Ismail to the Shahidnagar Dhal area to recover arms. As the team reached the area, Ismail's associates opened fire on the policemen and prompted them to retaliate. While trying to escape, Ismail sustained bullet wounds after being caught in the cross fire, the Officer in Charge claimed. Later he was taken to Mitford Medical College Hospital where doctors declared him dead. In answer to a question, he said that Ismail was in fetters but not locked with rods at that time and that the rods were unlocked in custody. However, Odhikar learnt that the rods were actually opened at Mitford Medical College Hospital when Ismail's body was delivered to his family.

Case study-2

A day labourer, Bacchu Mia, was arrested for robbery by Sherpur police and he later died in Sherpur police custody.

The Second Officer, S.I. Nibaran Chandra Barman of Sherpur Police Station said that Bacchu Mia was arrested on the night of June 07, 2006 (actual date was June 06, 2006). He said that Bacchu admitted his involvement in a robbery. On June 08, 2006 at 5.45 p.m. duty officer Oporna Biswas found that Bacchu had hung himself. After seeing this, she shouted out and other officers then came and cut the rope and pulled him down.

Case study-3

Kasim Uddin, a day labourer, was allegedly tortured to death by Kurigram police. Abdus Sattar, an eye witness, told Odhikar that people gathered on a bridge near Kasim Uddin's house on June 21, 2006 to watch on TV the football match between Argentina and Holland. As the match started at 1 a.m., some people including Tajul, Kasim Uddin's brother, were playing cards to pass time, not staking money. By that time, police were passing over the bridge to arrest Alam and Abed Ali of the same village. Seeing the police, they tried to run away but the police stopped four people, including Tajul. The police handcuffed them and put them in their pick-up van while they went to arrest Alam and Abed Ali who were the accused in a specific case. Having arrested them and on the way back when they came under a bamboo-clump, Kasim Uddin grabbed the legs of SI Hakim to help his brother escape. SI Hakim kicked Kasim Uddin in groin and chest. Kasim Uddin fell on the ground and shouted 'I am dying'. After a while, he died on the spot.

SI Nurul Islam Munir, Second Officer of that police station, said that SI Abdul Hakim told him that he did not touch Kasim Uddin but that he went to Mirerbari to arrest the two accused. Having arrested them on the way, they found somebody gambling on the bridge. Then SI Abdul Hakim arrested four people from the spot. At that time he heard a shout and came to know that a man named Kasim Uddin had died from a cardiac arrest.

The above-mentioned case studies indicate alleged violations of the law by the law enforcing agencies. These are-

- violation of laws in remand
- violation of laws inside custody, and
- violation of laws outside custody

In case study 1 it was noticed that the victim Ismail Hossain was in irons in police custody. However, the law is silent on whether an accused should be in irons while in custody. As a number of police officers were present, it was not possible for Ismail to flee. No proof was found that Ismail tried to flee from jail custody. Besides, he was allegedly beaten while on remand and it was impossible for him to walk without the help of others. How could he then be a dangerous criminal who could flee from custody?

A question was asked to an official of high rank (prison) about whether an accused could be taken in on remand wearing fetters. He replied that, for security reasons the police could sometimes do this.

The High Court Division issued a rule demanding why the extrajudicial killing of Ismail, when he was in fetters and unable to walk, was not illegal. The rule ordered the Home Secretary, Inspector General of Police, DIG of Dhaka Zone, Police Commissioner of Dhaka City and the Officer in Charge of Lalbagh Police Station to reply.

What does the law say?

In BLAST v Bangladesh 55 DLR 363, the High Court Division gave 15 directives on how the police should deal with an arrestee. To fetter prisoners in irons is inhumane and unjustified save where safe custody is otherwise impossible. The routine resort to handcuffs and irons is considered barbaric and hostile to human dignity and social justice.

Prisons Act 1894
Rule 486

When a prisoner shall be put in irons, his name and his prison number, date of wearing fettering irons and date of removing them must be recorded.

Rule 719 and 720

The maximum period in fettering irons would not exceed more than three months and, if it is necessary to continue the process, ten days break is needed.

Jail Code 1864
Section 56

Where the superintendent considers it is necessary for the safe custody of any prisoner, they should be confined in irons.

Section 57

(1)Prisoners under sentence of transportation may, subject to any rules made under section 59 [which provides that the government may make rules consistent with this Act], be confined in fetters for the first three months after admission to prison.

(2) Should the Superinten-dent consider it necessary, either for the safe custody of the prisoner himself or for any other reason, that fetters should be entrained on any such prisoner for more than three months, he shall apply to the Inspector General for sanction to their retention for the period for which he considers their retention necessary, and the Inspector General may sanction such retention accordingly.

Section 58

No prisoner shall be put in irons or under mechanical restraint by the jailor of his own authority except in case of urgent necessity in which case notice thereof shall be forthwith given to the Superintendent.

In this connection, a writ petition was filed in the High Court by Ain O Salish Kendro on February 25, 1998 asking why the rule to fetter in irons would not be unconstitutional. The hearing was forwarded from April 19 to April 27, 2006. The High Court ordered the jail authority to go through the Prisoner Act 1984 in this regard.

In case study 2 it was found that a day labourer was allegedly tortured to death in police custody where police tried to prove it as a suicide case. He was arrested on June 06, 2006. However, he was not produced before the court the following day and died on June 08, 2006. He was kept in police custody for two days. He was not taken in on remand.

Article 33 of the Constitution provides that a person must be produced before a magistrate within 24 hours of arrest. Section 324 of Police Regulations of Bengal, 1943 says the same thing. A police officer failing to produce a person before the magistrate within 24 hours of the arrest is guilty of wrongful detention.

Clause (4) of Article 35 of the Bangladesh Constitution clearly provides that no person accused of an offence shall be compelled to be a witness against himself. In this case, the accused was not in remand. Therefore, according to Sections 25 and 26 of the Evidence Act 1872, confessions given before a police officer or in police custody cannot be used against an accused. According to Section 27, the confession will acquire evidentiary value only when something is recovered according to his confession. In this case such type of process was not found.

For security reasons, the accused was kept in the female custody but the reasons why his security was threatened were not told. Nobody could give any satisfactory answer about why a travel bag's strap and rope were in the female toilet, what was the reason for Bacchu wanting to commit suicide and how an adult of 5'6" height could hang himself with such a thin rope. Police Officers cannot ignore their responsibility in this regard.

Section 29(7) of Police Act 1861 provides that, if any police officer is guilty of unwarrantable personal violence against any person in custody, he will be produced before the magistrate.

In case study 3 it was found that the victim was a day labourer. He was allegedly killed by a police officer outside the custody. There was no GD and no case was filed against him in the police station. Generally, police are engaged to ensure the safety of life and property of the people but in reality this is often not the case.

Impact

Approximately five hundred extrajudicial killings have been carried out by law enforcing agencies during one and a half year period. Judicial inquiry of more than two hundred extrajudicial killings must be ordered. Inquiry of three hundred cases has already been made but we do not know the nature of these enquiries or whether any of the law enforcers involved has been convicted.

Why the government is responsible

While Bangladesh has ratified the Convention against Torture and Other Cruel, Inhuman or Degra-ding Treatment or Punishment, it has a reservation on the application of Article 14 of the Convention. Article 14 stipulates that "the state party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including means of full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture his dependents shall be entitled to compensation."

In an Open Letter to the UN Human Rights Council on August 09, 2006, the Asian Human Rights Commission once again criticised the Government of Bangladesh for its failure to address "widespread and institutionalised torture, extrajudicial killings and corruption, and to make the country's judiciary independent of the executive". Further, the AHRC highlighted the Government of Bangladesh's pledge that it would establish the National Human Rights Commission as soon as possible.

Recommendations

From the above mentioned reported incidents of torture and death of arrestee, some recommendations can be made to prevent such abuses of human rights:

- Form special investigating units functioning preferably under the direction of the Attorney General.
- Speedily and effectively investigate all complaints of extrajudicial killings.
- Establish an independent Human Rights Commission.

The author is fact-finding officer of Odhikar.

Star LAW *analysis*

Right to information strengthens democracy

Nurul Huda

A consultation meeting on "Draft law on right to information," prepared by a law core group and facilitated by Manusher Jonno Foundation recently, emphasised the need for launching a countrywide movement of the people for its enactment. The demand for its enactment is sure to become stronger as professionals at different levels are gradually becoming united. And if the right to information is ensured it would go a long way to help strengthen democracy and also curb corruption in society.

The enactment of Right to Information Law is expected to greatly benefit the newsmen who frequently need confirmation of information from different sources. They face difficulties in the discharge of professional responsibilities in the absence of such a law.

In today's world the importance of free flow of information needs no exaggeration. Freedom of speech is often described as a precondition to democracy. And most of the countries of the world have either established democracy or are struggling for it.

The countries which were under the British rule have freed themselves from the colonial masters long ago, but in some cases they are still carrying the legacy of their colonial masters in running the affairs of the government. It is high time that the subject of right to information is brought under a legal regime as has already been done in many countries. If the political parties are serious about the enactment of Right to Information Act, they have to amend the Official Secrets Act which is a hurdle in gathering information.

Public statements were made by responsible ruling party leaders, including Law and Parliamentary Affairs Minister Barrister Moudud Ahmed that they would amend the

Official Secrets Act as it was not in conformity with democratic practices. In reality nothing concrete has been done so far though the term of the alliance government ends within a couple of months.

South Asian Free Media Association (SAFMA), an organisation of journalists of SAARC member countries, has also been creating pressure on the decision makers for enactment of Right to Information Act and repeal of the Official Secrets Act. If the Official Secrets Act is amended it would also pay dividend to the ruling alliance. Meanwhile, the enactment of the Right to Information Law is at various stages of progress in SAARC member countries like Pakistan, India and Sri Lanka.

The politicians of Bangladesh, as it appears, are either reluctant or not serious about amendment of the Official Secrets Act, which has become irrelevant and also redundant in today's context. Nothing has so far been heard as regards giving punishment to anybody in our country for violation of the Act. The politicians often have to swallow criticisms for not amending the black law formulated by the British colonial rulers. The British rulers adopted the Official Secrets Act for consolidating their rule and exploiting the people denying their fundamental human rights.

Even places like Railway, Water or Power installations were included under the purview of the Official Secrets Act through a gazette notification on temporary basis. Under the Official Secrets Act, any body drawing any sketch or taking any photograph of any restricted government installation, can be given various degrees of punishment, including death sentence.

Bangladesh has been under parliamentary system of democracy for nearly 15 years and it remains a big surprise why this unnecessary and anti-people law, has not been changed or repealed so far.

As per the media list the number of dailies coming out from Dhaka is 117 that of and those from outside Dhaka is 193. The number of weeklies coming out from Dhaka is 109. Some of those newspapers do not practice responsible or objective professionalism. When several hundred dailies and weeklies are coming out with reports not permissible under the Official Secrets Act, it means the law has not only lost its relevance but it has outlived its utility.

Even as back as in the 17th century famous English poet John Milton had strongly argued in his famous book " Areopagitica" in favour of freedom of opinion. Areopagitica was addressed to the two Houses of Parliament of Britain in the form of an oration addressed to the members urging them to repeal or withdraw the licencing order which they had passed in 1643 with regard to all kinds of publication. Milton was opposed to any kind of censorship upon books as he was a staunch believer in freedom of opinion of all kinds, including the freedom of authors to write whatever they pleased and the freedom of publishers to publish whatever they wanted.

Taking advantage of the Official Secrets Act, officials in most cases do not cooperate with the people not to speak of the Press whenever any information is sought on any matter of public interests. They argue that they cannot comply with the request as they could be liable to punishment under the Act.

Information relating to even inter-ministerial meetings are not disclosed to the people who have a right to know what decisions are being taken about their fate. Even in some

cases top officials of one ministry cannot officially seek information of another ministry out of fear of the law. During my more than three decades of journalistic career, I could have been probably harassed several times taking advantage of the law for publication of exclusive reports, some of which have, however, earned readers' appreciation.

One newspaper was punished in Singapore, which was also a British colony, applying the Official Secrets Act a couple of years ago. On the other hand, one woman in Thailand obtained admission of her child who was shown disqualified in the admission test of a reputed school by throwing challenge to its authority taking advantage of the Freedom of Information Law.

The Washington Post and The New York Times had published reports relating to Vietnam War in the 60's despite attempts of the Pentagon to impose ban on their publications as there has been Freedom of Information Law in the US.

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COURT *corridor*

Anticipatory bail

BARRISTER MOKSADUL ISLAM

Anticipatory bail is also known as pre-arrest bail. But the question is can someone be enlarged on bail when he was already a freeman? Usually it is granted even though no warrant for arrest has been issued. However we have decision of the Honourable Court saying a person cannot be admitted to bail unless he is in custody or under some other form of restrain, reported in 5 DLR (FC) 143 [Crown vs. Khusi].

Usually an application for anticipatory bail is made after the filing of First Information Report (FIR) and before submission of the Charge Sheet. It is made under section 498 of the Code of Criminal Procedure, 1898 even though section 498 deals with regular bail. Considering socio-economic condition and political unrest of our society the Hon'ble Court may allow this extraordinary remedy of anticipatory bail, amounts other, on the ground that the facts and materials disclosed an ulterior motive, political or otherwise, for harassing the accused and not for securing justice, in a particular case. Usually the prayer portion of the application has two parts i.e. (1) Rule in the form of a show cause notice and (2) ad-interim bail. Normally the prayer is framed in the following manner: 'wherefore it is most humbly prayed that your Lordships would graciously be pleased to issue a Rule calling upon the Deputy Commissioner, Nilphamari to show cause as to why the Petitioner should not be enlarged on anticipatory bail in Saidpur P.S. Case No. 23 dated 12.6.1991 corresponding to G. R. No. 196/2002 under Section 399/402 of Penal Code now pending in the court of First Class Magistrate, Nilphamari and the Petitioner further prays for ad-interim bail till disposal of the Rule'.

A careful observation of the prayer will reveal that only the Rule contains the word anticipatory bail and issuance of the Rule opens the door for bail. Things will be clearer upon examining the order which is usually passed the Court. Usually the Rule is issued in the manner it is prayed and ad-interim order is passed saying 'not to arrest or humiliate the Petitioner for a certain period (or till disposal of the Rule) or till submission of the Charge Sheet (CS) whichever is earlier'. That means after submission of the Charge Sheet you cannot make an application for anticipatory bail.

One of the main grounds of these kinds of applications is political ground. The magistrate being part of the executive may not grant bail at the instigation of the party in power. Under these kinds of situations usually it is ordered to surrender before the judicial officer (e.g. sessions Judge) instead of any Magistrate. However, on many occasions even thought there was no such prayer for any direction from the Court yet the court orders surrender of the Petitioner before a particular court. Sometimes a direction to surrender frustrates the entire purpose of making an application for anticipatory bail. These kinds of directions sometimes may be interpreted as an order of arrest upon surrender. You came for bail now you must surrender and get arrested. As the tribunal before which you will have to surrender lacks power to grant bail. If you do not surrender you risk being held on Contempt of Court. Although for ends of justice the court has immense inherent power. However the question is under the existing provisions of law can the Court pass an order of direction to surrender before a court which lacks power to grant bail? Sometimes although the FIR contains a name yet no allegation is revealed therein the said FIR against that person. Under these kinds of situations usually the order is passed asking the authority not to arrest unless the Petitioner is wanted in a specific case.

The question is can the police arrest someone who is not wanted in any specific case (except under section 54)? Obviously the answer is no. Then why do we need an order from the Supreme Court just confirming the law. Similarly should the police be stopped from investigation an alleged crime? Once again the answer should be negative. If we do not allow the police to investigate properly how would he submit his report (i.e. Charge Sheet or Final Report)? Simply a Catch-22 situation, is not it?

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