

INTERNATIONAL DAY OF THE VICTIMS OF ENFORCED DISAPPEARANCES

'Will the state take responsibility?'



BLACK, WHITE
AND GREY
ALI RIAZ

WHO will accept responsibility for the incident? Will the state take responsibility? Asked the Supreme Court of

Bangladesh on February 13 of this year to the lawyers representing the state of Bangladesh while addressing a review petition. The review petition was submitted by the state. These questions were about those who have disappeared and remained missing for years.

The review petition was not about the growing incidence of enforced disappearances, but about the provisions for arrest without a warrant. But the exasperation of the highest court of the land about enforced disappearance was quite evident. While expressing dissatisfaction over the non-implementation of a 16-year-old High Court (HC) order regarding Section 54 of the CrPC, which allows arrest without a warrant and interrogation on remand, the court asked these two questions—plain and simple, about a more disturbing phenomenon. The Attorney General did not respond to these queries, as it was not germane to the case at hand, or simply because it appeared to him as rhetorical.

That enforced disappearances have become routine in Bangladesh in the past decade is an understatement. According to the human rights group, Odhikar, a total of 553 persons have become victims between 2009 and 2019, and in the past six months, 14 individuals faced the same predicament. The stories of these incidents are familiar and almost similar. Family members and friends have alleged that these individuals have been picked up, either from their home or from the streets, by plain-clothed members of law enforcing agencies such as the RAB, or the police. The law enforcement agencies deny that the person was brought to their

custody. When the family members visit the local police station or the RAB camps, the answer is "he is not here".

Often the police refuse to register a case, particularly when the complaint is against any of the law enforcing agencies alleging them as the perpetrators. There are instances when family members have knocked on all the doors one can think of—filing written complaints to the police, the RAB, other government bodies including military intelligence and the National Human Rights Commission. Yet, nobody has an answer—where is the person?

In some instances, those who "disappeared", mysteriously return. According to Ain O Salish Kendra (ASK), between 2014 and August 2018, of the 310 abductees, 33 persons returned. But many others do not. Their families keep on hoping—their day will come, and their loved ones will be coming home—one day. They pray and whenever opportunities arrive—they plead to the authorities, to the prime minister. For them, God and the government are the places where they can ask, and they do. Often, children, parents or spouses of the victims are offered sympathy from the higher ups; promises are made that all will be done to find their loved ones. But seldom are their prayers answered, and far less the government takes the trouble to tell the families what is being done, let alone bring the victims home.

In some instances, families are told that their loved ones were found dead. For example, in 2019, of the 34 who were reported to be picked up by law enforcing agencies, eight were found dead; 17 were released or produced before the courts. The instances of producing before the court is relieving for the families, the victims are alive and no longer traceless, but what is inexplicable is how did these people, who for days or weeks were not there, suddenly appear.

Not only these incidents, but the entire phenomenon of enforced disappearances have been denied by the government, time and again. Appearing before the United Nations

Committee against Torture in June 2019, for the first time since ratifying the Convention 20 years ago, Bangladesh's representatives, including the Law Minister, emphatically denied any incidents of enforced disappearances. Anisul Huq said, "We do not agree to the proposition that enforced disappearances occur in Bangladesh frequently." Alas! if it was only true for those who are still waiting for their loved ones, when

internationally accepted agreement called, "International Convention for the Protection of All Persons from Enforced Disappearance". In Article 2 of the Convention, enforced disappearance is defined as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal

government to take steps to show that it has done its part, stipulated in Article 12 of the Convention: "Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation" (Article 12). Although Bangladesh is not a signatory to the Convention, it does not preclude it to act along the stipulated line.

The continued denial of the government of enforced disappearances is disturbing, but unfortunately not surprising because increasingly the incumbent has created a system of governance which is devoid of any accountability. In the past decade, as the country witnessed its journey further away from any semblance of democracy, the incumbent has become more reliant on coercion, and the coercive apparatuses of the state have become predominant in governance. With two consecutive elections which can be hardly described as "elections", the entire accountability mechanism of governance has fallen by the wayside. With the demise of the vertical accountability mechanism, that is holding free and fair elections, the need for horizontal accountability mechanisms, that is holding the government accountable by the non-state institutions, became imperative. But the abject failure of the National Human Rights Commission (NHRC) to raise its voice against incidents of enforced disappearances, let alone act robustly, show how deep the crisis has become.

As we raise voices against enforced disappearance, we should underscore that the question of enforced disappearances is intrinsically connected to the system of governance and accountability, and unequivocally say that the state must take responsibility.

Ali Riaz is a Distinguished Professor of Political Science at Illinois State University, and a non-resident Senior Fellow of the Atlantic Council, USA.



every knock on the door raised their hopes—he is back.

While the government continue to deny, international human rights organisations, who have investigated cases of such incidents have concluded to the contrary. In a report published in April 2019, the International Federation for Human Rights (FIDH) alleged that these are neither sporadic nor arbitrary incidents, but "part of a concerted strategy executed by State actors." Describing these as "systematic" and "amount to a State policy", the FIDH insisted that as "most of the victims were targeted on political grounds... these acts [qualify] as a crime against humanity."

The allegation of "crime against humanity" is derived from the

to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law". The Convention further stipulates in Article 5, "The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law."

In the court or outside, the AG has not responded to the question the Supreme Court asked, but the Law Minister's denial is an answer to the question. If the government is confident that no such incidents take place, it is incumbent on the

A new trend in disappearance cases

JYOTIRMOY BARUA

THE law has repeatedly been side-lined in recent years by law enforcers, who have illegally abducted or "picked up" people and detained them secretly in custody, without following due legal process. Some were later released, while others remained indefinitely "disappeared" (or "gloom") in what are known as enforced disappearance cases.

Over the last two years, a new dimension has emerged in such enforced disappearance cases—where cases are filed against people subsequent to their detention under laws such as the Digital Security Act—which journalists, human rights activists, and people from many sectors alike have expressed concerns about, for its curbing effect on freedom of expression.

This act is now newly connected with the culture of "gloom", as law enforcement agencies are taking it upon themselves to silence people who are expressing views that are seen as "anti-government" or anti-state agencies, and prevent these views from entering into the public discourse by abducting them illegally. In this way, law enforcement agencies are dangerously side-lining the judicial system and acting as both judge and jury as well as violating citizen's fundamental rights as guaranteed in the constitution and under domestic law.

The phrase "picked up" indicates illegality i.e. abduction. Police and law enforcement agencies cannot "pick up" people—they can only arrest. Arrest and abduction are two different things. Abduction is taking someone away from lawful custody i.e. their home, whereas a person is arrested when they commit an offence under the law—the two have different consequences.

But the language we hear is that someone was picked up at night by people in plainclothes in a car without number plates. For example, in April this year, Didarul Alam Bhuiyan was "picked up" for his allegedly "anti-government" comments on Facebook. When he was picked up, the law enforcers were not wearing uniforms though at the time of the Supreme Court judgment regarding Section 54 of the CrPC, it was clearly laid down that those without uniform/ outside their working hours cannot arrest anyone. When this arrest was taking place, law enforcers were still on duty—just working the night shift. Day or night, why aren't they wearing their uniforms if they're working? Without uniforms and identification, law enforcement agencies have no authority to enter into private

premises. They need a warrant from the court that they can enter into a house to arrest a particular person.

When Didarul was "picked up", there was no case against him under the DSA or any other act. Therefore, there was no legal justification for arresting him or entering his premises. It was a violation of Didarul's rights and that of his family's, safeguarded in the constitution, to liberty and safety.

It is also a violation under sections 54 and 167 of the Code of Criminal Procedure 1898. Section 54 of the CrPC lays down when the police can arrest someone based on suspicion. This section was modified by the HC division and subsequently upheld by the appellate division in 2015 (judgement formally came on April 24, 2016). Section 167 of the CrPC is

offense or will commit one, then the officer can arrest that person without a warrant and without an order from a magistrate.

The SC modified this so this "suspicion" has to be reasonable and it has to be noted by the officer in a diary as to why he suspects someone and their activities and what he or she has witnessed of the suspect's activities. When a person is arrested, they are also supposed to be produced before the court within 24 hours, he or she should be notified that they can make a call to their family and to a lawyer. If they have no mobile on them, the police have to provide means of communication for them.

In case of such "disappearances", the opposite has happened. When Didarul's family was looking for him at

case against him was filed on March 9 this year by Saifuzzaman Shikhor. On March 10, he "disappeared" in the evening. He was found after 53 days in the border town of Benapole and the story circulated was that he was trying to enter back into the country without a valid passport.

In the meantime, his wife filed a case with the Chawkbazar police station saying that her husband had gone missing/was abducted since March 10. There is no progress in that case, the police did not say a word regarding the outcome of the investigation of that case. Basically, they did not carry out any investigation. Where was he? The responsibility lies with the state to tell us where he was these 53 days. If the state says he crossed the border

showing him for arrest after the cases were filed, and then after 53 days, he was shown formally arrested. In the Hazaribagh case, he was shown arrested on June 23 but he was arrested from the border on May 3.

Look at the time and look at the gap. First, they are grabbing people, holding them in their custody without any explanation and without following any judicial or legal procedure at all. Then, they are planting a case against that particular person and forwarding him before the learned magistrate for further judicial procedure.

The judicial system is crippled and thus we are failing to make law enforcement agencies accountable and answer for such actions.

Another dimension, indirectly related to enforced disappearances, emerged during photojournalist Shahidul Alam's case last year.

When someone is accused, no matter by a state agency or any individual, they are accused not guilty. Until proven guilty in a trial, convicted by a competent court, the law needs to treat the person as innocent.

"Innocent until proven guilty" is not just a rhetoric but a guiding principle in criminal proceedings. While innocent and even after found guilty of a particular crime following a trial, the person's fundamental rights cannot be waived.

If a person under police custody is beaten or tortured, under the Torture and Custodial Death (Prevention) Act, 2013, action needs to be taken against the police. In this particular torture case, the person is a victim, despite being accused in another case. When the law enforcement agency hits or physically assaults a person or commits some type of physical or mental torture, then that person becomes a victim.

The accused in enforced disappearance cases are getting no such protection and we have not been able to get any legal forum to effectively address these questions and ensure their fundamental rights are safeguarded.

The Constitution is the supreme law of the country. Law enforcers are supposed to follow it.

When someone is being "picked up" or "gloom"—for a complaint for which there could be various elements, as is seen, personal/political vested interests—the violations of the legal system is dangerous to every citizen's safety. That means, this legal protection and fundamental rights exist only on paper.

Jyotirmoy Barua is an advocate of the Supreme Court. As dictated to Malika Khan.



Family members, friends and colleagues of the missing journalist Shafiqul Islam Kajol form a human chain demanding steps for his safe return.

about police taking people to remand. This was also modified by the HC which gave the 15-point directives. The court's observation regarding sections 54 and 167 was that the fundamental rights guaranteed in the constitution would be violated based on certain provisions and thus needed to be modified and separate directives given.

Section 54 is important, because when there is no criminal case against Didarul, on what basis can the police go to his house, arrest him, or even question him? They could only do so if they follow the SC directives on it. Under the original law, if a police officer suspects or there is any reason to believe a person has committed an

thanas and RAB offices, they were told he had not been brought in anywhere.

That's the point at which these cases become "gloom": when you're not following any judicial process, you are denying that you arrested him, you did not arrest him on a specific case's warrant, and after bringing him in say you do not have him under your custody. There was no account of his whereabouts for two days, and after these two days, cases against him (and 11 others) were filed under the DSA.

As the case was filed two days after his disappearance, the whole process is illegal. That is an enforced disappearance.

Earlier this year, this happened with journalist Shafiqul Islam Kajol. The

without a passport and he was hiding in India, in that case it needs to prove it. They need to give us an explanation of what happened during those 53 days—because there is a case pending at Chawkbazar police station.

He was abducted before he was shown formally arrested in a particular case. There is now subsequently a case under the Passport Order, 1973 at the Benapole port police station and three cases filed under the DSA against him—one in Sher-e-Bangla Nagar police station, another in Hazaribagh police station, and the third in Kamrangirchar police station.

But look at the process. The cases were there [since March] but there was no investigation, no application

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