



The Village Salish : Taking the Law in Their Own Hands

Recently the Amnesty International (AI) has released a report on the village salish in Bangladesh after receiving reports over the last two years that local village councils or salish, have without legal authority sentenced people to flogging and to death and that these sentences have been carried out. The AI expresses its grave concern saying that 'the Government of Bangladesh has apparently failed to take adequate measures to prevent such bodies from taking the law in their own hands.' The organisation believes that if the Government had acted swiftly and decisively after the first incidents were reported, the extralegal punishments and killings of several people could have been prevented. Given the importance of the AI's report and its content, here we publish the full text.

THE village arbitration council or salish is an institution which goes back to traditional forms of conflict resolution through mediation; it is not part of the judicial system which was given its present form during the colonial period. It has no legal standing but persists as a body that passes informal judgements like a council of elders seeking compromise solutions in local disputes, for instance over property, family or inheritance matters. There are no uniform terms of reference for the salish, and there is no legislation governing it. A village salish is apparently established as and when the need for arbitration arises. It usually consists of local elders, including the village clergy, and its verdict is reportedly accepted by all the disputants.

The institution of the salish has been controversial in Bangladesh. Many observers in Bangladesh consider it an effective indigenous non-formal body using methods of conflict resolution which permits the rural population to seek justice outside an expensive, slow and sometimes corrupt lower judiciary. Others, particularly women activists and human rights groups, point out that salish are usually constituted by conservative members of rural society who seek to reinforce existing social structures and tend to censor those who do not fully conform with socially accepted behaviour patterns. Amnesty International does not take any position on the desirability or otherwise of the village salish, but it is concerned about reports that they have illegally tried and sentenced people to inhuman punishments.

There are two types of local courts which resemble the salish. Under the Village Courts Ordinance of 1976 and the Conciliation of Disputes (Municipal Areas) Ordinance of 1979 village courts and conciliation boards in the towns and cities were established; their procedures, composition and jurisdiction are clearly defined in the ordinances. Their jurisdiction is strictly limited to small civil matters and petty criminal offences; in criminal cases they may not pass a sentence of fine or imprisonment but may order the accused to pay the aggrieved person compensation of an amount not exceeding 5,000 Taka (approximately £70).

The establishment and jurisdiction of all other courts are governed by the provisions of the Constitution of Bangladesh and statutes like the Code of Criminal Procedure of Bangladesh but acts of parliament may establish further special courts. All criminal proceedings are regulated by the provisions of the Code of Criminal Procedure of 1898 or specific acts passed by parliament.

Salish clearly have no legal authority to try criminal cases. To take part in a criminal trial by a salish violates national law. The Government of Bangladesh has a duty to ensure specific such bodies and to ensure that they do not take the law into their own hands. Article 109 of the Constitution of Bangladesh entrusts the High Court division of the Supreme Court with the superintendence and control of the subordinate courts; this duty would appear to encompass the obligation to call the government's attention to instances of local bodies arrogating judicial powers which they do not possess.

In several cases over the last two years, village salish in Bangladesh have without any legal authority tried, convicted and sentenced people, mostly women, for alleged criminal offences, and these sentences have been carried out. Moreover the law under which they have illegally tried, convicted and sentenced people is a form of Islamic law in contravention of the civil law enshrined in the Bangladesh Penal Code which is in force in Bangladesh.

Public lashing

In April 1992 a village arbitration council in Dohar Thana sentenced a young woman and her mother to 100 lashes each. Earlier, the young woman, Shefalli, aged 14, had been raped by an influential village elder. When she became pregnant, the local people convened a salish, composed of village elders and local clergy, to decide her case. The participating clergy decided that since there

had been no witness to the intercourse, the elder could not be held responsible, as under Islamic law four adult male Muslim witnesses of good repute need to have witnessed illicit intercourse to permit conviction for rape or adultery. But as Shefalli had admitted to the intercourse when she complained about having been raped and her pregnancy was obvious evidence for intercourse having taken place, she was sentenced to 100 lashes to be administered in public. Shefalli's mother was sentenced to the same punishment as she had accused the village elder of rape. Shefalli's punishment was

forced to marry, irrespective of the fact that the man already had a wife and family.

In a similar incident reported from Pabna in late May 1993, a Quran teacher of a mosque was reportedly caught having sexual intercourse with a female student. A salish reportedly sentenced them to 60 lashes each and a fine. They were also forced to immediately get married.

On 1 September 1993, a salish in Kalikapur village in Satkhira district found Feroza, a 16-year old girl, guilty of fornication with a Hindu boy of a neighbouring village and sentenced her to public flogging,

stoning to death in Chatakhara village in Sylhet district. Noorjahan, aged about 21, had married a second time in December 1992, after her first marriage had broken down. A salish, presided over by Maulana Mannan, the local Islamic clergyman, on 10 January found her second marriage to be illegal under Islamic law and sentenced her and her second husband, Motaieb, to death by public stoning. The salish reportedly did not inform the couple of the grounds for considering the marriage illegal; according to reports, the first marriage had been duly declared dissolved

but had survived and committed suicide later. Some observers believe that Noorjahan's parents may have been put under pressure to make this statement so that the criminal charges that might be brought against those responsible for her death would be abetment to suicide and not murder. Abetment carries a lesser sentence than murder.

Apparently Noorjahan's husband Motaieb was subjected to stoning, too, but survived. According to reports, Noorjahan's father publicly administered the flogging sentence to his wife as he apparently would not let other villages touch his wife on

Noorjahan, was tried by a village in Dokhin Sripur village in Faridpur district, some 40 km west of Dhaka; she was found guilty of adultery by a salish, which included her husband, and sentenced to death by fire. Noorjahan was then tied to a stake; kerosene was poured over her and she was burned to death. After a local newspaper, the Bengali language daily Sangbad, carried the story on 20 May, seven alleged members of the salish were arrested on 24 May, but it is not known if the police investigation is proceeding apace and if those responsible have been formally charged to be tried yet.

AI's Concerns and Recommendations

Amnesty International is concerned that over the last two years the incidents of salish taking the law into their own hands have increased. Amnesty International understands that these local arbitration councils appear to be tolerated by the government as tradition arbitration bodies and to this extent are accountable to the government. They are not part of the judicial system, yet in every case cited the salish has acted entirely outside its authority in trying and sentencing the defendants and encouraging villagers to carry out illegal acts like public flogging, stoning or burning to death. Further the defendants in all the cases cited were apparently tried, convicted and sentenced under a form of Islamic law in contravention of the civil law enshrined in the Bangladesh Penal Code which is in force in Bangladesh.

To try people by a village salish violates the defendants' fundamental rights guaranteed by the Constitution: Article 32 of the Constitution of Bangladesh says: 'No person shall be deprived of life or personal liberty save in accordance with law.' Again Article 31 lays down: 'To enjoy the protection of law, and to be treated in ac-

cordance with law, and only in accordance with law, is the unalienable right of every person for the time being in Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.' Articles 33 and 35 lay down safeguards regarding arrest, detention and fair trial, all of which are violated by illegal trials of salish. Trial, conviction and punishment by an illegally constituted court like the salish also violate a number of human rights enshrined in international human rights standards, including the International Covenant on Civil and Political Rights (ICCPR).

Amnesty International believes that the Government of Bangladesh has the duty to ensure that local bodies do not assume functions for which they have no legal authority. After the first incident the Government of Bangladesh should have taken decisive and public action to ensure that village councils strictly conform to their specific tasks and do not abrogate functions which are clearly vested in the judiciary alone and which the arbitration bodies are not entitled or equipped to fulfil. If the government had brought those responsible for the incident in Dohar in April 1992 to justice and had been seen to do so and had further clearly informed all local administrators that abrogation of judicial functions will not be tolerated, the later incidents, in which one woman was stoned and another burned to death, may not have occurred.

Amnesty International wrote to the Government of Bangladesh in March 1993 urging it to promptly investigate the incidents in Dohar and Chatakhara and to bring those responsible to justice. It has not received a reply from the Government to this letter. Amnesty International now urges the Government of Bangladesh to ensure that all the incidents mentioned in this report and any that may be highlighted in the media of Bangladesh are promptly and thoroughly investigated by an impartial and independent inquiry commission. The findings of such an inquiry should be made public promptly. Further village administrators must be clearly instructed that a transgression of their functions will not be permitted under any circumstances.



Activists of different women's organisations brought out rallies protesting medieval forms of violence against women. — Star file photo

deferred pending delivery, while her mother's punishment was apparently carried out. A human rights organization in Bangladesh has challenged in court the authority of the salish to convict Shefalli and her mother and to impose the punishment of public lashings. To Amnesty International's knowledge the case is still pending.

In early 1993, a young domestic maid servant in Dhaka was reportedly accused of maintaining a sexual relationship with her employer. They were found guilty by a salish, consisting of neighbours and the local clergyman, and given 25 lashes each. They were then

She was tied to a bamboo pole and given 101 lashes with a broom. She died shortly afterwards; village elders and a human rights group investigating the death said she had committed suicide. On 9 or 10 September, police filed a case against the participants of the salish charging them with abetment to suicide. It is not known if any of them were arrested. The result of the post mortem, carried out in Satkhira Modern Hospital, has not been made publicly available.

Public Stoning to Death
On 10 January 1993, a young woman, Noorjahan Begum, was sentenced to public

During the hearing Motaieb was reportedly slapped by members of the council when he questioned the ruling. He was told that the court's word was law. Noorjahan's parents were held partly responsible for Noorjahan's "un-Islamic" second marriage and sentenced to 50 lashes each.

Immediately after the verdict, Noorjahan was buried in the ground up to her chest, then villagers began throwing stones at her. She reportedly died a few hours later. Her parents, according to some reports, later said that Noorjahan had not died as a result of the injuries sustained during the stoning,

religious grounds.

The village headman and six members of the salish were reportedly arrested and charged under sections 306 (abetment to suicide), 504 (intentional insult) and 109 (abetment) of the Bangladesh Penal Code. It is not known if the police have concluded their investigation, if the seven men were formally charged to be tried or whether charges were brought against the villagers who took part in the stoning of Noorjahan.

Public Burning to Death

On 5 May 1993 another young woman, also named

OUR BODIES, OUR SELVES

Calling on Fellow Women Physicians

by Dr Naila Z Khan

CANDIDLY speaking, I was inspired to write this article by the mildly put allegation of the then Executive Editor (now the Editor) of The Daily Star ('why don't you ever put pen to paper?') that there was a dearth of articles by women in their respective fields of work. We had met at a discussion about the 'Girl-Child' arranged by the paper. I left the meeting with mixed feelings of anger, frustration, admiration and humility, in that order.

I was angry because so little has been done about the plight of the girl-child in the health sector, public or otherwise. I was angry because I felt that doctors (who are supposed to be the top professionals in this field), and especially women doctors, might well be considered the worst offenders. Ours is a service-orientated business. Everyday we are (silent) witnesses to all forms of abuse of women and children — unwanted pregnancies, child-pregnancies, septic abortions, rape and other innumerable ways of physical and mental abuse, and sex discrimination. Although we might not be insensitive to these issues, what have we done to vindicate ourselves in the public eye? I was angry because I felt a traitor to my own sex — yes, I too was once a girl-child and am also the mother of another. I felt a traitor to the women of my community, whose custodian I am (or, at least, would like to think so) for maintaining a healthy society.

Being a paediatrician (child health physician) only makes it worse, as all paediatricians of this country, it seems by consensus, have amputated childhood by a good ten years. Pubescent children are not admitted into paediatric units, nor adolescent paediatrics an acknowledged field of medicine. Adolescence, an important period of childhood that comprises a third of all growth and development in human beings, has been banished to a medical 'no-man's-land' by the paediatricians of this country. Adolescents are not 'mini-adults' — as many physicians



As the girl leaves behind her one digit age, the attitude of the society towards the boy and girl diverges. — Photo: Unicef

treating them feel. In fact this is the most formative and tension-filled period in a child's life where raging hormones, growing stature, and an emerging personality are often at war with each other. Typical complaints at this age must be treated with a degree of expertise and great sensitivity. We, my dear physician-friends, have reneged on this population! No wonder that these children are getting a raw deal! No wonder that more than 50% of all pregnancies in our country occur before children have matured into complete adults!

Coming back to my original

feelings, it is frustrating to think of the used and unutilised power we women physicians have, singly and collectively, to empower other women. For instance, who is more educated in the biological sciences than us to talk about sexual maturation, puberty, body changes during adolescence, menstruation, safe sex and so on? Who should understand and talk about our own bodies better than we, ourselves? We hold credible positions to discuss publicly these issues and make them a part of the natural understanding of the world around us.

The apathy of women-doctors towards their own kin is not, of course, a Bangladeshi malaise only. It is the non-medical women who have come forward in the western world to educate themselves about their own biology. One important outcome in the mid-seventies was the publication of the book 'Our Bodies Our Selves,' by the Boston Women's Health Cooperative. The book explains different aspects of the woman's body, hormonal changes, sexual relationships and so on, in very simple terms. To me the term — Our Bodies Our Selves — implies a concept whereby I, as a woman, have informed knowledge and, therefore, confidence and control over my own body, reproduction, sexuality, etc.

Every cloud should have a silver lining. My silver-lining is the fact that, unlike women doctors, other professionals are forming increasingly significant advocacy and service-orientated groups to help the women and girl-children of this country. Exemplary institutions are the Ain-O-Shalish Kendro formed by women lawyers; the work done by Terred-des-Hommes and Shaishab for the street child; protective shelters given by the Mahila Parishad to deserted and abused women etc. These highly articulate and dedicated women are spear-heading policy changes and representing us in international forums. One can only admire such work and be humbled by it. In my perception, these women are the Begum Rokeyas of our generation.

So, fellow women physicians, the bell is tolling, time is running out, and every day hundreds of girl-children and women are dying from neglect, social discrimination, violence and ill health. Professionals from other fields are showing us the way to stop such atrocities, unacceptable by any civilised standards. It is time we came forwards as a cohesive group of highly trained individuals and pledge our solidarity with today's struggling women force.

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Rebelling Against the Status-quo

by Aasha Mehreen Amin

SHE has been referred to in the Independent, a British paper, as Bangladesh's Salman Rushdie. A 'moulana' in Sylhet is said to have offered 50,000 taka for her head while India's BJP (Bharatiya Janata Party), has asked for her safety. Best selling writer Tasleema Nasreen is certainly the most talked about personality in the sub-continent. With her vitriolic attacks against religion, establishment and the male gender in general in so far as they are agents of oppression on women, Tasleema has created quite a sensation. Her bold, irreverent writings loaded with sexual reference have outraged conservatives and religious groups of the country.

Her name, flashed almost everyday in various tabloids and newspapers in Bangladesh, is being linked with political intrigue, slander and muckraking. Her book called 'Lajja' (shame) has been the latest cause for controversy and government outrage leading to the banning of the novel for 'inciting communalism'. Incidentally, the book depicts a young Hindu man whose sister has been kidnapped by Muslim communal fanatics during the spill over of communal violence in Bangladesh over Babri Masjid. The man takes his revenge on a prostitute with a Muslim name. His family later leaves the country. Tasleema's crime therefore seems to be to expose some of the atrocities that actually happened against Hindus during that volatile period — a fact that authorities have continuously tried to deny.

On the other side of the spectrum are Tasleema's ardent supporters. Writers both at home and abroad have shown their solidarity in her trying times. Her simple, yet provocative style mixed with brutal frankness has made her into the most read best selling authors. Her first book — 'Nirbachito Column' sold 60,000 copies in the first year of its release, a number that has long crossed a 100,000 by now.

But just who is Tasleema Nasreen — a proclaimed man-

hater, a social activist or merely an opportunist out to take advantage of sensationalism? In person Tasleema is tight-lipped, aloof and hard to figure out. Death threats at her doorstep and chronic bad publicity, have perhaps, made her press wary. In her airy apartment in Eastern Towers, guarded by two armed police guards, Tasleema sits in her living room with a disturbed look on her childlike, boyish face. Perhaps she is wondering if she will ever be able to lead a normal life again without the constant fear of death that haunts her. The reason for the uproar over her book she says is because "there are some

people in this country who do not want any kind of progressive element to exist; they are doing this to serve their own interests, no real reason has been given to justify the banning."

The uproar, has been mainly from various Islamic activist groups who consider Tasleema as a heretic, trouble maker and threat to Islamic authority a crime that deserves death. Tasleema points out that she is not a critic of any particular religion. "I have not written against Islam only, she says, "I have written against all religious fundamentalism that become instruments of oppression and communalism."

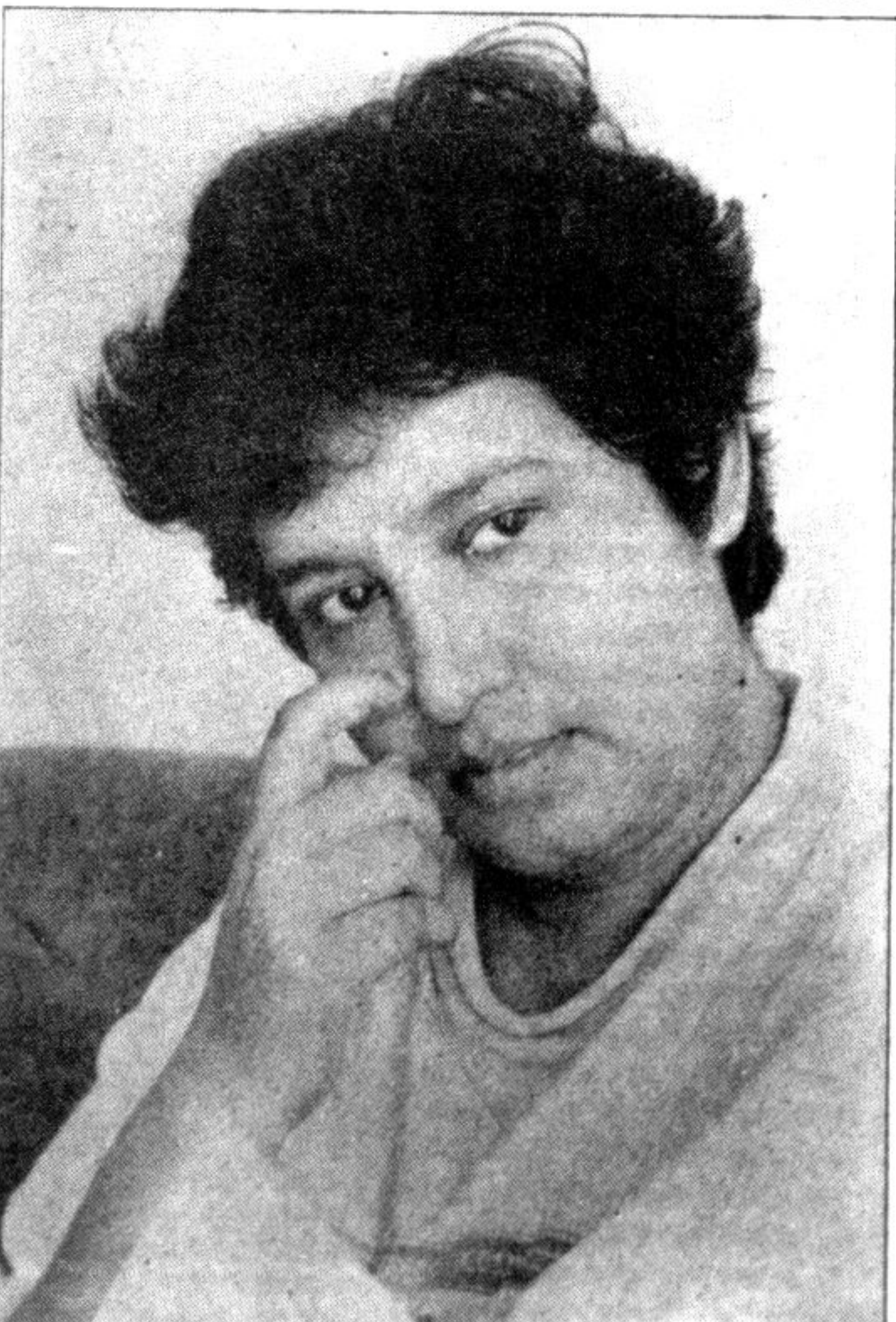
Yet religious groups are using her as a political pawn with the BJP projecting her as a proponent of Hinduism while Islamic factions have made her a symbol of blasphemy. In spite of the real danger to her life Tasleema has no intention of seeking asylum abroad: "Why should I leave my own country?," she demands.

Refuting the public's image of her as a hardhitting feminist and man-hater, Tasleema says she is an advocate of neither sex. "I am just an advocate of humanity, and of equal rights for both men and women."

Tasleema who apart from being a prolific writer is also a doctor with an MBBS degree now has to deal with constant insecurity. The security guards of the apartment complex screen her visitors and two policemen wait outside her door. This however, offers little protection against the storm that is brewing outside. Yet how long can this go on? Her reaction to this question is matter of fact — at least outwardly "well, I have to go on with life," she says simply, "the government should take strong action against those who are threatening me. I will go on doing what I am doing, no matter what."

Meanwhile letters and phone calls pour in everyday from fans especially women who wish to show their solidarity with their favorite writer.

Tasleema is now working on a new novel. This time she says it is about a young woman growing up in an orthodox Muslim family and how she deals with oppression. Her last novel 'Phera' (coming back) is about a Hindu woman's disillusionment when she returns to an independent Bangladesh only to find that the place where she had grown up in Mymensingh no longer is the home she had yearned for during her 26 years long stay in India. Even her childhood friend, a Muslim girl had changed and become aloof cold and distant. The book moving and sad, no doubt reflects Tasleema's own disappointment with her country where she is being victimized for speaking the truth.



Tasleema Nasreen