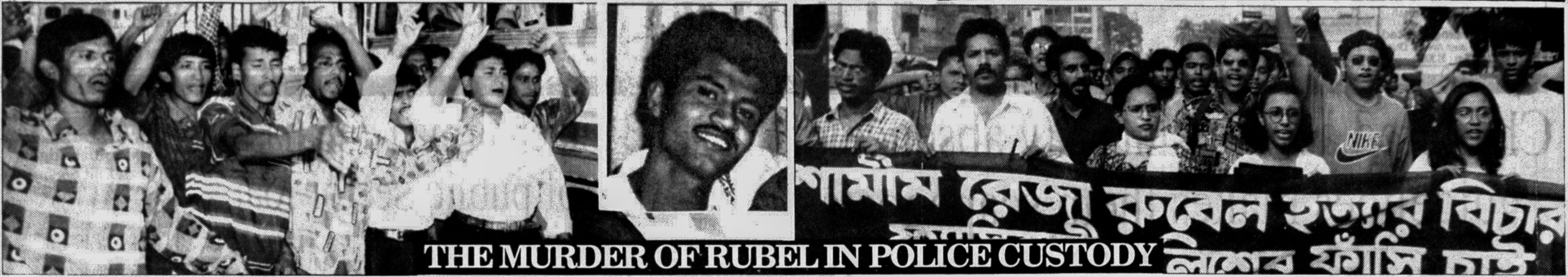


Law and Our Rights



THE MURDER OF RUBEL IN POLICE CUSTODY

Who will Police the Police?

by A H Monjurul Kabir

The problem of human rights springs from the duplicity of man. Justice is promised though only law (!) prevails. Human rights are talked from housetops yet prisons of all areas are full. Torture is condemned as inhuman and uncivilized yet the police posts all over the country resound to the cry of the tortured. While on the one hand human rights are proclaimed to be inviolable, on the other, human beings seeking such rights are tortured, maimed, disemboweled, raped and even killed. Police stations, special agencies' head quarters and prisons all over the country ring with the cries of their unfortunate victims.

THE most unfortunate and brutal murder of Shamim Reza Rubel, on the 23rd July '98 in police custody amply testifies the existing gulf between laws in theory and practice and raises some serious questions. On that fateful afternoon of Thursday, Rubel, a final year BBA student of Independent University was picked up by the plainclothesmen of the Detective Branch (DB) of the police merely on SUSPICION. The detectives arrested him under Section 54 of the Code of Criminal Procedure which empowers them with wide discretionary power of arrest. They beat him mercilessly in public on their way to office and interrogated him there with their barbaric but effective (!) and usual means of torture. In fact they resorted to third degree methods to extort information regarding illegal possession of arms for which they suspected Rubel. Usually such methods include beating at joints, spreading powdered chilli on the eyes, kicking on the chest and the back, electric shock, hitting with rifle butt, inserting boiled egg into the anal passage, pouring hot and cold water on the face, forcing to drink urine, uprooting nails and so on. Their tough interrogation in the evening at the helm of DB office led him to premature death which rocked the conscience of the whole nation. This unfortunate occurrence in fact questions the so-called paramount necessity (!) of Section 54 of the CrPC and the very existence of Section 24 and 25 of the Evidence Act.

Section 54: Anti-people or Necessary Evil?

Like many other countries, police is the principal law-enforcing agency of Bangladesh. It is one of the disciplined forces of our country. According to the Police Act of 1861, maintaining law and order is the principal function of the police. Section 23 of the said Act provides: **Duties of police officers:** It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the public peace to prevent the commission of offence and public nuisances, to detect and bring offenders to justice and to apprehend all persons whom he legally authorised to apprehend and for whose apprehension sufficient ground exists; and it shall be lawful for every police officer for any of the purposes mentioned in this section, without a warrant to enter and inspect any drinking shop, gaming house or other place of resort of loose and disorderly characters. Maintaining law and order in all kinds of public places is another crucial duty of police as per Sec. 31 of the same Act. For all these practical purposes police has been equipped with wide power of action. The Code of Criminal Procedure 1898 deals with some of

major important procedural elements of the power and function of police. Chapter V of the Code particularly deals with procedure and mode of arrest of which Section 54 is of utmost importance. It gives police almost unlimited power to arrest any person without warrant.

Generally the police can arrest a person accused of a non-cognizable offence, without warrant or precept or notice under the seal and signature of a court directed to a person to arrest a criminal and bring him before the court for being dealt with according to law from a magistrate though under certain circumstances the police can arrest for non-cognizable offence (offence for which the police officer may not arrest a person without warrant) also. But when a person is concerned in a cognizable offence, the police can arrest him without warrant under Section 54 of the code. Section 60 provides that a police officer making an arrest without a warrant shall without unnecessary delay and subject to the provisions of the bail, take or send the person arrested before a magistrate having jurisdiction in the case or before the officer in charge of a police station. Under Section 61 it is provided that no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not, in the absence of a special order of a Magistrate under Sec 167 exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to a Magistrate's court. Therefore unless a police officer considers that he can not complete the investigation within a period of 24 hours it is incumbent upon him to forthwith produce the accused before a magistrate.

The Text of Section 54

Before any further analysis the text of the Section 54 of the Code of Criminal Procedure should be considered. The section says: Any police officer may, without an order from magistrate and without a warrant, arrest—

First, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned;

Secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house breaking;

Thirdly, any person who has been proclaimed as an offender either under this code or by order of the government;

Fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

Fifthly, any person who obstructs a police-officer while in the execution of his duty, or who has escaped or attempts to escape, from lawful custody;

Sixthly, any person reasonably suspected of being a deserter from the armed forces of Bangladesh;

Seventhly, any person who has been concerned in or against whom a reasonable complaint has been made of credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained or detained in custody in Bangladesh;

Eighthly, any released convict committing a breach of any rule under Section 565, sub-section (3);

Ninthly, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specified the person to be arrested and the offence for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition."

Power of Arrest

The words "may arrest" show that the power of arrest is discretionary. A police-officer is not always bound to arrest for cognizable offences (offences for which a police officer may arrest without warrant). If an information of such an offence is brought to him he ought, if there be circumstances in case which lead him to suspect the information, to refrain from arresting persons of respectable position and to leave the complaint to go to a Magistrate and convince him that the information justifies the serious step of the issue of a warrant of arrest.

The powers under this section must be cautiously used. This section gives wide powers to a police officer to make an arrest without an order from the magistrate and without warrant only in certain circumstances limited by the provisions contained in this section, and it is necessary in exercising such large powers to be cautious and circumspect.

Not Unqualified!

The section does not give an unqualified power in all cases to any police-officer to arrest, without an authorisation in writing, a person concerned in a cognizable offence. The provisions of this section are limited by those of Section 56 (procedure when police officer deputed subordinate to arrest without warrant). But where a subordinate police officer is not acting independently, but is merely deputed by a superior officer to arrest some one concerned in a cognizable offence, a further formality is prescribed in Sec. 56, presumably, to prevent

abuse of the powers of the police or to allow the person arrested to know the reason for his arrest and the office of the person arresting him. (Md Ismail, AIR 1936).

The Test of Reasonableness

The first clause of the Section 54 which empowers a police officer to arrest any one on the basis of reasonable suspicion exists in his mind or credible information received by him does not apply to a case of non-cognizable offence and the accused is consequently not exceeding his legal right in insisting upon the release of the arrested persons.

What is a reasonable complaint or suspicion must depend on the circumstances of each particular case, but it must be at least founded on some definite fact tending to throw suspicion on the person arrested and not a mere vague surmise or information. Still less have the police any power to arrest persons as they sometimes appear to do on the chance of something being there after proved against them.

A general definition of what constitutes reasonableness in a complaint or suspicion can not be given. Both must depend upon the existence of tangible legal evidence within the cognizance of police officer, and he must judge whether the evidence is sufficient to establish the reasonableness and credibility of the charge, information or suspicion. A police officer may, without a warrant arrest on reasonable suspicion, "reasonable" being understood to mean a bonafide belief that an offence had been committed or is about to be committed necessitating the arrest of the person concerned (KV Muhammad Vs C Kannan, AIR 1943).

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The Valueless Confession and Police Torture

Section 25 of the Evidence Act (Act I of 1872) states: No confession made to a police officer shall be proved as against a person accused of any offence. The language of the section is quite clear. The principle upon which the rejection of confession made by an accused to a police officer or while in the custody of such officer is founded is that a confession thus made or obtained in untrustworthy. The broad of not admitting confessions made to a police officer is to avoid the danger of admitting a false confession. Section 26 further states: No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person. Section 25 excludes, confessions to police-officers under any circumstance— whereas section 26 excludes confessions to anyone else, while the person making it is in a position to be influenced by a police officer. In spite of all these legal bars the question remains the same: why do the police torture suspects? The brutal homicide of Rubel has made it the question of the country.

Some steps like the following have become an urgent imperative for the government:

The police should be made responsible to the civil administration at each and every administrative unit of the country changing the present warrant of precedence and administrative set-up.

The wide discretionary power of arrest which encourages the police to be arbitrary and whimsical should be qualified and in some cases, curtailed. The controversial section 54 of the CrPC should be reformed providing adequate provisions of test of reasonableness.

The system of police-remand should be reformed and modified to accommodate the changed situation and to reflect the democratic governance.

The Home Ministry should supervise and coordinate the activities of the DB (Detective Branch), SB (Special Branch) and the CID (Criminal Investigation Department) regularly through an effective administrative unit. Each and every special agency should be made accountable for its every omission and commission before this unit or authority.

A separate department for investigation must be created within the existing police administration. This department will not do any 'harta' or 'protocol' duty except investigating case or complaints. And it is a must.

The Special Powers Act - 1974 should be repealed without any further delay.

All alleged homicides and rapes committed by the police should be investigated and the culprits should be tried to check future occurrence of such gross miscarriage of justice.

The proposed National Human Rights Commission should be equipped with adequate power and jurisdiction to tackle any such police atrocity. Infact one of the prime agendas of the proposed body should be to monitor and supervise the activities of the police regularly and to take direct and stern disciplinary action. Specially where accused is a police, investigation should be done by the proposed commission.

The training manual and curricula of the police should be reformed and modernized to make the law enforcers sensitized.

Politicization of the Police force must stop without any further flourishment. The government should realize that such heinous attempt does not attribute any benefit to it. Let the police grow in a professional manner free from all sorts of interferences by the ruling party. Placing loyal at the top will not pay any more. The tragic event of Rubel testifies it. Policing the police in a neutral manner should be the prime agenda of the days to come.

The problem of human rights springs from the duplicity of man. Justice is promised though only law (!) prevails. Human rights are talked from housetops yet prisons of all areas are full. Torture is condemned as inhuman and uncivilized yet the police posts all over the country resound to the cry of the tortured. While on the one hand human rights are proclaimed to be inviolable, on the other, human beings seeking such rights are tortured, maimed, disemboweled, raped and even killed. Police stations, special agencies' head quarters and prisons all over the country ring with the cries of their unfortunate victims.

If minimum human dignity is to survive humanity must replace hatred and bestiality, the true commitment take precedence over retherics and deeds take place of wards. The time is NOW.



Cops on the move: Is the style legal? — Star Photo by Anisur Rahman

Right to Torture: A Tale of a Better Society

by Shahdeen Malik

RUBEL'S killing has brought out certain dimensions of the law enforcement agencies into the open and under public scrutiny. A number of newspapers, however, have also mentioned AC Akram's well publicised recent 'successes' in arresting notorious criminals such as 'Swedish' Aslam, Bikash and so forth. His methods were not questioned then. He was hailed, interviewed and televised for those 'successes'. And now his defiant photograph with a raised hand, partially handcuffed, has been published by almost all the newspapers.

It seems that we operate in a culture in which end always justifies the means. AC Akram did arrest some very hardened and dangerous criminals and that was that. No body raised or posed any question about his methods, or for that matter his techniques of 'investigation'.

The culture of 'anything goes' is also being re-enforced by our politicians' almost constant exhortations that there is no 'last word in politics', meaning, obviously, that end justifies the means — one can hop into any political bed for the sake of power. Long gone are the days when naive ones like Gandhi or Bhasani were in politics for principle(s).

Today is harta. Ostensibly to protest Rubel's killing. But this harta against violence, brutality, torture and lawlessness of the police also involves all these on a much grander scale. I am sure everyone is appalled, shocked and disgusted by Rubel's killing. Everyone not only demands trial and punishment of the perpetrators of the killing but also changes in police attitude, behaviour and a

transparent system of accountability. However, have the hartalwallas asked rickshaw pullers whether they were willing to give up the few takas they would have earned had they been allowed to work today; or the shop owners to forgo their profit from today's sales; or office workers not to carry on with their responsibilities. Aren't most of us confined to our houses because of the fear of violence or torture?

Hartalwallas have graciously exempted ambulances, journalists and some other categories from the harta. Exempted from what? Obviously from violence, torture and assault. Hartals these days, will anybody deny, are a collective form of our subjugation to torture and violence, at least threats thereof. Most of us would readily agree to concede to a demand by police for not torturing or arresting, as the family of Rubel reportedly had agreed to do. Similarly, we also comply with the threats of violence by the political parties and stay indoors. We accept others' right to torture us or use violence against us; by police, by political parties, by mastans, by countless others.

Many of us take our cue from this prevailing culture. We don't earn money but 'extort' it. I may be a 'mastan' or a government official who is 'dealing with someone's file'. Money has to be paid. It has to be paid in almost any situation in our daily lives. Paid not because someone is earning it, deserves it, or because the work done but because someone 'demands' it and that demand has to be met. It also includes demand for money for not arresting, not torturing, 'demand' for money for goods which the

number of formally educated persons, said that the police can torture an arrested person. More than 90% of the same respondents, however, knew what a postmortem was and the situations in which postmortems were needed.

Also, we tried to find out about the issues and laws on which NGOs concentrated their awareness and legal literacy efforts and campaigns. Many, many NGOs are involved in awareness and literacy campaigns against fatwa, dowry, child marriage, registration of marriage, etc.; they are

The rationale for all these is rather simple: end justifies the means. Students, increasingly frequently, are resorting to violence (torture) against their teachers. Such instances are, until now, mostly confined to situations of copying during public examinations. Teachers and magistrates, are assaulted for not permitting of copying during examinations. Will it be too long before they start demanding question papers before examinations and resort to violence (torture) to obtain it?

Lawyers should not bother about merit, law, fact, procedure, witness, proof and all those mundane matters. Hit the judge hard enough and get the verdict you need. At least threaten him. Come to think about it, we might have to change the criteria for selecting judges. Only the very robust, healthy, strong and, most importantly, those with a high level of pain-tolerance ought to be appointed as judges. No weaklings need to apply.

Recently, we did a survey on awareness about prohibition on torture. As lawyers we are not terribly qualified to do such things, i.e., survey and hence ours was an impressionistic rather than a rigorously representative one. We questioned more than 1200 'respondents' in three thanas of three districts. More than 60% of the respondents, which included a large

protesting against child trafficking, prostitution, for death sentence to offenders against women as well as right to housing, health, environment, equality of sexes, and so forth. Our TV and radio are broadcasting public service messages on tree plantation, fishing or saving fish fries, advising on foreign employment, degradation of environment, means for producing better agricultural products, teaching computer — the list goes on and on and on. But we could not find any one poster or leaflet or traces of campaign for the citizen's right not to be tortured — for freedom from torture or inhuman punishment.

We accept torture and violence. Yes, once in a while, as in the case of Rubel, it was more than what we are normally willing to accommodate or accept. With the repeated assertions in media that "Rubel was not involved in politics", it seemed that we would probably have accepted Rubel's death as 'normal' if he had been into politics or at least the outcry



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Death In Police & Court Custody (1st January to 31st July 1998)

Sl No	Name	Age	Police Station	Date of Occurrence	Reference	Date of Arrest
1	Ismail Hossain	60	Tangail Magistrate Court**	8/1/98	Bhorer Kagoj 10/1/98	—
2	Ramjan Ali	60	Kahalu Police Station	15/1/98	Janakantha 18/1/98	15/1/98
3	Arun Chakrabarty	27	D.B. (Detective Branch Custoday)	23/1/98	Inquilab 24/1/98	21/1/98
4	Nurul Islam	37	Gafargaon Police Station	19/4/98	Inquilab 21/4/98	9/4/98
5	Shariful	35	Jessore Police Station	19/6/98	Bhorer Kagoj 21/6/98	19/6/98
6	Jalil (Masum)	25	Lalbag Police Station	21/6/98	Ittefaq 22/6/98	17/6/98
7	Shamim Reza Rubel	27	DB (Detective Branch) Custoday	23/7/98	Daily Star 24/7/98	23/7/98

Courtesy: Odhakar

would have been much more muted. Anyway, after a few days all of us will probably go back to our 'acceptance' culture. Police will continue to beat and torture the arrested or suspected ones, mastans will threaten us with violence or beat us up and we shall pay up. There would be barricades to violently prevent thousand of travelers from continuing with their journeys because someone else has suffered violence. Goons would be hired by political parties to popularise their demands, factory owners will resort to violence to make their workers perform better and so on. At individual levels, we shall continue to beat up our wives, children, domestic workers, rickshaw pullers. We shall continue to enrich our culture of torture and violence.

For the sake of those brighter days, with more violence and torture in even more situations, let us get rid of the blip in our legal system: Article 35(5) of the Constitution. This most useless fundamental right foolishly proclaims: "No person shall be subjected to torture or cruel, inhuman or degrading punishment or treatment."

Can you imagine the stupidity of such a fundamental right in the context of our culture of violence. What's the point of my power if the power can not be used to torture the ones I don't like or can't stand. Let's be realistic and raise our collective fists for our right to torture and renew our pledge to accept torture as one of the fundamental principles for organising our society. Let the most powerful in the society have the greatest right to the most effective means of torture. Obviously material benefits in cash and kind would follow and the most powerful will certainly have the right to be the richest also. One of the newspapers did report that Akram owned two houses, including one in Gulshan, and two garment factories. Let there be more Akrams, more hartals and, consequently, a much better society!

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