

# Law and Our Rights

"All citizens are equal before law and are entitled to equal protection of law"-Article 27 of the Constitution of the People's Republic of Bangladesh

## State of Human Rights 1999

# Human Rights Violations by Law Enforcing Agency

PEOPLE have become angry at the collapse of the law and order situation in the country and the lack of security of life of the citizens. Great concern was shown and protests held against police at many places of the country, including Dinajpur, Jessore, Khulna and Chittagong. The security forces, which should be engaged in maintaining the law and order situation, were used as the tools of the political parties. They allegedly involved in torture, killing, robbery and even rape. In the beginning of 1999, several recommendations were made against the corruption of police. The Public Administration Reform Commission recommended that the corrupt police officers be suspended. No steps have yet been taken on that.

In 1999, due to police and jail-police brutality, 61 persons succumbed to death. After the death of Shamim Reza Rubel in police custody, despite serious protests from various quarters against police brutality, no major change in the treatment of arrested persons by the police has been observed. Some of the reported cases of police brutality that hit the headlines in 1999 are reflected here with.

On 14 March 1999, in the Capital, one Mojibur Rahman was tortured to death by police of Sabujbagh Thana. Later police discarded his body. After recovery and identification of the corpse, people of the locality became furious towards the Police.

A few days later, on the 25 March 1999, a dead body was found in a water tank on the roof of the D.B. Office in Dhaka City. This body was identified

as of one Jafal, a microbus driver. He was said to be a police informer. This incident was treated as a pre-planned murder occurred at the D.B. Office. As usual, an investigation has not been properly conducted.

On 30 March 1999, Saleha Begum, a maid working in the police barracks in Chittagong, was shot to death by a police constable. The Inspector General of Police said to have only ordered police personnel not to employ any maid in the barracks. An inquiry Commission ordered regarding this killing, but the fate of this case is yet to be known.

Deaths in police custody are on the increase. Most inhuman news are published in the newspapers. Public confidence in the administration of justice is rudely shaken. This can not be breed contempt for law.

One Kamal Mondal succumbed to death in Police Custody. Mr. Mondal was a resident of Pungsha area under Rajbari District. He was arrested and then remanded by Court for two days to Pungsha Police. On the first day of the remand he was treated brutally by Sub-Inspector Sajedur Rahman of Pungsha PS. He succumbed to his injuries the following day. People of the area made several protests and complaints to the superior police authority against that Sub-Inspector Sajedur Rahman, but of no avail. The authority did not even record the case filed by Kamal Mondal's wife. Again, seeking justice goes in vain.

Naju, a resident of Chaudanga was beaten to death by police of that PS. Facts are

that Naju, an accused of a kidnapping case, was arrested by Chaudanga Police led by O.C. A.T.M. Farooq. On the way to the police station he was severely injured in front of hundreds of people. At the police station also, he was beaten so seriously that he died.

Shah Md. Tuku, a resident of Moghbazar Area of Dhaka City, was forced to drown in a stagnant filthy lake. Apparently, the police arrested Tuku and beat and kicked him mercilessly. As a result, he was unable to stand. Nevertheless, as alleged, the police pushed him to plunge into dirty lake water and sink. Said incident caused public resentment against police, and people took out several processions against the police. A case has been lodged against three policemen by Tuku's family.

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On 15 September 1999, Shamsuddin Jewel (25) was forced to drown in a dirty waterbody of Kamlapur area of Dhaka City. Four police constables of Kamlapur Police Camp attacked him while he was returning home by rickshaw. At one stage of torture by police on the public road, he tried to evade that and fell in to 'Doba' of Balumath slum. He was shouting for some one to save him but the police did not rescue him nor did they allow

anybody to save his life.

Police have played vital role in political repression and harassment during every regime. In 1999, the opposition activists and leaders were seriously under repression even if it included well known BNP leaders. Sadek Hossain Khoka, JCD Leader Habibun-Nabi Sohel and Nasir Uddin Pintu. It has also been reported that police filed a case against an opposition activist who was out side the country at that time — yet police showed his presence at the spot in the Capital.

Police have been misusing and abusing their authority in the name of investigation and inquiry during a remand. This can be called a clear perversion of justice. After the arrest of political activists, it is a general practice of the police to send a forwarding note to the Superintendent of Police and the District Commissioner, accusing them as notorious criminals. Besides this, there are accusa-

### Death in Thana, Jail, Court and D.B. Custody 1999

Division	Dhaka	Chittagong	Rajshahi	Khulna	Barisal	Sylhet	Total
Jail	24	6	7	5	3	1	46
Thana	6	-	1	4	-	-	11
Court	1	-	2	-	-	-	3
DB	1	-	-	-	-	-	3
Total	32	6	10	9	3	1	61



tions that police occasionally kidnap people and take them to a solitary place for ransom. Their demand for such toll is an open secret that all are aware of.

What does the law actually say? Does it give the police the right to torture, maim and even kill? The Code of Criminal Procedure (Cr.P.C) does not permit involuntary confession or a confession made by a person while in police custody. There is no question of torture being permitted by the Cr.P.C. particularly for extracting confession while in custody.

All the safeguards under the Constitution and law put together should ordinarily be adequate to protect an arrested person from torture and involuntary confession. Yet in almost all criminal prosecutions of offences carrying penalties of death or transportation, or heavier sentences of imprisonment, confession made by the accused has come to be the mainstay of the prosecution.

This is an alarming situation and cannot be allowed to continue. Those in the police administration responsible for investigation of crimes must be re-trained and should gather

expertise in the more civilized methods and techniques of investigation. It is also necessary that the police administration have adequate manpower, logistics and equipment for conducting investigations. If the social fabric is to be kept intact and the political governance is to promote good governance — which would eventually make it more stable and credible and promote people's welfare. The safeguards which are contained in the Constitution and law must be observed.

A matter, which requires special mention, is the power of police to arrest a person on reasonable suspicion under section 54 of the Cr.P.C. These are not arbitrary powers, because if they were so, the power will be unconstitutional. The provision of arrest without warrant under section 54 of the Code are divided in 9 sub-clauses. The power of arrest under section 54 contains a reasonable restraint on the enjoyment of personal liberty of the citizen. However, it is common knowledge that Section 54 is widely abused by all branches of police administration, that is connected to maintenance of law and order and investigation of crimes. The statistics of such arrests and of the persons so arrested and eventually being sent up for trial, reveal that although a large number of persons are arrested by the police, while exercising this power, only a small proportion is charge-sheeted and tried for specific offences. Most of the others are released from custody. It is also widely held and believed that the abuse of this police power on such a large scale is in many cases, for extracting money by violence or

by torture or by threat of violence or torture and for arresting political activists of the opposition. Subjecting an arrested person to actual violence and torture where he is unable to satisfy the demand of money made from them is not uncommon.

Constitutional guarantees of the due process of law under article 32 of the Constitution declares that no person shall be deprived of life or personal liberty save in accordance with law and article 35(5) of the same guarantees that no person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. Under article 33(1) of the Constitution, an arrested person has the right to consult a legal practitioner of his choice and to be informed as soon as may be of the grounds of arrest. These fundamental rights of the persons arrested are not empty words. They safeguard the fundamental rights of the citizens of Bangladesh and are constitutional guarantees to protect accused persons from the cruel and inhuman injustices during investigation and at the trial.

The guilt of the arrested persons cannot be allowed to be established by dispensing with fundamental or even rudimentary fairness which have long been recognized under the law and the Constitution as basic guarantees. If a prisoner is coerced by torture or other methods to self-incriminate himself, if he is beaten or is slowly "broken" by third degree methods then the entire criminal procedure from arrest to trial becomes an inhuman ritual.

The writers are both members of Odhikar.

# ADR (Shalish) Practice in the SAARC Countries

ALTERNATIVE Dispute Resolution (ADR) is an age-old practice in Bangladesh as well as in other SAARC countries namely — India, Pakistan, Nepal, Bhutan, Sri Lanka and Maldives. The practice is rooted in history once time immemorial and is still in vogue. Presently it has two forms viz formal and non-formal, both in prevalence, side by side. Formal ADR has the stamp of official recognition or legality, while the non-formal one is based on convention, customs and cultural nuances of the local people. The non-formal 'Shalish' prevails because of the peculiar nature of the rural societies, clout, expertise by the influential groups and the subservience of the rural poor, religious beliefs and superstition. Illiteracy of the vast majority of the people and limitations of the state apparatus making proper legal measures and procedures inaccessible to poorer and disadvantaged section, particularly the women.

An overview of the formal ADR practices of the SAARC countries is outlined below:

### Bangladesh

Apart from performing a developmental role, some judicial functions have also been vested in the Union Councils. Under the Constitution Courts (Amendment) Ordinance 1982, the Chairmen of Union Councils act as the Chairmen of Arbitration Councils which regulate procedures relating to marriage, divorce and maintenance of separated wives. Similarly, the Chairmen of Union Councils and Town Committees and ward members in Municipal Corporations and Municipal Committees act as Chairmen of Conciliation Courts to settle various criminal and civil disputes at the local level. Each party to the dispute nominates two representatives on a Conciliation Court. Conciliation Court for a case comprises five persons.

Gram Parishad or Palli Parishad (Village Council) is

between 5 to 11. Village Panchayets generally comprised a village assembly (Gram Sabha) and an executive body (Mahattar Sabha) and consisted of representatives of groups and castes. The most important task of the Panchayets in the whole of India was the maintenance of public order which, *inter alia*, meant that they exercised both police and judicial duties. In other words, the Panchayets were village tribunals also engaged in ADR or Shalish.

This was during the ancient period. Many of these forms of Panchayet exist with little changes in rural India.

Post-independent India has adopted the three-tier Panchayati Raj Institution (PRI) namely, Village Panchayet (VP) at the village level, Panchayat Samiti at the Block level and Zilla Parishad (ZP) at the district with their respective functions clearly defined and demarcated.

### India

India has had long history of ADR dating back to several centuries before Christ. ADR is still very much in practice in India and is recognized as an institution for out of court amicable settlement of disputes by the country's parliament and judiciary. The latter, however, retains its supervisory role over it. Through the enactment of the Arbitration and Conciliation Act in 1996, the Indian Parliament has given due recognition to the disputants to decide for themselves the mode of settlement of their differences. Its precursor — the Arbitration Act 1940, used to deal with only domestic arbitration. The 1996 Act modified the earlier act and expanded the scope of ADR alongside its legal cover.

The optional functions of village Panchayet include promotion of social and moral welfare including prohibition, removal of untouchability, eradication of corruption and measures to discourage litigation and encourage arbitration. Panchayet system is still now playing an important role among the members of the scheduled castes and backward classes in India. ADR is at the centre of the functions of these panchayets.

### Pakistan

As in Bangladesh, so also in Pakistan the Union Councils are at the bottom of local government infrastructure. Atop the Union Council is the Tehsil Council. Alongside Union Councils, Agency Councils and Regional Councils also exist for the people belonging to different tribal areas, particularly in North West Frontier Province and Baluchistan. All the three also act as arbitration tribunals — both formal and non-formal — for settling petty local disputes. Women also have representations in the Union

and the proposed lowest tier of the four-tier local government bodies, namely Zilla Parishad (District Council), Upazila Parishad (Sub-district Council) and Union Parishad (Union Councils). The Gram Parishad is supposed to look after petty disputes in the respective villages through shalish, apart from assisting in the maintenance of law and order. It has provision of including female members as in the Union Parishads to ensure women's participation at the grassroots level. Because of the controversies generated by the proposed composition, mode election/selection and modality of its functions progress towards the constitution of the Gram Parishad has now been stalled. The government is yet to decide on the introduction of the Gram Parishad.

The Panchayet literally means village councils comprising five eminently respectable local persons. Panchayets were formed on caste and community basis mainly for resolving disputes arising out of the village people. The number of its members varied

### by Mansoor Mamoon

Councils and Tehsil Councils.

### Sri Lanka

Gram Sabhas or village councils used to exercise judicial and administrative functions in the rural areas of the island republic of Sri Lanka since 500 BC. These councils were autonomous and its major decisions were accepted and acted upon by the village community. This type of arrangement was in existence till the advent of modern colonialism in Sri Lanka.

The village councils were replaced in 1981 with Gramodaya Mondalaya (GM). Thirty-six different types of organizations including NGOs are eligible

### An Appeal to the Hon'ble President of the People's Republic of Bangladesh

The following human rights organisations are extremely critical of the Jana Nirapata (Bishesh Bidhan) Ain 2000 [Public Safety Act 2000] passed by the Parliament in an unseemingly hurried manner on 30 January 2000.

The organisations find the proposed law to be against universally recognised principles of the criminal justice system and criminal procedural laws. Most of the acts, particularly those creating obstacles to the movement of vehicles, creating terror and fear, etc. have been defined in such a manner so as to be easily misused against innocent people. The main concern includes, but is not limited, to the following:

1. Punishment for attempt to commit crime has been made similar to crimes committed.
2. The provision for treating on the spot jobanbandi as evidence when the person providing the jobanbandi cannot be present in the Court violates fundamental principles of fair and natural justice.
3. The Act imposes fetters on the power of the court to grant bail, which can be widely abused by accusing innocent persons under this law.
4. Moreover, the organisations mentioned below feel that punishment for most of the acts, treated as crimes under this law, are already provided for in the Penal Code.

The organisations mentioned below appeal to your Honour not to give your assent to the said Act and return it to Parliament for reconsideration.

**Ain-O-Shalish Kendra, Bangladesh Legal Aid and Services Trust, Consumers Association of Bangladesh, FEMA, Law Review, Madaripur Legal Aid Association, Nari Pokkha, Odhikar: a coalition for human rights.**

able to become its members. ADR is an important component in the functions of GM.

### Nepal

Panchayet system is an age-old basic unit of village governance in Nepal. The system still prevails with modifications and changes in tune with the demands and requirements of the changing times in the country. Under the existing Panchayet system any area of approximately 2000 population is a village Panchayet area. The village Panchayet is divided into nine different wards, each of which selects one representative known as the Pancha or Panchayet Member. The nine Panchas, one Chief Pancha and one Vice Chief Pancha constitute the Village Panchayet.

Under the Village Panchayet Act of 1961 and Section 41 of the 1962 Village Panchayet Act and as amended in 1980 village Panchayets enjoy minor judicial power in respect of certain categories of cases including the domestic one.

The Headman is responsible for adjudicating minor disputes (ADR). The two disputant parties are generally represented by other village who could be Chhipos or village elders.

### Maldives

During the Buddhist period, the Maldives was organized into districts called Madulu. Later they were renamed as Atol (atolls). At present there are now twenty atolls in the country. Like the headship of an island under him at least once a month, in such visit, he generally takes along with him Gazis to settle local disputes and adjudicate on inheritance claims.

the capital Male and the islands and supervise the work of the island administration. The Verin required to visit island under him at least once a month. In such visit, he generally takes along with him Gazis to settle local disputes and adjudicate on inheritance claims.

The Gazis perform the duties of Arbitrators under the supervision of atoll chiefs.

# law watch

## Do We Need Public Safety Act?

by Nasrin Akter

In all the leading national dailies, pictures of several political goons of both ruling and opposition carrying guns during Hartal, were published. Why are they not yet arrested? Whereas, the published pictures were sufficient to identify each one of the n. Unfortunately, they are still roaming freely on the city streets. Was the absence of Public Safety Law could allow them to move freely and defiantly or was it lack of responsible Police officers which pushed our society into despotic situation?

There are plethora of Laws existing in Bangladesh, which are sufficient to curb crime and terrorism from the society. Unfortunately during Bangladesh's short history the law of the land has been tempered many a times by introducing preventive detention to suppress so called terrorists who mostly belonged to the opposition. If our leaders could be more enthusiastic in enforcing our existing law, rather than legislating Draconian Laws and enforcing them vigorously, then perhaps we would have had a people friendly society free from fear of violence and terrorism.

It is not understood why it is feared that it will only be misused against opposition. Any citizen, having no connection with politics may also be implicated falsely by PSA. In mid 98, Odhikar — a coalition for human rights reported an incident where a man named Harun was picked up by police and tortured while in Police custody under the suspicion of a hijacker. Armed with Public Safety Act now, such suspicion may occur more frequently than necessary and even a person found not guilty will lose his 90 precious days in the dark hole of prison. Who then will compensate his loss? The Government?

Though our Prime Minister states that, there is a provision of punishment in the PSA to ensure that it is not abused, none is harassed and none files case out of vengeance. But a person who has already undergone imprisonment for 90 days, then would be affluent enough and be able to gather ample witnesses to pursue the case, under the said law, to get remedy? Moreover, if the Police department is his opponent, will there be possibility to have any witness against that department armed with PSA 90 days after the incident?

PM explaining her position on Special Powers Act 1974 says, no election manifesto of AL or she herself