

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

Human Rights Violations by Law Enforcing Agency

MD. Nur Khan and Md. Asaduzzaman for Odhikar

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 Molliur 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 stories are published in the newspapers. Public confidence in the administration of justice is rudely shaken. This can be attributed to the law.

One Kamal Mondal succumbed to death in Police Custody. Mr. Mondal was a resident of Pungsha Thana 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 Pungsha 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 Chuadada, was beaten to death by police of that PS. Facts are

that Naju, an accused of a kidnapping case, was arrested by Chuadanga 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 incidence 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.

Lal mia, a truck driver of Savar area under Dhaka district, was remanded in police custody for 5 days in connection with a case of robbery. He died on 19 August 1999, in the custody of Savar PS. He was inhumanly tortured by the police of that PS.

On 15 September 1999, Shamsuddin Jewel (25) was forced to drown in a dirty water-body of Kamapur area of Dhaka City. Four police constables of Kamapur 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 it included well known BNP leaders. Sadek Hossain Khoka, JCD Leader Habibun-Nabi Soheli 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-

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 government 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, 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 person 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.

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

ADR (Shalish) Practice in the SAARC Countries

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 Gram Sabha was reconstituted as a village council under the Village Councils Ordinance 1871. Along with the village councils, village tribunals were set up with minor judicial functions over domestic and local disputes to be resolved through arbitration and mediation.

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

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 Nirapatta (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-Salish Kendra, Bangladesh Legal Aid and Services Trust, Consumers Association of Bangladesh, FEMA, Law Review, Madaripur Legal Aid Association, Nari Pokkho, Odhikar: a coalition for human rights.

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 since 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 of legality, while the non-formal one is based on convention, customs and cultural mores 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 Conciliation Courts (Amendment) Ordinance 1982, the Chairmen of Union Councils act as the Chairmen of Conciliation 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 Councils act as Chairmen of Conciliation Councils 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

the proposed lowest tier of the four-tier local government bodies, namely Zila 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.

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.

However for the sake we would confine our discussion to ADR under the system of Panchayat.

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

between 5 to 11. Village Panchayats 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 Panchayats 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 Panchayats were village tribunals also engaged in ADR or Shalish. This was during the ancient period. Many of these forms of Panchayat exist with little changes in rural India.

Post-independent India has adopted the three-tier Panchayati Raj Institution (PRI) namely, Village Panchayat (VP) at the village level, Panchayat Samity at the Block level and Zilla Parishad (ZP) at the district with their respective functions and jurisdictions clearly defined and demarcated. The optional functions of village Panchayat include 'promotion of social and moral welfare including prohibition, removal of untouchability, eradication of corruption and measures to discourage litigation and encourage arbitration'. Panchayat 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 panchayats.

Pakistan

As in Bangladesh, so also in Pakistan the Union Councils are at the bottom of local government infrastructure. 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

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

Nepal

Panchayat 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 Panchayat system any area of approximately 2000 population is a village Panchayat area. The village Panchayat is divided into nine different wards, each of which selects one representative known as the Pancha or Panchayat Member. The nine Panchas, one Chief Pancha and one Vice Chief Pancha constitute the Village Panchayat.

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

Bhutan

In the land-locked Himalayan Kingdom of Bhutan the basic unit of administration at the ground level is a village, the authority of which is vested with the headman called Gapp in the northern areas and Mandari in the southern areas. Mandari is elected by the people of the Nepalese origin. The Gapp is assisted by a Chipon who is both an aide as well as a messenger. The Chipons are selected from different households by turn. Village Headman was originally a hereditary post but since the 50s it has become an elected one.

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

Maldives

During the Buddhist period, the Maldives was organized into districts called Madulu. Later they were renamed as



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 them. 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 despicable situation?

There are plethora of Laws existing in Bangladesh, which are sufficient to curb crime and terrorism from the society. Unfortunately, Bangladesh's short history of 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 false case out of vengeance. But a person who has already undergone imprisonment for 90 days, then would he be affluence 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 had promised to abolish the law. Then should we take the enactment of the new law as an addendum by the Government that they have been unable to control Law and order situation in the country despite existence of another stringent black law SPA 1974.

There had enactment and enforcement of Draconian Laws under the guise of providing safety and security to the people in the past. Unfortunately, none of them could effectively curb terrorism or crime from our society. If enforcing Draconian law could reduce the ever growing crime rate, then in Bangladesh, rule of law would have prevailed long ago.

The Suppression of Terrorism Act 1992, under which over six thousand people were detained and subjected to summary trials, lapsed in 1994. The Public Safety Act appears to be another reincarnation of that law in different way.

To avoid the misuse PM assured that, the Government would arrange whatever training and institutions needed for impartial application of PSA. Unfortunately for last 28 years, different Governments could not provide such training to even our Law enforcing agency to serve the people as per public expectations. Even the present Government, in their long three years regime, failed to make this agency function properly. What makes it so confident to believe that within shortest span of times this agency and others would be able to function miraculously?

Though strange, it is a fact that accused threatened witnesses through cellular phone from the jail or police custody. However, does that happen due to lack of law or due to the slackness on the part of the enforcing agency? PSA does not provide any such procedure, which will end that practice. Rather, only a strict imposition of existing law and a strong police and jail administration can stop all such clandestine activities.

The nature of crimes listed in the PSA are hijacking, extortion, damage to cars and properties, obstruction to free movement of transports, kidnapping for ransom, terrorising public places, obstruction to the tendering process, lodging case on false charges and incitement to commit crime. All these offences have been made punishable under the existing laws. For example, in case of extortion, Section 383 of Bangladesh Penal Code defines extortion and Section 384 provides punishment for that.

Do we really need this new Act? Or do we need to amend or reform the existing laws as well as restructure our present administration system to suit the latest trend of crimes?

One Law for One, Another for Another

by R M Pal

DIABOLICAL methods are adopted by the police and law-enforcing agencies, politicians in and out of office, and lawyers, to ridicule the whole criminal justice system with a view to enabling the "high and mighty" go scotfree; and all these are done at the expense of India forfeiting the right to occupy her due place in the community of civilized nations. The capital of India which ought to be a model for the rest of India presents a dismal picture. The climate in the capital would indicate that police personnel including those of the IPS cadre with the benefit of liberal education in universities/colleges and mostly belonging to the middle class, treat the procedures laid down by the law with utter contempt. In a number of cases the courts have indicated the police and investigative agencies for tempering with evidence and fabricating reports facilitating the acquittal of the accused. Added to this is the inordinate delay in bringing the culprits to book-justice delayed is justice denied. There are also instances where lawyers have not performed their duties as officers of the court.

In a case relating to the 1984 killings of Sikhs in Delhi — in

question, 'who are the guilty?', has not been answered even after fifteen years of the cruel happenings — in Additional Sessions Judge of Delhi, Mr. Shiv Narain Dhirga felt constrained to observe in September 1996: "All attempts were made to see that the persons who were involved in the riots go scotfree even if they were arrested in the cases". The judge added that the "sole attempt of the police was to help the rioters and discredit the victims".

On an earlier occasion, in another judgment relating to the same incident, the judge had observed that "no attempt has been made to proceed against the influential and powerful persons.... The courts work very fast when the victims are powerful and wealthy.... the system stops working when the victims are poor".

That investigating officers destroy evidence so that criminals can go scotfree has again come to light in a disturbing verdict given by another Additional Sessions Judge, Mr. GP Thereja in Delhi in the sensational Priyadarshini Mattoo murder case. Priyadarshini Mattoo, a 24-year law student in Delhi University, has found murdered in her Vasant Kunj

flat in New Delhi on 23 January 1996. One Santosh Kumar Singh, the son of an IPS officer, Mr. J.P. Singh (presently Inspector General of Police) at one stage confessed to having killed Priyadarshini. The case was transferred to the Central Bureau of Investigation (CBI) on 25 January 1996, because the accused's father, Mr. J.P. Singh was then a senior Delhi police officer (DIG). The CBI filed a chargesheet in the case.

The judge, in a judgement on 3 December 1999, acquitted Santosh Singh for lack of evidence, recording, however, that Mr. J.P. Singh had used his official position to influence the investigations in favour of his son. Judge Thereja made the astounding observation in an open court, in the course of his judgement: "Though I know he is the man who committed the crime (murder), I acquit him, giving him the benefit of doubt.... I was in a dilemma till the last moment on whether to convict the accused and, in the end, jurisprudence prevailed".

The judge did not consider it proper to ask the CBI to produce the evidence which was kept away, for he felt that "such ex-

ercise of power by the court may be held as if the court is discharging the role attributed to the prosecution" and that such a course of action is unfair to the system of administration of justice.

The judge criticised the CBI severely: "Has the CBI, by acting in this manner, negatively intended to help the accused by betraying the confidence reposed on it?... The influence of the father of the accused has been there in the matter and there was deliberate inaction by the police". With regard to Delhi police the judge observed "that the rule of law is not meant for those who enforce law or for their near relatives". In short, it is one law for one, another for another. The judge also referred to tampering of scientific evidence (DNA) that is technicians and medical doctors were also involved in this.

Although one must complain the judge for his forthright observations and comments, his pronouncement that even though he knew that Santosh Kumar Singh is the murderer, he had to acquit him,

is rather perplexing. We are not going into the legal aspect of the judgement except to say that once the judge has stated that investigative justice has failed, there is nothing that could prevent him from calling for the witnesses. In any case, the judgement points to the fact that our justice system including investigative justice has lost credibility and is breaking down.

There is another case of killing, (the widely reported BMW case) now before the courts in Delhi which, it is alleged, points to active involvement of powerful lawyers in discrediting the justice system.

The prosecution witness in this case, it is alleged by the Delhi police, was kidnapped by a lawyer and lodged in 5 star hotels with a view to winning him over.

The witness told the police, it is further alleged, that he was offered Rs 1.5 crores by the accused party. Since the case is sub-judice, we may not go into a detailed examination of the involvement, if any.

What is disturbing is that this loss of credibility will contribute to the vast majority of our people, specially the

marginalised and the underprivileged, losing faith in the rule of law. The pervasive belief namely that law is often misused by the rich with the connivance as also active assistance of the law-enforcing agencies at the cost of the poor, will stick. If the institutions of rule of law collapse, the country will face a civic disorder resulting in a possible break-up of the country.

It is, therefore, urgent that the civil society and non-party social activists take upon themselves the task of inculcating in the police and other law-enforcing and investigative agencies as culture conducive to respect for rule of law and human rights. It is an uphill task, no doubt; but must be pursued all the same. Activists must drive home the point that the suffering, loss of freedom of the victims, and death can never be redeemed even if the courts ultimately right the wrongs.

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