

## Power and Public Safety - II

Imagination is more important than knowledge

— Albert Einstein

## Power, Safety and the 'Minorities': A Brief Report

THE issue of safety has traditionally been tied to power. Power can be the source of safety, security as well as insecurity. This Janus face perhaps is a consequence of the will and orientation of the user, or more precisely the institution that exercises the power. Safety, thereby often remains quite elusive for the general people. In the context of the minorities the situation is even more obscure and precarious. The following is a brief write up of three major concerns of the minorities in Bangladesh. The term minority has been used here in the numerical sense.

## (i) Land Alienation

**Land and the Hindu community:** A report done by Ain-o-Smashan Kendra (ASK) states: "The 1991 census estimated that the Hindu population has declined by 0.3 per cent since 1974. Fear of loss of property, under the Vested Property Act 1974, or fear of communal violence has induced the migration of Hindus from the country" (Human Rights in Bangladesh 1998, ASK, Dhaka 1999, p.192). The continued existence of the Vested Property Act is the major source of insecurity and human rights violations of the Hindu community. In 1999, about 29 cases of forceful occupation of land and property of the Hindu community have been reported in different newspapers. These include their homesteads, farmlands and religious places. Influential political forces and their goons have also occupied many of the properties listed as vested property. In 1999 in the Sunamganj district out of 21,000 acres of vested property land 16,000 acres have been illegally occupied (Bhorer Kagoj, 17.5.1999); likewise in the Mymensingh district out of 29,722 acres of vested property land 28,000

acres of land and 300 houses (vested property) have been occupied by one influential person (Bhorer Kagoj, 12.5.1999). The above are committed by people with political backgrounds – either as members of political parties or as supporters. It matters little if the party is in power or in opposition. Statistics as cited in the ASK Human Rights Report (p.193-194) show that in 1995, 72 per cent of all vested property was acquired by members of BNP; and in 1998, 44 per cent was acquired by the Awami League and 32 per cent by the BNP.

The government has instituted a Parliamentary sub-committee under the Ministry of Land to annul the Vested Property Act and reinstate the vested properties to the original owners. The sub-committee has also formulated a draft Bill to this effect to be placed in the Parliament. This Bill, however, has several loopholes. The Bill reads that the properties that are not legally vested under the ownership of the government, and those which have been declared as enemy or vested property after 16 February 1969, would not be considered as vested property under the proposed law. The fact of the matter is that most of the Hindu property has been declared as vested property after the said period. The proposed Bill further reads that nothing containing in the proposed law shall affect the property ship status of the vested property if it has been taken over by the government, any government institution, any other institution or individual; has been sold or has been handed over permanently by the government at the direction of a court. These cases cannot be even questioned at any court (Janakontho, 25.11.1999). These provisions negate and defeat the spirit and objectives of the proposed law.

The proposed law also states that the original owners must produce their land documents to the tribunal within 180 days of the promulgation of the law, else it would be taken over as government property. The 180 days time period is considered to be too insufficient by members of the community.

**Land and the Ethnic minorities:** According to one estimate the Adivasis have lost about 80 percent of their land (Nil Chandra Bhounik & Basu Dev Dhar, Adivashi-Upaniyo Dibee Nae Shoungot, Prothom Alo, 24.2.1999). Ignorance about their rights, extreme poverty, development of the state and forceful occupation of their land by the local goons aided by strong political forces are the major factors behind their loss of land. The Kheyangs of Banderban district (Prothom Alo, 18.12.1999), the Hajougs of Birishiri (Bangla Bazar, 1.1.1999) have become victims of the development paradigm of state. The Forest department has asked them to leave the lands on which they have been living for ages. Deprived of any other means of livelihood they are now passing their days in extreme anguish and agony. The land ownership of about 40 Khasia families of the Boiragee punji of Chunarughat is also under threat. An influential tea estate of the neighbouring area has threatened to take over their punji and turn it into a tea estate (Bhorer Kagoj, 9.8.1999). The Rakhaines of Patuakhali are falling prey to the fraud and forgery of the Bengali settlers. About 90 percent of the Mahals of Parbatipur have lost their land to mahajans (money lenders) due to extreme poverty (Muktakontho, 6.12.1999). The Garos of Birishiri have also lost their land to the mahajans. The Bengali settlers carry on this

business in the area. They charge interest rates as high as 400 percent a year. Extreme poverty drive the Garos to these mahajans (Bangla Bazar, 4.1.1999).

**(ii) Gender Violence**

Women are the most vulnerable and marginalised section of the society. Minority women are doubly marginalised and vulnerable, first as minorities second in their position as women, in most cases human rights violations against women are not reported due to societal taboos. Minority women have been marginalised and violated as individual women members of the society, and also due to state institutions, laws and the development notions of state. The following are two instances of this.

The Garo women in the bordering area of Birishiri are victims of poverty. 80 percent of the Garo families in the area are dependent upon forest resources for their survival. But most of the forests have been taken over by the state as Reserved Forests. The women go into these forests to collect fuel wood and also their food items. At times they also cross the borders because most of the forests on the Bangladesh side have been denuded while these are still lush and thick on the other side. While crossing the border the women are often caught by the BDR personnel. They then are forced to satisfy them. The situation is not different on the other side of the border. They are often caught by the BSF and again they have to satisfy their demands. The Garos are extremely poor and the women are enduring these for the sake of their families and children (Bangla Bazar, 5.12.1999).

Hindu women remain marginalised and vulnerable due to discriminatory laws regarding inheritance. Since 1956 no amendments have been made to Hindu laws. The Hindu women are deprived of inheritance of their parental property, that is why the institution of dowry is so strong among them. Men often torture their wives for dowry for this is the only property that Hindu women get from their parents. Apart from the physical torture this discrimination is also very humiliating for the girls. Hindu marriages are indissoluble but the husband has a right to marry polygously. Besides there is no registration of Hindu marriages. Despite strong pressures from various women organisations for change the government has refused to make any amendments to the existing laws without the full consensus of the Hindu community.

The reported cases of violence against women often go unheeded by the police authorities.

## (iii) Lack of Employment and Education Opportunities

Part I Article 3 of the constitution states that the state language of the Republic is Bengali. Bengali being the state language is also the medium of instruction and the language for official purposes as well. It certainly puts the non-Bengali population of the state at a disadvantage. Students of these communities allege that they find it difficult to compete with the students whose mother tongue is Bengali. The dropout rate among the students of these communities is also very high. The schools as well as the

teachers expect the students to confirm to certain conventional norms and patterns that the students from the other communities find difficult to adapt to. Lack of education opportunities also restrict their employment opportunities. Members of different ethnic communities allege that they have been denied jobs because of their different features.

The state has not taken any steps for the preservation and development of the ethnic languages.

## Conclusion

The following are suggested as ways of overcoming the concerns of the minority communities:

Adequate laws should be framed for the protection of their rights, and these must be implemented effectively.

Efforts should be taken to develop their languages. They should have the right to pursue their education at least till the primary levels in their mother tongue.

The mainstream civil society should be made aware of the concerns and plight of the minority communities.

The electronic and print media ought to be sensitive about the minority concerns.

Finally only a concerted and united effort on the part of the members of the 'minority' and 'majority' communities can help us come out of this majority-minority dichotomy and build up a system where the different communities may feel part of the society.

An "Ain O Shish Kendra" report.

## Necessity or a Sense of False Security

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Public Opinion on the PSA:

To assess public opinion on the PSA a survey was conducted on 200 respondents. Some salient findings of the public opinion survey are mentioned below -

1. The survey did not find any student who had read all the provisions of the PSA.

2. 64.00% of the respondents mentioned that they did not know whether any provision of the PSA violated the norms of human rights or not. This suggests that to majority of the respondents, the concept of human rights are not clear.

3. 46 respondents pointed to the non-bailable provision as a violation of human rights.

4. 58.00% of the respondents felt that the passing of the PSA in the absence of the opposition was a flaw.

5. 71.00% of the respondents were in favour of accepting bail in some way or other. 23.00% opined that non-bailable provision is a violation of human rights, 11.00% felt that it would lead to misuse of the law and 37.0% opined that there should be some special provisions regarding bail.

6. 86.50% of the respondents supported the provision that stipulates for punishment for making false cases under the PSA.

7. 64.00% of the respondents felt that the PSA contains appropriate punishment provision. While 20.00% asked for more stringent punishments. This suggests that 84.00% of the respondents did not consider the PSA to be draconian.

8. 60.50% respondents felt that the process of formulating and approving the PSA was not transparent.

9. The survey found that there was lack of knowledge among the respondents about the PSA (only 36.70% knew about the provisions of the PSA). Similarly, there was lack of knowledge about the "Suppression of Terrorism Activities 1992", which was another controversial law of that period. Only 31.00% of the 200 respondents (who knew about the PSA) could make the comparison of the PSA 2000 and the Suppression of Terrorism Activities 1992. This proves the

continuing lack of interest among the respondents about the governance of the state.

10. Passing the PSA as the 'money bill' was the most controversial issue. Relevant sections of the constitution were cited in both print and electronic media. Still a significant portion of the respondents were indecisive whether it was a 'money bill' or not.

11. Though 46.00% of the respondents did not feel the necessity of the PSA, the activities of the opposition political parties was supported by only 24.00% of respondents. 68.00% of the respondents did not support their activities. This suggests the failure of the opposition to capitalise on the wrong doing of the government.

12. Out of 136 respondents who did not support the activities of the opposition political parties against the PSA, 96 respondents suggested that the opposition should make the movement without the *hartial* and 78 respondents felt that they should use the parliament.

## Recommendations

**Strict & Impartial Implementation of Laws:** The PSA assumes that tougher laws can improve the law and order situation. But to stack laws upon laws can at best create a complex system of justice, this cannot guarantee its efficacy. Rather only a strict and impartial imposition of existing laws by an impartial and strong police administration, judiciary and jail administration can stop many such clandestine activities.

## Amendment of Existing Laws:

**Laws:** It is true that with the course of time as the society changes the trends and types of crimes also change. Existing laws become inadequate to combat the newer forms of criminal activities. The age old Penal Code of 1860 and the

Criminal Procedure Code of 1898 cannot meet the demand of the time. Amendment of the Penal Code and the Criminal Procedure Code through consultation with the opposition, law specialists and civil society, instead of creating new tough laws could have been a better option to avoid all the controversies.

**Freedom of Judiciary:** Law is a dead without the freedom of the judiciary. If we desire the rule of law, we must make the judiciary free from the executive.

**Cleaning up of own Camp:** The government's concern for ensuring people's security would have sincerely manifested itself had it taken measures to clean up its own terrorist and extortions.

**Modernisation of Police Force:** It requires immediate steps in the following areas -

a. Those in the police administration responsible for investigation of crimes must be re-trained and should gather expertise in the more civilised methods and techniques of investigation.

b. It is also necessary that the police administration have adequate manpower, logistics and equipment for crime prevention and conducting investigation.

c. Police personnel should be given sufficient training on the existing laws of the country which will enable them to file cases properly.

**Taking the Opposition into Account:** To enact a tough act like the PSA, opinion of the opposition political parties should have been given due importance. Law and order situation is a national issue. The opinion of the representatives of the majority of the people cannot be ignored. There has been no clear indication that the government sincerely wanted to discuss with the opposition political parties regarding the enactment of the

PSA other than calling them to join the parliament and criticising them without decency at the same time.

**The PSA in a Limited Version:** The purpose of enacting laws is to create a law-abiding society. To enact such law, which is not endorsed by the representatives of the larger section of the population, is to avoid all the controversies.

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**Independent Institution to Check Abuse of the PSA:** Presence of institution to act as a check on the activities of another institution is the hallmark of democratic rule. An independent investigative department headed by a person with the reputation of being honest and impartial can be established to check abuse of the PSA.

Report prepared by Sharif Aqir Rahman, Syeda Suhana Fahri, Md. Delwar Hossain and Rozina Yasmin.

## Power, Public Safety and Women

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6. Muslim family Law Ordinance of 1961
7. Penal Code, 1860
8. Suppression of Immoral Trafficking Act, 1933
- We will try to analyse the most recent legislation enacted relating to women and children, namely Suppression of Violence Against Women and Children Act, 2000. This Act was passed by the Parliament on January 30, 2000 with another controversial Act, Public Safety Act, 2000.

The new law makes provision for the punishment of sexual abuse and sexual harassment. The law also has put restrictions on the media so that the victims' privacy could be protected. The introduction of the concept of the Safe Custody is one of the most important features of the new legislation. Section 31 of the Act reads thus: "If the Tribunal considers it necessary to commit any child or woman to safe custody during the trial an offence under the Act, the tribunal may pass an order directing the child or woman to be committed to the safe custody, to be situated out-

side the jail and be a government facility or may commit the child or woman in the custody of any individual or agency which the tribunal thinks appropriate.

So, the concept of safe custody has got legal recognition by this enactment. The provision of the law clearly spells out that the place of custody must be out of the jail. But the law clearly violates a fundamental right guaranteed by the Constitution itself - Freedom of Movement. The Tribunal has been given the absolute authority to decide whether the child or woman concerned needs the protection of safe custody or not. The victim's right to choose has been completely ignored.

Moreover, it provides mechanism for the trial period only it is silent on what should be done before the case is sent to the tribunal for the trial.

Another striking provision of the Act is that the rapist has been given the status of a father. Section 13 of the Act says that the rapist will bear responsibility of the child born out of pregnancy due to the rape. The tribunal will decide where the

child will live. If proved rapist, he would be sentenced and detained in jail. It is not understandable how the rapist would bear the responsibility of the child from the jail and how the victim mother would collect money from the rapist. Option to abortion in such cases could be an alternative.

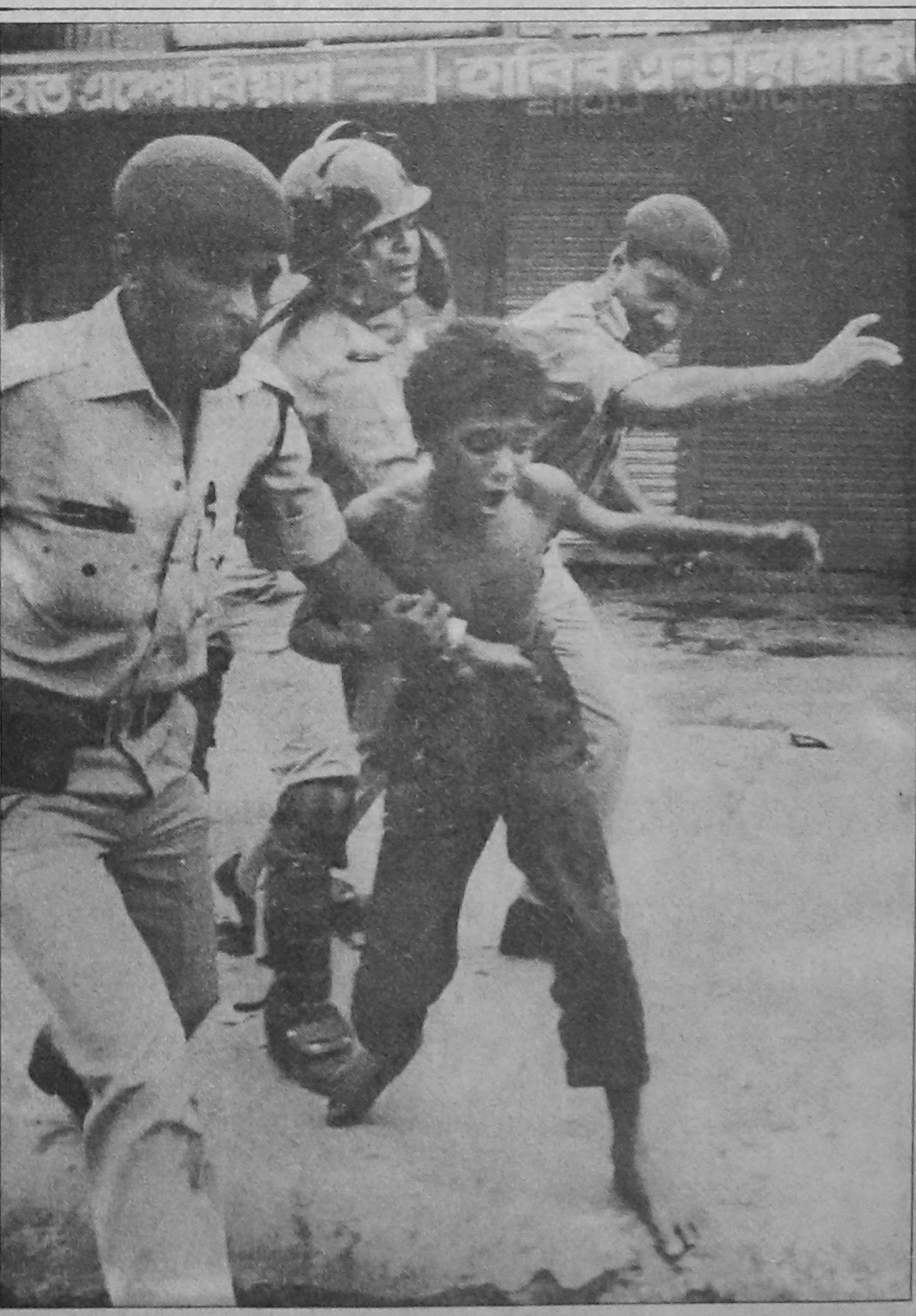
The definition of rape as given in the new law makes room for the rapists to escape punishment. According to the law a man is said to have committed rape who has had sexual intercourse with a woman under the following circumstances:

- against her will
- without her consent
- with her consent when her consent has been obtained by putting her in fear of death or hurt
- with or without her consent when she is under 16 years of age.

But in a number of cases it has been observed that victims have failed to prove the element of threat.

But the daunting challenge we are facing today is the implementation of the laws against violations. When a violation is reported, the police is the first organisation a woman confronts to seek redress. Law is there that the police would take the case and investigate it and provide necessary security to the victim. But there is active connivance of the police in most of the rape cases reported and therefore, it is very difficult to take any action against the culprits. The cases of Shima Chowdhury and Yasmin are the glaring examples.

The topic of our next issue is: Peace Building in the CHT. Creative suggestions are invited from our esteemed readers. Please send your materials to: Dr. Imtiaz Ahmed, Executive Director, Centre for Alternatives, Room No 431, Lecture Theatre, Arts Building, Dhaka University, Dhaka-1000. Tel: 9661900-19, Ext 4550; Fax (8802) 8316769; E-mail: imtiaz@bangla.net.



Misuse of power? Apparently.