

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

Fighting Worst Forms of Child Labour: Bangladesh Perspective

An ILO-IPEC Initiative

THE Convention on the Worst Forms of Child Labour bans the worst forms of child labour. While poverty in definitely the root cause for child labour, and a long term response requires sustainable poverty alleviation programmes, there are some forms of child labour that cannot wait until there is no more poverty. These forms of child labour need to be eradicated immediately, irrespective of poverty constraints, and a broad alliance is needed to tackle this as an immediate priority. Action oriented commitment from national stakeholders, particularly from the Government, is essential for its success.

Definition

It means children, younger than 18 years, who are:

forced to work in conditions where they are entirely at the mercy of the employer, guardian, household head or parent

trafficked, no matter whether it is for sexual exploitation, and any other labour exploitation

sexually exploited in prostitution or pornography, engaged in illicit activities, such as drug production or trafficking

engaged in work which threatens their life, health or morals. This can be different in different countries and the national authorities need to specify which kind of hazardous work falls under this.

All other forms of child labour, which take place in the midst of a caring family to help the family survive, as important as its ultimate elimination remains, do not require the same level of priority as the categories just referred to.

Convention No. 182

The unanimous adoption of the Convention in June 1999 shows that its provisions were accepted

by delegates from developed and developing countries alike. In fact, there have been 37 ratifications registered so far, two-thirds of them originate from developing countries who are in a very similar socio-economic position as Bangladesh. This Convention explicitly recognizes poverty as a

just to give a few examples. It is true that much child labour is caused by poverty, but child labour also breeds poverty. It denies a child the opportunity to acquire the abilities to become a productive adult, capable of pursuing material well-being and spiritual development through

illicit activities or imminent death? The Convention's novel call for international cooperation in areas such as poverty eradication and universal education clearly indicate that, although it is a sovereign government's responsibility to implement a programme of action, the interna-

tion community also has a responsibility in eliminating the worst forms of child labour from the world. The ILO estimates that, around the world, at least 250 million children between the ages of five and 14 work for a living. Can you imagine the productive capacity of a country nearly as big as the United States going to waste? Convention No. 182 is the first instrument to recognize in such explicit terms that child labour is to a great extent caused by poverty, and that the long-term solution lies in sustained economic growth leading to social progress. It does not, however, diminish the need for immediate action to break the vicious circle of poverty. Where better to start than with the worst forms of child labour? Can anyone condone that children of poor families must survive on slavery, prostitution,

ment Body which, among other things makes recommendations regarding the ratification of ILO Conventions) has already expressed its support to the ratification. The matter now remains to be brought forward to the Parliament and will then be submitted to the President for his signature. This is already a great achievement. It will allow the country to develop a time bound plan of action for this and, from there, progress can be monitored. This will, in turn, motivate the international community to continue to come forward with assistance to achieve this.

Next Steps after Ratification

Ratification is the first step, but, naturally it is implementation that will be the acid test. Once ratified, the next step will be to organize a broad consultation on the worst forms of child labour in Bangladesh. From the Government's side, there may be a need to adjust the national legal provisions in order to remove inconsistencies or gaps. A national consensus will need to define which hazardous child labour exists in Bangladesh. Then a time bound plan of action will be set up, as well as a national mechanism that will monitor the progress made in effectively removing the worst forms of child labour. From civil society, particular attention should be paid to social mobilization, and to innovative methods of monitoring children in hidden forms of work (e.g. domestic work, and in some forms of prostitution). A national watchdog commission could go a long way in empowering child victims, and bridging the present communication gap between them and the formal channels of public authority.

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Informal Sector

A child's right to be free from slavery, sexual exploitation and life-threatening work situations is a fundamental human right, irrespective of whether we call that informal or formal sector. In fact, most of the worst forms of child labour are in the informal, sometimes even illegal sector. That does not make a difference to our goal, but it does have implications for the types of responses that are needed. For example, we need to reach beyond what is ordinarily within the scope of formal legal stan-

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Importance of Ratification

Even the worst forms of child labour in Bangladesh will not be abolished overnight by the stroke of a pen. But, by ratifying the Convention, the Government of Bangladesh will give a firm sign of its commitment to work towards the immediate eradication of the worst forms of child labour. The National Tripartite Consultative Council (A Govern-

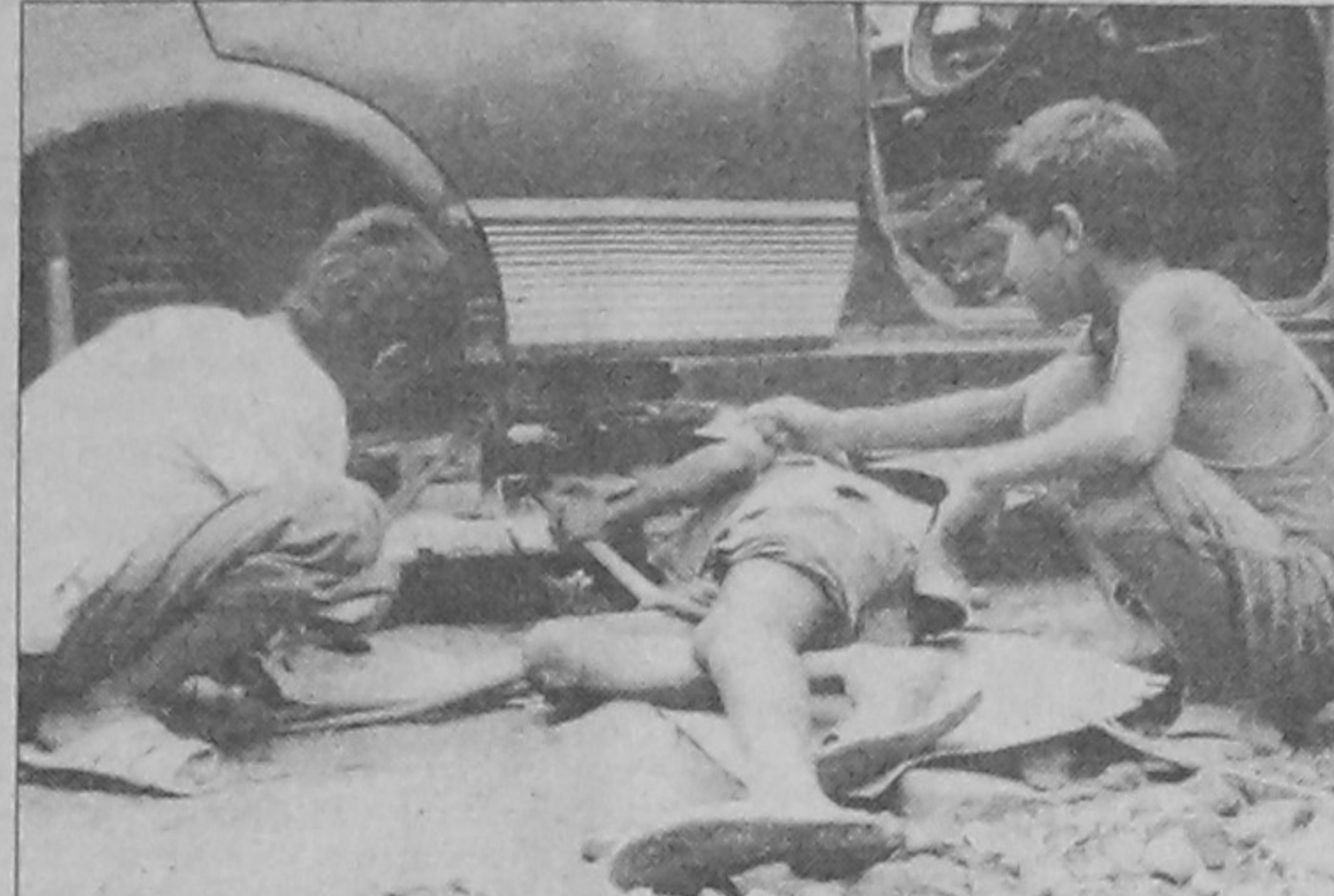


Photo: ILO, Dhaka

root cause to child labour, but it argues that some forms of child labour are socially unacceptable, irrespective of the degree of poverty. By ratifying the Convention, Bangladesh will recognize the need for immediate and effective action to eliminate the worst forms of child labour, and demonstrate that it is prepared to join the international mass movement to make the worst forms of child labour uncomfortable, unprofitable, and ultimately impossible.

Poverty and the Fight

Poverty is not an excuse to accept that children work in prostitution, are being trafficked, or that they work in leather tanneries or on construction sites,

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On 'Impunity from Law' and Our Underdevelopment

by Dr. Shahdeen Malik

TWO cows of a poor farmer were stolen from his ramshackle barn at night and his only goat was killed. Earlier he had quarrels with the powerful neighbour and the neighbour had threatened to teach him a lesson.

The poor farmer went to the Police Station to lodge a complaint about the crime and inform the police of his suspicion about the involvement of his rich neighbour. The police refused to register the case or, what in legal jargon would say, "did not accept/record the FIR". Clearly, police were friendly with the rich neighbour. At some later stage, the police got (extracted) some money from the neighbour for 'saving' him. The neighbour lost some money (as payment to the police), but got his revenge and the two cows which he had stolen were promptly sold. He and the police profited by the crime.

In a similar vein, it may happen that if you try to lodge a complaint for the murder of your brother, the police may record the fact of murder, but omit to write down the names of the suspects you want recorded. Or, even if police is somehow persuaded to record the names of the suspects involved, they may not lift a finger to arrest him nor investigate the matter. Subsequently, police definitely gains through transactions with the accused; so do the suspect who remains free to commit further crimes.

And a somewhat different though substantially similar scenario: someone brings in something from abroad and he knows that customs tax for that item is Taka 10,000. He pays the

custom officer Taka 1,000, who does not record the import of the goods. The custom officer gains Taka 1,000 and the traveller saves Taka 9,000. Needless to say, one can cite such or similar examples from most spheres of our lives.

In the first of the two above scenarios, the victims of the crimes were the sufferers, but there were a number of gainers. Though justice was not done, some people got some advantage or benefit which they did not deserve. How are we, the rest, affected by such happenings? Leaving the issue of justice aside, do we lose anything at all those of us who have not been victims of crimes nor involved in illegal transactions.

I suppose those in power probably do not think much about such events, unless the victim is 'one of them' or newspapers make a big hoopla about such 'injustices'. However, it now seems even the newspapers are increasingly becoming ineffective, as nothing is being done as a follow up of investigative reports.

In situations similar to those described above, thinking of those in power probably flows along the following channel:

"Look the world is not perfect; we have suffered injustices in the past; have been jailed; had to make a lot of sacrifices; and so forth. So what if in some situations a culprit is not arrested or punished. After all the culprit had helped me in my times of needs and I won't use the full force of legal power to see the 'friend in need' ends up in jail for pretty

transgressions of laws. I have sympathy for the relatives of the murdered, but that family had caused us a lot of trouble/grief when they could. And if my friend saves Taka 9,000, the world will not notice. The police and custom and others who made a little bit of extra money will be grateful to me and in some occasions I may call the favour back. You can not do justice in all situations or cases. The world is not perfect." Or "where were the bleeding hearts when we were in trouble?"

Now, justice may not be terribly important only for its own sake. It may be important for its own sake if you happen to be immersed in Kant's philosophy or your notion of well being is intricately connected with the expectation that justice will be done. Often, when it is not done or seen as not being done examples from recent days are too numerous someone's expectations are not fulfilled. But, what's so terrible about unfulfilled expectations? Life, after all, is replete with unfulfilled expectations.

So why are all these 'unjust' events or happenings so important? Or are they really as important as we tend to think?

Leaving the notion of justice aside which, after all, is an abstract concept endlessly debated by philosophers and jurists, why would a normal human being, particularly if she is not affected by, for example, the transaction at the airport, be bothered or concerned about it? Similarly, an ordinary human being may read endlessly about murders not being properly investigated, or corruption cases

not prosecuted or about chandabazi in tenders for big bridges, and so forth. The bribes, after all, do get built, albeit at a slightly higher cost, but then none of us are paying the higher cost from our own pocket. So why bother? Yes, we may feel a tinge of sympathy for the relatives of murdered victim. But, after all, you or I do not know them personally nor would have known anything about these murders if some newspapers hadn't made headlines out of these!

Simple answers are often wrong. Nor can there be a simple answer to a complex phenomenon. Nevertheless, a complex phenomenon does not always preclude the possibility of simple answers.

What if situations such as those described earlier had not occurred or occurred only rarely due to inefficiency and not for deliberate disregard to duties. What if the police had registered the case, found the stolen cows after prompt investigation and conducted the trial vigorously; sending the culprit to jail. What if the murderers were caught, tried and punished and the traveller did pay the Taka 10,000 tax and a real contractor had built the bridge without paying substantial bribe to the engineering department or chandabaz to the local maastans and others.

This is about simple answers and an answer to these 'what ifs' is that we, as a nation, would most likely have been at a decent standard of living, at around US \$ 800 per capita. When a nation reaches this threshold of around US \$ 800, it does not take more

than two decades or so to go up to the middle income level of US \$ 3,000. We could be something like Malaysia in another twenty years if we had already reached the US \$ 700 800 threshold by now. Instead, we are still at less than US \$ 400 per capita income level, which means that it would probably take another half a century for us to reach the present level of the Malaysian life style.

Among the league table of nations, we are one of the most illiterate and amongst the ten most poor nations (which means people in all the other 180 or so nations have a better standard of living -- they eat better, live in superior accommodations, have better medical and health care facilities as well as richer schools and colleges for their children; and in those countries police are far more vigilant in recording and investigating crimes and ensuring punishment of criminals, and so forth). Our lives are one of the shortest among nations we die quickly and early, often without medical attention or care. More alarmingly, almost 70% of all five-year-old Bangladeshi children suffer from malnutrition and, consequently, all these children have probably lost their chance of a healthy and normal life.

Obviously, not all is lost -- the rich neighbour had his revenge and some extra money; the murderer is free and he, in turn, helps his godfather to amass property and power. The unscrupulous traveller affords a luxury item cheaply and the custom officer makes some extra money, as does the contractor, the engineer and

the maastans and everyone else involved in enriching themselves at the cost of others.

There are hardly more than a few hundred thousands of these scoundrels, but for them the rest of us remain poor, hungry and in ill-health, with hardly anything to look forward to unless we become one of those few hundred thousands, further pushing everyone else the more than 100 million of our fellow countrymen -- to more vicious circles of deprivation.

During the last half a century or so, I do not know of any country or nation which had managed to prosper without the rule of law, without law taking its own course. A society with an alarming tolerance of impunity from law for the rich and the powerful has no record of meaningful and sustained development.

Impunity from law is all around us for every one to see and suffer in almost every sphere of life. Nevertheless, we seem to have unquenchable thirst to believe in fairy tales of prosperity and democracy, and continue to allow impunity to thrive. The more impunity thrives for the few, the longer will it take for the rest of us to develop and prosper. The enemy is within and not without.

Development and impunity from law can not thrive together. A society can only have one at the cost of the other. We seem to have chosen, at least by default, 'impunity from law'. Hence, we can hardly have 'development', fairly tales of the demagogues notwithstanding.

The writer, an advocate, is Adviser to BLAST

From Law Desk ...

Deregistration of Bandh-seeking Parties?

The Supreme Court in Delhi stayed a High Court judgement asking the Election Commission to deregister political parties that enforce Bandhs.

As Congress and CPI (M) challenged the verdict of Kerala High Court, the apex court issued notices to the Centre, the EC, State of Kerala, Director General of Kerala police and the institute which had moved the High Court against general strike enforced forcibly.

A bench of the SC comprising Chief Justice AS Anand, Justice RC Lahoti and Justice Shrivaj V Patil on Monday stayed the Kerala HC order that asked the EC to take a decision on complaints against a party calling for shut-downs.

The Kerala HC in its June 1 ruling asked the EC to take a decision for deregistration of a party or organisation, if it is following complaint found enforcing bandh forcibly. Institute of Social Welfare had moved the petition.

Arguing against HC judgement, Congress counsel K Parasaran told the SC bench that the question of law was whether the High Court was competent under article 226 to direct the EC to start proceedings for deregistration of a political party.

He submitted that under the Representation of Peoples Act there is no provision for deregistration.

"A party might call for a general strike and its implementation through peaceful manner," he said. "Merely because its implementation at one or two places was done the way bandhs were enforced on the spur of the moment, initiating deregistration process against the party would be uncalled for."

He said even if a political party calls for a peaceful demonstration, some miscreants could use force and land the party in trouble, which will have a drastic consequence and democratic rights would stand infringed.

"Power to deregister is a drastic power... Section 29A of the RP Act which provided for registration of the political parties, didn't include the power to deregister a party," Rajiv Dhawan, told the SC arguing for CPI (M).

Before the judgement on bandhs, the Kerala High Court in 1997 also held that calling of bandhs and enforcement of that call was illegal and unconstitutional. The Supreme Court upheld that verdict. Source: UNB

Safe Custody-Not Always Safe for Women

by Shahiduzzaman

FATEMA Begum, a 27-year-old helpless woman, has been languishing in safe custody of Habiganj district jail since she was raped two years ago.

On a sultry summer night of Sept 1998, she was traveling to Sylhet by a shuttle train. She was attacked by two ruffians in Habiganj railway station. The youths took her to a nearby tea garden, and raped her there.

The next morning, she was sent to safe custody in the district jail. Since then, she has been living there and could not breathe fresh air until she was produced before the local court that sat for the hearing of her rape case on Jan 17, 2000.

"I don't know when my ordeal will end. I have been put behind the bars as I sought justice. It's better to die under the open sky rather than languishing in this jail," said a furious Fatema.

But the court sent her again to the safe custody because she had no guardian to look after her.

The irony of the tale is that when Fatema was kept in prison as judicial custody since the incident, the rapists remained at large.

During her last court appearance, local newsmen found her mentally ill and desperate to leave the prison.

The necessity of safe custody still exists in society as more women and girls suffer from dowry, abuse, rape, sexual harassment. According to an official at the Dhaka Central Jail, who declined to be named, there are over 1,000 women in safe custody in different jails of the country.

He said insecurity of life caused by increasing violence force women to seek safe custody. "But it does not mean they should be kept with the criminals and be considered as the common convicts."

Statistics provided by Bangladesh Society for Enforcement of Human Rights (BSEHR), a human rights organisation, reveal that huge pending cases in court only extends the time of safe custody beyond justifiable period adding to the sufferings of the victims. In most cases, police are to be blamed because of their inefficiency and negligence of duty.

Most of those in safe custody are either minors or adolescent girls. Bangladesh National Women Lawyers Association (BNWLA) once freed a woman who was in a prison's safe custody for nearly 12 years.

BSEHR data also showed majority of the girls and women in safe custody across the country are either victims of kidnapping or rape. Now they curse Bangladesh Penal Code (Section 366/A and 376) which is supposed to protect them.

Those who escaped or have been rescued from brothels or the clutches of criminal gangs cannot return home under Section 54 of the CrPC and those who had home due to ill behaviour of their step-mothers or husbands, or those arrested for vagrancy, having moved to urban areas' in search of jobs but have no where to go are supposed to be taken into safe custody.

Besides, those who eloped with their fiances at their early age and then were abandoned or lost and have nowhere to go for shelter are to be sent to safe custody under the section 54 of CrPC, those in need of safety as determined by the courts, the police etc and also those who are witnesses to grave criminal offences such as murder (Section 302 BPC) are also taken into safe custody.

BNWLA, fighting such laws, recently won the right to take into custody of these women who have no involvement in crimes but have been forced to stay with criminal groups. In 1998, they got the custody of 123 women and children belonging to such group upon a High Court order.

Most of these women were either sent to their guardians or rehabilitated. BNWLA and other organisations like Association for Correction and Social Reclamation (ACSR) are now able to take into their custody of the minor female offenders or women having no involvement in crimes.

Instances are not rare that women in safe custody of Bangladesh's jails are also killed and violated by those who are supposed to protect them.

Announcement

Make Your Voice Heard

1. Law Desk wishes to maximize readers' participation in making 'Law and Our rights Page' more people friendly and informative. This desk is particularly interested to build a strong rapport with judges, lawyers, academics, professionals, law students, and human rights activists from across the country. Your thoughts, ideas, and experiences on legal profession, education, and activism can make a significant difference.
2. Law Desk wants to unmask the violation of legal and human rights against you, your family, and your community. Raise your voice and concerns against such violations.
3. Law Desk is interested to disseminate information on academic research, professional studies, and various publications (e.g., books, journals, reports, monographs, newsletters etc.) on legal and human rights issues.
4. You can eye on important human rights and legal events of your locality. Law Desk is willing to focus on the problems faced by the courts of different levels, local bar associations, law colleges, and law faculties.

Send your articles, findings, day to day experiences, reports with relevant pictures to:

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Police Justice?

Investigation Report by Odhikar

ON 20 September 2000, the nation opened its morning papers to come face to face with yet another police-related death that of Mahbub Hasan Khan Oli (29), who drowned in Nayanjali Jheel (lake) fleeing police on 18 September. On the morning of the 21st, Odhikar investigators visited the site and also talked to Oli's family.

Oli was the youngest son of late Al-Haj Abul Hashem Khan, Additional Secretary in the Ministry of Establishment. At the time of his death, Oli left behind his 22 year old widow, Murni and two and a half year old son, Zafri. He was involved in the rent-a-car business, his establishment being called 'Avis Rent-a-Car' in Rampura.

Oli's brother and cousins informed Odhikar investigators that on 18 September 2000, Oli and some of his friends were chatting in a room of the East Hazipara Multi-purpose Co-operative Society club, next to the Nayanjali jheel. Their conversation was rudely interrupted

when a group of policemen, led by Matur Rahman, Sub-Inspector, Khilgaon Police Station, surrounded the club and tried to hound them out. Oli and his friends managed to run out of a back door and clamber into a boat. Police chased them and the boat capsized when the latter jumped into it.

Oli's friends managed to swim out of the clutches of the police, though one, known as Dada Bhal, was arrested. Oli's heavy clothes and shoes dragged him down and prevented him from swimming. By this time, hundreds had flocked to the banks of the Jheel. Onlookers told Odhikar that Oli had called to them to help him out of the jheel. A few came forward to help, but just before they entered the water, the police pointed their guns at them and warned them not to proceed any further. They even said "Let that son of a pig drown".

Eventually, Oli's head disappeared under water. Witnesses claim that the police remained on

the banks of the lake for another ten minutes or so to make sure that Oli had in fact drowned, before making a retreat. After they left, local residents called the Fulbaria Fire Services who began diving for Oli's body at around five in the evening. His body was eventually found at ten in the morning the next day, 19 September 2000.

When his body was recovered, local people called the Police Control Room requesting someone to take the body for post mortem. The Control room directed them to contact the local police station. Khilgaon Police Station was duly informed, but failed to appear.

Local people believe that the police there, were afraid of the fury and possible retaliation of the residents after their behaviour the previous day. Eventually, the Sub-Inspector of Motijheel Police Station was informed of the situation. He contacted the Khilgaon Police Station and Oli's body was removed to Dhaka Medical Col-

lege Hospital for post mortem. The post mortem concluded at half past ten in the night and Oli's body was buried in Azampur grave yard. Oli's brother-in-law, Md. Alauddin Bhuyyan, filed a 'wrongful death' case at the Khilgaon police station. The case is numbered No. 28/19.9.2000.

Odhikar investigators also visited the said Co-operative Society Club adjacent to Nayanjali jheel. There they met and spoke to the Awami League chairperson of Ward no.23, Union No. 5, Mr. Mansur; one Abdul Malek and several others who wish to remain unnamed. They all said that Oli was a member of the co-operative, which had leased the Nayanjali jheel from the government to cultivate fish. They told investigators that on the day of Oli's death, the police returned to the club and ransacked it, breaking furniture, glass and chinaware. According to local residents, Sub-Inspector Matur Rahman, who led the raid, often stopped people and harassed them for money. They

also said he was a trouble-maker. Neighbours and Oli's family said that during the BNP government, Oli used to support the party in power. However, at the time of his death he had moved away from politics. The local Awami League leader and prospective Commissioner of Ward No. 29, had, according to Oli's family, allegedly inserted his name in several criminal cases. Using this ruse, Sub-Inspector Matur Rahman began to blackmail Oli for money. When Oli refused to pay anymore money, Matur Rahman threatened to destroy his business. According to Oli's family, the last thing he gave the policeman was a mobile phone and thirty thousand taka.

After Oli's death and burial, family members visited the site of his demise and talked to the local residents. This is how they learnt the truth about his horrendous death. Witnesses and club-members told them that the police had chased Oli and his friends, as a result of which Oli drowned in the jheel trying to

escape by boat. They were also told that the police did nothing to save Oli when he cried out for help.

Local people commented to Odhikar investigators that the police had not come to arrest Oli, but to kill him. Why else would they prevent anyone from rescuing him and wait a further ten minutes at the banks of the jheel after he drowned, instead of pulling him out and hauling him to the police station? They did not even notify the fire service. Local people did that. Witnesses also said that they heard some of the other onlooker's cry out to the police to pull Oli out of the jheel and arrest him.

Apparently from this report, it is clear that Khilgaon police not only have the blood of Oli on their hands, but are also responsible for destroying his young family. After the recent news of the police torture and death of Solet and horrendous torture of young Belal, How much more police corruption will this country tolerate?