

Impunity of Law Enforcing Agencies

by A. H. Monjurul Kabir

SOCIETY demands a much higher standard of conduct from public office holders, especially those charged with enforcement of the laws of the land, than from the public at large. Uncompromising honesty, trustworthiness and integrity are paramount, and an obvious breach such as this clearly diminishes the trust which an individual can expect, either from the public whom he serves, his department or his peers. Unfortunately, the public's confidence in the law enforcing agencies, especially the police as a whole is grossly affected by a demonstrated lack of integrity by its members. Corruption, malpractice and abuse of law and procedure are rampant in the rank and file of the police and related intelligence and investigating agencies. Their members are involved in torture, rape and death in custody, cruelty to women and children, harassment of women and what not. Yet impunity for law enforcers is the failure to bring those responsible for heinous crimes to justice. A successful prosecution to be brought against an alleged member of law enforcing agency requires a combination of extraordinary circumstances. Continuing media attention, public vigilance, a pro-active judiciary are not enough for ending the culture of impunity. Proper investigation and efficient prosecution is a sine-qua-non for such trial. And combining all those conditions against the law-enforcing agency, is no doubt, the rarest occasion to happen.

without any punishment, can be repeated without fear. The numerous cases and instances around the globe clearly show that the concept of impunity has a strong presence in many sectors of governance. In fact in many countries of Asia, Africa and Latin America it becomes a culture, a vicious circle, which breeds further violations of rights, both legal and human. The situation becomes worse in case of criminal justice system. Most of the human rights violations, carried out by different state agencies and people in power, are confidential in nature. Generally their places of occurrence are shielded from public scrutiny. Evidence, which is vital to the successful prosecution and conviction of the human rights violators, is routinely concealed by the state agencies. The fate of investigation of such violations often becomes uncertain due to the inaction, ineffectiveness, or complicity of the investigating authority. As an obvious consequence, prosecution of the criminals in uniform becomes highly unlikely.

Factors Contributing to the Growth of Impunity in Bangladesh

There are several direct and indirect factors that facilitate the breeding of impunity within the law enforcing agencies of Bangladesh:

1. Legal Provisions/Practices

Code of Criminal Procedure 1898

The Code of Criminal Procedure deals with some of the crucial procedural elements of the power and function of the police. Chapter V of the Code particularly deals with procedure and mode of arrest of which section 54 is of utmost importance. It grants police almost unlimited power of arrest any person on reasonable suspicion without warrant on nine grounds. Practically, it is being indiscriminately abused by the police and as application of this section fraught more with ulterior motives than prevention of crimes and or arrest of persons suspected of having committed or

about to commit crimes. Most of the arrest under section 54 are effected on fanciful suspicion and in most cases to fill in the quota allotted to an individual police officer to make an arrest each day. This incredible practice has been going on with impunity for many years.

Refusal of Bail and Granting of Remand

Illegal action of the police personnel, in most cases, are either authorised or endorsed by a magistrate. Refusal to grant bail to a person accused of a bailable offence at the instance of police is an example police-magistrate joint collaboration. Section 167 of the Code allows the magistrate to grant police remand in custody beyond 24 hours for a total period of 15 days on request from the police after s/he satisfied that there are grounds for believing that the accusation or information is well founded' (167.1). The term 'remand' is practically synonymous with torture for extracting confession. Refusal of bail and granting of remand is an instance of police-magistrate joint collaboration, which at the end inspires the law enforcers to flout the legal safeguards more easily.

Safe Custody

Sending female victims of crimes specially of sex offences to prison in the name of safe custody under section 100 of the Cr.P.C. is another glaring instance of abuse. Instances are not rare that women in safe custody of Bangladesh jails are violated and killed by those who are supposed to protect them.

Special Powers Act 1974

An arrest under section 54 is often a prelude to issuance of detention order under the Special Powers Act (SPA). The SPA allows the authorities to detain any person on eight grounds, vague enough to detain any person. Such detention can extend to six months, and may extend beyond this period, if so sanctioned by the Advisory Board. The use and abuse of the SPA in the name of protecting security interests have resulted in steady pattern of human rights violations.

Metropolitan Police Ordinances

There are four Metropolitan Police Ordinances, the contents

of whom are identical. Section 100 of Dhaka Metropolitan Police Ordinance 1976 confers on a police officer wide power of arrest without warrant. Section 105 grants police impunity from punishment or compensation for any acts or application of power under the ordinance or any other laws or regulations.

Public Safety Act 2000

This brand new addition to the armoury of repressive laws and regulations has already proved to be a successful weapon for harassing people for their political activism or conviction. It denies certain categories of detainees the right to appeal for release on bail.



Habibun Nabi Sohel. His torture began from the time of his arrest

2. Ineffective Investigation

Sadly investigations into human rights violations are carried out by the very agency whose members were responsible for the abuse. Police, the principal law-enforcing agency, has no separate division having trained personnel for investigation. Financial constraint, lack of necessary logistics and appropriate training aggravate the situation.

3. Covering up of Evidence

Unlawful detention practices such as denying detainees access

to lawyer, relatives or doctors, non-keeping of proper records, non-disclosure of identity of the concerned officials help law enforcers attain impunity by covering the trail of their illegal acts.

4. Lack of Judicial Determination

The judicial system has made no progress in prosecuting cases of police abuse. For instance, the death of two girls in police custody in 1995 and 1997 had created widespread public outrage. But in one case, the accused police officials were freed for lack of "sufficient evidence". The acquittal was given to the four

Seema murder case. It was also alleged that the public prosecutor had acted in favor of the accused to help them avoid arrest. The Court took the case into cognizance on October 5, 1998 and issued a warrant of arrest. But the accused people were released on ad-interim bail. Later on three police officials were charged in the Chittagong Fourth Additional District and Session Judge Court on March 5, 2000. In another development, the Chittagong Chief Metropolitan Court on September 11 ordered a judicial probe in to the Seema murder case and appointed a magistrate for his purpose.

In the Yasmin murder case, the government appealed in February 1998 against the judgement acquitting the eight accused, including police officers, for concealing and destroying evidence during investigation into the case in 1995. The court convicted four policemen for raping and killing Yasmin. Their appeals are still pending.

5. Inadequate and Irregular Disciplinary Regime

Regular administrative and disciplinary sanction is important for maintaining the institutional integrity of any law-enforcing agency. The Police Act 1861, Police Regulations of Bengal 1943 and Metropolitan Police Ordinances empower the hierarchy of the police to take certain disciplinary measure against unruly members of the force. Metropolitan Police Ordinances have also a number of provisions for taking disciplinary measures. The problem lies with application of such provision professionally without any political or other interference.

6. Complicity of Colleagues

Professional sense of belongingness among the law enforcers discourage members of law enforcing agencies to speak up against their accused colleagues. Important evidence is concealed by the members of the law enforcing agencies to save their accused fellows.

7. Absence of Independent Investigation Agency
Absence of a separate, independent investigating agency denies victims of an important choice to plea their case before an impartial forum. The much-talked national human rights commission has not yet been established though a project titled 'Institutional Development of Human Rights in Bangladesh' supported by the UNDP has been running since 1995.

8. Political Use of Law Enforcers

Using law enforcing agencies for even petty political purposes and curbing political programmes harms institutional impartiality and integrity and breaks their chain of command. The present state of police amply exemplifies this statement. It also sends the message to them that they will get away with even gruesome violation of law in return of their political use and loyalty.

9. Unaccountable Intelligence Agencies

There are a number of intelligence agencies operating in the country to protect internal or national security. National Security Intelligence (NSI), Directorate General Forces Intelligence (DGFI), Special Branch (SB), and Special Security Force (SSF) have their specific agenda for action. The NSI, DGFI, and SSF are directly accountable only to the Prime Minister. The NSI was created by a cabinet decision in 1972; it has no statutory basis. The SB is a part of the police and reports to the Home Ministry.

These agencies, in fact, enjoy wide governmental power and sanction. They are intensely involved in the application of national security legislations. In many cases, detainees are kept in the custody of the intelligence agencies for interrogation purposes. Lack of accountability, transparency and monitoring and using them for political purpose has placed them beyond the reach of the law.

Breaking the Cycle of Impunity

The alarming trend of torture, rape and death in the hands of

the law enforcers exposes once again its inherent tendency of being viewed with a philosophy of paramilitarism associated with the mechanism of awe, threat and coercion. The culture of impunity endorses the existing trend and protects the culprits from being prosecuted. It encourages others to follow the suit, as the criminal justice system is open to manipulation by the agencies.

The law enforcement agencies must be free from all sorts of political interference. The laws regulating their formation, conduct and discipline have to be updated to cope with the changed scenario. Investigation work of such agencies has to be separated from their day-to-day routine work. The investigation of the personnel accused of any crime must be done by a separate, independent agency. A pro-active role of the criminal justice system of the country can make a significant difference. Establishing an independent National Human Rights Commission and an Office of Ombudsman can improve the existing situation further.

The government should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law. All those who are concerned with the arrest, detention, and custody of the people, particularly of the poor and vulnerable sections of the society must strictly implement the constitutional and legal protections and safeguards. It is necessary that the guardians of law and the custodians of lock-ups and prison houses should be made aware of the constitutional and legal rights of the people. At the same time, it is of extremely importance to break the cycle of impunity; otherwise people's confidence in the law enforcing agencies will be totally shattered.

This is an abridged version of a working paper presented at an open discussion on 'Impunity of Law Enforcing Agencies' held on 27 October 2000 organised by Odhakar in co-operation with Bangladesh Freedom Foundation.

Who will contribute to the "Ershad Fund"?

After the Appellate Division's imposition of the fine, we all now know that the required sum is five and a half crore taka, a small amount for most, though probably not for Ershad's supporters. For them, understandably, raising the required amount is clearly a noble cause.

One can not blame the faithful for doing everything and there is nothing wrong, legally, to raise the required amount to ensure an expeditious release (from jail) of their beloved leader. It would be stretching our imagination really too far to suppose that fifty five lac supporters would pay ten taka each to raise the required amount, nor five and a half lac, paying one hundred taka each. If we reduced the number of donor-supporters to fifty five thousand, it would still work out at exactly one thousand taka per person to raise the desired amount. Alternatively, as many as five and a half thousand persons would have to contribute ten thousand taka each!

Now there may be enough persons (few thousand) who could possibly donate enough to raise the required amount of five and a half crore taka. But then each of these donors would have to contribute hundreds of thousands of Taka each. At one lakh taka a piece, it would still require as many as five hundred and fifty donors. Obviously, only in the realm of imagination would you have more than five hundred contributing at least one thousand taka each. So at least a few whom would be the region of ten Fine! These contribu-lac taka (each) need at least fifty contributors, i.e., paying ten lac

that for the last would be contributing taxes, had money that they contribute ten lac have ten lac taka in the last fiscal year.

Let's assume fiscal year these butors, after so much extra are willing to take each. To in ready cash, in addition to the money required to maintain themselves and their families, the potential contributors must have had an income of at least seventeen lac taka in the last fiscal year.

I calculate this on the basis of the fact that these would-be contributors had to spend a lot of money for rent, electricity, gas, water, petrol, car, driver, salaries for house-hold helpers, food, clothing, education for children, medical bills, travel, entertainment, other donations for noble causes to suddenly decide one fine morning to fork out as much as ten lac taka, and all these expenses at the paltry rate of forty thousand aka per month would mean an earning of almost five lac taka during the year. Plus the ten lac taka contribution to the "Ershad Fund", making a total of fifteen lac for the year. For this fifteen lac taka to be legal income, or at least 'white' money, the contributors must have paid another, minimally, two lac taka as income tax. Now find me fifty persons who have paid income tax of at least two lac taka last year and still willing to contribute in the region of million-plus taka each to the "Ershad Fund". My guess is that there aren't fifty five persons in the country who have paid income tax of more than two lac taka each last year. Obviously, not all of those who paid such an amount of income tax are generous-hearted Ershad supporters to fork out ten lac taka from their hard earned and income tax paid money to the "Ershad Fund".

The fund raisers may claim that the bulk of money would come from small donors - one hundred, five hundred or a thousand taka a piece. However, at a thousand taka a piece, you are still talking about fifty five thousand die-hard supporters. Would these fifty five thousand Ershad supporters be clean and honest enough to put on record their names, addresses and the amounts contributed?

Otherwise, we would legitimately infer that the money for a convicted criminal (H M Ershad) was raised by persons who do not have white or legal income (tax paid) money for their noble cause.

The bottom line is, we can not let a criminal off the hook because some persons with dubious sources of income may decide to raise money for a criminal. Let legal and clean supporters come forward to help their convicted leader. Then we would at least know that the leader may be a criminal but his supporters are not. Alternatively, can we expect the income tax officials to do an honest job and look closely into the accounts of the million-plus contributors to the "Ershad Fund". Otherwise, they would clearly be deemed to be cohorts of illegal money-owning Ershad supporters.

Bangladesh: Regimes of Torture

Amnesty International Report on Torture and Impunity

TORTURE has been widespread in Bangladesh under successive governments. Neither governments nor the opposition parties past and present have shown serious determination to confront the practice and prevent it.

Each government's failure to address torture has constituted a failure to fulfil Bangladesh's obligations under the Universal Declaration of Human Rights and the Constitution to provide durable and effective protection from torture to the people in the country.

Each party's inaction on the issue of torture has effectively contributed to the continuation of this endemic human rights violation.

By signing the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in October 1998, Bangladesh has committed itself to safeguarding a most fundamental right of the people in its territory, that is freedom from torture. Government authorities have therefore a clear obligation to ensure that people are protected from torture.

The eradication of torture in Bangladesh demands determined action from the government; it also demands active support and participation from leaders of political parties. Sadly, neither governments, nor the political parties in Bangladesh have shown a determination to address torture.

Elected representatives particularly have a duty to protect the interests of their constituency, the rights of their constituents, and the rule of law in their area. It is the role of Parliamentarians to lead their country towards better enjoyment of fundamental human rights, to press the governments to protect people against torture and other human rights violations.

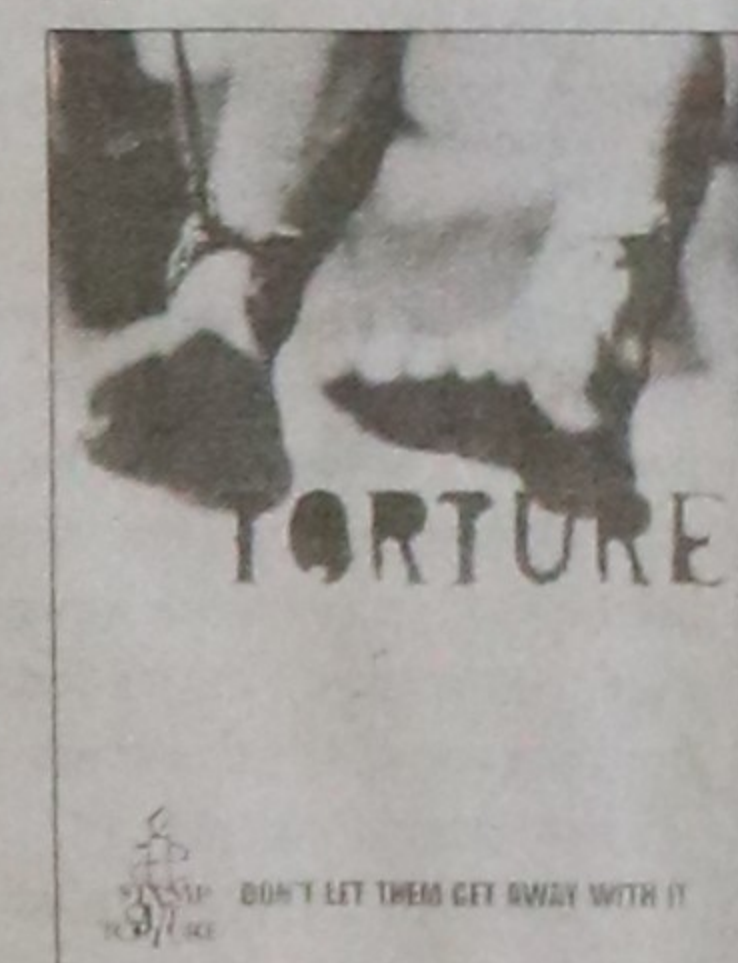
The report is based on interviews with victims of torture conducted in Bangladesh during a mission in May 2000 as well as information gathered by Amnesty International on torture over a number of years.

All governments should ratify international instruments containing safeguards and remedies against torture, including the International Covenant on Civil and Political (ICCPR) rights and its Optional Protocol which provides for individual complaints. Amnesty International is encouraged to note that the ICCP was ratified by the Government of Bangladesh on 6 September 2000.

Failure of all governments in Bangladesh to prevent torture.

As the following extracts from Amnesty International's annual reports show, ill-treatment and torture has been an endemic problem in Bangladesh under successive governments since the inception of the country as an independent state. Sadly, none of the country's governments has demonstrated a clear determination to combat torture.

From independence (1971) to 1975: There were reports of torture and ill-treatment of the detainees particularly by Rakkhi Bahini, a para-military force operating as a law enforcing agency during the early years of Bangladesh's formation as an independent state. At least one of these reports reached the Supreme Court in 1974 in the



form of a habeas corpus petition on behalf of Shahjahan, an 18-year-old boy who died allegedly as a result of torture while in the custody of Rakkhi Bahini. A division bench of the Supreme Court ruled in favour of the petition. The government reportedly pleaded that they could not produce Shahjahan as he was no longer in custody and the court, faced with limited jurisdiction, recommended that the government set up a commission of inquiry to establish the truth about the circumstances in which Shahjahan died and his whereabouts as there were credible reports that Shahjahan had been arrested by Rakkhi Bahini.

From 1975 to 1985: Amnesty International received persistent reports of torture, ill-treatment and deaths in custody allegedly as a result of torture. Some related to abuses of civilians as well as political suspects in the military while being interrogated by the army as a means of obtaining confessions prior to their trial by military tribunals. Allegations

of ill-treatment of political prisoners in 1976 and 1977 included severe beatings and burnings with cigarettes during periods of interrogations, particularly in Dhaka Cantonment and the National Security Intelligence interrogation centres. Other allegations during the early 1980s related to several cases of death in police custody and in prison, reportedly as a result of torture. In several cases political prisoners

1986 to 1995: Scores of prisoners arrested in connection with criminal offences died as a result of police torture. Two of the victims in 1986 were said to be aged 17. The post-mortem on Mohammad Ashiqul Islam, a school student, noted that his death was caused by a brain haemorrhage and injuries "which are homicidal in nature". An inquiry into his death was conducted by an army officer and a magistrate, and in July three police officers at the station where he had been held were dismissed. When such incidents gained public attention, the authorities announced that they had established investigations either by police officials or by a magistrate. However, information on the findings of the investigations and action taken as a result was rarely made public. Abu Sayed Moksedul Huq Rintu, a student from Barisal, had died in November 1987, reportedly as a result of beatings in pre-trial detention in Barisal Jail. A post-mortem found that he had died of head injuries, noting evidence of blows on his neck, head and back. In 1998, following a private prosecution, police officers were convicted of the murder of Sahfiqul Islam, a 17-year-old school student who had died in police custody in October 1986 after he had been held for three days in Dhaka police station. The police officers were sentenced to 10 years imprisonment and a fine in the first case known to Amnesty International in which police have been prosecuted in connection with the death of a prisoner in custody.

A case was also brought in 1988 against a police officer from Babuganj district, who was sentenced to two years imprisonment and a fine for torturing a woman in custody. Two sisters were reportedly raped by police officers in Chittagong in August 1989 when they went to the police station to file a complaint. One prisoner, Shahidul Islam reportedly had extensive injuries and was unable to speak when he was taken to hospital from Katwall

police station, Jessore district, in June. He died the next day. A police officer in Jessore was sentenced to seven years' rigorous imprisonment in February 1989 for causing a prisoner's death through torture. Police severely beat people during strike and some arrested demonstrators were reportedly tortured. Nurul Islam Hoan, a leader of the left-wing five-party alliance was arrested during a strike called by the alliance in August. He suffered a fractured leg and hand allegedly as a result of severe beatings inflicted while he was in custody. A private prosecution was brought against the six police officers allegedly involved, but the outcome was not known by the end of the year.

Wazed Ali, a rickshaw-puller, died in custody in February 1990 at Kotwali police station, Jessore, reportedly after a severe beating. His death was followed by clashes between protesters and police during which at least four people died. The police said that Wazed Ali had committed suicide, but they apparently disposed of his body themselves.

At least two journalists were beaten by riot police when they took photographs during a demonstration in July 1992. About 50 other journalists were injured, some seriously, when police broke into the National Press Club in Dhaka and opened fire. At least 12 people were reported to have died as a result of torture in 1992. In July 1993, a 13-year-old street child, Mohammad Shaukat, was allegedly raped by two police constables in Dhaka. The constables were suspended, but no charges were known to have been brought against them.

In January 1993, Rustam Ali died in a police station in Sylhet allegedly following torture; he had been arrested the same day and was reportedly in good health. No investigation was known to have been undertaken. During demonstrations police often indiscriminately beat peaceful protesters.

In July 1994, police injured some 15 journalists in Chittagong who were covering a rally. Over 40 people died in police and judicial custody allegedly as a result of torture in 1994. In August 1995, 14-year-old Yasmin Akhter died after three police officers in Dinajpur had reportedly raped and injured her. They had reportedly given her a lift in a police van and later dropped her dead body by the roadside. Police claimed she had died when she jumped from the van. Following public protests about the attempted cover-up, three police officers were suspended and charged. A judicial inquiry submitted its report to the government in October but it was not made public.

From 1996 to present: Torture was as widespread as in previous periods. At least 13 prisoners reportedly died in custody in 1996 following torture. Hundreds more were subjected to beatings. In January 1996, police reportedly beat scores of students during a raid on the Jagannath Hall students' residence at Dhaka University. Incidents of rape in custody by security forces continued to be reported. Police frequently beat anti-government demonstrators, and journalists covering demonstrations during this period.

In February, 18-year-old Shima Chowdhury died in

Chittagong Jail where she was being held in so-called "safe custody" during an investigation into her alleged rape in police custody in October 1996. In July 1997, four police officers accused of raping Shima Chowdhury were acquitted by a trial court in Chittagong. The judge reportedly criticised the prosecution for presenting a weak case. The government appealed against the decision, following an outcry from women's groups and human rights organisations. In August 1997, three police officers were found guilty of the rape and murder of 14-year-old Yasmin Akhter in 1995 and sentenced to death.

In July 1998, Shamim Reza Rubel a student was allegedly beaten to death in police custody five hours after being arrested at his home in Dhaka. According to the autopsy report he suffered a brain haemorrhage. Following an investigation by the Criminal Investigation Department, 13 policemen and a local Awami League leader were charged in connection with his death. A judicial inquiry into the case confirmed that Shamim Reza Rubel's death was not accidental, although the full findings of the commission were not made public. Custodial violence against women continued to be reported. In the wider community, hundreds of women and girl children were scarred and maimed in acid attacks and scores of others were murdered in dowry-related incidents.

This is an edited part of the Amnesty International's report on 'Bangladesh: Torture and Impunity'.

From Law Desk ...

A Critical Note

The Amnesty International Report on 'Torture and Impunity' attempts to cover the saga of torture prevalent in Bangladesh for last 29 years. It is unusual for Amnesty International, which generally focuses on recent patterns of human rights violations. Why did Amnesty try to summarize the trends of 29 years when the atrocity and torture committed by the police is comparatively a recent phenomenon? "For Bangladesh, this is the election year and we don't want our report to be used as a campaign tool by any political party against any particular regime", replied Abbas Faiz, researcher, Asia Region Program South Asia. If anyone looks into Amnesty's nature of such specialized reporting apart from its annual global report, he or she could hardly substantiate this reply. The report is vocal against section 54 of the Code of Criminal Procedure 1898 and the Special Powers Act 1974 but regarding the infamous Public Safety Act 2000 it only mentions "...the Public Safety (Special Provisions) Act, which denies certain categories of prisoners the right to appeal for release on bail." In its recommendations to the Government of Bangladesh, Amnesty requests for establishing "clear and enforceable safeguards against abuse of administrative detention procedures resulting in torture, such section 54 of the Cr.P.C. and the Special Powers Act" but it keeps mum on the Public Safety Act. The report is not up-to-date either. In many cases it failed to trace the latest developments of particular case studies.