

Police as violators of law

Death in custody, torture and rape in 2000

ODHIKAR

THIS report chronicles the activities of the police force during the year 2000. It is not a comprehensive retinue of all aspects of police conduct, nor does it deal with the important issue of how this force has been allegedly used as the extended arm of the ruling elite. Based on media reports the report attempts to establish that contrary to its professed goal of law enforcement, there has been overwhelming evidence that a section of the members of the agency have been engaged in arbitrary exercise of power, often with complete impunity. This review finds that in the reporting period, incidence of death, torture and rape in police custody have been quite pronounced.

Death in custody

Protection of a detainee and respect for his human dignity are basic precepts in the police law. That does not appear to be taken note of by a section of the Bangladesh police. In March, Monslathoi Marma died in Khagrachari Hospital following his arrest and torture in custody. In two other cases, one in Tongi in June, and the other in Khanshama thana of Dinajpur in July, police claimed that detainees had committed suicide in the toilets of police custody. In the first case, marks of injury in the back and feet of the deceased were obvious, and in the other, the victim was alleged to have been beaten up by the local chairman Keshari Mohan Roy in the Bhaboki Union Council office and to have taken his own life within two hours after he was handed over to the police.

In September, in Motihar thana of Rajshahi, one Abul Kalam was admitted to the local hospital in the morning following severe beating by the police after his arrest. He died in the afternoon. Police claimed that the death was caused due to injuries he had sustained earlier. One Bengali daily cites eyewitnesses who claim that the deceased was severely battered by the police at the time of his arrest. In a separate report, the daily further stated that, the deceased incurred the wrath of local miscreants as he

protested their illegal felling of trees. Evidence of police collusion was apparent, as they did not take any action when the trees were felled. The father of the deceased alleged that he was forced to sign a statement prepared by the police, which suppressed names of the accused. The commanding officer of the local BDR battalion alleged that the Motihar thana police violated the law as they crossed the border in chasing the accused by not informing his agency.

In June, one Mohammad Ali was tortured in police custody and was transferred to local hospital where he died after several weeks. Like the previous case, police claimed that he attempted to commit suicide.

In July, four Bangladesh Rifles personnel were charged for causing the death of a cattle trader and looting Tk. 1.65 lac. Press reports suggest that concerned authorities tried to conceal the incident. The investigating officer, Jainal Abedin later stated that preliminary findings suggested that there was a case against the accused.

In a separate incident in August, in Rajoir thana of Madaripur, a group of 13 men were brought into custody following a rape and robbery in the area. The mother of one of the accused went to the local police station to plead innocence of her son. In rage, one police officer kicked her and she died on spot.

Torture

Although torture of detainees is prohibited under the law, its practice is rampant particularly in extracting confessions from those detained. In their attempts to "solve" cases agencies often take recourse to this method. Meting out physical punishment to detainees is almost a routine matter.

In May, a police officer was charged for torturing Quamruzaaman, an 18 year old for refusing to marry the girl with whom he was alleged to have an affair. A Bengali daily reports that the local municipal commissioner physically assaulted him and handed him over to police. Police acknowledged that the boy was sent to hospital in a critical condition, but denied that he was tortured. The Superintendent of Police of Jhalkathi ordered intern-

ment of the concerned police staff.

In June two brothers, one five and the other six years of age, and two of their adult relatives were tortured in the Doara police station in Sunamganj on suspicion that they had stolen important police files. One of the children suffered a broken hand and the other had cigarette burns on his forehead. Later, all four were released when the files were found elsewhere.

In another instance one Makbul Hossain, rent-a-car dealer, was drowned in a pond in Dhaka following a police chase. His family stated that the victim did not know how to swim and as he was drowning, he cried for help. They alleged that police not only refused to help, they barred others from extending help. A leading English daily in its editorial wrote that the victim met the fate as he refused to pay bribe to the police sub-inspector, Motiur Rahman.

In another incident in August, Jainal Chowdhury, a reputed businessman of Rangpur, was taken to custody following an altercation with police. He was severely tortured in custody. The victim was hospitalised following his release the next day.

Lower level police functionaries are sometimes accused with arbitrary exercise of their power even on petty grounds. One particular incident fortifies such accusation. A female assistant inspector Helen Khatun detained a rickshaw-puller for one night in Bogra police station for allegedly bumping into the rickshaw which was carrying her.

On several occasions, collective recourse to violence by members of law enforcing agencies have been reported.

In March when a small shop keeper of Joypurhat refused the return of empty soft drink bottles after seven days from the wife of a BDR staff, 30-35 members of the force arrived at the spot in two pick up vans. They went on rampage that led to the injury of 25 persons, including three housewives. Four persons were hospitalised. Local people were angered by such ultra vires act. They set up barricades on the Joypurhat-Naogaon highway as a mark of protest.

In another incident a police constable paid less than the amount for a snack that he had bought from

a local store. When the owner of the shop Jamaluddin asked for the due amount, the constable brought back with him 30-40 BDR persons. Jamaluddin was forcibly taken to the nearby BDR barrack and was roughed up by the group with stick, rifle butt and boots. The attack led to severe injury to his eyes.

Perhaps the most brutal case of torture of the year took place in Betai police camp in Jhenaidah on 15 June. A 14-year old boy, Billal

women were raped during police search or patrol, in other cases, they were lured by promises of jobs or other favors or were attacked when they went to police station to seek redress or meet relatives or family members.

In September, sub-inspector Majibar Rahman of Mongla police station raped a young girl when he went for arresting one of the members of her family. After preliminary investigation Rahman was suspended and interned.

of the area. Likewise, Nargis Begum filed a case against a police constable Abdul Qadir for rape and looting of valuables from her house. The constable entered Nargis' house to arrest her husband, who was not at home when the incident took place. Nargis claimed that Qadir threatened her with dire consequences if she reported the incident.

Often the rape victims were young girls. In June, constable Najimuddin of Panchagarh thana in

incident a 9-year old girl was lured with a bottle of soft drink by a member of armed police battalion in Uttara. The person was subsequently arrested once the screams of the child were heard.

Promising jobs to unsuspecting women has been another method adopted by "law enforcing" rapists. In June, an Anti-Corruption Bureau official of Sunamganj disrobed and attempted to rape a woman after she was taken to his house on promise of a job.

In December, a member of Bangladesh military was arrested for raping a young woman near Dhaka gate in Banani area. He took her there offering a job.

In Kolapara a female insurance employee was raped by a member of police staff named Shimul Gazi. The insurance employee was stopped by Gazi on the road and demanded her identification. When she did so, Gazi brought her home promising to buy a policy. At his home, Gazi raped her by threatening her with his firearm.

In June under Ullapara thana, a young girl who was visiting her relatives was picked up from a rickshaw by members of a police contingent and later she was gang raped. Although the complainant identified the perpetrators, thana authorities registered the case without naming any one. After an inquiry Havildar Rashid was interned. In a similar case constable Arshad Ali of Bogra thana raped a woman who was staying in a hotel with one of her relatives. The victim came to Bogra from Naogaon for treatment. It was alleged that Ali gained notoriety for harassing women borders of local hotels, even when their male relatives accompanied them.

A police constable of Sunamganj attempted to rape Shapna, a young day-labourer. The victim suffered injuries and was hospitalised after the attack.

In August, Mohar Ali of Kaliakair police line requested her tenant's wife to cut pineapple for him. As she entered the room, Mohar Ali attacked and raped her. In the same month, in a similar case, river traffic police sub-inspector of Chadpur Abdul Malik raped the wife of a boatman of his own department.

In July, at Gaibandha thana sub-

inspector Shafiqul molested one of the detainee's wife. The victim had gone to the police station to meet her husband. The incident sparked of a tense situation in the area.

A horrifying case of rape was reported in December, when a young female passenger was tactfully separated from her brother who was accompanying her on a train journey to Mymensingh. After reaching Bahadurabad, as she was reboarding the train she was made to travel in a compartment that was carrying 31 newly recruits of Bangladesh army. One of the recruits raped her. As she refused to give herself to others, she was kicked out of the compartment. Later, following an extensive media coverage an Army inquiry was initiated. The two were terminated from service following a court martial. The principal accused was given only an additional one-year rigorous imprisonment, as the case of rape was not proven.

The above incidents portray a dismal picture of the state of the law and order situation in the country. What makes this matter even more distressing is that the members of the law enforcing agencies themselves are involved in these forms of heinous criminal activity. Not only has this served to create a dark patch in the fabric of our society, but it is also fuelling a sense of contempt towards the system in the minds of the informed citizenry. Though it is true that disciplinary action has been taken against the miscreants in some cases, this can only be the first step. These problems are not only contained within themselves, rather they are symptomatic of a more deep rooted social malaise. Any satisfactory solution to the problem requires a complete overhauling of the system. Nothing less will serve to fulfill the fundamental expectations from the newly created, independent state.

Dr. Chowdhury R Abrar, Professor in International Relations at the University of Dhaka, has prepared this report for Odhikar, a coalition for human rights.

Caste-based discrimination

One-quarter billion lives at stake

WCAR THINK PAPER

THE World Conference Against Racism (WCAR) may be marked by a collision of forces: (1) those who consider caste-based discrimination a significant part of the WCAR's mandate and an issue that should be explicitly included in the Declaration and Programme of Action; and (2) those who argue that caste discrimination is not a form of racial discrimination and the issue should therefore be

Dalits (the preferred term for "untouchables") in South Asia ranks among the worst conditions for humans in the world. The Special Rapporteur on Racism, for example, recently stated: "According to several sources, the Dalits are most often the victims of forced relocation, arbitrary detention and summary executions in India." In India alone, the Dalit population totals approximately 250 million people a number greater than the national population of almost every country

based discrimination. The recent massacres involving Hutus and Tutsis in Northern Africa may best be described as caste-based violence as well. That is, Tutsis and Hutus, as a technical matter, cannot be classified as ethnic groups, according to a consensus of experts and, notably, according to the U.N. War Crimes Tribunal for Rwanda as well. Instead, the classificatory distinction between Hutus and Tutsis is best described as a caste- or class-based difference, in the view of various sources such as: international legal scholars, the United States Department of State and the U.N. Special Rapporteur Mr. Acre Waly Ndiaye. Thus, insofar as the Government of India's position gains support -- that caste should not be considered a form of racial discrimination or a part of the WCAR -- not only the conference's consideration of discrimination against Dalits, but also its consideration of the massacres in the Great Lakes region may be jeopardised.

Terms of the debate
The "Indian position" in the definitional debate about caste has been elaborated in other UN fora. In separate communications to CERD and to the Special Rapporteur on Contemporary Forms of Racism, India has maintained that the caste system is "unique to Indian society and its historical processes" and should be considered a "social" or "class"-based category rather than a racial one.

Although caste-based systems exist in other countries, India is the only State to suggest that caste should be excluded from consideration in the efforts to combat racial discrimination. The Government of Nepal, for example, reports to

CERD on its country's problems with caste-based discrimination as a component of racial discrimination and it has never questioned the Committee's competence or jurisdiction over the subject. The African Group has also indicated its unwillingness to embrace the Indian position. At the First PrepCom for the WCAR, the Group's official Position Paper on the WCAR listed the "caste system" as a sub-issue alongside "ethnic conflicts" and xenophobia, to be considered under the first theme of the agenda. However, there has been little opportunity, so far, for States to directly address the subject and, as the examples above illustrate, only a few indications are currently available for assessing the political will States are willing to exert to oppose the Indian position.

Notably, in terms of UN human rights mechanisms in which decisions are made by independent experts, the Indian position has been rejected. The Sub-Commission on the Promotion and Protection of Human Rights, the Committee on the Elimination of Racial Discrimination, and the Special Rapporteur on Racism, have all concluded that caste is contained within their respective mandates to address all forms of racial discrimination and related intolerance. In so doing, CERD and the Special Rapporteur both explicitly rejected the Indian position. The Sub-Commission took a similar view, but its rejection of the Indian position was implicit.

Although current political support for the Indian position appears to be small, the issue will still need to be closely monitored. India wields significant influence within the U.N., among States from the South, and especially those within its own regional group. During the course of the conference, the "horse-trading" that occurs behind the scenes can easily yield a few victories in India's favour, and avoidance of textual references to caste discrimination is likely to be high on the Government of India's list of objectives. NGOs should be attentive to subtle changes in the text which could have profound implications. A central question will be whether the problem of caste discrimination is (a) explicitly or implicitly included, (b) explicitly or implicitly excluded or (c) ambiguously referenced in the final Declaration and Programme of Action. Approximately one-quarter billion lives will be affected by the outcome.

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Women and security

The refugee context

SYEDA ROZANA RASHID

THE notions of international security have undergone a fundamental change during the last decades. Besides lessening focus on the traditional and narrow military issues of state security, the new approach to the security has become increasingly concerned with other sources of instability, including issues such as communal conflict and social violence, poverty and unemployment, organised crime and terrorism, migratory movements and population displacement. While identifying the close connections that exist between these new security concerns and the way they interact and reinforce each other, nowadays valuable insights are put into the themes like refugees, persons in refugee-like situations, internally displaced persons, ecological migrants and many other such categories of growing scales and complexities of forced migration. Under such an offing any approach on gender security in the international context seems incomplete without a focus on the refugee women who are devoid of both national and international protection.

Refugee women represent the overwhelming majority of refugee caseloads in almost every country. They are considered amongst the most vulnerable sections of the refugee population. Because, sexual violence and exploitation are a shockingly frequent experience for female refugees, whether before flight, during flight, or while living in camps. Being the member of high risk group at different stages of their status they face human rights violation in the form of forced labour, extortion by the members of law enforcing agencies, rape, abduction, restriction of movements and soon.

There is a lot of difference between man and woman refugees in their sufferings. Young and adolescent girls are always vulnerable to physical abuse. In Bangladesh various studies prove that a good number of Rohingya refugees has been abused by BDR, police and law enforcing agencies during their flight. In the camp if sexual violence or abuse occur, they cannot seek justice. Because being non-citizens they do not have any access to the judicial

institutions of the country of asylum. Also the poor design of the camps adversely affect women in terms of privacy and security. In many cases location of latrines and water sources at an unsafe distance made refugee women exposed to sexual violence and assault.

Camp situations are rarely model democracy and the situation becomes more complex by the ways programmes of refugee management are implemented. For example, food rations were distributed through men who are not always very keen about equal distribution to the families of conservative women head. There are cases in Rohingya refugee camps where a part of ration was withheld by the distributors and women had to agree to sexual favours to receive the full amount. One of the most unattended areas, as far as the security of the refugee women concerns, is providing them with adequate healthcare, medicare and sanitation facilities whose absence can virtually immobilize a woman or adolescent girl.

Besides these, difficulties come when the uneducated women heads of the families become responsible for family survival for the first time. One cannot ignore the mental insecurity of these women suffering from the psychological stress that they face while coping with a totally different environment. Hardly they find the cooperation of their male counterpart of the family or outside the family. The situation is more displeasing for the members of ethnically or religiously conservative societies. Whenever the international humanitarian and rescue agencies come up with programmes of empowerment and self-reliance for this struggling women through training for skill development, employment opportunity or making women associations, the traditional society imposes restriction on their movement or activities. It happened in case of the Afghan women refugees. There is also risk involved for the refugee women in the repatriation as long as the country of origin cannot guarantee security for them. In that case they may get exposed to the same physical and mental sufferings.

All these issues must be included in the women security discourses. It is pertinent in this connection to define the responsibility of states to protect its citizens

and humanitarian action in situations where states are unable or unwilling to provide such support. There is need for the gender analyst to identify the special problem of the refugee women for mobilizing public opinion towards humanitarian action to be taken by states and international organizations. Without representative on refugee

committee the specific needs of women refugees cannot be addressed. Therefore efforts must be geared to empower the women refugees and make their voices heard.

Syeda Rozana Rashid is Research Associate, Refugee and Migratory Movements Research Unit.

The "Indian Position" on Caste

Article 1 of the Convention includes in the definition of racial discrimination the term 'descent'. Both castes and tribes are systems based on 'descent' since people are normally born into a particular caste or a particular tribe. It is obvious, however, that the use of the term 'descent' in the Convention clearly refers to 'race'. Communities which fall under the definition of Scheduled Castes and Scheduled Tribes are unique to Indian society and its historical process. . . . it is, therefore, submitted that the policies of the Indian Government relating to Scheduled Castes and Scheduled Tribes do not come under the purview of Article 1 of the Convention."

excluded from the WCAR and its final text. At this point, India is the only State to publicly advocate the second position, but, notably, no other State has publicly opposed India either.

What is at stake?

If the Government of India attempts to scuttle international efforts to address caste-based discrimination, the stakes of the debate could not be much higher. According to both United Nations and NGO sources, the treatment of

in the world. Other States in South Asia also have Dalit populations e.g., Bangladesh, Nepal and Pakistan where the lot of Dalits is also among the worst. It is important to add that caste-based discrimination is not confined to South Asia. In many areas of the world, Dalit labourers were brought over with Indian communities, and their descendants still suffer from the continuing effects and persistence of caste discrimination.

The condition of Dalits is part of an even larger problem of caste-

Statements from U.N. Human Rights Mechanisms Regarding the "Indian Position" on Caste

"[T]he Committee states that the term "descent" mentioned in article 1 of the Convention does not solely refer to race. The Committee affirms that the situation of the scheduled castes and scheduled tribes falls within the scope of the Convention."

- Committee on the Elimination of Racial Discrimination 1996, CERD/C/304/Add.13, para. 14 (Concluding Observations/Comment)

"Given, on the one hand ["d'une part"], the above-mentioned information, particularly as it relates to the constitutional provision cited by the Indian Government in its communication of 30 September 1997 - "Under article 366, the Scheduled Castes are defined as 'castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of the Constitution'" - and given, on the other hand ["d'autre part"], the fact that the Committee on the Elimination of Racial Discrimination, in its concluding observations on India's periodic reports, stated, "the situation of the scheduled castes a scheduled tribes falls within the scope of the Convention on the Elimination of Racial Discrimination" (CERD/C/304/Add.13, para. 14), the Special Rapporteur believes that specific attention should be given to the situation of the untouchables in India."

- Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance 1999, E/CN.4/1999/15, para. 100.

ANNOUNCEMENT

Special Issue on Caretaker Government and Laws of Election

The Law Desk will publish a two-page special issue on the constitutional provisions of Caretaker Government and the laws of election on 25 March 2001. Interested contributors should send their write-ups by 22nd March 2001.

Readers' Queries

We have received encouraging responses from our readers who have raised their voice on a number of legal and human rights problems. In a new regular column, the Law Desk in co-operation with some distinguished members of the legal fraternity will debate and discuss readers' problems. We request our valued readers to be specific in detailing their queries.

All correspondence should be addressed to:

Law Desk
The Daily Star
19 Karwan Bazar
Dhaka-1215
Fax: 8125155
E-mail:lawdesk20@hotmail.com