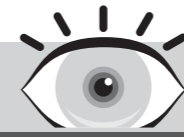




## LAW vision



## LAW week



## Torture in police custody

## Bangladesh could follow Mexican trail

DR. MUHAMMAD ASHRAFUZZAMAN

THE Police have been given bizarre power in Bangladesh. According to section 54 of the criminal procedure code, which was drafted by the colonization masterminds, the police can arrest anyone whom it suspects to be involved with any crime. The reason I used the offensive words above is that the act is and was for the subcontinent (during British colonization period) only and never applied in England, where the masters were from. And the common scenario is that, after the arrest police forward the person before the magistrate with a prayer for remand in custody under section 167 of the criminal procedure code. At this stage if remand is granted, the arrested person is then taken into the police custody for interrogation. And in the name of interrogation usually torture is carried on the arrested person to obtain information or confessional statement. Now a day it has become a practice by the police that they also take money from the arrested person just not to torture him (the detainee). After the expiry of the remand period the arrested person is brought before the Magistrate and if there is any confessional statements the Magistrate records it and the police also may pray for further remand. This is so routine practice that even some people and almost all policemen do not consider this as a violation of rule. Although, while in opposition, the major political parties always admit this fact and raises their voice against this issue, but unfortunately this widespread and persistent torture has been routinely ignored by successive governments, since Bangladesh's independence in 1971.

The United Nations' Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, entered into force June 26, 1987. Bangladesh signed the convention, although very late, only in the 5th October 1998. However having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975, this convention is not a new concept but a continuation of UN attempt to stop cruelty. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. We have to bear in mind that only pain or suffering arising only from, inherent in or incidental to lawful sanctions are exempted from the definition and police tortures are not lawful.

Bangladesh is not the only country where there is this trend of police torture. In many countries this is a major problem and even in the countries where the law and order is the best in the world, this problem exists in a limited scale. If we look at Austria, one of the lowest crime rate country, with persistent record of best law and order, In November 1999 the United Nations Committee against Torture noted the fact that in Austria "... allegations of ill treatment by the police are still reported". There are continued reports of alleged ill treatment of detainees by police officers, in many cases while being arrested. A large majority of allegations come from non-Caucasian Austrians and foreign nationals. Most report that they have been subjected to repeated kicks, punches, kneeling, beating with truncheons and spraying with pepper after being restrained. In many cases the allegations of ill-treatment have been supported by medical reports and in some cases the detainees have been taken by the arresting police officers to receive medical attention during their initial period in custody.

But unlike other nations Bangladesh government is shy to admit this problem let alone address the solutions. Like Bangladesh there are many third-world countries where citizens are often vulnerable to their own law enforcement agencies. Such a country with very bad reputation for police torture is Mexico. The Mexican Government is trying to tackle its reputation as one of the world's worst human rights abusers by holding a "counter-torture" course for police. Mexico's Attorney General ordered the course as one of a series of steps to modernise the country's law enforcement agencies and improve their reputation. And for the first time he has appointed an official to oversee human rights within his own office. Together, human rights agencies say they mark a significant admission by the attorney general that a serious problem of torture exists. The course is aimed at police prosecutors - the officials who deal with alleged offenders after they have been arrested. It teaches them the limits of what is and is not appropriate

treatment of suspects and how to recognise the signs of abuse when police have gone too far.

Here back home, for too long torture has been accepted as normal behaviour by governments. Victims can be children, women, the elderly, political dissidents, criminal suspects, or innocent bystanders. As Mexico detected here also, the basic reason for police torture is that the police do not know or forgot what they did learn in their training about the methods of investigation or extracting information in an interrogation. The above sentence may raise doubt among readers



PHOTO: STAR

but consider the typical view of an hartal or political activities. Although according to the convention, no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. Even, An order from a superior officer or a public authority may not be invoked as a justification of torture.

Scores of people have died in custody as a result of torture. Custodial rape has been a serious problem in Bangladesh. Victims of rape often have to rely on the support and resilience of their family to seek justice. Sadly, it has been mostly in cases where the victim has been murdered or there has been public outcry that any action has been taken. Many cases of violence against women take place at the hands of private individuals and it is common for police not to take action against alleged perpetrators on payment of a bribe.

Torture and ill treatment is not always carried out behind closed doors. Police frequently attack demonstrators and in an attempt to hide their actions, they also beat the journalists reporting such protests. On 9 August 1999, an AFP journalist Debu Prasad Das was taking photographs of a strike by truck transport labourers near Chittagong when several police officers beat him with sticks and rifle butts. Debu Prasad Das knows the names of the policemen who beat him but did not include them in his complaint for fear of retaliation. Later he filed a petition case against seven policemen in the Chittagong Magistrate court but no investigation has been made. According to the code of criminal procedure no court shall take cognizance of a case filed against a public servant on duty i.e. police who was torturing a public to comply with his duty. Furthermore, police officers harassed him to withdraw the complaint and have offered to pay the medical bill (very kind of them).

The above fact is not a stand-alone case but a one of a series of cases. In another occasion a 81-year-old Sheikh Shahabuddin Ahmed, was tortured by police on the day of his arrest, 7 July 1998. Sheikh Shahabuddin Ahmed was president of an association, which worked against drugs and criminal activity. He said to the newspaper "The criminal gangs were working directly with the police who came to arrest me saying I was stopping business activity in the area. In fact we were only trying to stop criminal activity and drug abuse." After send-

ing appeals to the Home Minister, Prime Minister and the Inspector General of Police seeking punishment of those who tortured him, he was told one of his torturers was dismissed, but should not expect any further action or compensation. Although, the 1987 article also, clearly states that upon being satisfied, after an examination of information available to it, that the circumstances so warrant, the government should have to take the officers alleged into custody or to take other legal measures to ensure their presence.

Police officials in Bangladesh admit privately that torture takes

place but they take a lenient approach, blaming it mostly on the low income of police officers. In other cases, police officers may be involved in criminal activity such as trading in drugs or contraband, and torture people to stop them taking action against them. Torture of political opponents is believed to be ordered by politicians. Police may also torture for personal gratification as is the case with rape. However, the majority of cases involve torturing people to confess to a crime they didn't commit. All of this continues because successive governments allow it to. It is rare that cases are investigated and even fewer are brought to justice.

Bangladesh ratified the Convention Against Torture in 1998. Torture is forbidden under the Constitution and it is a criminal act under the Penal Code. However legislation which facilitates torture, for example by allowing for detention without an arrest warrant, is still in place. Several NGO's prepared report on this issue and invited the government to take measures to prevent this torture by police. Among various proposals there include; ensuring no law facilitates torture, that allegations of torture are investigated, that torturers are brought to justice, that police are trained in torture-free methods of interrogation and that victims are compensated. It is understandably true that if a complain has to be made to the same authority an expectation of justice is a fake dream. So, if the government has any honest intention to make this complain any fruitful there should be a separate authority to deal with these complains. Torture by no means should be accepted as a necessary act or a part of life -- it is a human rights violation. The government should take up the challenge to make a difference in Bangladesh by ending years of endemic torture. It is also recommended that the Government repeals the Special Powers Act. It is further urged that the Code of Criminal Procedure should be reviewed for the sections therein where the police code is embodied and the law relating to confessions. It is proven facts that the provision of confession results in torture. It is also necessary to ensure that law enforcement agencies understand that torture is a criminal act and to bring perpetrators of torture to justice.

The author is assistant professor and head Department of Law, Northern University, Bangladesh.

## Women reserved seats In Js HC clears way for election

The High Court upheld the 14th amendment to the constitution providing for 45 reserved seats for women in parliament and the law for their indirect election.

Discharging three writ petitions that challenged validity of the provision, a High Court division bench termed the amendment "not unconstitutional," clearing the way for holding the election to the reserved seats in time. The petitioners said they would move the Appellate Division against the verdict. "We will continue our legal battle," said Farida Akhter, one of the petitioners.

Parliament passed the 14th amendment in May last year, enacted the law for holding indirect election on November 29 and gazetted it on December 8.

But the election could not be held within the stipulated period (90 days from enactment of the law) because of a High Court stay order following three public interest litigation writ petitions filed by 13 women rights groups and individuals.

The court observed that in the Ahmed Hossain case (that challenged the 10th amendment provisions of women's reserved seats), the Appellate Division had said that indirect election cannot be called undemocratic and it has sanctions of the constitution itself.

The 14th amendment does not go against the basic structure of the constitution, the court observed. Sigma Huda, a counsel for the petitioners, told reporters after the judgement: "The Supreme Court's guidelines act as bindings on the High Court. The High Court cannot deviate from such guidelines." Dr Kamal Hossain, Dr M Zahir, Tania Amir and M Asaduzzaman also appeared for the petitioners. - *The Daily Star*, May 31.

## SCBA turns to president, PM over Faizee

Supreme Court Bar Association (SCBA) sought intervention of the president and the prime minister for resolving the raging controversy over the LLB certificate and age of Additional High Court Judge Faisal Mahmud Faizee.

The SCBA sent a letter to the president, the prime minister, the chief justice and the law minister where it urged them to take immediate steps to put an end to the controversy and thrash out problems arising out of it.

The letter did not, however, refer to the resolution of the issue by the Supreme Judicial Council, the lone authority to investigate allegations against a sitting judge.

"An uneasy and delicate situation is prevailing across the country as well as in the sphere of the judiciary due to the controversy over Faizee's certificate and age," reads the letter signed by the secretary.

Faizee did not have the original LLB certificate while he took oath as judge, the letter said, adding although the Chittagong University issued a provisional LLB certificate, its syndicate decided later against issuing the original certificate because of the flaw in the marks-sheet.

In October last year, national dailies Prothom Alo and Bhorer Kagoj ran reports that results of law graduation examinations of Faizee were tampered with, prompting the SCBA to boycott Faizee's court. - *The Daily Star*, May 31.

## New rules to try Rab offenders Maximum penalty life term

The government has framed new rules making provisions for trial of the Rapid Action Battalion (Rab) members for their crimes under three trial processes--Special Court, Summary Court and Departmental Proceedings.

"We hope that the newly framed rules and regulations developed in line with the Armed Police Battalion (APBn) Act will come into force within a month," said State Minister for Home Affairs Lutfozzaman Babar after meeting with Rab high officials at his ministry.

The Special Court headed by an additional inspector general of police and comprising another person having the status of a police superintendent will have the power to award a minimum of seven years to the maximum of lifetime imprisonment. A deputy inspector general of police will head the Summary Court which will comprise another person holding the post equivalent to a police superintendent. The Summary Court will have the power to award delinquent Rab personnel up to three years' imprisonment. - *UNB*, May 30.

## Attorney general at odds with lawyers

Bangladesh Bar Council has engaged in a rift with the attorney general, who is the council's ex-officio chairman, over holding an emergency meeting on lawyers' rights and privileges following a court ban on their agitation.

The dispute has forced the council, the statutory body of lawyers, to go for holding a "requisition meeting" this month, for the first time in its history, in the face of repeated resistance from the attorney general since late last month.

The elected council members wanted to hold an emergency meeting following the recent High Court ban on lawyers' agitation but the newly appointed Attorney General from (AG) A.J. Mohammad Ali refused to authorise the meeting. The rift developed in the council that represents 20,000 lawyers across the country, against the backdrop of the lawyers' continuous agitation for removal of controversial Additional High Court Judge Faisal Mahmud Faizee. - *The Daily Star*, June 3.

## FACT file

## Plight of female prisoners in Bangladesh

RITA BHOWMICK

A middle-aged woman from Noakhali has recently been released from jail after serving years of sentence in a murder case.

Explaining her experience in jail, the woman says, "The jail authorities behaved who served his term at Dhaka Central Jail, "Male and female prisoners live in separate wards here. However, there is a door connecting male wards with those for the female prisoners.

Veteran male prisoners often bribe guards of the female wards and coerce them to have sex with them. Some female prisoners opt for sexual contact with the men in the hope of getting other facilities.

Jails in the country are overcrowded. Three hundred to three hundred fifty female prisoners live in each room, many times higher than the capacity. While many spend time outside their rooms, the real problem occurs when they come back at night to sleep.

A 2004 report says more than 74,000 prisoners are kept in the country's 64 jails, including more than 2,000 female inmates. At Dhaka Central Jail were lodged more than 11,000 inmates and over 300 of them women.

In many police stations of Dhaka city there is no separate hajot for women and children. In some cases, female detainees are



kept in the offices of male police officers. Women are subjected to various types of abuse."

In Dhaka, there are fewer female police officers than their male counterparts. A police station has only two or three female officers that is not enough. Some police stations have to do without female officers. So, male police officers deal with the female detainees, including arrests, interrogation and investigation.

Says Dr. Halida Hanum Khondaker, Executive Director at Confidential to AIDS Prevention: "There are separate wards or cells for female inmates in jails. Yet the female inmates are not safe there. They are

victimised by male officials and supervisors. Such female inmates do not get justice because of abuses by the law enforcers."

Says Farida Akhter, Executive Director at Nari Grantha Prabartana, "Women are arrested also under Dhaka Metropolitan Police Ordinance. A female detainee is supposed to be taken care of by a female police officer. But this rule is violated, as there is shortage of female police officers. As a result, female detainees are subjected to abuses and maltreatment. We have asked the government to appoint female police officers in police stations. The demand came especially after the rape and killing of Yasmin by police in Dinajpur. But our demand has not yet been met.

Says Law Minister Moudud Ahmed, "There are about 5.50 lakh cases pending in the courts. The process of trial is slow. There are

at least 30 hajatis in a room which is good for only two female hajatis. At night, the women just remain standing on their feet as there is no room for sleeping. But we should not blame only one institution for this. There are provisions of punishment for violation of laws."

Most women held in Dhaka Central Jail had been involved in crimes like theft, robbery, kidnapping, murder, child abuse, sex trade, and drug abuse or drug trade. They are mostly from poor families living in slums.

Says Moudud Ahmed, "Any abuse of female prisoners in jail is to be condemned. It is not desirable even though it happens," he says urging the media to create awareness against such maltreatment.

Source: NewsNetwork.

## Corresponding with the Law Desk

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