

The accused and his confession

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DESPITE the fact that Bangladesh has some excellent laws to control crime, the rate of violence in the country is high and 'justice for all' is not the case at all. Frankly, justice is mainly for those who can afford legal support and for those who can 'pay' for it. According to newspaper reports, the rate of impunity by law enforcement agencies is high and corruption in those quarters is an open matter. One of the many laws that are abused by some quarters of the justice system is the law pertaining to confessions. The general practice is that if a person confesses, it makes the work of the investigators easier. The quicker he confesses, the better, and if he does not confess, he is made to.

The Evidence Act states that, in a criminal proceeding if the court deems that the confession was 'caused by any inducement, threat or promise having reference to the charge against the accused person; proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused personal grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him', that confession would not be accepted and would be 'deemed irrelevant'. According to the same law, if a co-accused in a crime makes a confession and implicates others with him, his confession may be considered against the other accused persons as well. However, even though this law makes the confession of one accused person receivable against his co-defenders, this does depend on the discretion of the court. The court will usually ask for material evidence to corroborate the statement.

According to Article 35 (4) of the Constitution: 'no person accused of any offence shall be compelled to be a witness against himself'. The main objective of Article 35(4) is to protect an accused person from any compulsion to make self-incriminating statements. Thus, the operative word here is 'compulsion', which may be translated to mean 'duress'.

Thus, in order to gain the protection of Article 35 (4) of the Constitution against testimonial compulsion, it must be proved that the accused person made his statement under compulsion and that it was not voluntarily given. This rule is also reflected in the laws that govern the making and recording of confessions. The Code of Criminal Procedure and the Evidence Act. These laws make it mandatory that the confessional statement must be freely given without any duress or threat or compulsion. The Magistrate must give the accused time to reflect before he makes his statement, must ensure that no police are in the courtroom, must ensure that the statement is voluntarily given and must remind the accused that he is under no compulsion to give a confession.

Confessions are of two kinds judicial and extra-judicial. A judicial confession is one that is made to the Magistrate, as per the guidelines given in section 164 of the Code of Criminal Procedure. An extra-judicial confession is one that is not made to a Magistrate, but to any person except a police officer. Again, statements of guilt made by the accused person to a police officer, wherein he mentions ways to recover material evidence (like a murder weapon, etc.) is recognised as an extra judicial confession. However, only the fact that the accused led the police to recover evidence will be relevant in the court, while the confession of guilt made will not be receivable as evidence. The law fully recognises the danger that if such a statement made to the police officer was given the legal status of a confession, this may lead the police to use all sorts of force or other methods to extract confessions which may also lead the accused to falsely implicate him.

The form No. (M) 84 used to record the confessional statement by the Magistrate states inter-

alia: 'Magistrates should clearly understand the great importance of giving their closest attention to the procedures to be followed, from first to last, in the recording of confessions. This procedure should be followed without haste, with care and deliberation, it being understood that this duty is not a distasteful and minor appendage or addition to their normal functions, but one which is of consequence to the confessing accused, his co-accused and court responsible for the administration of criminal justice. A confession which is recorded perfunctorily and hastily is a source of embarrassment to the trial court, the prosecution and the defense.'

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Whether a confessional statement was made voluntarily or not is the most important factor to determine whether it can be admissible or must be rejected. Almost all the applications for retraction of confessional statements are based on the claim that the confessions were the outcome of police torture. It is paramount that a confessional statement is made voluntarily, without coercion or threat. However, cases have shown that testing the voluntary nature of the confession is sometimes ignored by the Magistrate and those statements that have been made after prolonged police custody have been accepted as admissible.

One example of this kind of torture resulted in the death of 35-year-old Shafi Uddin. On 30 November 2005, Shafi Uddin was arrested on suspicion of involvement in a theft. On 01 December he was produced before the magistrate and taken into remand for 3 days. After that he allegedly assaulted him with hockey sticks. He was injured so badly, he died on his way to the hospital. According to the police, Shafi confessed to theft and they went to recover the stolen goods from a specific house, but on the way, Shafi fell sick and they rushed him to the hospital, but it was too late. Eyewitnesses at the



PHOTO: FEASCORP

Police morgue stated that they saw serious injuries on Shafi's body and said that the police coerced staff at the morgue to alter the contents of the autopsy report.

A large majority of cases of retraction of confessions are based on the claim by the applicant that the confession was a result of police torture after arrest or in remand. Poor police practice, over zealousness, criminal misconduct and, sometimes external pressure to close a case, make police coerce a suspect or the accused to give a statement implicating himself. Once this statement is made, investigation ceases and convicting the confession maker becomes the goal of the police, the courts and the prosecutor. Once a person is in police custody, the police have a whole plethora of ways to proceed in making his life miserable so that he is bound to confess even if he did not commit the crime. The fact that the law states that an arrested person must be produced before a Magistrate within 24 hours of his arrest, according to section 61 of the Code of Criminal Procedure, is occasionally overlooked by the arresting police, thus casting serious doubts on any confession he may later make to the Magistrate.

In the words of Sir Edmund C. Cox, "In my opinion, it would be advisable to make all confessions made previous to trial once and for all irrelevant. One effect of this would be to put the police upon their mettle to obtain extraneous evidence and not rest satisfied with this miserable confession which is more likely than not to be

withdrawn, and leave them stranded at the last moment."

Magistrates have accepted confessional statements from accused persons after they have been in prolonged police custody and even after they have complained of police torture. There have also been cases where Magistrates have sent accused persons to police remand and then recorded their confessions. Remand in police custody, under the Code of Criminal Procedure, 1998, is when the police seek more time (from the Magistrate) to keep the accused person in their custody, for further questioning. Section 167 of the Code of Criminal Procedure states that at the stage of investigation of an offence, a Magistrate cannot award more than 15 days of remand in police or jail custody.

A police officer makes a prayer to the Magistrate that the accused is involved in a cognizable offence and that for the purpose of interrogation he needs to be taken into remand. In Bangladesh, police remand is synonymous with police torture and more often than not, the accused and his relatives offer money to the police to prevent remand. In many instances, the police themselves ask for the money. Any statement made to a Magistrate by the accused after the latter has been through a period of remand in police custody ought not to be recognised as a voluntary statement by the Magistrate. However, in some cases this has happened. The Rules attached to the format for recording a confession clearly state that 'Applications, if ever made, for remand to police custody of a prisoner who has failed to make an expected confession or statement, should not be granted.'

The redeeming feature for Magistrates, who have failed to correctly record confessional statements, lies in section 533 of the Code of Criminal Procedure. This section states that if the Court finds that the Magistrate has not fully complied with all the provisions of the law that deal with the recording of confessional statements, it will examine the recording Magistrate and, if the confessional statement so recorded does not injure the accused, the court will admit it as valid evidence. The provisions of this section apply to Courts of Appeal, Reference and Revision.

Cases show that there are instances where the Magistrate has failed to tell the accused that he is under no compulsion to make a confessional statement, or that police were present in the court room when the statement was being recorded, or that the Magistrate failed to consider whether the confession was being made voluntarily. All this has serious affects on the maker of the statement. All the provisions relating to the recording of confessional statements are important and must be followed in order for the Magistrate to ascertain as to whether the statement was given voluntarily and to reassure the accused and give him time to reflect so as to make his confession more accurate and effective. There are many cases

studies that establish that all the formalities of Section 164 have to be followed and given utmost importance.

Convictions based solely on confessions seem to be a common incident in some courts, and it is the quick conclusion of a case that is making this a common practice. A confession means that the police need not carry out further investigation for supporting evidence, that they can close a case quickly. It means that they need not ascertain whether the accused is telling the truth or whether he confesses in order to stop the inhuman torture being inflicted upon him. This over zealousness of the police is contagious and the Magistrates have picked it up. It is only when a few of the cases reach the High Court Division of the Supreme Court for appeal for retraction that we are sure that something is seriously wrong. However, not all such cases reach the high echelons of the judiciary. A large number of persons who have been convicted based on confessions come from the poorer strata of society, who are unable to afford a lawyer and do not know that they can appeal. When NGO's and other legal aid organisations hear of their plight, only then are they properly represented. A confessional statement cannot be the overwhelming reason to convict an accused person.

Given the trouble it takes to extract a confessional statement from the accused by the police, and that serious acts of human rights violations fall upon the former in order to 'prepare' him to make a confession, the question that arises is: why must we even have a law dealing with this topic? Why not do away with the practice of recording confessions altogether. It would certainly improve the activities of the investigation wing of the police. The fact is that, if an accused person is morally compelled to make a confession, out of pure feelings of remorse, he should be allowed to unburden himself to a competent Magistrate. If he does not want to do so and the laws states that he does not have to, the investigating police must follow other legally prescribed methods of collecting evidence in order to ascertain his guilt or innocence. It is the task of the prosecution to prove the case against the accused, not the task of the accused to confess and thus make the system easier.

The law regarding confessions makes it clear that the recording of confessional statements; the format the Magistrate must follow and what may be admissible as a confession. The Constitution makes it clear that no one must be compelled to be a witness against himself and that no one must be subject to cruel, degrading and inhuman treatment. What is now necessary is the proper and effective implementation of these laws, and if necessary, their amendment, in order to ensure that a person on trial is innocent until it can be proven that he is guilty.

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HUMAN RIGHTS advocacy

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IT was a bright Saturday morning on 6th October 2007. I went to my office to check on my last minute work and then rushed to the airport. I was going to participate in the 11th Annual Asian Training and Study Session for Human Rights Defenders (ATSS), which took place in Bangkok from 7-27 October. The training programme was arranged by Forum Asia, a regional human rights network consisting of 40 organisations belonging to 15 countries of Asia.

only sign his name in Bangla. I helped him to some extent, while thinking about the fate of these Bangladeshi youths as many of them are helpless and unemployed and have decided to leave the country failing to find suitable jobs. Many of them become victims of unscrupulous manpower agencies and middlemen who make quick money by exploiting them. In many cases, they find themselves 'undocumented' in host countries. Sometimes they have to work in extremely hazardous conditions and are subject to exploitation. Furthermore, in some cases, even though they have valid visas and work permits, they cannot join their jobs and are deported. These young men face serious human rights violations.

At the inaugural ceremony on 7 October, I met all my fellow human rights defenders who came from 15 different Asian countries and were united in the same spirit: 'to protect and promote human rights'. The thirty-four human rights defenders represented different organisations of Bangladesh, Sri Lanka, India, Burma, Nepal, Tibet, Thailand, the Philippines, Indonesia, Malaysia, South Korea, Laos, Cambodia, Mongolia and Timor Leste.

The 21-day intensive training course reflected on various forms of human rights violations in different Asian countries and on how to uphold human rights there. The training course covered topics such as: historical evolution of human rights; domestic and international human rights protection mechanisms; universality of human rights; Asian values and the concept of responsibility to protect; gender and women's human rights; human rights defenders; challenge and situation; UN Human Rights System and mechanism; humanitarian law; principles of community organising; guidelines on advocacy; and cyber campaign strategies.

To gather practical experience we went for a field visit to Klong Dan and then to an urban slum community in Bangkok. The Klong Dan sub-district consists of 14 villages with a total population of 30,000 people. Their main livelihood is coastal fishing. However, the Government of Thailand decided to build a wastewater plant in the area, funded by the Asian Development Bank (ADB) without consulting its inhabitants. If this project becomes active, industrial wastewater will be processed

and released in the sea, unbalancing the ecosystem and having an adverse effect on mussels and other shellfish. As a result, this may have a direct negative impact on the livelihood of the fishermen of the Klong Dan community. Aware of the consequence of the project, the community has been fighting against it and a case is pending in the court since 1998. After the visit to Klong Dan we went to visit the slum Pra-ves in Bangkok. The inhabitants of this slum are fighting against an eviction drive.

The training session was very interesting and helped defenders to develop their skills. We demonstrated in front of the Burmese Embassy against the killing of Burmese people, for the freeing of all the political arrestees and to bring back democracy in Burma. We also videoed the demonstration and made animation pictures to highlight the violence in Burma. We also went to observe the 30th commemoration of the October uprising Anniversary in Bangkok. People gathered at Sanam Luang to commemorate the 30th anniversary of the student uprising of October 14, 1973, which toppled the dictatorship. We visited the United Nations Economic and Social Commission for Asia and Pacific (UNESCAP) office in Bangkok. UNESCAP advocates for greater private sector involvement in infrastructure development and it monitors progress of, and provides advice to, countries pursuing the UN Millennium Development Goals. In the UNESCAP office we came to know about the human rights work carried out by the UNDP, UNIFEM, UNESCAP and UNHCR.

In the training programme, the Rapporteur of the Democratic Republic of Korea and a teacher of Chulalongkorn University Mr. Vitit Muntarabhorn, gave his lecture on Asia regional human rights mechanism. We also had elaborate training on how to use UN mechanism and tools on advocacy and human rights issues. We had excellent resource persons and facilitators who made the training interesting and understandable to all.

The 21 days flew by. Soon it was time to return home, time again to serve my country's people and help ensure human rights. We promised to keep in touch and network, in solidarity with all the human rights defenders.

The author is working with Odhikar, a human rights organization.

HUMAN RIGHTS monitor

16 days activism for violence against women

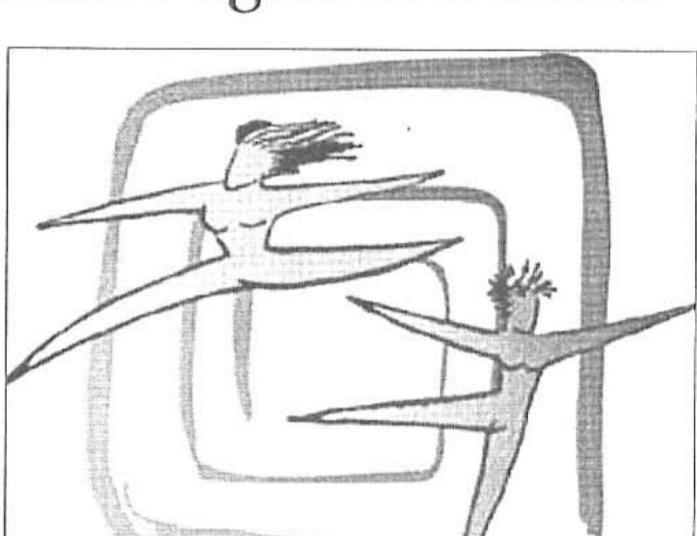
Millions of women throughout the world live in conditions of abject deprivation of, and attacks against, their fundamental human rights for no other reason than that they are women.

Combatants and their sympathizers in conflicts, such as those in Sierra Leone, Kosovo, the Democratic Republic of Congo, Afghanistan, and Rwanda, have raped women as a weapon of war with near complete impunity. Men in Pakistan, South Africa, Peru, Russia, and Uzbekistan beat women in the home at astounding rates, while these governments alternatively refuse to intervene to protect women and punish their batterers or do so haphazardly and in ways that make women feel culpable for the violence. As a direct result of inequalities found in their countries of origin, women from Ukraine, Moldova, Nigeria, the Dominican Republic, Burma, and Thailand are bought and sold, trafficked to work in forced prostitution, with insufficient government attention to protect their rights and punish the traffickers. In Guatemala, South Africa, and Mexico, women's ability to enter and remain in the work force is obstructed by private employers who use women's reproductive status to exclude them from work and by discriminatory employment laws or discriminatory enforcement of the law. In the U.S., students discriminate against and attack girls in school who are lesbian, bi-sexual, or transgendered, or do not conform to male standards of female behavior. Women in Morocco, Jordan, Kuwait, and Saudi Arabia face government-sponsored discrimination that renders them unequal before the law - including discriminatory family codes that take away women's legal authority and place it in the hands of male family members - and restricts women's participation in public life.

Abuses against women are relentless, systematic, and widely tolerated, if not explicitly condoned. Violence and discrimination against women are global social epidemics, notwithstanding the very real progress of the international women's human rights movement in identifying, raising awareness about, and challenging impunity for women's human rights violations.

We live in a world in which women do not have basic control over what happens to their bodies. Millions of women and girls are forced to marry and have sex with men they do not desire. Women are unable to depend on the government to protect them from physical violence in the home, with sometimes fatal consequences, including increased risk of HIV/AIDS infection. Women in state custody face sexual assault by their jailers. Women are punished for having sex outside of marriage or with a person of their choosing (rather than of their family's choosing). Husbands and other male family members obstruct or dictate women's access to reproductive health care. Doctors and government officials disproportionately target women from disadvantaged or marginalized communities for coercive family planning policies.

Our duty as activists is to expose and denounce as human rights violations those practices and policies that silence and subordinate women. We reject specific legal, cultural, or religious practices by which women are systematically discriminated against, excluded from political participation and public life, segregated in their daily lives, raped in armed conflict, beaten in their homes, denied equal divorce or inheritance rights, killed for having sex, forced to marry, assaulted for not conforming to gender norms, and sold into forced labor. Arguments that sustain and excuse



16 Days of Activism Against Gender Violence November 25-December 10

these human rights abuses - those of cultural norms, "appropriate" rights for women, or western imperialism - barely disguise their true meaning: that women's lives matter less than men's. Cultural relativism, which argues that there are no universal human rights and that rights are culture-specific and culturally determined, is still a formidable and corrosive challenge to women's rights to equality and dignity in all facets of their lives.

The Women's Rights Division of Human Rights Watch fights against the dehumanization and marginalization of women. It promotes women's equal rights and human dignity. The realization of women's rights is a global struggle based on universal human rights and the rule of law. It requires all of us to unite in solidarity to end traditions, practices, and laws that harm women. It is a fight for freedom to be fully and completely human and equal without apology or permission. Ultimately, the struggle for women's human rights must be about making women's lives matter everywhere all the time. In practice, this means taking action to stop discrimination and violence against women.

Source: Human Rights Watch.