



## **ASIAN HUMAN RIGHTS COMMISSION**

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### **BANGLADESH: The Human Rights Situation in 2006**

#### ***Bangladesh, a corrupted & tortured nation***

Although Bangladesh has twice gone through independence struggles, culminating in full political independence in 1971, its laws have not yet emerged from the 19th century. Meanwhile, policing has for the most part degenerated back into the feudal ages. At no stage has there been a serious attempt to modernise it or to take advantage of significant developments happening elsewhere in the world. Legal and investigative reforms are moving so slowly as to place Bangladesh completely out of touch with the rapid developments in communications, transportation and sense of time among people in other countries. The last “sweeping reforms” referred to on the Bangladesh Police webpage of the Ministry of Home Affairs occurred in 1861. The atrophy and its consequences are manifest.

#### **Arbitrary arrest: Anyone, anywhere, anytime, any excuse**

Despite a constitutional prohibition, arbitrary arrest is among the most common features of policing in Bangladesh. It is routinely accompanied by assault and extortion, and also often leads to torture, killing and other grave abuses of the arrested person and others. Laws in Bangladesh make it easy for a police officer to arrest someone on a suspicion and try to pry some information out, with which to conjure up a better excuse to hold the person in custody. Section 54 of the Code of Criminal Procedure 1898, which permits arrest on “a reasonable suspicion” of a crime, is perhaps the most commonly used provision. For police in Dhaka, section 86 of the Dhaka Metropolitan Police Ordinance is frequently used to make arrests without valid reason after dark wherever someone is found “without any satisfactory answers”. The section carries a summary one year penalty, fine or both. A person can also be held in detention through provisions such as the Special Power Act 1974, through which the police can propose to the district commissioner (executive officer) who is also the district magistrate (judicial officer), that any person shall be detained for a certain period of time.

Under these laws a hapless ordinary pedestrian may end up in jail for months simply for crossing the road at the wrong time and in the wrong place: namely, where police were present. Many others are targeted arrestees, having been identified as political opponents of a local official, or the government as a whole. Some descriptions of incidents help to understand how easily this works in practice.

On 24 November 2005 Mohammed Abul Kashem Gazi was on his way to buy spare parts for his refrigerator shop. He was stopped by a number of policemen in front of the Khilgaon police outpost, apparently without any particular reason. Somehow an altercation followed, and it soon led to three of the officers assaulting Gazi on the street, and dragging him back to their main station, where they kept him in detention overnight and took his mobile phone. He was brought before a magistrate the next day under section 54, who mercifully released him on bail due to health grounds. Police commonly arrest people as a service to someone they know, or in exchange for money or other rewards. On 28 December 2005, a young man named Imon Chowdhury went to collect his pregnant wife from her family's house in Barisal and return home to Gaibandha together. When he arrived, a dispute erupted and his in-laws allegedly beat him up. His father-in-law had a connection with an assistant superintendent of police in the district, and he handed Chowdhury over to the officer. He was taken back to the police station and assaulted, apparently as a favour to the family, after which he was held in custody under section 54, despite differing police accounts of what had taken place at the house. The periodic use of these laws to make mass arrests also encourages the continued routine detention of innocent persons on a whim. In the first week of February 2006, for instance, some 10,000 or more people were detained simply in order to thwart opposition party plans for a mass rally. Many were not produced before a court for some days. On February 5 the Supreme Court ordered that the arrests stop. It also went so far as to question the constitutional legality of section 86. Although the court's injunction had the effect of halting that wave of arrests, the laws and practices that allowed for them still stand. Some other laws which ostensibly have been intended to protect human rights have also been used instead to arrest innocent persons. For instance, as it is easy to secure a temporary detention order under the Women and Children Repression Prevention (Special Provision) (Amended) Act 2003, the law is used by political, personal or business rivals to harass one another. This is one of the reasons that the overwhelming number of cases brought to courts under that law are reported to fail.

### **Section 54(1) of the Code of Criminal Procedure 1898**

Any police officer may, without an order from a Magistrate and without a warrant, arrest first, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned; secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; thirdly, any person who has been proclaimed as an offender either under this Code or by order of the [Government]; fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property [and] who may reasonably be suspected of having committed an offence with reference to such thing; fifthly, any person who obstructs a police officer while in the execution of his duty, or has escaped, or attempts to escape, from lawful custody; sixthly, any person reasonably suspected of being a deserter from [the armed forces of {Bangladesh}]; seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been

received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in Bangladesh; eighthly, any released convict committing a breach of any rule made under section 565, sub-section (3); ninthly, any person for whose arrest a requisition has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

### **Section 86 of the Dhaka Metropolitan Police Ordinance**

If any person is found between the periods of dusk to dawn: a) equipped with dangerous machineries without any satisfactory account; or b) covered the face or disguised or masked without any satisfactory account; or c) present in the house of anybody else or in a building of anybody else or on board or on a boat or in any vehicle without any satisfactory account; or d) lying or moving in, on any street, any yard or any other place without any satisfactory account; or e) entering in any house along with weapons without any satisfactory account; then, that person shall be imprisoned up to maximum one year or shall be fined up to Taka two thousand, or shall be punished in both ways.

### **Torture, the Third Degree Method**

Once a person is under custody, the police have a range of alternative ways to proceed. If the detainee can be accused of a serious offence like murder or storing illegal weapons then the investigating officer will already be calculating how much money can be made and from whom it can be collected. On one side, he will be taking money from the complainant (such as on the pretext of needing to purchase fuel for the police vehicle). On the other, he will be bargaining with the accused about how much it will cost to escape from the charges, or at least from the Third Degree Method, or death by “crossfire” (see further: Nick Cheesman, “Fighting lawlessness with lawlessness [or] the rise & rise of the Rapid Action Battalion”, 2006).

If threats and negotiations with an accused do not yield anything lucrative, police will turn to what is euphemistically known as the Third Degree Method. The third degree starts out light, and is gradually increased in intensity as the interrogation continues. The scale of torture also depends upon the severity of the charges and amount of money involved, as well as other factors such as the amount of interest in the case from politicians or other influential persons, and the identity of the accused. The methods start with beating with sticks and other objects on the joints and soles of the feet; then, walking over the body, forcing hot or cold water into the nose (depending on the season), applying chilli or itching powders, and Banshdola: rolling and pressing on the body with bamboo; then, hanging upside-down from the ceiling or a tree and beating, inserting

sharp objects under fingernails and into other sensitive parts of the body, and hanging a heavy weight from the penis and forcing to stand on a table or chair. The Third Degree Method is an all-round winner for police who use it. It brings in money and helps curry favour with senior officers, members of parliament and other important people. It reinforces the status quo, as the only truly effective means that victims have at their disposal to deal with it is to pay the police and other influential people to escape. The relatives of persons under the Third Degree can be seen rushing in and out of police remand cells and other places of detention, doing their bit for one of the most corrupt economies in the world: making mobile phone calls, negotiating with middlemen, seeking help from political leaders or high-ranking civil or police officials, and spending huge amounts which they are forced to borrow from rich persons, money lenders or micro-credit groups, or by selling valuables like gold and land on the cheap.

Many others have an indirect interest in keeping this whole performance going. Lawyers get more clients, magistrates have an endless supply of easy prey, and the government earns revenue out of every transaction. Prison staff must be bribed to take even so much as a bar of soap to a new inmate. After the accused is released, he needs medical treatment and drugs, which if they are to be of a reasonable standard must be paid for through a private clinic and pharmacy. By contrast, the victims of the Third Degree Method often become unemployed, traumatised burdens on their families. They may need treatment for years or decades to come. They remain a permanent physical reminder of the violence and injustice meted out by the state, for their own generation and the next. So the new generation learns that the best way to survive is to be cautious, less innovative and more submissive. Police officers who use the Third Degree Method run very few risks of ever being punished. Although article 35(5) of the Constitution of Bangladesh prohibits torture and the country has ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, there is no law to prohibit the method or any effective means through which to lodge a complaint, initiate an independent investigation and have a perpetrator prosecuted. The government has also said that it will apply article 14(1) of the UN convention, which stipulates the right to redress, compensation and rehabilitation for a victim, only in accordance with existing laws. As there are no existing laws for redress, compensation and rehabilitation for torture victims in Bangladesh, it is not difficult for the government to say that it has fulfilled its obligation by doing nothing.

### **Article 35(5) of the Constitution of Bangladesh**

No person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment.

### **Article 14 (1) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

**By refusing to implement article 14(1) of the Convention against Torture, the government has negated its commitment to the entire treaty**

By refusing to implement article 14(1) of the Convention against Torture, the government has effectively negated its commitment to the entire treaty. It has also shown that it has no sincerity to see international standards on torture introduced in Bangladesh. Instead it has strongly endorsed impunity, and by implication, given the green light to the Third Degree. The government of Germany was among others which at the time of ratification objected to the reservation on article 14(1). It noted with concern that it “raises doubts as to the full commitment of Bangladesh to the object and purpose of the Convention”. That is diplomatic talk for, “We can see that you aren't going to do what you say you're going to do.” All other evidence points us to the same conclusion: despite its continued pretences to be a good international citizen, the government of Bangladesh has not yet lodged a report on its compliance with the treaty to the UN monitoring body. Its first report was due in 1999, the second in 2003. Somehow, non-submission of reports to UN human rights treaty bodies did not seem to count against Bangladesh when it came to being elected to the new UN Human Rights Council. Or perhaps no one noticed. Presumably the diplomats from Dhaka did not make a point of bringing it up. It follows from above that no coherent legal provisions exist to enable victims of torture and other serious abuses to make claims for compensation or rehabilitation. The state does not provide medical facilities for physical and psychological injuries suffered. Only after high-profile incidents such as the assault on sports journalists at an international cricket match, might some compensation and rehabilitation be used as a way to set aside pressure to lay legal charges against the accused. But more often than not, as in the case of the villagers in Meherpur, victims are left to obtain treatment themselves.

The Government of Bangladesh has shown no commitment to the implementation of the international instruments that it has ratified. It is playing a game of ratification in order to seem credible at first glance, without having any intention of actually living up to its commitments.

Bangladesh was elected to the newly-formed UN Human Rights Council this year, having delivered significant pledges to the international community. Not a single pledge has yet been implemented by the authorities to prove their respect for human rights and rule of law issues. Due to the continuous inaction of the government of Bangladesh and its absolute failure to address human rights issues, the international community should ensure that Bangladesh is removed from the Human Rights Council at the first possible opportunity, as its presence discredits the entire body.

## **Corruption, the god of all institutions**

In Bangladesh corruption is the one and only god of all public institutions. Each and every person has to think about how much money will be needed to get something done. Corruption starts from the top political leaders and runs right down to the most junior functionaries. The ruling party, whichever it may be, wallows in it: being in government is first and foremost a chance to make money illegally, and for one's supporters to make it too. There are few exceptions to this rule, and there is not a single institution in the country that is corruption-free. Whether recruiting, training or transferring staff; purchasing, deciding or investigating anything; collecting, registering and recording land or goods; auctioning or transporting something, it always takes a bribe. Corruption in policing, as noted, has a close relationship to the use of torture. But it is also found in every transaction involving police, in one way or another. When a person goes to a police station, the on-duty officer or others there will assess the complaint not on its merits but rather according to the identities of the two parties:

**1. What is the identity of the complainant?** Does she belong to a political party? If so, is it the ruling party or the opposition party, or a minor party? Is her family well-known? Do they have money? Does she have relatives in the government bureaucracy or police department?

**2. What is the identity of the accused?** Does he belong to a political party? If so, is it the ruling party or the opposition party, or a minor party? Is his family well-known? Do they have money? Is he a police officer or government officer? Does he have relatives in the government bureaucracy or police department? How do the answers to all these questions compare to those of the complainant? If the complainant is a poor and illiterate person, then she will be refused, or asked to pay some money for the expenditure of the policemen, and given a false assurance that someone will solve the problem. She will be advised not to file a case against the alleged perpetrators. If the complainant belongs to a rural middle class family, then her case can be filed following the intervention of some local influential persons such as the Union Council chairperson, a local political party leader or any representative of a powerful family in the locality, together with a sum of money. If the complainant belongs to the ruling political party, then the case will be recorded without any question provided that the accused is not also someone equally or more powerful and that there is no evidence of any request coming from someone more powerful not to take the complaint. Of course, some cigarettes and money will also still change hands. Unquestionably, complainants belonging to the ruling party or moneyed groups of people are warmly welcomed and entertained in police stations, their complaints recorded with assurances that the alleged perpetrators along with all their surviving family members will be thrown into prison in the shortest possible time. If the complaint is against any police officer, then the complainant, whatever is his qualification or identity, shall be refused, threatened, intimidated and ousted from the police station.

## **The tiger's claws**

In 2004, the government was compelled to pass the “Anti-Corruption Commission Act-2004” as the result of international and local pressure. At this point, Bangladesh was ranked as being among the most corrupt nations in the world, according to Transparency International. In February 2005 the former Bureau of Anti-Corruption was turned into an “independent” Anti-Corruption Commission, after repeated pressure by the international community and donors to Bangladesh. The commission is to date an irrelevance. This is partly as a result of legal and administrative hiccups in its formation and also the persistent lack of necessary rules and regulations to guide its functioning. The commission is unstructured, lacking in staff and resources, and still tied to the government through budgetary and recruiting constraints.

### **A malfunctioning policing system is not merely a defect of society; it is a threat to society**

Today the ordinary person in Bangladesh will try to avoid going to a police station even if his house is robbed. This is because the cost of the robbery is likely to be less than the cost of trying to get the case solved. When asked, the person may repeat a popular expression: “A tiger's claws inflict 18 injuries; a policeman's hands inflict 36.” A malfunctioning policing system is not merely a defect of society; it is a threat to society. As in Bangladesh today, where the police are out of control, it encourages crime. As in Bangladesh today, where they lack both competence and interest in criminal investigations, it destroys people's faith in the prospects for redress. As in Bangladesh today, where the police are corrupted from top to bottom, bridges between organised crime and the state are firmly secured. As in Bangladesh today, where they are thoroughly politicised, it allows for easy violent revenge against persons with opposing views. Where policing is such, to talk of human rights is meaningless.

### **Laws without order & courts of no relief in Bangladesh**

While the whole of Bangladesh is struggling for some justice, the country's laws and judiciary are compromised and incapable of meeting the people's needs. At every point there are contradictions and inconsistencies. Meanwhile, the police and other security forces kill and torture with impunity, and there is no relief in sight for the victims or their families.

### **Laws are designed to protect officials, not citizens**

Section 46 of the Constitution of Bangladesh empowers the government to extend immunity from prosecution to any state officer on any grounds: Notwithstanding anything in the foregoing provisions of this part, Parliament may by the law make provision for indemnifying any person in the service of the Republic or any other person in respect of any act done by him in connection with the national liberation struggle or

the maintenance or restoration or order in any area in Bangladesh or validate any sentence passed, punishment inflicted, forfeiture ordered, or other act done in any such area), to make the above-mentioned law. Although this provision was originally intended with reference to the 1971 war for independence from Pakistan, it is now being used to protect police and joint operations units from prosecution for human rights abuses. Notably, the Joint Drive Indemnity Ordinance 2003 removed from the hands of victims and their families the right to take legal action against soldiers, police and other security forces responsible for the gross abuses that occurred from 16 October 2002 to 9 January 2003 under Operation Clean Heart (see further: Nick Cheesman, "Fighting lawlessness with lawlessness [or] the rise & rise of the Rapid Action Battalion", *article 2*, vol. 5, no. 4, August 2006). But aside from the passing of special laws under section 46, there are barriers built into ordinary criminal procedure that prevent people in Bangladesh from making a complaint against an official. Sections 132 and 197 of the Code of Criminal Procedure 1898 are those that prove the best defence.

### **Under section 132, no criminal complaint can be lodged against any official without prior sanction from the government**

Under section 132, no criminal complaint can be lodged against any official without prior sanction from the government. This means that complainants must first lodge a case with a magistrate, argue the case and have it investigated simply in order to get it opened. Furthermore, an accused person who is found to have been acting "on simple faith" and following orders from a superior shall never be charged and his actions shall never be considered a crime. These provisions appear to have been incorporated into Bengal's criminal procedure by the British colonial regime to protect its personnel at all costs from being pursued into a court by a "native" whom they had wronged. It is also an article that seems to have much more in keeping with antiquated French administrative regulations than with the common law tradition. Even as Bangladesh's criminal procedure was being established, the eminent British legal scholar A V Dicey wrote of the "essential opposition" between the idea that a government official should have special protection from a court on the grounds that they were merely carrying out an order and the basic principles for the rule of law and justice in England: The personal immunities of officials who take part... in any breach of law, though consistent even with the modern *droit administratif* of France are inconsistent with the ideas which underlie the common law of England. (A V Dicey, *Introduction to the study of the law of the constitution*, 8th ed., Liberty Fund, Indianapolis, 1982 [1915], p. 267)

The government of Bangladesh has never sought to make changes that would overcome this inconsistency. On the contrary, it has exploited the section to an extent that perhaps even the British regime would never have imagined. And although section 132 runs contrary to decades of development in international jurisprudence aimed at establishing that to claim to have simply been following orders is no excuse from responsibility, still in Bangladesh it lives on. The courageous attempts of Shahin Sultana Santa and her husband to overcome these massive obstacles are illustrative. Santa was assaulted in front of television cameras and mercilessly tortured by the police in Dhaka during March 2006:



she was pregnant at the time, but lost her child shortly afterwards. In any sane and properly functioning society, such an incident recorded for the whole world to see would lead to swift and severe punishment of the perpetrators, and probably highlevel inquiries to determine what went wrong and make legal and structural changes to prevent similar atrocities in the future. But the police, judiciary and administration of Bangladesh are neither sane nor properly functioning.

What happened when Santa went to lodge a complaint? The Mohammadpur police refused to record it: not once, but repeatedly. Her husband, a lawyer, lodged two cases directly in the court. One of the cases was investigated by a judicial probe commission, on an order from the judge. The probe did not finish the job. The judge then ordered a supplementary report. The report concluded that “the victim was excessively tortured unnecessarily, which is a punishable crime under the Penal Code, if it is sanctioned by the authority according to the section 132 of the Code of Criminal Procedure”. So far so good, but what happened? The judge dismissed the case on a technicality: that the probe had not established the intent of the police as required under the Women and Children Repression Prevention (Special Provision) (Amended) Act 2003. Never mind that the judicial investigator had concluded that there was a case to be answered under the Penal Code, the whole thing was thrown out even before anyone was taken to trial. Santa and her husband are now pinning their hopes on the Supreme Court. But few others would have the know-how and determination to carry on if in their shoes.

Section 197 for its part iterates that a court must obtain government approval to hear a case against one of its officers, and then, that even if it is approved, the government has complete control over how the case is heard: Section 197- (1) When any person who is a Judge within the meaning of section 19 of the [Penal Code], or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of the [Government], is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the [previous sanction of the Government]- (2) [The Government] may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, [Magistrate] or public servant is to be conducted, and may specify the Court before which the trial is to be held. Under these circumstances it is no exaggeration to say that the notion of redress for rights abuses by state agents is nonexistent in Bangladesh. Where politicians use the police, magistrates and prosecutors for personal gain, what approval can be expected from them when an ordinary person alleges torture, death by “crossfire” or some other terrible wrong committed by police or other security officers? All claims by the government that there is justice and enjoyment of human rights in Bangladesh are made farcical when viewed through the lens of these laws.

### **Who’s afraid of a judicial probe?**

A judicial probe is an investigative inquiry into an active case by a magistrate under the Code of Criminal Procedure. According to its section 202, it is possible for (1) Any

Magistrate, on receipt of a complaint of any offence of which he is authorized to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police officer, or by such other person as he thinks fit, of the purpose of ascertaining the truth or falsehood of the complaint; [“Provide that, save where the complaint has been made by a court, no such direction shall be made unless the provisions of section 200 have been complied with.”]

In Santa’s case, a judicial probe found that she had been tortured and prosecutions could follow under the Penal Code, but still the judge found a way to enforce the wishes of the police rather than due process. This is the usual fate of a judicial probe in a human rights case. Take the brutal assault on journalists on 16 March 2006 in the Chittagong stadium at the start of a test cricket match between Bangladesh and Australia. This police attack also was televised and could not be disputed. Under heavy pressure, a judicial probe commission was set up under the District and Session Judge of Comilla. The State Minister of Home Affairs, Md. Lutfuzzaman Babar, promised that the probe report would be published in the media the day after it was submitted to his ministry and the alleged perpetrators would be prosecuted in accordance with its findings. The minister subsequently forgot all about these promises. The report was never published and nor have any perpetrators ever been punished, instead receiving only departmental disciplinary action.

Ultimately, most probe commission reports are useless documents that anyhow are ignored or manipulated by the authorities to reach whatever conclusion they would have come to in the first place: i.e. one that will ensure that the perpetrators escape punishment. Sometimes the failure is due in part to the work of the person heading the probe, who may deliberately distort and delay their findings to protect the accused, or who may simply have a lack of genuine commitment and interest in the needs of the victim. In other instances, it is the efforts of other authorities to undermine the probe that are its downfall. Many times it is due to both. In either case, most reports end up gathering dust on a shelf or in a wastepaper basket. In fact, whereas a judicial probe is intended to reveal truths that may cause the case to progress, it can also be used to dispatch a case without giving the complainant any chance to speak. This is because under section 202(2B) if the police are entrusted with the probe, “When the police submit the final report, the magistrate shall be competent to accept such report and discharge the accused.” This is what happened in the case of Abdur Razzak, who died in Bogra district jail on 27 June 2005 after illness and an assault which was allegedly on the orders of the jail authorities.

When Razzak’s mother lodged a complaint in court about the death of her son, the magistrate instructed the officer in charge of the local station, Police Inspector Mansur Ali Mondol, to investigate the case. Mondol lodged a final report with the court without investigating and recording the complaint as required. The case was closed without

Razzak's mother being informed. She was thereafter forced to open another case against the alleged perpetrators. Other human rights cases where judicial reports have come to little or naught include the assault of Rashida Khatun; the mass killings and assaults in Nawabganj, and the shooting deaths of two men and a boy and injury of at least 16 others on the orders of a magistrate in Kustia.

### **No rule of law + non-separation of powers = No independent judiciary**

In his 2004 report, the UN Special Rapporteur on the independence of judges and lawyers described how the rule of law and separation of powers are the pillars of the independence of judiciary: The rule of law and separation of powers not only constitute the pillars of the system of democracy but also open the way to an administration of justice that provides guarantees of independence, impartiality and transparency. These guarantees are... universal in scope... (E/CN.4/2004/60, para. 28) Although section 22 of the Constitution of Bangladesh directs the government to ensure an independent judiciary, in fact the entire lower judiciary in Bangladesh moves on strings extending from government departments. The components of the special rapporteur's equation—rule of law, separation of powers, independence of judiciary and for that matter, democracy—are all missing from Bangladesh today.

To understand why, it is necessary to look in more detail at the structure, work and characteristics of its judges. The judiciary in Bangladesh has three major parts, starting with magistrate's courts and then judge's courts in each of the country's 64 districts, and at its peak, the Supreme Court, which comprises of a High Court Division and Appellate Division. To open a case, it is necessary to go through a magistrate. Here a complainant will find the first problems, particularly if the complaint is against a state official. Magistrates are not independent of the government. In fact, they are petty administrators-cum-judges. All magistrates throughout the country, and at the four metropolitan cities, where they work in Chief Metropolitan Magistrate's Courts, are answerable to the district deputy commissioner. This person is the chief executive officer of the area. The deputy commissioner will also hold the position of district magistrate, who is in turn the boss of the additional district magistrate. The latter handles the assigning of duties to the sitting magistrates throughout the jurisdiction in consultation with the district magistrate/deputy commissioner: these may include revenue collection and other administrative functions.

So magistrates work for not only the Ministry of Home Affairs but also the Ministry of Establishment and the Ministry of Finance. They can also at any time be assigned duties from other ministries. A "magistrate" may at 9am start work as a revenue collector, after 11 am go to sit as a judge in court and conduct trials and after lunch be engaged in some other government business. Needless to say, the first priority of these so-called magistrates is to implement government orders, rather than adhere to any notion of judicial integrity. They also are actively involved in investigations of cases as well as arriving at verdicts: an executive magistrate and judicial magistrate rolled into one, but less efficient than two separate persons.

Judge's courts are the second line of defence for the state and its functionaries. Each is headed by a district and session judge, accompanied by an additional district and session judge and a number of sub judges, senior assistant judges and assistant judges. Perhaps the titles are intended to be ironic, or to convince the public that through reiteration of the word "judge", one can be found somewhere. In fact, none can be properly called a judge in the sense that the word is understood in developed jurisdictions or international law. Instead, these are just a higher level of state agents. The Ministry of Law, Justice & Parliamentary Affairs oversees recruitment, posting and promotion.

Although the "judges" may not have to run around collecting taxes and looking after government property like magistrates, still they are subject to the dictates of the executive, not any judicial authority. It is obvious to any intelligent onlooker that when judges are under executive control, the government can interfere in undertrial cases whenever it feels like it. And it does. Much of the time this is done through various indirect means. But sometimes also it is direct, particularly where a politician from the ruling party needs to be rescued from prosecution. The case against Bangladesh National Party (BNP) leader Mirza Khokon in connection with a series of bomb blasts on 10 November 1998 is a good example. Khokon, the brother of BNP Joint Secretary General Mirza Abbas (later a government minister) was leading an opposition rally through the Khilgaon area of Dhaka when bombs went off in the vicinity, killing one person. Participants in the rally were blamed.

On 21 September 2000 six persons, including Khokon, were charged. After the BNP took power, the case was kept pending. Then, Sheikh Momen, a Senior Assistant Secretary of the Ministry of Home Affairs wrote to the Additional District Magistrate of Dhaka on 19 June 2006 "recommending" that the court drop Khokon from the charges. On July 3, the magistrate asked the prosecutor to comply and, not surprisingly, on July 17 an application was lodged to drop Khokon's name from the case. Finally, on July 25 the Metropolitan Session Judge's Court did as instructed. The Ministry of Home Affairs said that the murder case had been politically-motivated and that by removing Khokon from the charge sheet they were saving an "innocent" man. Whether or not Khokon had anything to do with the blasts will never be known as in either case there is no means under the present judicial system to try such a person without political interference one way or the other.

The Supreme Court of Bangladesh, including both of its divisions, is the only genuinely independent court in the country. In fact, in contrast to other parts of Bangladesh's odd judiciary, it has up to the present obtained public respect for its uprightness and non-partisan decisions. Among its historic verdicts in recent times was its order to the government to cleave off the two lower tiers from the various ministries to which they are answerable (in *State vs. Mr. Mazdar Hossain*, 2 December 1999). That order included 12 directives to the government, including to establish a Judicial Service Commission for recruitment of judges of the subordinate courts and to ensure financial upkeep of the courts. The problem is that as the one island of relative coherence and consistency in a sea of corruption and maladministration, the Supreme Court judges have difficulty enforcing these directives. Even the staff members of the Supreme Court offices, such as

bench clerks, are known to compel litigants to pay bribes every step of the way, and offer extra services, such as pushing cases up the queue, for more money.

### **Hollow commitments to an independent judiciary**

Successive governments have for the last 15 years promised to separate the judiciary from the executive. In 1991, when the BNP won the election after nine years of military rule, this was among its key pledges. It was such a fine-sounding pledge that after five years of having done nothing about it, not only the BNP but all of the major political parties made the same commitment before the general election in 1996. The new administration, led by the Awami League, took a leaf from the BNP's book and also let five years pass without any evidence that it could recall having made such a promise. In 2001 a caretaker government led by a retired chief justice of the Supreme Court gave signs for hope. Freed from the usual party political shackles, it began steps to make good on the government's now legal obligations for an independent judiciary (keep in mind that the Supreme Court in 1999 had ordered that the earlier election promises be made reality). But the former chief justice was advised on the phone by the subsequent Prime Minister, Begum Khaleda Zia, to leave the job for her "elected people's government". As her BNP-led four party alliance had put the separation of the judiciary at the forefront of its pledges, the caretaker government took Khaleda's word for it, and left the job to the "people's representatives". The opportunity was lost. Nearly five years have passed and the government has again, predictably, done nothing. Meanwhile, the government has kept playing the Supreme Court for time. After its order to separate the judiciary from executive branch, the government began applying for extensions.

Like a schoolboy coming to class with one implausible excuse after the next about why he could not do his homework, it applied on 23 occasions for more time, saying that framing new laws and amending old ones is not easy. For instance, it pointed out that the antique laws and procedures governing the magistrate's courts, notably the Code of Criminal Procedure, need a bit of work to bring them into the 21st century. It has since managed to frame some basic rules and regulations, but for the most part has just wasted time and allowed the bureaucracy to move at snail-pace as usual. Finally, the Supreme Court lost its patience. On 5 January 2006 it rejected the government's latest request for more time, and said that it would not entertain any more. The government had taken almost five years to formulate the Judicial Commission and the Pay Commission, while the Rules of Bangladesh Judicial Service (Formulation, Recruitment, Transfer, Suspension, Termination and Removal) 2006 and the Rules of Bangladesh Judicial Service (Posting, Leave, Grants, Discipline and other conditions of service etc.) 2006 have been prepared after the imposing of the Rules of the Judicial Service Commission by the president. A contempt of court case has now been opened against the government over its failure to implement the 1999 order. How long that takes, remains to be seen. Meanwhile, people in Bangladesh are left to suffer injustice heaped on injustice by their ridiculous lower judiciary.

## **The politics of prosecutors**

As if the deliberate non-independence of judges alone was not enough of a problem, the government of Bangladesh also plays havoc with the way that cases are prosecuted. Public prosecutors are political party playthings. Each time a new government comes to power—that is, each time power rotates from one of the two main parties to the other—all of the public prosecutors and assistant public prosecutors in the country are replaced, from attorney general down. They carry on until the next power flipflop, and again the other side puts its own people back in. Prosecutors are also thrown out during a government's tenure if they dissatisfy the whims of a local member of parliament, a minister, or some other political heavy. Their appointment and job security is not determined by their ability or professionalism but by the extent to which they have served the financial and political interests of the appointing party, its leaders and followers.

The obvious consequence of this mad system of appointment and promotion is that there is no building of a functioning institution and tradition of good prosecutors. They do not accumulate experience or build an institutional legacy to pass from generation to generation as they are in and out the door every few years. The skills needed for proper prosecuting do not develop, and instead political bias is the sole determining factor. Prosecutors simply make the most of the time that they have in their positions to benefit themselves and their patrons. The prosecuting and investigating branches also are completely detached. If the police do not investigate a crime, the prosecutor has no responsibility. Most of the time public prosecutors accept charge sheets prepared by police officers solely because of bribes or other external pressure. They will only challenge the police when there is a direct conflict between the police and their political masters. Under any circumstances, in most instances the police will also simply choose to go along with whatever the political party in power at the time wants and expects of them. As long as they can keep making money and getting away with whatever else they are up to, they adopt a mercenary approach.

The March 1999 bomb blasts case is a good example of all these problems with prosecutors and politics in court cases. Around midnight on March 6 that year, two explosions killed ten persons and injured around a hundred attending a cultural programme in Jessore. More than ten of the wounded suffered permanent injuries. The same night Sub Inspector Abdul Aziz lodged two cases with the district police station. Assistant Superintendent of Police Dulal Uddin Akand in the Criminal Investigation Department was assigned to investigate. Finally, in December ASP Akand laid charges against 24 persons, including a top leader of the BNP (later a government minister), Tarikul Islam. Other persons connected to the BNP, which was then in opposition, were also named.

In response, Islam submitted a petition to the court seeking to get his name removed from the charge sheet, which was finally done by the Appellate Division of the Supreme Court on 12 August 2003. Only then could the trial proceed. On 28 June 2006, with the BNP in power, the Special Tribunal of the Session Judge of Jessore released all of the alleged

perpetrators unconditionally. Judge Abul Hossain Bapari said that the prosecution was completely “evidence-free” and proposed that “the investigating officer should be prosecuted for preparing a false charge sheet”, the accuracy of which the prosecutor had failed to verify. He gave as an example that on 19 January 2006, ASP Akand admitted in court to having forced five of the accused and seven witnesses to sign blank papers which were used to construct fake testimonies. None of those persons were ever produced before magistrates. The officer also admitted that he had intended to use the case to frame Tarikul Islam and other BNP members.

After the verdict, a discouraged victim who saw that among the group there were persons who got off because the police messed up the case by dragging in political opponents of the government was reported as saying that, “I have lost one of my legs, ten people died and more than 100 were injured like me. Now the killers are doing victory lap around the town. What have we got out of the trial?” This is the question that each and every helpless person asks as they watch killers, torturers and rapists leaving the court, or cases destroyed by political interference, while the jails are packed to the ceiling with innocents. Although the judge in this case sanctioned the investigating police for wrongdoing, there was nothing to be said of the prosecutor. The prosecutor has no obligation to check facts and allegations before taking a case to court. Even if a prosecutor goes in “evidence-free”, it is other people who have the problems. The prosecutor feels answerable only to his party bosses. He does not share blame when truth is distorted. Nor do politicians who get targeted by such practices take initiatives to change the system: after all, when they are in power, they hope to do the same to their rivals.

### **An independent judiciary remains a dream in Bangladesh**

Another political government has finished its five-year tenure with fake promises of making the judiciary independent from executive control. Moreover, the outgoing four party alliance government used its power to release party activists and the relatives of party leaders. In the cases of the ruling party political leaders and their relatives, the government used Home Ministry officials to request the concerned courts that are directly controlled by the ministry to drop the names of a certain number of accused persons from trials, which was executed accordingly by the respective courts. The Public Prosecutors (PP), who were in almost all cases politically recruited by the Ministry of Law, Justice and Parliamentary Affairs, had to play dubious roles regarding the withdrawal of cases following the ministry’s direction.

The Home Ministry has no hesitation in deciding itself qualified to adjudicate these cases on behalf of the courts, which are anyhow compliant with its wishes and not independent. In this manner, justice is mocked and political expediency reigns supreme.

The manner in which the Home Ministry chooses to withdraw cases against its people suggests that either it itself does not have any faith in the judicial system, or it is harbouring killers. If it did, and the accused in these cases were truly innocent, then

surely it could let a trial run its course and see the accused redeemed before the law and the country through full proceedings. Instead, by acquitting them itself it is sending a message to the country that the courts cannot be trusted to make a reliable decision. The only other conclusion that can be reached about this behaviour is that the accused persons in these cases were in fact guilty and the purpose of withdrawing charges against them was to free them from legitimate punishment. The message sent in this case is that anyone with ruling party connections is guaranteed impunity. In either case, what expectations can anyone else have whose interests come before a judge?

The same concerns arise with regards to the police and public prosecutors. All of the accused were charged following criminal investigations. Were the police investigators also politically motivated? Can their investigations be trusted? If the Home Ministry is so confident that the charges were brought without any basis, what action will now be taken regarding those who carried out the investigations? And what can be said of the public prosecution each time a case such as this is withdrawn, other than that it is an open humiliation of its role and personnel? Again, the ordinary person will be forgiven for lacking confidence in these institutions when they are rubbished by the government itself.

It takes considerable time and money for an ordinary person to get a case lodged in a court. One reason for this is to prevent frivolous complaints. In Bangladesh, it takes relatively more time and money than in other countries. The families of victims felt that there were charges to be answered against those accused who have now been acquitted by the Home Ministry. They have seen their time and money wasted due to the politicised condition of the country's courts. They may now themselves be subjected to attacks for having filed their complaints. Frustrated and hounded, they are left with less and less hope for justice each passing day.

The notion of independent courts has been all but lost to the people of Bangladesh. There is in its stead the notion of courts as an asset of the state, and specifically, whichever party is in power at the time. Faith in the system will only be restored over time if a concerted effort is made to separate the courts from the Home Ministry, and so, from the clutches of the political parties.

The victims of the crimes committed by the persons having political identities of ruling party lost all the hopes to get justice any more due the said trial by the Home Ministry instead of the courts of law.

Before handing over the power the outgoing Law Minister, Barrister Moudud Ahmed, claimed that because of no more sessions of the parliament his government failed to complete the separation of judiciary that require an amendment of the Code of Criminal Procedure in the parliament. The government passed five years in the office promising the separation of the judiciary from the executive did not consider and respect its own parliament, its laws and its country. If the administration had five years in which to get "only an amendment" to the Criminal Procedure Code through parliament towards fundamental changes in the management of courts in Bangladesh that could bring them closer to compliance with international law, why has it failed to do so? The minister



offered the pretext that parliament was out of session. But if the matter were important enough, it could be a simple matter to call another session before parliament was dissolved.

The government also seemed to have forgotten a ruling of the Supreme Court on this matter. In *Secretary, Finance Ministry vs. Masdar Hossain*, the Supreme Court on 2 December 1999 ordered the government to separate the lower judiciary from the executive in accordance with 12 points. Among those, point 11 set aside an earlier ruling that it was not necessary to amend the constitution in order to ensure fulfil this obligation. "If the parliament so wishes, it can amend the constitution to make the separation more meaningful, pronounced, effective and complete," the court ruled. So why has the parliament not so wished? Have its members, together with the minister, suffered collective amnesia of this unprecedented ruling? And why have they spent five years seeking extensions of time, rather than comply with the court's instructions?

### **The only sure things in Bangladesh: Death and Impunity**

Impunity and death are the only sure things in Bangladesh today. Both come in many forms, but whereas one is an inevitable part of the natural order, the other is part of the country's unnatural and degenerate political, legal and administrative goings-on. The unfortunate thing about impunity is, of course, that it just keeps creating more impunity. A person who assaults another on behalf of a political party and gets its protection when it is in office becomes more committed to keeping that party in power at whatever cost.

A police officer who kills for a superior and is protected by him afterwards has entered into an extralegal contract that will be far harder to break than anything the country's pathetic legal system can enforce, if it ever had the inclination. A politician who steals government money and is protected by his appointee in the court will do her best to see that judge brought up through the ranks. In fact, everything is about the movement of officials from this post to that, through chains of command from political patrons: an entirely different structure in reality from the charts drawn up on paper for the sake of bureaucracy and to be reviewed by international organisations and donors.

This is the legacy that is being left to the children of Bangladesh. The legacy of scratching backs, of give and take. It is a legacy that causes enormous frustration to the millions who suffer from impunity, rather than benefit from it. These people have lost trust almost completely in those claiming themselves to be police, judges, prosecutors and administrators. As a result, they do not go to seek help from the police, or lodge a case in a court. If worse comes to worse, they find their own way of dealing with problems, or withdraw completely. The entire nation is filled with mistrust, fear and hatred; democracy, human rights and the rule of law are figments of the imagination in today's Bangladesh.

## **Fighting lawlessness with lawlessness (or) the rise & rise of the Rapid Action Battalion**

There is an armed group in Bangladesh today which is beyond the reach of the law. It moves by night and makes its own rules. It kills and threatens with impunity. It robs and steals. It is responsible for escalating public anxiety about the level of crime and terrorism. It is the Rapid Action Battalion, or RAB.

The Rapid Action Battalion, which was inaugurated on 26 March 2004 and began its operations on June 21 of the same year, is depicted by the government of Bangladesh as an elite joint-operations crime-fighting force. In fact, RAB personnel operate as hired guns for whichever political party happens to have its hands on the reins of power. Through systemic violence and trademark “crossfire” killings, their great success has been the spreading of more panic and lawlessness throughout Bangladesh: the very things needed to justify the RAB’s continued existence. Where did the RAB come from, how does it get away with what it does, where is it going, and why?

## **The 86-Day Tragedy a.k.a. Operation Clean Heart**

In late 2002 the government of Bangladesh issued an executive order that launched a drive to arrest “wanted criminals” and recover “illegal arms”. The order was aimed at curtailing a rapid rise in cases of murder, extortion, kidnapping, and crimes against women by warring gangs that were allegedly linked to members of both the major political parties. Codenamed Operation Clean Heart, it comprised of army, police, village defence force, and border security personnel. It lasted for 86 days, from 16 October 2002 to 9 January 2003. During this time there were 58 deaths in custody, all “heart attacks” according to the concerned authorities. Over an estimated 11,000 people were arrested, held and brutalised at military camps. At least 8000 were persons against whom no case had ever been lodged. A few “wanted criminals” were captured, but most managed to hide elsewhere until the whole thing blew over. Undeterred, the government cooked up some statistics upon which to claim success. Countless ordinary citizens, meanwhile, had been traumatised and panicked out of their wits. Little wonder that at least a few of the heart attacks were genuine: during Clean Heart, the sound of a military vehicle or boots approaching your front door was enough for a few persons to literally die of fear. And so Clean Heart became synonymous with Heart Attack. Some victims sought to lodge criminal complaints. The government, fearing that criminal complaints could multiply, threw a blanket of impunity over the 50,000 or so personnel involved in the operation. On 24 February 2003 it passed an indemnity law in accordance with section 46 of the constitution, which denied the possibility of justice for anyone whose rights had been violated during the period, including those killed (see further: Md. Ashrafuzzaman, “Laws without order & courts of no relief in Bangladesh”, *article 2*, August 2006, vol. 5, no. 4). Two independent UN human rights experts communicated their “serious concern” over the Joint Drive Indemnity Ordinance 2003.

On January 21 the Special Rapporteurs on torture and extrajudicial executions together called for the government to abide by international standards and “ensure that all allegations of torture and death in custody are promptly, independently and thoroughly investigated”. The indemnity law ensured that this did not happen. It instead gave immunity from prosecution to all concerned personnel and officials for involvement in “any casualty, damage to life and property, violation of rights, physical or mental damage” throughout the 86-Day Tragedy. Although it was challenged in court, no state officer responsible for deaths, serious injuries or other offences during those 86 days is known to have ever been punished in accordance with the criminal law. The indemnity law also flies in the face of a global trend away from such enactments. In his 2005 report, the UN Special Rapporteur on the independence of judges and lawyers observed that “The granting of immunity by means of amnesty laws is being rejected by national and regional courts... Argentina, Chile and Poland have repealed the amnesty laws adopted by the authoritarian regimes or at the time of transition which infringed their international obligations... Several recent decisions have confirmed the incompatibility of amnesty measures with States’ obligation to punish serious crimes covered by international law...”

The appeals chamber of the Special Court for Sierra Leone recently declared it to be a well-established rule of international law that a Government may not grant amnesty for serious crimes under international law. (E/CN.4/2005/60, para. 48) Never let it be said that the government of Bangladesh did not do its best to run contrary to international trends in human rights (despite its best efforts to appear to be doing the opposite).

### **RAB, from heart attacks to confused minds**

Operation Clean Heart and the Joint Drive Indemnity Ordinance were the chronological and ideological mother and father of the Rapid Action Battalion. The government explained—in the broadest sense of the word—that there was a “felt necessity” due to the “unstable law and order situation” in the country to establish a permanent joint anti-crime force along the lines of that used during the 86-Day Tragedy. At first, policymakers dreamed of a Rapid Action Team, a “RAT”, but somebody woke up in time and it was renamed RAB. The RAB was legalised through the Armed Police Battalions (Amendment) Act 2003, which has its origins in the Armed Police Battalions Ordinance 1979. The amended law gives the RAB wide responsibilities, including “intelligence in respect of crime and criminal activities” and “investigation of any offence on the direction of the Government”. And then there is section 6B (1): “The Government may, at any time, direct the Rapid Action Battalion to investigate any offence”. Any offence, any time: this is what justifies the description of the RAB as hired guns. Translated, section 6B (1) reads as follows: “The Government may, on any whim, use the Rapid Action Battalion to harass and otherwise maltreat any person without cause for its own purposes.”

The government of Bangladesh has told the UN Special Rapporteur on extrajudicial executions that the RAB is “guided strictly by the Code of Criminal Procedure” (E/CN.4/2004/7/ Add.1, para. 26). This is in reference to the latter subsections of section

6 in the 2003 act. In reality, nothing could be further from the truth. Here is one small example. According to section 103 of the code, police who search a certain premises must first obtain two or more “respectable inhabitants” of the locality to witness the search and countersign any record of seized items. When RAB personnel take persons in their custody to search and retrieve weapons or other illegal objects at 3am they completely ignore this obligation. It is under these circumstances that RAB personnel conveniently get into “crossfire” and the person in their custody dies. Perhaps the RAB members are not complying with the code out of concern for the safety of the respectable inhabitants.

The entire reference to the Code of Criminal Procedure is spurious anyhow, for reason that criminal procedure in Bangladesh is both devised and carried out with the purpose of blocking the possibility of any complaint against state officers, including through provisions of the code itself (see Ashrafuzzaman, “Laws without order”.) The mingling of both personnel and law in the RAB has intentionally caused confusion. The majority of RAB personnel are soldiers. Out of the nine of its 12 regional battalion commanders listed on its website at time of writing, eight are army lieutenant colonels. Only one is a police officer. Informed observers in Bangladesh tell that the overwhelming majority of the RAB command is from the military. In this, RAB is a replica of the joint-force used for the 86-Day Tragedy. However, RAB is part of the Bangladesh Police and technically under command of the police chief. Police personnel are obligated to follow the Police Regulation of Bengal and Police Act 1861. Yet the 2003 amended act makes no mention about whose guidelines it is meant to follow, and at the same time gives authority for the making of orders to the Ministry of Home Affairs rather than the chief of police.

The multiplicity of persons apparently or actually in charge of the RAB, and duplication of command hierarchies, frees the RAB from any particular responsibility to anyone. Whereas the control of behaviour in law enforcement depends upon a sequence of functioning posts and departments, if these are jumbled up, maintenance of internal order is lost. All that is left is a RAB on the loose. The Policy to Confuse through the RAB can be understood by looking at the procedure for conducting and forwarding the results of a criminal investigation. Its 12 separate battalions are spread out across the country in perceived high-crime areas, and under them there are smaller units that are designated to various localities. They work independently of the police. Meanwhile, the police have a headquarters in each of the country’s 64 districts, a number of stations under each headquarters, and a number of outposts again under each of those. Officers ranked sub inspector and above are entitled to conduct criminal investigations, unless directed otherwise by a court or the Ministry of Home Affairs. The investigation report is submitted to the officer in charge of the police station, who submits it to the district superintendent of police, who bumps it on to a court. But instead of taking responsibility for submitting its own reports to the courts through an established procedure, the RAB palms its work off to the regular police, to whom it owes nothing, who then have to do the job on its behalf. Section 6C (2) of the 2003 amended act states that a RAB investigator “shall file his report to the OC of the concerned police station; the OC shall, within 48 hours of receipt of such report, forward the same... to the competent court or tribunal”.

Any court receiving a report on a RAB investigation is getting it by way of a proxy. And that proxy has no responsibility to ensure the contents of the report are accurate or in any way reliable, or to seek clarifications where necessary and procedurally allowable. Another important aspect of the RAB is that its personnel are not permanently appointed. Rather they are “seconded” to the battalion, and after a period return to their original posts in the armed forces, border security force, police and the village defence units, often with promotions. So the lessons learned from RAB—i.e. that abducting, killing and robbing are permissible—get carried back into other parts of the security forces. The current police chief, for instance, is a RAB alumnus. This may be one of the reasons that since the battalion’s inception the number of murders and other gross abuses committed by the regular police also appears to have increased: recent documentation by the Bangladesh Institute of Human Rights puts the (much larger) police force ahead in the killing contest for the first half of 2006, the police credited with an innings of 83 killings for 58 incidents, while the RAB had 78 for 73.

### **“Crossfire”, the slogan, the storyline & the take**

Wherever extrajudicial killing is made policy, a routine explanation is needed for each body sent to the morgue. For instance, in three months of 2003 more than 2500 alleged drug traffickers were shot dead in Thailand during the first “war on drugs” launched by an executive order of the prime minister there. An unknown number were killed by the police and their accomplices: as almost no investigations have ever been conducted into the killings, it is also unlikely that it will ever be known. The number of victims who were actually involved in the drug trade as against innocent victims also is unknown. By contrast, what is well-known are the prefabricated stories told, with minor variations, to explain the every new body. First there was the slogan, for advertising purposes: “killed to cut the link”. The second feature, the storyline, kept the audience interested: the person’s name was on the list of suspects; he was called to the police station for inquiries; he confessed to some wrongdoing; he was released after signing a statement; his drug-trafficking pals shot him on his way home/at home/a few days later “to cut the link”; they were not identified.

Thirdly, there was the take, the stuff brought back in “evidence”: those signed “confessions”, and lots of little blue plastic bags neatly packed with an identical number of amphetamine pills in the back pockets of victims’ pants. Then again, according to independent forensic scientists, it was a small number of little blue plastic bags being neatly reused after the victims were already shot dead. No matter, they were dead, the prime minister was happy. A few lawyers or human rights commissioners may stir up some trouble. No one else would care, the reasoning went. Now let’s look at Bangladesh. By the RAB’s own tally, 283 persons have “died during exchange of fire”/ “in crossfire”/ “in the line of fire” since it was established.

As in Thailand, the actual number remains unknown, although independent fact-finders and journalists estimate it to be several times higher. Again, what is well-known is how it

works, thanks to the storyline: the person was arrested as a suspected violent criminal/terrorist/whatever; he confessed to having hidden some weapons outside of town; he was taken there (oddly, sometime between midnight and dawn) to recover the weapons; somehow his criminal buddies found out and ambushed; there was a crossfire/exchange of fire; he tried to escape; he died in crossfire/ during exchange of fire/in the line of fire; the assailants got away; there were five to ten serious criminal cases against him. Part three, the take: an old pistol or two, a few rounds of ammunition “recovered” from the site of the killing. Sometimes some other stuff. RAB battalions list among their “successes” the recovery of toy revolvers; Viagra; fake dishwashing items, and black stone statues.

Thanks to RAB Bangladesh has been freed from the scourge of toy revolvers, perhaps being wielded by stone statues on Viagra. Two people who were recently taken to see how this works in practice were Harun-ur-Rashid and Aslam Hossein. Like many of the victims in Thailand, they had earlier had criminal records but had come clean under a government programme. Like many in Thailand, they had had no further criminal records since that time, and had gone into legitimate business. But as in Thailand, their old files could be pulled out whenever a few of the usual suspects were needed. In Rashid and Hossein’s case, they had reportedly been pressured by politicians and old contacts to get back into crime, but had resisted and moved to another part of the country to avoid harassment. RAB found them anyway, and on 14 July 2006 sent them back to their hometown, Jessore. In the early hours of July 16 RAB-6 personnel took them in two different directions and both died in separate and yet virtually identical “crossfire” scenarios. The RAB lodged cases against both to the effect that they had murdered many persons each, an allegation contested by their families and doubted by villagers in the area.

Then there was Mohammad Masudur Rahman, also known as Iman Ali. The RAB allegedly killed Ali in Savar, Dhaka on 9 March 2006 after taking him from the front of the Dhaka Session Judge’s Court premises the previous day. Security guards stationed nearby where he was killed said that they witnessed RAB members “exchanging fire” by shooting their guns overhead. Perhaps the criminal gang with whom they were engaged had suddenly sprouted wings and flown away. For its part, the battalion claimed that Iman Ali was an accused in four murder cases. His family lodged a case against the RAB, home affairs minister and chief of police on March 22. The magistrate said it was outside of the court’s jurisdiction. Iman’s brother, Nazrul Islam, lodged a revised petition with the Metropolitan Session Judge’s Court, alleging that his brother was murdered because he supported the inhabitants of Miton village against land-grabbing by a cousin of the home affairs minister. He also alleged that the officer in charge of the Savar police station, Haidar Ali, told him as much when he went to the premises shortly after Ali was abducted, saying that, “Your brother leads a movement against the home minister’s cousin and you have come to learn about him. How dare you! He [Iman Ali] has been sent for ‘crossfire’.”

Despite the case being lodged, there is no evidence of progress, and no investigation has been conducted into the family’s allegations. How about Abul Kalam Azad Sumon? The

23-year-old opposition party activist was taken into a field at Rampura Banosri residential area under the Khilgaon police station in Dhaka late at night on 31 May 2005 and came out dead thanks to RAB-3 personnel. Eyewitnesses in that case have said that they saw the RAB shoot Sumon at close range. Predictably, a RAB press release said that the victim had six cases listed against him in different police stations around Dhaka. Human rights defenders and journalists took the time to check. None of the stations could produce a scrap of paper on Sumon. Again, a complaint with little hope of success was lodged in the metropolitan magistrate's court, with the help of opposition party leaders.

The policy of killing through crossfire has been reaffirmed by members of government. Minister for Law, Justice and Parliamentary Affairs Maudud Ahmed, the overseer of Bangladesh's lower judiciary, made clear in a press briefing on 30 November 2004 that death in crossfire under RAB or police custody could not be considered custodial death. This, he reasoned, was so because the state officers would only be opening fire to save themselves. Since that time, no member of the RAB has ever been prosecuted for a killing. Most families of victims do not even bother to complain as they are aware that it will be fruitless and only cost money, time, energy and risks to their own security. Only those with some personal involvement in a political party or other outside assistance and support try to raise their voices. The policy is also ensured by procedure. In keeping with the Clean Heart spirit of 2002-03, under the Armed Police Battalion Ordinance RAB members are indemnified from prosecution for any action "done in good faith" under the law.

Where exactly does "good faith" come into the picture when detainees are marched into fields at 3am and shot on the pretext of an encounter? The question has not been answered, as the only known steps taken following the hundreds of almost identical deaths have been through routine executive inquiries. These require that after police have discharged firearms the reasons be ascertained and the shooting be found to be in compliance with regulations. The reports from these executive inquiries are useless. The investigating officers aim to find some justification for the shooting and get on with other things. Their reports are never made public, but a former police chief has been quoted as having said that the overwhelming number of them conclude that "crossfire" was justified.

### **Why RAB & crossfire, not courts & due process?**

Rather than attempt to address the deep institutional problems in Bangladeshi courts, including the non-independence of judges, political control of prosecutors and rampant corruption described elsewhere in this report, the government has found it easier—and more suitable for its own purposes—to mete "justice" through the gun, no matter the consequences. Basil Fernando, director of the Asian Legal Resource Centre, has described how this thinking was applied in his own country of Sri Lanka, and the consequences: The situation of instability and insecurity prevailing in the country during the last three decades, particularly during the last decade, has given rise to a 'consensus' that order has to be maintained with or without law. The underlying assumption in this

way of thinking is that the law itself could be an enemy of order. According to this way of thinking, certain provisions of law restrict the powers of law enforcement officers to deal with disorderly conduct by some persons or groups. It follows that the perceived restrictions need to be removed and that, once freed from such restrictions, the law enforcement officers may return order and stability to society. This way of thinking is usually regarded as 'realistic'. The maintenance of order through legal means is considered unrealistic for the following reasons, among others:

- Financially speaking, the country cannot afford to have well-functioning law enforcement machinery and must therefore be resigned to defective machinery;
- Too much insistence on law may discourage law enforcement officers from carrying out their functions even to the extent that they are doing them;
- As corruption and abuse of power are facts of life in the country, it may not be a wise policy to fight too hard against them; and,
- As the insistence on law may lead to conflict, it may be necessary to restrict such agencies that insist on observing the rule of law, such as the judiciary.

These and other similar considerations form the basis for encouraging practices such as killing under certain circumstances. The country now has the lessons gained by the experience of testing the practices ruthlessly launched on the basis of such a social philosophy. Instead of bringing about order, these practices have confounded the situation a thousand-fold. Ironically, the worsening of the situation may reinforce this same philosophy. It is like the situation of a creditor who gives further credit to a debtor in the hope of regaining his earlier loans. [WJ Basil Fernando, 'Disappearances of persons & the disappearance of a system', in *The right to speak loudly*, Asian Legal Resource Centre, Hong Kong, 2004, pp. 41-42] This is both a description of Sri Lanka and a prediction for Bangladesh.

While innocent people go to jail, real criminals in Bangladesh have many means at their disposal to be freed on bail. Legal loopholes and bribery are plentiful, political influence, normal. The members of local Union Councils whose alleged acts of rape are described in this document (stories 26 & 33) appear to have had no difficulty in obtaining their get-out-of-jail cards, one of them repeatedly. So have virtually all of the other alleged perpetrators with connections to the police whose cases have been studied by rights groups. Where the intervention is early enough, the matter may be dealt with even before it is fully recorded and lodged in court. Where a complaint is already made, the police officer is then made aware of the situation, with some harsh words and threats if necessary from the concerned politician or overlord, and the necessary arrangements are made to sort the matter out in court. Magistrate, prosecutor and any other persons involved will all be made to understand that the case is not to proceed. If the accused is a political party member, the party may launch demonstrations for the person to obtain bail. Inevitably, enormous frustration wells up among the victims and general public, as well as among many police officers and other public officials who are daily made aware that they are engaged in a farce. So it comes as no surprise that many applaud when "bad guys" get shot dead rather than bothering with messy criminal procedures, rights and obligations. A key related problem is the absence of witness protection.



Where witnesses have no guarantees of security will they give testimony in an open court? This is a common and grave concern that is deeply undermining the judicial systems of many countries throughout Asia, particularly where state officers are among the accused. In the Philippines it has gone so far that families whose relatives are shot dead in the doors of their houses are not willing to lodge complaints and identify suspects. When a wife refuses to name the person who shot her husband dead in front of her it can only be for the reason that she knows the same awaits her if she speaks. In Bangladesh, over three and a half decades since independence the government has apparently shown no inkling about the notion of witness protection, nor any interest to do anything about it.

The death of Sumon Ahmed Mazumdar says it all. Mazumdar, a witness to the murder of Member of Parliament Ahsan Ullah Master, was pulled from his house in the Amtali area of Gazipur by RAB personnel at around 3:45pm on 15 July 2004. The arresting officers told others present that they needed to interrogate him as he was a witness in the murder case. Even before Mazumdar was in their vehicle they had assaulted and blindfolded him. He was taken back to the Dhaka headquarters at Uttara, where he was held incommunicado and severely tortured. Around midnight the Tongi police station called his family to say that the witness was in their custody. However, the family was also unable to see him there. That morning, they received an anonymous call to the effect that Mazumdar was dead. At around 8am Monir Ahmed Mazumdar located his son's body on the floor of a hospital, next to a staircase.

The police record showed that the witness-turned-victim had been detained by the RAB for extorting money from a businessman on the afternoon of July 15, although the complaint was only recorded with the police station at 11pm that night. The police record and RAB media release gave different accounts of how the dead man obtained his injuries, which in either case absolved all of them from any wrongdoing. Independent fact-finders were unable to locate one businessman in the area who could support the allegation that the victim had been extorting money. Attempts by members of the judiciary to address the frequency of killings by "crossfire" seem to have been negligible. As discussed elsewhere, magistrates and district judges are unreliable officials to call upon for redress in any case of abuse by state agents.

As for the Supreme Court, Chief Justice Mohammad Habibor Rahman was quoted as having said at a public gathering in January 2005 that, "We have belatedly decided to get a report on every death in crossfire. We ought to have asked for a report when the first incidents of death occurred. That would make the law and order men more cautious." (Daily Star, 19 January 2005) Whether or not the court ever received its reports, the killings have continued regardless. Clearly more is needed to make the "law and order men more cautious".

## **RAB goes ROB**

Apart from killing people, the RAB is also itself reported to be keen on a host of other criminal activities. Many of these have been widely reported in the local media. RAB personnel and former personnel have in recent times earned a reputation for robbery. In July 2006, newspapers described an incident involving a covered van on its way from the port in Chittagong to Dhaka with a load of imported goods. It was still early morning on July 13 when the vehicle passed through the Shanir Akhra area of Narayanganj district. A minivan came from behind and pulled it over. Two persons in black uniforms introduced themselves as RAB officers; five others were with them. They claimed to have received information that the van was carrying contraband goods before making off with it and its cargo. The driver and his assistant lodged a complaint with the Demra police station in Dhaka, but later found that the police had failed to respond and had anyhow recorded the robbery as a lesser offence of theft. The importer then complained directly to the chief of police, both about the incident and also the officers at Demra. Only then did a real investigation begin. Most goods were recovered and the culprits arrested. One was a RAB corporal on leave; the other a sergeant who had earlier been dismissed.

A few days later, on July 16, RAB officers were reported to have snatched money from two businessmen who had been traveling by bus and buy motorbikes for their shop. When the bus reached the Baipile area of Dhaka, a RAB team led by Deputy Assistant Director Humayan Kabir searched its passengers. The team found over two million Taka (USD 29,300) on the two men, which they were carrying in order to pay for the new bikes. *The RAB* seized the money on the allegation that it was for an illegal transaction. Back at base, the team recorded that only 1.8 million Taka was taken from the two passengers. Local police got wind of the theft and recovered the missing amount the next day.

Anecdotal evidence suggests that such incidents are common. This should come as no surprise. RAB personnel have been given the impression that they are beyond the law: If I can kill, detain and torture people, why can't I also rob a little? The relatively minor non-criminal penalties applied to personnel found to have committed offences that are not part of the battalion agenda do nothing to discourage further wrongdoing, particularly when most personnel may expect that the worst that will happen is for them to be sent back to their old jobs. Docking of wages, demotion or forced retirement are small risks when there is big money to be made from lots of good opportunities.

### **Beyond lawlessness**

The creation of the Rapid Action Battalion is an implied admission by the government that Bangladesh has descended into lawlessness. Despite the external appearance of some courts, police and administrators, most state institutions are today without public legitimacy. By choosing to fight lawlessness with lawlessness, the government has also admitted that these institutions cannot be relied upon, lending credence to the popular view. Bangladesh is today a deeply frustrated nation. Its government's policy of extrajudicial killings is a symptom of that frustration; not its cure. On the contrary, the licence to kill handed out to RAB officers is only rapidly exacerbating problems and

speeding the growth in a new generation of killer state personnel who will carry the lessons learnt with the RAB throughout their professional lives. These men will be unable to ever perform their future tasks with a sense of integrity or decency, whether as police, soldiers or other government officers: once a RAB man, always a RAB man.

The systemic use of military personnel for policing has been the cause of repeated tragedies throughout Asia. The people of Bangladesh need only look to Nepal, Sri Lanka, Burma and Indonesia to obtain their lessons. Sri Lankan police were once relatively well-disciplined and law-abiding. Then they were told to hunt down insurgents and terrorists. The lessons learnt from that time carry on until today in horrendous forms of torture and killing for the most trivial reasons. In neighbouring Burma, an army general is police commander. His men understand their duties only in terms of “security of the state”. In Indonesia the police force under the Soeharto regime was a part of the military structure itself. Now the country faces the monumental task of teasing the two apart. And Nepal is just starting to come to terms with what was done by joint operation forces under the royal dictatorship there in recent years. Are any of these desirable models? Are any of them prosperous or stable societies? Do any of them suggest to the people of Bangladesh how they would like to be?

The removal of controls on law-enforcing officers is easy. Its re-imposition is not. Even with the RAB gone, the rebuilding of orderly law enforcement will be a formidable task. Nevertheless, every day that this task is delayed poses a greater threat to the people of Bangladesh and their society. It is a threat not only to the victims of abuses and their families, friends and colleagues, but a threat to everyone. It is a threat that is capable of destroying the entire society, its bureaucrats, government ministers, judges and functionaries included.

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