



Report 2005

**Project on
Investigation, Research and
Publication of Human Rights
Violations**



Odhikar Report 2005

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Foreword

2005 sees the third, and final year of the **Odhikar** Project "**Investigation, Research and Publication of Human Rights Violations**" funded by the **Academy for Educational Development (AED)** of the **United States Agency for International Development (USAID)**.

This report is the final report for this project and compiles the out puts of the project activities, including fact finding reports and the results of police station monitoring. It also contains highly informative documents presented by human rights activists of the South Asian region, at a project-based discussion meeting on the protection of victims and witnesses.

In 2003, the AED put its faith in **Odhikar**, recognising its potential to act as a catalyst for change. **Odhikar** is extremely grateful for all the support it has been given and, though the journey has often been rough and hurdles had to be overcome, there have been several improvements and signs of greater awareness among the concerned government organs, members of civil society and the general population of the country regarding law enforcement, civil and political rights, impunity and the law. **Odhikar** was also able to form a regional network called **South Asian Network against Torture and Impunity (SANTI)**, as one of the outcomes of its regional discussion meetings.

Odhikar once again thanks the AED and USAID for all their support on this long and often dangerous journey. The organisation and its staff of researchers and fact-finders have, for the last three years, been able to increase their potential and have strengthened their expertise, which is also an important, if not direct, result of the three year project.

Dr. Tasneem Siddiqui

President

Odhikar

Odhikar and the AED: Partnership for Change

Since 1996, Odhikar, a human rights organisation, has been carrying out monitoring, fact-finding and research activities on violations of specific human rights - the main focus being on civil and political rights of the people and how they are violated by state and non-state actors. A large portion of Odhikar's activities revolve around abuses perpetrated by law enforcement agencies, and the organisation has investigated many incidents of police brutality and torture in custody and other acts of impunity. Such fact-finding reports are enhanced by archival and legal research and published in the country's daily papers for nationwide dissemination.

In 2003, Odhikar was supported by the Academy for Educational Development (AED) of the United States Agency for International Development, USAID. This partnership has continued till 2005, and the AED has supported Odhikar in its dedicated monitoring and fact finding activities into abuses perpetrated by law enforcement agencies and their behaviour towards victims, witnesses, complainants and arrested persons.

Synopsis of Activities Covering the Three Project Years

Due to the many reported incidents of alleged police abuse and torture in police custody, Odhikar commenced a program, in 2003, with the support of the AED, of annually monitoring four specific police stations, two within and two outside Dhaka Metropolitan City, in order to monitor the use of legal provisions of arbitrary arrest, the behavior of police towards detainees and common people, and the overall condition of the police stations. The second component of the project consisted of carrying out fact-finding missions into incidents of serious human rights abuse caused by law enforcement agencies through out the country. The third component of the project was advocacy with policymakers by organizing public discussion meetings on the findings of police station monitoring and fact-finding missions. This kind of combined project was supported by the AED in 2004 and 2005 as well, so that Odhikar could expand its work area.

Odhikar raises awareness through the media, the printing and distribution of annual reports and at planned discussion meetings and these are also the medium by which the information obtained on its fact finding missions are disseminated and discussed. From year 2003 to 2005, as part of the AED funded projects, Odhikar organized three very successful South Asian regional discussion meetings on pressing issues of human rights violations perpetrated by law enforcement agencies in the police stations and outside.

Project Goals

The goal of the project was to highlight the violation of civil and political rights through investigation and research and to monitor the activities of law enforcing agents in order to help contribute to the movement for good governance.

Specific Objectives

▶▶ Investigate the human rights abuses perpetrated by law enforcing agencies, including the abuse of specific laws, torture in remand and other forms of verbal and physical abuse, as reported in several leading newspapers and through Odhikar's local networks and human rights defenders.

▶▶ Monitoring 4 police stations (Thana) every year, (4Thanas x 3years =12 thanas), which includes 6 police stations previously monitored, as a follow-up program, with regard to the use of Section 54 of the Code of Criminal Procedure, Section 86/100 of the Dhaka Metropolitan Police Ordinance (a law similar to S.54) and the Special Powers Act of 1974.

▶▶ Arranging a discussion meeting every year in order to highlight the findings of the investigations and create an awareness of the abuses for the policy makers and implementers. The meeting will invite representatives from concerned government agencies and ministries, members of parliament, major political parties and media and civil society, including other human rights organizations. Five prominent human rights activists and advocates from south and south-east Asia will be invited to participate in this meeting in order to formulate a comparative study of such police abuse in the region. There will be a separate topic for discussion every year, related to the project activities.

Outcomes planned from the objectives

- First hand detailed fact-finding report
- Improvement in the behavior of police towards arrested persons.
- Awareness raising and advocacy to initiate change and to highlight police abuse and create pressure groups to advocate for a better police system.

During the first project year (2003), from the activities it carried out, especially from fact finding and police station monitoring missions, Odhikar learnt that although the police were violating human rights, there were extremely few cases where legal action had actually been taken against the police in this regard. Thus the police were enjoying a sort of impunity, despite violating human rights. While they should be held accountable and punished for such violations they remain out of reach from the 'long arm of the law'. For this reason, in 2003, the theme "Breaking the Chain of Impunity: Human Rights Intervention in South Asia" was chosen for a project-based regional discussion meeting. The discussants and participants condemned the vicious circle of politics, crime and corruption, which makes ordinary people victims of police abuse. They condemned the fact that the denial of human rights creates conditions for social and political unrest, sowing the seeds of violence and conflict. Impunity in any form, is a violation of human rights as well as a direct threat to rule of law, which is a necessary basis of democracy. The participants agreed that victims did not resort to the court and offences perpetrated against them went unpunished because of several factors, including, in many cases, ignorance of law, poor economic condition of ordinary people and fear of reprisal. The participants from the other South Asian countries opined that impunity persisted in the region mainly due to government's intention to cling to power for a long period of time, thus abusing state power. Absence of the independence of judiciary and virtually non-functioning parliaments were also identified as causes of impunity to human rights violations.

The theme for the 2004 project-based regional discussion meeting was **Criminal Responsibility for Torture: South Asian Perspective** in which prominent human rights activists from South Asian countries spoke of having similar problems regarding abuses of power by law enforcement agencies, enabling them to commit torture and other crimes. Odhikar felt that continued monitoring could bring to light the reasons behind inefficiencies, abuse and acts of human rights violation by law enforcement agencies so that a continued effort could be made to sensitize policymakers and responsible people in government of the problem.

This year, 2005, the theme of the discussion program was **Victim and Witness Protection Under the National Legal Regime: South Asian Perspective**. One of the main findings of the Odhikar monitoring and fact finding component of the project, was that victims and witnesses continued to remain in an environment of insecurity and uncertainty even after they took recourse from the law. Thana monitoring showed that police were not very sympathetic or understanding towards victims and complainants had to wait for a minimum of an hour or more in order to lodge complaints - and that, too after 'paying' the police. Research shows that the

laws of Bangladesh, particularly the procedural laws, do not have any provisions for the protection of victims and witnesses and, as a result, victims and witnesses to crimes continue to be threatened by the perpetrators of dire consequences if they dare to file cases or even complain to the police. Furthermore, witnesses were afraid or reluctant to come forward to provide important and possibly incriminating evidence. Lack of evidence, caused by this fear and lack of interest seemed to be an important factor responsible for improper trials against perpetrators of human rights violations.

Since Bangladesh does not have a legal regime of victims and witnesses protection, Odhikar decided to plan advocacy programs with the government and policymakers in order to draw their attention to this issue. Human rights activists from other South Asian countries were invited to this meeting to discuss their views and any recommendations they may have in order to formulate a comprehensive outline for a policy for the protection of victims and witnesses of human rights abuses in the region.

Strategies for achieving results

For achieving the intended results, Odhikar followed the following policies from 2003 - 2005:

- ⊙ *Publication of the investigation reports in order to alert interested legal aid and human rights organizations to create awareness campaigns and mass awareness of police atrocities around the country.*
- ⊙ *A regional discussion meeting to highlight the issue of criminal responsibility for torture in the sub continent. The views of governments and civil societies were also reflected in the meeting.*
- ⊙ *Odhikar has an international network through which it disseminated the monthly statistics of torture by law enforcers. Such networks include the Asian Human Rights Commission, Organization against Torture (OMCT) and the South Asian Network against Torture and Impunity (SANTI). Odhikar regularly sends them its investigation reports and statistics which help to make the international community aware of our situation.*
- ⊙ *Sending of Urgent Appeals regarding the death of Shah Newaz Titu, who was killed by the Rapid Action Battalion (RAB) in Chittagong and the incident of gang rape by law enforcers in Chuadanga were sent to the national and international community, in a bid to urge the government to take swift steps against act of impunity perpetrated by the law enforcers in the year 2004.*

Problems faced during project implementation

a. Difficulties faced during fact-finding

For the last three years, during fact-finding and monitoring, Odhikar faced a particularly difficult problem. More often than not, officials use the Official Secrecy Act as a weapon to withhold information. They use this law and state that either they or the fact finders will need to seek the permission of 'higher levels' before they can give out information, knowing very well that such permission is strangled with red-tape and almost impossible to obtain. After a written application to such 'higher levels', Odhikar found that it took a lot of time for them to respond, if they ever did and permission for gaining access to information was never permitted. Furthermore, it was seen that journalists and investigators were restricted from police stations during the time of mass arrests.

b. Difficulties faced during Thana monitoring

✓ Tracing arrested persons to their address

It is sometimes difficult to trace persons who had been arrested under Section 54 of Cr.PC and later released, in order to collect information. Normally Odhikar's Thana monitors collect information from the residence of the arrested persons, or by conversing with them while they are being freed from custody. However, in Fotulla Thana, monitors faced such problems. Since Fatulla is an industrial area, like other industrial areas it has a lot of slums and a dense population. Most of those arrested under Section 54 were the inhabitants of those slums. It was extremely difficult to trace them from the addresses that they gave, since such addresses (provided to the monitors by the police) only stated the name of the slum or the location of the slum. In Dhaka City the scenario was fairly similar. Odhikar has learnt from its monitoring experience over the last 10 years that there is a tendency of those arrested to either provide the police with their village addresses (permanent address) or, in many cases, a false address in order to elude further arrests.

✓ Impolite behavior and non cooperation

Police officials do not behave well with Thana monitors. In some cases, they did not even allow them to see the arrest registrar and were non-cooperative in giving information. The escape route that the matter was confidential and needing the permission of someone 'higher up' was also used. Some police officials even taunted human rights activists and the monitors and mocked the concept of human rights. However, Odhikar was relieved that there were a few police officers that actually cared about the human rights of people.

Some police stations are relatively busy (Motijheel Police Station, for example) and collecting information from there is quite difficult. Monitors have to stand all day in such police stations and if they roam around in the Thana they are usually questioned about their 'loitering' and asked to sit in the visitors room. Police find this constant watching annoying and are further irked if

they find the monitor writing notes. Therefore, in the police station, the monitors are not allowed to take notes. As a result, they have to watch intently, keep everything to memory and detailed reporting is only possible as soon as they emerge from the police station. Over all findings from such Thana monitoring activities can be summarized as follows:

- ✓ The register book is not properly maintained and misrepresentation of information regarding the age of the arrested person or his address or even the time of arrest has also been noticed.
- ✓ Collecting information is difficult from the police station. Statement officers are not available most of the time.
- ✓ Some of the detainees were not willing to provide information for fear of either verbal or physical abuse by the police. In some cases, detained persons were not interested to be interviewed by the monitors for fear of police harassment.
- ✓ It required several visits to Thanas to get the cooperation of the concerned police officers to see the Thana registers and interview detainees. In most of the cases, police did not allow Odhikar monitors to talk to the detained persons.
- ✓ In many of the cases, the detained persons gave false names and addresses in the police arrest registers, which made follow-up of the cases difficult. The detained persons did not want police to go to their families while they were detention or they did not want to be harassed by police after their release. That is why, they gave false information in Thana registrars. This further compounded Odhikar's difficulties since its monitors were unable to tract previously arrested persons for comment.
- ✓ Police officials sometimes sought a letter of authorization, from the officer-in-charge of a concerned police station, from the monitors before they even considered giving out information or showing the arrest register.
- ✓ The information and statements given by police and the detainees were often contradictory, especially in the region of ages, time of arrest, the incident leading to the arrest and the address or area the incident took place.
- ✓ Impolite behavior and non-cooperation of the Thana police.
- ✓ Statement officers (who took the statement of arrested persons at a particular time and made the entries in the arrest register) were usually not available for interview or comment.

Summary of Fact Finding and Thana Monitoring Work

The monitoring of police stations brought the following discrepancies to light:

- * Police sometimes commit excesses while investigating an incident of crime, which leads to the violation of civil rights.
- * In some instances, police maintain close relations with criminals in order to take a share from the proceeds of the illegal business.
- * Local units of national political parties sometimes try to provide shelter to identified criminals.
- * Police and criminals have a tendency to influence medical examiners in order to fabricate or falsify reports in their favor.
- * Local human rights activists and organizations are not always aware of the violation of human rights by the police.
- * The role of the police is not always proactive in protecting victims from violations.
- * Common people are conscious and they try to protest any violation of human rights by police. Some pay a price for doing so.
- * The inquiry into the violation of rights by police officers is entrusted to other police officers, which cannot ensure fair investigation and findings. No one will speak against his own.
- * Women and children are specifically vulnerable to the brutal behavior by the police and female officers at the police stations are few and far between.
- * The police are sometimes used by people to harass others.
- * Some of the police did complain that their basic salaries did not cover their cost of living or help them raise a family and therefore some of them succumbed to bribery or other criminal activities.

The Thana monitoring project was, as always, an ambitious and risky venture for Odhikar monitors and after almost three years of work with the police and having to talk to people from all walks of life, their experiences have been further enriched. Odhikar also believes that the follow-up monitoring of the six previous Thanas have helped improve their physical condition. The lock-up and custody areas seem to be cleaner and there is less rubbish lying around. Odhikar also believes that the police in all the Thana's monitored are more aware of human rights issues.

Problems faced during thana monitoring and fact-findings in 2005

1. This year (2005), during fact finding, fact finders of Odhikar said that the police refused to give any information and kept mentioning the Official Secrecy Act as the reason for this.

The Official Secrecy Act, originally adopted in 1923, restricts access to information when related to 'national security'. It bars public servants from handing over to anyone any secret government plan, document, note, sketch, model, signal, information, etc, which are related to "restricted places", and which, if made public, could pose a threat to the security of the State. The problem is that de facto, the successive governments have tended to classify a vast majority of governments documents, even some seemingly as innocuous as the displacement of an officer from one desk to the other, as "secret".

Law enforcing and government officials use this provision and ask for permission from the higher levels for getting information. And it is known to all that seeking permission from the higher authorities is a very lengthy and time and energy consuming process.

2. Under this 2005 project our monitors visited each police station 5 times every month, but it was found that this was not adequate enough to get the achieved goals or results, or spot any concrete improvements. More frequent monitoring can give some sound and effective details.

3. Like the previous years, thana monitors found that police were annoyed with their presence at the thanas and reluctant to show them the arrest registers. However, this sort of attitude also depended on the individual character of the officers at the police stations at that time.

4. It was difficult for the monitors to trace former arrestees from the addresses they gave to the police and which were noted down in the arrest register. This was due to the fact that either many of them lived in the slum areas, where there are no road or house numbers, or they had given a fictitious address in order to save themselves from future harassment. Tracing addresses in Fatullah thana was particularly difficult, since a large majority of the arrested persons lived in the large slum areas there.

Recommendations

1. More frequent visits to thanas every month - 8 or 9 times for each thana, for example - would generate better information and build better rapport with the police. Furthermore, police personnel at the thana's keep changing, and thus time is required to build up a 'relationship' between the monitor and the new police.

2. Permission from the higher police authority for monitoring police stations can solve some hindrance while monitoring and can be a safe guard against the non-cooperation of some police officials.

Signs of Improvement of Police Behaviour in the Thanas

Since 2003, Odhikar thana monitoring reports have shown that police are generally rude and abrupt towards the persons they have arrested. Furthermore, hints of freedom in exchange for money are made both openly and aside to family members of the arrested persons.

In 2004, an Order was made that a Code of Conduct to be followed by police be hung up in every Thana and followed by the police. This Code gives the Thana police guidelines on proper behaviour towards complainants, visitors, victims and arrested persons - men, women and children. In some Thanas it was observed that the police were well mannered towards visitors and complainants and victims, even though they asked the visitors to pay money before they could see their near and dear ones. However, this polite behaviour depended from police officer to police officer.

One police officer ventured to mention that budget constraints, poor pay meant that the police were unable to work properly. In many cases, they had to buy their own furniture, stationary and other necessary material from their own pockets. Furthermore, they received no conveyance when going out to investigations or going to court to give their statements. On top of all this, they had to work a minimum of 16 hours a day. This police officer said that under such daily pressures, good performance could not be expected and all this paved the way for corruption.

In 2004, the government took the initiative to separate enforcement and investigation activities in the police stations. This had been introduced in 10 police stations around the country.

In 2005, Thana monitoring by Odhikar revealed that police behavior towards the common people was gradually changing for the better in a few cases. Furthermore, recently some police stations have even made a separate custody cell for children and juvenile offenders. In every police station monitored, there was a Code of Conduct hanging in the duty officer's room. However, it was not fully practiced or followed. Many police personnel did not even go through the Code of Conduct. According to the instruction, people who come to the thana should be offered to take a seat first. Unfortunately, in many police stations such as Mirpur, Motijheel, Tejgaon and Mohammadpur, there were no sitting arrangements for the people who come to the police station for complaining or lodging a FIR or GD!

Other Significant Observations

When Odhikar carried out its Thana Monitoring programme, one of the things its fact finders did, was check the arrest records to find out what laws are being used to arrest people. Most common are section 54 of the Code of Civil Procedure, which allows the police to arrest persons on several grounds- one of them being 'reasonable suspicion'; Sections 86 and 100 of the Dhaka Metropolitan Police Ordinance, which are similar to Section 54, relevant sections of the Special Powers Act - considered by human rights activists to be a 'bad law', sections 72 and 76 of the Dhaka Metropolitan Police Ordinance and Section 34 of the Police Act. These are discussed in detail in chapter 3 of this report.

After the 2004 High Court directive to amend Section 54 of the Cr.P.C. the use of this provision has reduced to a large extent from the year 2003. But the use of Section 86 and 100 of the DMP Ordinance increased. DMP police continued to use the power of arbitrary arrest by switching from use of one legal provision (Section 54 of the Cr.P.C.) to another (Section 86 and 100 of the DMP Ordinance).

Since 2003 to date, it has been observed that some persons initially arrested under Section 54 are subsequently charged with a crime, while others are released without charge. The phrase 'with reasonable suspicion' as mentioned in Section 54 of the Cr.P.C. gives the green light to unscrupulous police to misuse and abuse the provisions and contravene all constitutional guarantees of the rights to life, liberty and equality before the law. 'Suspicion' is a very subjective term and police apply it subjectively to harass people. Some times police could not justify the reason for arrest and used the ground of suspicion as a reason. Subjective application of the term 'suspicion' has made it a tool for abuse by police. There have also been cases where the police have arrested a person under S. 54 of the Code of Criminal Procedure and then included his name in a criminal case even though his name was not included in the First Information Report (FIR). Thereafter, a charge-sheet was filed against that unfortunate detainee.

It is also common for persons arrested under Section 54 of the Code of Criminal Procedure, to find themselves later charged under the Special Powers Act 1974, a repressive law favored by all the governments, or the Drugs Act or even the Explosives Act. This conversion occurs when a prayer or petition, for detention under these Acts, is submitted to the District Magistrate from the concerned police station, through the Superintendent of Police. The District Magistrate then issues a detention order and sends it for approval to the Ministry of Home Affairs.

Police Remand for interrogation is another instrument used by police as an excuse to physically torture detained persons. For collecting money from arrested persons, corrupt police officers use 'remand' as a tool. By talking to several remand victims while monitoring police stations, Odhikar came to know that they were tortured by police and were not provided with any food during detention in remand

Odhikar has found that large majority of arrestees came from poor segments of the society. They are mostly homeless, rickshaw puller, street children, destitute women who, being abandoned by their husbands, turn to the streets to try and keep them and their children survived. Young men suspected as terrorists, extortionists and belonging to various political parties are also regular victim of arbitrary arrest by police.

Police corruption is another prime cause of random arrest and for this type of arrest, Section 54 or Section 86 or the SPA are the most commonly used legal provisions. From the three-year experience of Odhikar's police station monitoring, instances have been found where persons were arrested on the grounds that they could not comply with the request of police officers for money and therefore, arrested under section 54 of the Cr.P.C.

The awareness among people for a better police system has increased and Odhikar feels it has contributed to this due to its publication of data, investigation reports, statements and articles in the various leading national dailies. Odhikar also played a significant role in the mass awareness regarding police impunity.

As per our project plan we achieved our results partially. Improvement of police behavior was not proved completely by the indicators, since such a thing cannot be done without constant directives and monitoring by the government, and the effective punishment of wayward police, but awareness and advocacy were done successfully.

Between 2003 and 2005, Odhikar has monitored a total of 12 police stations, or Thanas - seven of which are located in the Dhaka metropolitan area and 5 in the District of Dhaka, outside the metropolitan area.

Project Year	Thana	Location
2003	Ramna Lalbagh Sreenagar Keraniganj	Dhaka Metropolitan City Dhaka Metropolitan City Munshiganj District Dhaka District
2004	Badda Mirpur Munshiganj Narayanganj	Dhaka Metropolitan City Dhaka Metropolitan City Munshiganj District Narayanganj District
2005	Motijheel Mohammadpur Tejgaon Fatullah	Dhaka Metropolitan City Dhaka Metropolitan City Dhaka Metropolitan City Narayanganj District

With the assistance of the AED, the organisation has also carried out a total of 75 fact finding missions between 2003 and 2005. Some of the fact-finding missions carried out in 2003 and 2004 merited follow-up activities in 2005. Such cases were as follows:

(1) **Killing of PirenSnal: police tendency to avoid responsibility (2004):** Here a member of the indigenous Garo population, Piren Snal, was killed when police shot at a procession of Garo people who were protesting the government plan to construct an echo-park on land they have been living on and cultivating for the last century and more. The Garo people want to preserve their traditions and culture and their freedom of movement, and strongly believe that the creation of an echo park will curtail all this.

(2) **Torture of civilian people by joint forces in Jhenidah:** In this 2004 case, a man was hung by his feet from a tree and beaten by members of the joint forces over a land dispute.

(3) **SPs bullet claims two people in Nandile, Mymensingh (2004):** Two people were killed by the Super Intendant of Police during the Nandail Municipality elections under Mymensingh District. The incident was instigated when duty police misbehaved with a few women who had gone to cast their votes and the same police detained and beat a local man who protested the incident. This enraged the local people who attacked the police, causing the latter to retaliate and fire on the mob.

(4) Sumon Tortured to Death by Rapid Action Battalion (RAB) in Gajipur (2004): Plain clothes police arrested Sumon Ahmed Mojumber (24) from his home in the evening of 16 July, after he returned home on completing an election campaign in the Gazipur-2 parliamentary by-polls. Later on, his family received a phone call that he had been taken to Tajgaon hospital. However, his parents were not allowed to meet him, but were reassured by the police that he was all right. That same night, his parents were informed that he had died. On examining his body before his funeral rites, his family allege that it bore marks of torture, like cuts and bruises and it was swollen. Sumon was the Assistant Secretary of the local Jubo League, the youth front of the Awami League party.

(5) Two youths beaten to death in Araihaajar Police Station in Narayanganj (2004): A police team had arrested three young men between the ages of 22 and 32 in reference to a robbery case. They were taken to the police station where two of them died, allegedly due to police torture. The next day, their bodies were thrown in an abandoned area, in the presence of local Union Parishod Chairman, from where they were retrieved again by the police, who tried to cover the matter as an incident of mob killing.

For a long time, Odhikar and other civil society organizations have been involved in police station monitoring. They have been vocal for formulating and implementation of a Code of Conduct for Police. In the year 2004, a significant improvement took place in that regard. The Dhaka Metropolitan Police (DMP) finalized and circulated a code of conduct to be followed by police personnel in all police stations in Dhaka City and all over the country. The Code of Conduct came into force from July 1, 2004. Odhikar is undoubtedly one of the first organizations, which played a vital role in advocating for such code of conduct.

Such information regarding police behaviour and the violation of civil and political rights could not have been collected and disseminated without the whole-hearted support of the AED. The support of this Agency has helped Odhikar take part in the movement for the preservation of civil and political rights in Bangladesh.

Conclusion

In 2003, the AED put its faith in and embarked on a journey with Odhikar with the belief that the organization would be able to act as a catalyst in improving the human rights situation in the country. The journey has been long and often bumpy, but the partnership lasted for three years.

After three years of continuous work, the results have been significant, even though few in number. The Government is finally taking steps to improve the behavior of law enforcement agencies, is planning to revise and amend criminal laws, has taken note of the plight of victims and witnesses and has taken judicial action against the misuse of the dreaded 'Section 54'. Odhikar has also been successful in creating a new regional network, SANTI, with organizational membership growing. SANTI will help create pressure groups in South Asia, whenever there is a need for policy reform and spreading awareness of human rights abuses. It will also help member organization implement programmes by sharing success stories among themselves.

Odhikar thanks the AED for three years of support and trust, without which such achievements would not have come about.

Civil and Political Rights in Bangladesh

"The republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed."

-Article 9 of the Constitution of the Peoples' Republic of Bangladesh

The Constitution of Bangladesh guarantees to its citizens many of the basic, fundamental rights and freedoms as embodied in the Universal Declaration of Human Rights. Accordingly, a citizen of Bangladesh is entitled to the right of protection under law, protection of right to life and personal liberty, right to safe guards as to arrest and detention, protection in respect of trial and punishment, freedom of movement, freedom of assembly, freedom of association, freedom of thought and conscience and of speech, freedom of profession or occupation, freedom of religion, etc.

Civil and political rights were threatened in year 2005, and the fragility of the situation was worsened by the growing trend of extra judicial killing. Several bomb blasts, bomb threats and incidents of crossfire attracted widespread public attention for obvious reasons. Criticism is mounting against the alleged violations of the human rights of those who have died in the custody of law enforcing agencies and the role of security agencies were questioned after the simultaneous bomb blasts in 63 districts on August 17, 2005.

A brief overview of the human rights situation in the country from January - December 2005, in areas where law enforcement plays a direct part, is given below:

i. Right to protection of law:

a. Formation of elite forces:

To curb the recent growth of crime and the deterioration of the law and order situation in the country, three elite forces were formed to help the police authority in the year 2004, viz. Rapid Action Battalion, Cheetah and Cobra.

The Rapid Action Battalion, or RAB was launched as a special elite force as part of the government's new anti-crime initiative to clamp down on criminals and crime. It was created

through a Government Order issued on 1 March 2005 in accordance with the Armed Police Battalions (Amendment) Act, 2003 and came into operation on 21 June 2004.

Those who have been recruited into RAB are members of the armed forces, the police, and the paramilitary groups of the Bangladesh Rifles and Ansars (auxiliary forces). Currently, RAB is active almost all over the country under seven administrative units of the Battalion. It can investigate and work for all security purposes, especially as an elite law and order enforcement agency, which is to have a special focus on curbing organized crime and eliminating 'top' or most-wanted criminals. Since its formation, a culture of "death in crossfire" has been created; this is the means by which many deaths at the hands of RAB are justified. However, there are alarming number reports of deaths in RAB custody and, on reading the circumstances behind the deaths, some of these can be interpreted as being political.

Thus, we have a new security agency that has even more power than the police force and that has been given the power to shoot criminals without trial. In an already corrupt political arena, one can only be apprehensive about the use (and abuse) of the powers given to RAB. In addition, Cheetah and Cobra were formed as special units of the detective branch of the police force, and they also enjoy a lot of liberty in the case of arresting people.

It is openly accepted in Bangladesh that the police force is a highly corrupt, politically motivated institution. Unfortunately, the miseries of people may be compounded with the introduction of RAB and other specially created security forces, that are now beginning to committed wide spread human rights abuses. Initially, people were somewhat relieved with the creation of RAB, as they saw it as a force to monitor and control the police activities and make effective arrests of criminals. However, as time went on, allegations of bribery and corruption among RAB officers came to light, as well as the continuous killing of innocent people in 'cross-fires'.

If we look at the first year of activity for RAB, what do we see? RAB was formed with the mission of containing crime and improving the deteriorating law and order situation with sweeping powers. When it went into operation first, there was a sense of uneasiness and discomfort prevailing in the society and everybody wanted effective containment of the rising curve of lawlessness. In the backdrop of the raising corruption among regular police force and their failure in addressing the increasing number of crimes, there was the felt need to form a special elite force to check the trend. Initially due to RAB operations and killing of some notorious criminals, there were some marked improvements in law and order situation. However, the deaths of people in so-called 'crossfire' with RAB without reference to any trial or going through a regular judicial processes, has raised questions among human rights activities and social thinkers. Between January and October 2005, there have been reports of 87 people killed by RAB and labelled as people caught in 'cross-fire'. The statements issued by RAB after each such death has had a surprisingly identical tone and content.

Thus, the credibility of what were claimed to be crossfire casualties has never been above question. The deaths were seen as extra-judicial killings in the absence of any proof to the contrary. Regrettably, what has happened is patently antithetical to norms of civility, the rule of law and the constitutional principles guaranteeing the citizens' right to justice, even if those who

were killed were suspected or accused of criminal offences.

It has also been reported that many RAB members have so far been brought to book for taking bribes and some of them were even caught while committing robbery! It is good news that the authorities have shaken off some of their inertia and taken action against the errant members of RAB. However, corruption in an outfit like this might have already eroded the people's initial confidence in it.

An assessment of RAB's performance in the first one year shows that the repute it has earned in terms of initial improvement in law and order has been negated by the methods used by it. Apart from killing in so-called crossfire, excessive use of force by RAB and applying brutal methods in interrogation are against human rights norms. Sometimes innocent people have become casualties due to wrong information received by RAB.

Though the government claims a marked improvement in law and order in the one year of RAB operations, different human rights watchdogs, opposition political parties and professional bodies continue blasting the elite force for extra-judicial killings either in so-called 'crossfire' or in its custody. Besides, involvement of RAB men in robbery, extortion and bribery has also drawn scathing criticism from the public and the press.

b. Police and their methods of Arrest:

Till recently, Section 54 of the Code of Criminal Procedure was the most frequently misused law for arresting and detaining people. Human rights activists went up in arms and after the directives regarding the use of Section 54 of the Criminal Procedure Code, the police started to arrest people under similar provisions found in the Dhaka Metropolitan Police Ordinance (namely section 86 and 100) and when a writ petition was filed against mass arrests under this law and government stayed an order against arresting people under section 86 of the DMP Ordinance, arrests decreased for the time being. However, arrests have to be made, for whatever reason, and law enforcers then started arresting people under section 54 (f) of the Criminal Procedure Code, which involves arrests without warrant of people suspected of being deserters from the Bangladesh Army. When arrests made under this section were once again questioned by NGOs active in the process of Thana Monitoring, the police began using other techniques and excuses for upping their arrest records. For example, sometimes people are arrested under suspicion and then taken to the station and registered as being arrested for specific cases that are under investigation.

c. Deaths in the hands of law enforcement agencies:

This year a large number of deaths in so-called crossfire and police custody were observed. From Odhikar's documentation it was found that various law enforcing agencies killed a total of 396 people. Among them, members of the Rapid Action Battalion killed 111 and 258 were killed by the police. Again, a total of 340 persons were reportedly killed in incidents of 'cross fire' alone.

Persons Reportedly Killed by Law Enforcing Agencies (January-December 2005)

Months	By RAB	By Police	By Cheeta-Cobra	By Others	Total
January	14	41	3	0	58
February	2	30	0	2	34
March	3	19	0	1	23
April	3	28	0	0	31
May	19	33	0	0	52
June	11	27	0	0	38
July	6	16	0	2	24
August	10	15	0	0	25
September	12	15	0	15	42
October	14	12	1	1	28
November	12	13	0	2	27
December	5	9	0	0	14
Total	111	258	4	23	396

Persons Reportedly Killed in 'Crossfire' (January-December 2005)

Months	With RAB	With Police	With Cheeta-Cobra	Others	Total
January	13	39	3	0	55
February	2	28	0	0	30
March	2	19	0	1	22
April	1	24	0	0	25
May	19	26	0	0	45
June	11	21	0	0	32
July	6	13	0	0	19
August	10	10	0	0	20
September	12	11	0	15	38
October	14	6	1	1	22
November	12	12	0	0	24
December	5	3	0	0	8
Total	107	212	4	17	340

d. Rape by Law enforcing agencies:

This year from January to October 2005 three (3) cases of rape perpetrated by members of law enforcement were reported.

Reports of Rape by law enforcing agencies:

Name	Age	Area	Profession	Identity	Date of occurrence	Reference
1. Teen age girl	15	Dhaka	Domestic assistant	Nayek Nurul Islam, Police	28/7/05	Janakantha 30/7/05
2. Housewife	Un known	Rajshahi	Housewife	Samsul, Sub-Inspector of	27/7/05	Ajker Kagoj 31/7/05
3. Teen age girl	Un known	Dhaka	Domestic assistant	Md. Ujjal, Sub Inspector of	31/5/05	New Age 30/7/05

ii. Our prison system:

The serious situation of over crowding in the prisons persists. By August 2005 the official prisoner capacity of Bangladesh's prisons was 27,545. However, the total population of inmates of Bangladesh was 76,328 - exceeding the actual prison capacity by 47,783 persons. Among the number, 24,317 were convicted criminals. 51,801 were people awaiting trial or under trial. 73,913 of the prisoners were male and 2,415 were female.

In 2001, Odhikar carried out an investigation and fact finding report on the situation of prisoners in several Central Jails and found them grossly inadequate in terms of cell space, nutrition, recreation, education, medical care and water and sanitary facilities. The findings were made public to both the citizens and the relevant government officials. Four years down the line and nothing has improved. Medical care is allegedly, almost negligible. An inter-ministerial committee headed by the Principal Secretary of the Prime Ministers Office (PMO) holds 'periodic' meetings to check the condition of the women and children who are in prison.

Death in prison:

This year, between January and December 2005, the press reported a total of 76 deaths of inmates in prison while 6 people died in police custody. Prison conditions were extremely poor and were a contributing factor in some deaths in custody. Other alleged reasons for the deaths included torture, suicide and inadequate medical treatment.

Reported Deaths in Prison/Police Custody 2005

Month (s)	Prison Custody	Police Custody
January	3	0
February	4	0
March	4	0
April	9	0
May	11	1
June	8	1
July	6	0
August	7	2
September	7	0
October	5	1
November	7	0
December	5	1
Total	76	6

iii. Conflicts with political rights:

Police are often reluctant to pursue investigations against persons affiliated with the ruling political party, and governments in power in Bangladesh frequently use the police for political purposes. Police have often employed excessive, sometimes lethal, force in dealing with opposition demonstrators, like attacking peaceful opposition processions with tear gas and batons, regardless of whether they have been provoked or not. Supporters of different political parties, and often supporters of different factions within one party, frequently clash with each other and with police during rallies and demonstrations.

From January 01-December 31, 2005 it was reported that 310 persons died, 8,997 were injured and 1216 persons were arrested for politically motivated violence. 93 people were also kidnapped.

Reported Incidents of Human Rights Violations Perpetrated on Persons with Political Identity (political party leaders, workers, activists, etc) 2005

Month(s)	Injured	Killed	Arrested	Kidnapped
January	701	45	304	1
February	879	31	213	2
March	650	22	63	16
April	635	27	30	28
May	558	25	151	14
June	520	31	53	1
July	860	20	40	6
August	904	19	40	8
September	860	21	37	0
October	1005	21	60	0
November	682	19	200	15
December	743	29	25	2
Total	8997	310	1216	93

This year, 15 day-long and 1 half- day nation wide hartal (general strikes) were observed and two (2) people died in hartal related incidents. Ashraf Seddikey a policeman in Sherpur died as a result of an attack carried out by the (Opposition) Awami League supporters during the hartal on 02 February 2005. Amir Hossain was severely injured as he drove his CNG taxi during hartal on May 1, 2005. Awami League supporters set fire to his CNG and he succumbed to his injuries on May 25, 2005.

iv. Recent trend of bomb blasts and grenade attacks

Serious bomb attacks in 63 districts of the country on August 17, 2005 the killing of two judges, and death of policemen and lawyers in bomb attacks on courts in Gazipur and Chittagong were also major incidents in 2005. Sixty-two people were killed and 983 were injured in bomb and grenade attacks last year. Among them, 30 were killed and 347 were injured in attacks by religious extremists alone. During this time, some 881 suspects were arrested for their alleged involvement in grenade and bomb attacks across the country.

It is important to note that a total of 196 cases have been filed in connection with the incidents of country wide bomb attacks on August 17. Charge sheets have been submitted in 96 cases, while 102 cases are under investigation. A total of 642 suspects have been arrested for their alleged involvement in the August 17 and subsequent incidents of bomb attacks. Of the arrested, 478 are charge-sheeted accused persons. This information has been compiled from the report on the human rights situation of the country, which has been prepared by Odhikar on the basis of reports published in leading national news papers and reports of the fact finding missions of Odhikar.

a. August 21, 2004

Even though more than one year has passed, the investigation into the August 21 2005 grenade attack on an Awami League (AL) rally has remained at a stand still as investigators failed to find any strong evidence. As an obvious result, the government and the investigators came under strong criticism for their controversial activities carried out in the name of 'probe'. One year into the bloody incident and the intelligence officials of the country are yet to make any headway towards identifying the attackers and bringing them to trial. The government announcement of a Tk 1 crore reward for information about the perpetrators, repeated visits by the Interpol and FBI experts and the formation of a high-powered judicial probe commission have yielded no result. Worse still, even though the investigators arrested 15 persons allegedly having a connection with the attack, they are yet to get a clue about the grisly incident, except for a confessional statement made by one George Mia - one of the 15 persons arrested.

b. August 17, 2005

After the recent bomb attacks, on 17 August, numerous people were held by the law enforcing agencies under section 54 for interrogation. It has been reported that 154 cases were filed against one Abdur Rahman and 'Bangla Bhai' - two leading members of the JMB. Of these, charge sheets have been filed against the two in 47 cases. Of the mass arrests made by the police after the incident, it was alleged that a majority of those apprehended were mostly innocent, which was also discovered late by the police, who later released them. However, there have been allegations of torture during the arrest and detention in police custody.

c. October bomb blasts

A reported number of 218 people were arrested for their alleged involvement in the October 2005 bomb blasts that disrupted daily life in 63 districts. Many of those arrested were poor madrassa teachers and students, who were detained for their alleged involvement in such incidents or in aiding them. Many were later released after proving their innocence.

Chapter-3

Odhikar's work involving law enforcement agencies and their behaviour:

Thana Monitoring

From 2003 to date, the AED has assisted Odhikar in attempting to achieve its goals of highlighting the violation of civil and political rights of arrested and detained persons, through monitoring, fact finding and research.

One of the major components of this goal is to monitor police stations (Thana) every year, to see how many persons are arrested under specific laws, viz. Section 54 of the Code of Criminal Procedure, the Special Powers Act and sections 86 and 100 of the Dhaka Metropolitan Police ordinance. This exercise also helps Odhikar monitor what other laws are commonly used to arrest and detain persons.

In 2005, as per the plan of action, Odhikar monitored Motijheel, Mohammadpur, and Tejgaon Thanas under the Dhaka Metropolitan City area and Fatulla Thana under Narayanganj District. In most cases, the police did not give Odhikar permission to speak directly to the arrested persons, but the fact finders found a way through this problem by talking to former detainees about their experiences.

Presented here is an overview and analysis of the thana monitoring activities of Odhikar in 2005.

An Assessment of any Improvement in the Behavior of Police Towards Arrested Persons by Police Station Monitoring

Police behavior towards arrested persons can be monitored and assessed effectively by monitoring Police Stations. In Bangladesh, misuse of power, torture and other acts of cruelty towards arrested persons is a regular phenomenon. In most cases, the police try to justify torture and degrading treatment towards the arrestees as part of their job of interrogation and questioning for statements. The human rights of arrested persons are a concept quite unknown to most of the law enforcers.

Apparently, arbitrary arrests on the ground of "reasonable suspicion" under Section 54 of the Code of Criminal Procedure (Cr.P.C.), Section 86 and 100 of the Dhaka Metropolitan Police Ordinance (DMP Ordinance) and the Special Powers Act of 1974 and torture by police in police custody have all turned into common incidents. Torture or inhuman treatment committed by law

enforcement personnel is entirely contrary to the universally accepted international human rights instruments like UDHR, ICCPR, CAT and also to the domestic legal provisions and constitutional obligations.

Methodology

In the year 2005, Odhikar monitored, as per specified plan of action, Motijheel Thana, Mohammadpur Thana, Tejgaon Tahana under Dhaka Metropolitan City and Fatulla Thana under Narayanganj District.

Odhikar's focus was to monitor the use of Section 54 of the Code of Criminal Procedure (Cr.P.C.) and Section 86 of the Dhaka Metropolitan Police Ordinance. Under Section 54 of the Cr.P.C., individuals may be arrested on suspicion of criminal activity without order from a magistrate or a warrant, under several conditions, including 'reasonable suspicion'.

Each month, Odhikar fact-finders visited the four targeted police stations five to seven times, in order to monitor the number of people arrested under the said laws and the various reasons why police had picked them up.

The following information was collected during each monitoring visit:

- * Number and gender of persons arrested
- * Number of arrests under Section 54 of the Cr.P.C.
- * Number of arrests under Section 86 of the DMP Ordinance
- * Number of persons under remand
- * Number of arrests under specific cases
- * Number of arrests under Section 54 of the Cr.P.C. or Section 86 of the DMP Ordinance but subsequently shown arrested in other cases
- * Number of arrests under the Speedy Trial Act 2002
- * Number of arrests under court warrant
- * Size of custody room in police station
- * Whether any arrested person was kept in police station custody for more than 24 hours
- * Whether arrested persons were allowed to contact their relatives and lawyers
- * Living environment and cleanliness in the police custody
- * Whether information records/registrars are properly maintained in police stations
- * Whether special treatment was provided to women and children arrested persons
- * Whether there was any complaint/allegation against police officials on duty in police station
- * Allegations of sexual harassment

Odhikar sent one fact finder to each of the selected police stations. They interviewed arrested persons during the monitoring process, both in police station lockup (when permitted to do so) and upon their release from lock-up or jail, and also interviewed police officers and persons who had experienced such arrests under the laws in the recent past and were freed on bail.

Findings

A. General situation of Police Stations:

1. Mohammadpur Thana:

Environment of the custody cell

In Mohammadpur thana there are three separate custody rooms for arrestees. The size of the custody rooms is small, with inadequate lighting. Water supply was unavailable and people in custody were found buying water from outside vendors. Men, women and children were kept in separate custody rooms. The lock-up was, allegedly, cleaned regularly. There were separate toilets for male and female detainees - albeit in unsanitary condition. Food was allegedly provided to the arrestee once a day, but monitoring found that sometimes this meal was also missing. Relatives supplied other meals or the arrestee had to procure food from outside. The custody rooms were found to be over crowded most of the time.

While monitoring the police station at one visit, 24 arrestees were found in a single custody room. Though there was a separate cell for remanded detainees, they were kept in a jam-packed custody with the other arrestees. No breakfast was served in the custody room and it was found to be unclean.

Police's behavior towards victims

Most of the time the complainants had to wait for more than an hour for filing cases or making a general diary. Police were found addressing people abruptly and disrespectfully and their behavior was quite insensitive. Police officials did not listen to victims attentively. In some instances, the police were observed to be trying to exert pressure on victims indirectly for money.

** Plaintiff, Fazlul Karim was found waiting for more than an hour to help police to arrest the accused.*

** For lodging a GD, complainants had to pay Tk 200/300 to the concern officials.*

** For lodging a General Diary, a wireless operator was found taking Tk.100 from the complainants.*

On some days, it was observed that a small number of police officers attentively entertained the complainants and victims within half an hour. Complaints were written and the grounds of the filed cases were informed them clearly.

Police's behavior towards accused persons

The accused were allowed to contact legal practitioners/lawyers according to their choice. It was observed that family members could only see and talk to the arrested person after giving a bribe. Most of the time police were found to be harsh in their behaviour towards the arrestee but they informed them about the reason for the arrest. It was alleged that normal arrestees were not tortured physically but torture in remand was common. No information of sexual harassment was reported but attempts of undue influence to get money illegally was observed.

** Moniruzzaman who was arrested under section 75 of DMP Ordinance was produced before the court after 34 hours. As per law an arrestee must be produced in court within 24 hours of arrest.*

** Three teenagers were found in the lock up who's ages could not be more than 15/16. But in the custody register their ages were noted down as 19/20 and they were kept with the adult detainees.*

** Swapon and Mahin, arrested under Section 100/75 of the DMP Ordinance, claimed to have been tortured physically and verbally abused. They said that ASI Waged Ali claimed Tk 1,000 from them.*

** Faroque was arrested under section 100/74 of the DMP Ordinance. He claimed that the police asked for Tk. 2000 from him and snatched his mobile phone (0187560869).*

** Two young women, Ripa and Lucky, were arrested for prostitution. They said that the police behaved indecently and rudely.*

** While monitoring the station, police brought in one arrestee named Kausar and the Duty Officer informed Odhikar that he was arrested under G.R Warrant. The arrestee was allegedly checked by having his clothes stripped off. He informed Odhikar loudly that there was no case filled against him and that Police had arrested him by a conspiracy.*

2. Tegjaon Thana

Environment of the custody:

There were three custody rooms in Tegjaon thana for keeping arrested people and the size of each custody was made as per the requirements of the law - 36 square feet per prisoner. Water supply was very irregular. Light was inadequate. People in custody were found buying water from outside. Men, women and children were kept in separate custody rooms. Lock-ups were, allegedly, cleaned regularly. There were separate toilets for male and female arrestees. Once a day the food was provided to the arrestees. Relatives of the arrestees supplied other meals or they had to procure food from outside. The custody rooms were found over-crowded. Sometimes the age of the children were inappropriately registered. The register book was seen with a lot of corrections and it was learnt that arrestees were freed in exchange of money.

Police's behavior towards victims:

Most of the time complainants/victims had to wait for more than one hour for drawing the attention of the police (filing cases and so on). Normally the behavior they receive in return is quite ruthless and insensitive. The police were observed not to pay proper attention to the statements of the complainants/victims. Most of the time they did not even listen to the complainants/victims. During the filing of a case, the police were usually observed not mentioning the reasons to the victim or the accused. But in the complaint (*Ejhar*) the offence was mentioned properly and a copy of that was provided to complainant/victim.

Police's behavior towards accused:

** It was learnt that the police took Tk. 100 for filing each GD. For lodging each GD officials were found taking Tk. 100*

** For Lodging a GD police claimed Taka 200 from one complainant named Hasina Begum.*

There was no bar on communication with the lawyers. Family members were also permitted to be in touch with the accused but only in exchange for money. Most of the time, the police were seen to be rude to the arrestees but they were informed about the reason of their arrest. Most of the time normal arrestees were not tortured physically but torture of the arrestees in remand was, allegedly, common. No information of sexual harassment was received but Odhikar fact finders observed undue influence for money.

** Two/three children of hardly 14/15 years old were seen in the custody rooms but in the registrar their ages were mentioned as 19/20*

** Abdul Kader, father of one remanded Mokhles, informed Odhikar that police misbehaved with him when he came in the police station to see his son.*

** Shah Alam who was arrested for theft was threatened with beatings in remand.*

** Police claimed Tk. 2000 from the Saiful, brother of Sabuj who was arrested under DMP Ordinance*

** Two arrestees named, Nurul Islam and Shajalal were caught by Cobra and taken to the police station. They were produced to the court after 40 hours of arrest.*

** Shaheen and Julhash were kept in the police station for more than 24 hours. Two arrestees, Sumon and Raju mentioned false addresses and father's name in the register book.*

** Police claimed Tk. 1,00,00 from the relative of a remanded accuse, Faisal.*

** Ripon, arrested under the Narcotics Control Act, was kept in the police station for two days.*

3. Fatulla Thana

Environment of the custody:

There are two custody rooms for male arrestees but for female arrestees there is no custody room in Fatulla thana. As the number of female arrestees is very few, they are kept in the middle of those two custody rooms, which were separated by collapsible gates. It is actually a passage between two custody rooms. The custody rooms are small in size. With the two custody rooms there are two toilets but if there is any female arrestee then the authority takes special

arrangement so that the female arrestee can use it. Water supply is regular with adequate lighting. Lock-up is cleaned regularly. Arrestees have to procure food from outside. The custody rooms remain over-crowded most of the time.

Police's behavior towards victims:

Waiting for more than one hour for filing cases and complaints is a common picture in Fatulla Thana. Normally police behavior depends and varies on socio-economic status of complainants/victims. Sometimes it is quite ruthless and insensitive but it is also seen that they behave with due respect and politeness. They don't pay full attention to the statements of the victims. If a case is filed, then they usually ask about the offences, what was the reason of filing cases etc. Adopting unfair means and applying many tactics for getting money from complainants/victims was observed.

Police behavior towards accused:

Consulting a personal attorney or a legal counsel was permitted and normally there was no bar. By paying money to the sentry, family members are permitted to talk to the arrestees. Most of the time police are rude to detainees but they are informed about the reason of arrest. Usually normal arrestees are not tortured physically but for the arrestees under remand, torture is common. No information of sexual harassment was reported but police created pressure or undue influence for money.

** Odhikar was informed that, arrestee Salauddin(30) was arrested from a restaurant with a bag of brown sugar. But he had no drugs with him. As narrated by his mother, police tortured him and sent him to the court. Most of the time arrestees were kept in the thana for more than 24 hours.*

** One female arrestee was found kept waiting in the corridor between the two custody rooms. She told the fact finders that she worked in a garment manufacturing factory and police had arrested her without any reason. The police told the fact finders that she had been arrested under Section 54 of the Cr. P. C and would be produced before the court soon, but did not specify when. She claimed that the police slapped her as a part of the interrogation. She had been in the police station for three days.*

** Odhikar found that Ishak Mia (about 70years old) was arrested. He narrated that his son had a conflict with a lawyer and that lawyer filed a case against him. Duty Officer said they could not do anything as a case was filed against him but they were taking care of him.*

** Another arrestee Sumon (25) was freed by paying money to police.*

** An accused of a theft case, Delowar (32) was beaten by sticks outside the custody rooms. As he started to vomit he was taken outside and beaten severely but after that he was freed.*

** Nobi Hossain (22) told Odhikar that he was caught on the street the night before, but did not know why he had been arrested.*

** Jamal, Iqbal, Rassel and Mojnu were arrested in a robbery case and were kept in the lock up for more than 24 hours. They were yet to be presented before a magistrate.*

4. Motijheel Thana

During the monitoring period Odhikar monitors found that Motijheel Police Station had been renamed Paltan Police Station and the new Motijheel Police Station was transferred to a new rented building. As the new police station was not ready the arrestees were kept in the Paltan Police Station. Only the Duty Officer was seen in the station as the seating arrangements of other officials had yet to be prepared. He said that people were not informed about the new station and they were going to the old Motijheel Police Station (new Paltan Police Station). It will take some time to settle the matter.

Environment of the custody:

Motijhil Thana has two custody rooms of appropriate size. Normally it was found comparatively cleaner than other police stations. Arrestees were found provided with food twice a day. The remand arrestees are given meals thrice. This is an exception. Since other Thanas are notorious for their one-meal-a-day practice. Custody rooms are lighted adequately with available water supply. Most of the time the custody rooms are not overcrowded. It has two toilets for male and female detainees.

Police's behavior towards victims:

Most of the time within half an hour police officials have been found registering the complaints. Wireless Operator was found assisting in filing General Diary on receipt of money from complainants. Behaviors towards complainants/victims vary on the basis of their social status. But normally police officials did not pay proper attention to the complainants/victims. They have a tendency to adopt unfair means for money.

** Mohammad Jamal Mia one of the complainants came to police station to find his younger brother and informed Odhikar that he had to pay taka fifty to collect the information regarding whether his brother was in the police custody or not .*

** During the monitoring period it was seen that police officials were making delays filing a case against two muggers, Gholam Ohab and Azizul. They snatched 12 lac Tk from a businessman named Abul Kashem. The victim was found waiting in the police station for more than one hour.*

** (Female) duty officer Shahana was observed to be talking politely to the victims and complainants, but (female) ASI Parveen was charging Taka 90 - 100 for lodging General Diaries.*

** On one monitoring day, the duty officer was seen gossiping and smoking with colleagues, while wireless operator Hiru Shikder was helping the complainants/victims in writing GDs.*

Police's behavior towards accused:

Arrestees are allowed to consult legal counsel and normally it has been found to be initiated by the relatives of the arrestees. To see the arrestees, their family members have to pay money. Most of the time police have been found behaving rudely to arrestees but police have informed them about the reason of arrest. No information of sexual harassment has been found.

** Odhikar talked to Sohel who was in the custody. He narrated that on that day police caught him near the Fakirapul circle while 4/5 people were taking marijuana. After taking him to the police station SI Shafiullah claimed 5000 taka from him otherwise he would be taken to remand. Samad, Sohel's father, informed Odhikar that by paying 20 tk bribe he could manage the constable and got the permission to talk to the duty officer. He also informed them that his son was arrested under the Narcotics Act. SI Shafiulaah called him and again claimed 5000 tk threatening that otherwise he would be tortured in remand. Samad told Odhikar that he couldn't even afford to pay 500 tk as he was a mere rickshaw puller. The police authority denied the matter altogether.*

** One arrestee, Shahin, informed Odhikar that he was not given food, though food was served there. His mother bought food from outside. Jahanara, his mother told Odhikar that she had to pay take 20 to talk about the issue of her son's arrest. They were claiming 500 tk otherwise they threatened that they would produce him to the court under a theft case. She paid them taka 400 and she had no money left with her.*

** Remand accusee Kabir (27) told Odhikar that police tortured him.*

It was found that due to Hartal there were a few victims in the police station. One official arrested five people for unsocial activities in a residential hotel. Arrestee Abu Sayed informed Odhikar that his home was in Laksimipur . He went to Dhaka that morning and was arrested with two other people. To prevent defamation Shawkat Ali, one arrestee, offered Tk 2000 to the police officials. Duty Officer informed Odhikar that he was not able to say anything. The concerned/ responsible police official would take decisions after consultation with the OC. No case was filed against them.

** Two children were found in the male lock up. One of them, Mamun, told Odhikar that they were arrested for a Bank robbery. Duty officer informed Odhikar that though they were children they were very professional .*

In all, the findings from the monitoring efforts can be summarized in the form of a table as follows:

Key Areas	Motijheel Thana	Mohammadpur Thana	Fatullah Thana	Tejgaon Thana
Police behaviour towards arrestees	Police behaved roughly with the arrested persons and with their relatives as well.	Generally harsh and rude behaviour towards the arrested persons	Arrestees were behaved with roughly and money was also demanded from persons in remand.	Police were rude towards the arrested persons, sometimes verbally abusing them.
Police attitude towards complainants/victims	Complainants/victims were behaved rudely to and constables were putting pressure on them for money. It was found that for lodging each GD police officials were taking Tk. 50/100.	Their statements were not heard attentively and the police lacked understanding and sympathy, making the complainants/victims wary.	Behavior of the police towards victims was fairly good. They talked to them with due respect and no one had to wait for more than half an hour. They were attentively heard and their complaints were entertained attentively. But money was demanded indirectly for their service.	On some occasions, the Duty officer was not found in his room. Police officials didn't pay attention to the victims and behaved rudely towards them.
Waiting time to file a Complaint/GD	The longest time one had to wait to file a complaint was half an hour.	It was observed that the longest time one had to wait to file a complaint was approximately one and a half hours.	Complainants/victims had to wait for more than one hour for filing cases.	Complainants/victims had to wait for more than one hour to be heard.
Condition of the lock-up/custody room	Custody was not very clean and the conditions cramped.	Not very clean. Conditions were over crowded.	There are two custody rooms for male arrestees, but none for the females. Since the number of female arrestees is few, they were seen to be kept in the corridor	Custody was found to be dirty and over crowded.
Availability of food	It was known that food was provided to the persons under remand thrice a day but to others it was irregular.	The fact finders were told that meals were given once a day. However, it was observed that this too was missing on some days. Arrestees had to procure food or depend on their families.	Arrested persons had to procure food from outside or it was brought to them by their relatives.	Food was not provided to the arrestees. Arrestees were procuring food from outside
Availability of water	Water supply adequate and available to the arrestees.	No ready water supply for those in custody. Arrestees had to procure water from outside.	Adequate water supply. Available to arrestees.	Water supply irregular and arrestees had to buy water from outside.

Sanitation facilities	Separate toilets for men and women. Conditions not too clean.	Generally poor. There were separate toilets for the men and women.	No separate toilet facilities for women.	Water supply was not available in the toilets
Allegations of harassment sexual or other.	Former arrestees allege that the arresting officers verbally abused them.	No allegations of sexual harassment. Former detainees complained of verbal abuse. It was noticed that the arrestees were pushed and manhandled into the vans going to the court by the police officials.	No allegations of sexual harassment, but allegations of verbal abuse were common.	No allegations of sexual harassment, but allegations of verbal abuse were common.
Allegations of torture	A person under remand told Odhikar that police tortured him at night and claimed money	No allegations of torture from arrested persons	Torture in remand was, allegedly, a common thing	Torture to arrestees was observed. Persons under remand were found tortured and at the same time money was claimed from them indirectly
Allegations of payment of bribes	Visitors had to pay bribes in order to meet and talk to the arrestees. Police were observed to indirectly ask for money for writing complaints and for helping the arrestee avoid remand.	Visitors had to pay bribes in order to meet and talk to the arrestees. Police were observed to indirectly ask for money for writing complaints and for helping the arrestee avoid remand.	Police were found asking for money from visitors and also from arrested persons and persons in remand.	Police had to be paid money for any service.
Visitor facilities	No separate visitors rooms. Visitors had to pay the police in order to talk to an arrestee.	Available, but bribes had to be paid. No separate visitors room.	Family members were allowed to see the arrestees in the station in exchange of money.	Family members were allowed to see the arrestees in the station in exchange of money.
Maintenance of arrest register	Not maintained properly. The registers were found to have a lot of corrections and crossed out words in them.	Not maintained properly or regularly. In some instances, the ages and addresses of the arrestees was recorded wrong	Registrar book was not maintained properly and irregularities were found there.	It was found that the registrar was not maintained properly. An arrestee could be kept in thana for more than 24 hours without recording any information in thana registrar. It was not possible to find out the actual time of arrest.

Arrested children	In the station it was seen that though the children should be kept in women lock up as per mentioned in the police station but in reality it was found that they were kept in men s lock up.	Has a separate cell for arrested women and children	No children found during the monitoring period, but there was a separate cell for women and children.	Children were seen kept with the adult detainee.
Condition of women	Separate cells for male and female arrestees.	Even though there was a separate cell for women, arrested females were found kept waiting in the corridor.	No separate cell for women arrestees. They were kept in the corridor between the male lock-ups.	Though there is separate lock up for female arrestee, females were kept in the corridor
Availability of legal counsel for arrestee	No legal counselor was present in favor of arrestee	No legal counselor was present in favor of arrestee.	Arrested persons were allowed to talk to their legal counsels.	No legal counselor was present in favor of arrestee
Were the fact finders allowed to talk directly to the arrestees?	The fact finders were not allowed to talk directly to the arrestees most of the time. However, occasionally some police officers would allow it in their presence and for a brief time. In most instances, the police were irritated at the presence of the fact finders.	The fact finders were not allowed to talk directly to the arrestees most of the time. However, occasionally some police officers would allow it in their presence and for a brief time. In most instances, the police were irritated at the presence of the fact finders.	The fact finders were not allowed to talk directly to the arrestees most of the time. However, occasionally some police officers would allow it in their presence and for a brief time. In most instances, the police were irritated at the presence of the fact finders.	The fact finders were not allowed to talk directly to the arrestees most of the time. However, occasionally some police officers would allow it in their presence and for a brief time. In most instances, the police were irritated at the presence of the fact finders.

B. General Findings from the police station monitoring exercise

After the High Court Division of the Supreme Court's directive to amend Section 54 of the Cr.P.C., the use of this provision has reduced to a large extent from the year 2003. However, the use of Section 86 and 100 of the Dhaka Metropolitan Police Ordinance has increased.

Some persons initially arrested under Section 54 were subsequently charged with a crime, while others were released without charge. The phrase 'with reasonable suspicion' as mentioned in Section 54 of the Cr.P.C. gives the green light to unscrupulous police to misuse and abuse the provisions and contravene all constitutional guarantees of the rights to life, liberty and equality before the law. As has been mentioned, 'Suspicion' is a very subjective term and police apply it subjectively to harass people. Some times police could not justify the reason for arrest and used the ground of suspicion as reason for arrest. Subjective application of the term 'suspicion' has made it a tool for abuse by police.

It is also common for persons arrested under Section 54 of the Code of Criminal Procedure, to find themselves later charged under the Special Powers Act 1974, a repressive law favored by all the regimes, or the Drugs Act or even the Explosives Act. This conversion occurs when a prayer or petition, for detention under these Acts, is submitted to the District Magistrate from the concerned police station, through the Superintendent of Police. The District Magistrate then issues a detention order and sends it for approval to the Ministry of Home Affairs.

Other laws under which persons are regularly arrested and detained by the police were found to be the Special Powers Act, section 72 and 76 of the Dhaka Metropolitan Police Ordinance and Section 34 of the Police Act.

Section 72 of the DMP Ordinance 1976: If any person is found constructing or repairing any transport vehicle or part of it, except that which has become essential due to an accident, on any road or any public place creating obstacle in plying of vehicles or movement of people or causing disturbance for people living around, that person shall be sentenced to one-year imprisonment or fine of Taka two thousand or both and concerned vehicle will be confiscated by government.

Section 74 of the DMP Ordinance 1976: If any person is found on any street or public place or from inside any building or house engaged in following:

- (a) Drawing or trying to draw attention by obscene body movement or words for the purpose of prostitution; or
- (b) Disturbs or allures any person for prostitution;

that person shall be sentenced to imprisonment for three months or fine of Tk. 500 or both.

Section 34 of the Police Act was also found to be used very frequently. According to this provision, if any one does any of the following offences in an open street which may annoy, cause trouble or difficulties or create hindrance to the people, the Magistrate Court can sentence him fine of maximum 50 taka or rigorous or plain imprisonment for 8 days and any police official may arrest any person without warrant if such offence is occurred in front of him:

1. If any domestic animal is slaughtered, skinning or riding on horse recklessly or rearing animals in an open place;
2. Torturing animal viciously and unkindly in open;
3. Unnecessarily parking car or other vehicles, which causes trouble and difficulties for the passer-by;
4. Piling goods for sale in open space;
5. Throwing or depositing garbage in the street or using the roadside for making stable and other factory which creates odour of cow dung and other muck;
6. Roaming in the streets in drunken condition or insane condition;
7. Wandering around the streets without clothes or urinating on the streets or exhibiting any physical disability or any painful disease or using any restricted pond for washing clothes and having bath;
8. If any pond, well or other water source which is unsafe is kept uncovered;

'Police Remand' for interrogation is another instrument used by police as an excuse to physically torture detained persons. For collecting money from arrested persons, corrupt police officers use 'remand' as a tool. By talking to several remand victims during monitoring police stations, Odhikar came to know that they were tortured by police inhumanly and were not provided with any food during detention in remand

Odhikar has found that large majority of arrestees came from poorer segments of society. They are mostly homeless, rickshaw puller, street children, destitute women who, being abandoned by their husbands, turn to the streets to try and keep them and their children survived. Young men suspected as terrorists, extortionists and belonging to various political parties are also regular victim of arbitrary arrest by police.

Violating provisions of Children Act 1974, children are mostly arrested during political programs like hartal. They are put in cells with adults and common criminals in total contravention of the Jail Code.

Police corruption is another prime cause of random arrest and for this type of arrest, Section 54 or Section 86 or the SPA are the most commonly used legal provisions. From the experience of Odhikar's police station monitoring, instances have been found where persons were arrested on the grounds that they could not comply with request of police officers for money and therefore, arrested under section 54 of the Cr.P.C.

Odhikar also conducted 'fact finding' as a follow up of police station monitoring to find out detail information of arrest or abuse incidents. From that experience Odhikar has learnt that there is lack of proper and efficient implementation of the existing criminal laws. This is due to several factors: criminalization in the law enforcement agency like police, poverty and lack of awareness of legal rights. Such misuse of law not only violates human rights of the victims, but also their families. The common people needs to be made aware of the fact that such violations of the law occur and that immediate legal recourse needs to be taken as soon as illegal arrest is learnt of.

The presence of some unknown people were found in the police stations who acted as mediators between the police and relatives of arrested people for release of arrestees in exchange for money. Such persons were nothing but 'touts', but the police did nothing to discourage their activities, as they, too, were profiting from it.

However, the situation of police stations in the City has improved relatively during Odhikar's police stations monitoring. Police behavior towards the common people is gradually changing in few cases, which is obviously a good indication. In every police station a list of instructions provided by the Inspector General of Police was observed in the duty officer's room mentioning what to do and how to behave with people, but it has not yet been fully practiced or followed. Many police personnel did not even go through the Code of Conduct. According to the instruction, people who come to the thana should be offered to take a seat first. Unfortunately, in many police stations such as Mirpur, Motijheel, Tejgaon, Mohammadpur, there are no sitting arrangements for the people who come to the police station for complaining or lodging FIR or GD.

As in 2003 and 2004, it was disclosed that budget constraints prevented police from working properly. Police told Odhikar that in some instances they had to buy relevant materials and stationery from their own pocket. They received conveyance when they went to investigate specific cases or to give witness. These lead to corruption. A police official in police station has to work for 16 to 18 hours a day and under such pressure, it was not possible to expect good behaviour from the police always.

C. Some positive aspects/achievements:

Apart from the Government initiatives to separate enforcement and investigation activities of police personnel in police stations, it has also approved the recruitment of a good number of new police officers for this purpose. Formation of separate investigation and enforcement units is expected to specify works of police personnel and reduce excessive workload of them in police stations. It is expected that it will also help in improving the service and behavior of police towards common people.

Furthermore, it was disclosed at a discussion meeting held in October 2005, that the Ministry for Home Affairs was going to establish female based police stations and that in every police station there would be a separate investigation unit for female victims.

D. The thana officials:

From its monitoring experience, Odhikar learnt that officials play key role in running day to-day affairs of the thana. They are involved in corruption, ill treatment and misbehaviour towards people. For example, in Fatulla Police station Odhikar met two duty officers. One was found to be honest and had a helping attitude. He behaved politely and the complainants/victims were treated well by him. However, the other one was found being openly corrupt and blatantly asking for money. Everyone who comes to the station has to pay money to him. The personal character of the police officials always matters a lot.

In Motijheel Police Station, Odhikar talked with one Constable Jahid. He commented that the police received only 20 days annual leave and for arranging such a leave, they had to pay some 'extra money' to those arranging leaves. However, in the case of news of death of any family member, leave was sanctioned quickly and no money had to be paid.

Fact Findings in 2005

One of the main activities under the project was the fact-finding of human rights abuses perpetrated particularly by law enforcement agencies. Torture, cruel, inhuman or degrading treatment or punishment, abuse of some specific laws causing human rights violations, repression against innocent people and application of unnecessary force by law enforcement agencies were the issues Odhikar attempted to bring to light through fact-finding.

Odhikar believes that such on spot fact-finding will highlight issues that newspaper reports miss or might not state in detail.

Newspaper reports and information from grassroots level networks of *Odhikar*'s human rights defenders were the key sources of incidents for fact-finding. Odhikar emphasized on those incidents of human rights violations that have been reported in the newspapers or by grassroots level human rights defenders, but needed to undertake further enquiry to find out about the actual abuses faced by the victims, causes and the persons responsible from the law enforcement agencies. While media focus on human rights violations is more from a journalistic perspective confined within reporting the incident only, socio-legal perspectives of particular incidents are attempted to be analyzed in Odhikar's fact-finding process.

For fact-finding, no specific time frame could actually be determined. Among a number of incidents of police abuse reported, selected incidents were investigated. The nature of severity of harm caused, vulnerability of the victims (particularly women and children), the nature of abuse inflicted by perpetrators, location of incident, repercussion among the local people etc. were taken into consideration when identifying the incidents to be investigated.

The following fact-findings were carried out during 2005. Detailed fact-finding reports are available in Annex - I.

Fact findings undertaken in 2005:

- Nabi Hossain was hit by Police bullets in Kishorganj
- Two Killed by Coastguards and Forest guards in Laskmipur
- Young man tortured to death by RAB
- Jugantor Photo Journalist tortured by RAB
- RAB personnel involved in robbery of Tk 7.8 lakh from a cattle trader
- Fabricated news about the rape of a young girl by ansar personnel
- Over 100 hundred workers wounded during police shoot-out at Savar EPZ

- Back from Akhaura
- Traders are shot in Roumari, Kurigram
- Two workers were killed by Police in Majhirghat, Chittagong
- Police tortured a suspect of a murder case in Rajshahi
- Youth killed in Police Custody in Homna, Comilla
- Death of a worker in Gazipur
- Youth death in Prison, Narayanganj
- Jubo League Leader Shuman Shot dead by RAB, Dhaka
- Youth dead in police custody at Brahmanbaria
- A young businessman in his death-bed due to police torture in Rajshahi
- Masum killed at crossfire by Detective Police
- Death of a businessman due to police beating in Dhaka
- A youth injured due to RAB torture
- Allegation of rape of an indigenous woman by police in Rajshahi
- Police torture of a businessman in Chittagong
- An adolescent girl raped by police in Dhaka
- Allegation of Torture of two brothers in police custody in Rajshahi
- Torture of a political activist by police in Rajshahi
- Allegation against police of killing a political activist
- Allegation of involvement of a police officer behind the killing of a college student in Dhaka
- Death of a person by police in Gaibandha.
- Death of an accused in police custody in Dhaka
- Five people killed by Companyganj Police in Noakhali
- Farmer Nando Mohan killed by police in Thakurgaon

Follow-up fact-findings (from incidents that occurred in 2004):

- Killing of Piren Snal: police tendency to avoid responsibility
- Torture of civilians by joint forces in Jhenidah.
- SPs bullet claims two people in Nandile, Mymensingh.
- Sumon Tortured to Death by Rapid Action Battalion (RAB) in Gajipur
- Two youths beaten to death in Araihaajar Police Station in Narayanganj

Follow up of the previous fact-findings undertaken in 2005:

- Young man tortured to death by RAB
- Madrasha teacher tortured to death by RAB in Chittagong
- Beating of journalist Khalil by airport police and staff
- Death of a person by Police torture in Bogra
- RAB personnel involved in robbery of Tk 7.8 lakh from a cattle trader in Dhaka
- Harassment of a woman jail guard by the DIG prison in Jessore
- Death of a person in police custody in Shailakupa in Jhenidah
- Anwrul Islam Ranju tortured to death by RAB in Kushtia
- Jubo League Leader Shumon shot dead by RAB in Dhaka

General findings

It becomes difficult for police to maintain neutrality and perform the professional duty of maintaining law and order in politically difficult situations. Police may need to open fire, lob tear gas, charge batons to disperse unruly crowds or to prevent clashes between two politically rival groups. The nature of mob behavior and extent of tension are the factors behind police action in such volatile situations. Sometimes police have to open fire for self-defense. Whatever the situation may be, police have to maintain utmost restraint, show patience and remain within legal provisions in managing such situations. However, due to the chaotic nature of such situations, it becomes difficult to find out whether police action/behavior is responsible for death of innocent people in such situations.

The role of other specialized law enforcement forces like the Coastguard and Forest Guards need to be reviewed. There have been allegations reported in newspapers and by local level human rights activists that instead of catching pirates and smugglers in coastal and forest areas, these forces help such criminals in plundering the country's resources. In doing so, sometimes they try to make innocent people victims of their illegal acts. Sometimes, their actions have been found excessive and as such violating the rights of common people.

Newspapers sometimes publish reports, out of small incidents or rumors, of human rights violations by law enforcement personnel in order to create cheap publicity without checking and verifying properly the real facts. This amounts to abuse of press freedom.

Law enforcement personnel try to cover-up their misdeeds and incidents of human rights violations by offering money or other incentives to victims. They try to use their official positions, influence and connections for creating pressure on victims/complainants to make a compromise and not to take legal action or create any issue out of such incident. Vulnerable, poor people have no way but to succumb to such pressure.

The government, at regular intervals, conducts special drives and operations in search of hardened criminal groups. Generally joint forces comprising police, armed police, border security force and ansar take part in such special operations. Although such drives are conducted on the basis of specific intelligence information, sometimes misinformation makes innocent people victims of human rights violations by such joint forces. Such operations should be planned more carefully to avoid any excessive harm.

Sometimes, innocent people become victims of human rights abuse due to police negligence in properly verifying the identities of arrested persons. Among a number of arrested persons, presumably innocent people who have no connection with a particular incident get arrested and unnecessarily harassed by police.

The intelligence apparatus of the law enforcement agencies is neither strong nor reliable. It has been found that in many cases, police informants provided wrong information, which caused harassment of innocent people by police. Sometimes police informants, by using the threat of police harassment, try to get illegal favors from people. It is widely known that the Police, probably in order to suppress their inefficiency, try to emphasise on the wrong information provided by informants in order to complete their investigations and make arrests.

For ensuring justice, in the case of crimes committed by police personnel, it is not proper to assign one police officer to investigate human rights abuse or crimes committed by another of the same Thana. Unfortunately, this is being done, which has raised questions about the credibility of such investigations. An independent police investigation unit is essential in this regard.

A general sense of distrust against police prevails among people. This is a dangerous trend. Even if a person dies of physical complications like cardiac arrest any other disease or for any reason, and he/she comes in contact with police before death, this leads people to believe that the death must have occurred due to some method of torture or other such physical behaviour of the police.

The political identity of victims of human rights abuse plays an important role in police investigations. If the victim is an ordinary human being, police take more time to investigate the matter than if the victim had a political identity or association. This also plays an important role in the media reporting of such incidents. Torture or harassment of a politically important person gets more media attention than the death of a common man.

Several psycho-social reasons have been revealed behind the crime of rape perpetrated by police. One reason for this crime is that many police officers have to stay in the workplaces for a long time without their families, who live in some other part of the country. The excessive burden of work and lack of healthy social and recreational life force some of them to commit such abuses. Some such police-offenders have an inherent trend of committing sexual offences, which need psychological assistance. The absence of gender orientation and training is also responsible for mistreatment of women by police.

In some instances, the place of occurrence also becomes important. Police may torture an individual in the police station, but that individual dies in hospital or at home. Police tend to avoid responsibility on the grounds of place of death. In other cases, a victim may have been brought to the police station after a severe mob beating. The police then have to take responsibility of his death in the police station, although that individual may not have died due to police torture but due to mob beating.

Police abuse of the human rights of individuals also cause suffering for the families of the victims. The families do not always get the opportunity to be provided with the appropriate legal or other assistance for themselves or the victims. If the victim is the only earning member of his family, it becomes difficult for his family to survive in case of death or hospitalization or incapacity of the victim to earn a livelihood.

Sometimes police get involved in family or community conflicts and play a partisan role. Generally some members of the concerned family or community involve the police to protect their own interests. In such cases, police take the opportunity to cause human rights abuse for their own illegal gains - financial or otherwise. Misinformation and misinterpretation of available information make such a situation complicated for police to investigate.

The death of some innocent individuals by the Rapid Action Battalion (RAB) was another severe human rights violation in 2004 and 2005. Although killing in so called 'crossfire' by RAB was confined to listed and notorious criminals since the inception of RAB operations, Odhikar fact-findings revealed that some of the people killed by RAB were allegedly innocent and they were killed simply based on wrong information. Similar wrongs were committed by other law enforcement agencies. To save face, Police have a tendency to implicate such victim falsely in other cases.

Post-mortem reports of dead victims is one of the more reliable ways to establish the reason for the death of any victim. But the physicians who do the post-mortem of victims do not want to share the reports, except to police and official authorities.

Chapter 5

Recognising the need for laws to protect victims and witnesses

After three years of constant monitoring of police activities and fact finding missions into alleged police atrocities and instances of torture, Odhikar has confirmed that there is an urgent need to protect victims and witnesses of criminal acts. In order to carry a criminal incident forward to insure justice is done, the statements of victims and witnesses play vital roles. If the victims and/or witnesses and their family members are intimidated by the perpetrator or members of his family, if the police seem inattentive and unsympathetic and insensitive to those who come to them seeking to lodge complaints and GD's, how is justice to be brought? Furthermore, it was found that there is hardly any provision for police protection - except for the rich and politically connected. Bangladesh has no specific law availing protection to victims and witnesses and further research at Odhikar has shown that the situation of this group is similar in the rest of South Asia.

As a result, Odhikar recognised the need to hold a regional discussion meeting on victim and witness protection and invited guest speakers from India, Pakistan, Nepal and Sri Lanka to join in. The meeting was held on 01 October 2005 at the BRAC Centre Inn in Dhaka and was titled "Victim and Witness Protection under National Legal Regime: South Asian Perspective."

A detailed report of the meeting, along with the transcript of the discussions is given here.

A. Programme Schedule

* Inaugural Session: (10:00 AM-11:00 PM)

Presided by **Dr. Tasneem Siddiqui**, President, Odhikar

Working together: Three years of AED-Odhikar cooperation

Ms. Susan Ward, Chief of Party, BHRAP, AED

Thematic presentation: Victim and Witness Protection under national legal regime: South Asian perspective

Mr. Justice Tariq Ul Hakim, Honorable Judge of the Supreme Court of Bangladesh

Address by the Special Guest **Mr. A. F. Hassan Ariff**, Senior Advocate, Supreme Court and former Attorney General for Bangladesh

Address by the Chief Guest **Mr. Justice Syed J.R. Mudassir Husain**, Honorable Chief Justice of Bangladesh

* First Working Session: (11:15 AM -01:00 PM)

Presided by: **Mr. Farhad Mazhar**, Columnist, Alternative Development Activist

Country Paper Presentation

1. Mr. Arafat Amin, Researcher Odhikar
2. Dr. Saeed ur Rahman, South Asia Forum for Human Rights (SAFHR), Pakistan.
3. Prof. Buddhadeb Chaudhuri, CARID, India.

Discussants:

1. Justice Sharif Uddin Chaklader, Honorable Judge of the Supreme Court of Bangladesh
2. Mr. A.S.M. Shahjahan, Former IGP and former Advisor, Caretaker Government
3. Professor Dr. C.R. Abrar, Dept. of International Relations, University Of Dhaka
4. Dr. Shahed Zia, Human Rights Defender, Pakistan

Lunch



Chief guest, Chief Justice of Bangladesh Syed J.R. Modassir Hosain (centre), Special guest Justice Tarikul Hakim (left), Senior Advocate of the Supreme Court A.F. Hassan Ariff (right) in the Odhikar discussion meeting.

* Second Working Session (2:00-4:00)

Presided by: **Syed Fahim Munaim**, Managing Editor, The Daily Star

Country Paper Presentation:

1. Mr. Subodh Pyakurel, Chairperson INSEC and Board Member, SAFHR, Nepal
2. Mr. Rukshan Fernando, Sri Lanka

Discussants:

1. Dr. Asif Nazrul, Professor, Faculty of Law, University of Dhaka
2. Mr. Maqsoodul Haque, Cultural Activist and Columnist
3. Mr. Syed Nurul Alam, Executive Director, South Asian Partnership (SAP)

* Adoption of Recommendations and Future Action Plan (4:00-4:30 pm)

Moderated by: **Mr. Subodh Pyakurel**, Chairperson INSEC and Board Member, SAFHR, Nepal

Closing Session (4:30-5:00 pm)

Presided by: **Mr. A. F. Hassan Ariff**, Senior Advocate, Supreme Court and Former Attorney General for Bangladesh

Special Guest: **Mr. Gene V. George**, Mission Director, USAID, Bangladesh

* Vote of Thanks: **Dr. Tasneem Siddiqui**, President, Odhikar.

Refreshment (5:00-5:30 pm)

B. Transcript of the Proceedings

i. INAUGURAL SESSION

Dr Tasneem Siddiqui: On behalf of Odhikar, I welcome you all to today's discussion meeting, "Victim and Witness Protection under National Legal Regime: South Asian Perspective".

This is a part of an ongoing programme that Odhikar has undertaken with its human rights partner, the AED. Today's meeting is particularly important and from the title it is quite evident that the issue of victim and victim protection under the national legal regime in South Asia needs to be urgently reviewed. I must say, in the human rights discourse of the South Asian countries, this topic is extremely relevant and, although we are quite aware of the plight of victims and witnesses in the region, this issue is hardly ever put openly on the discussion table.

We are very proud that today, as the Chief Guest, we have Justice Syed JR Mudassir Husain, honorable Chief Justice of Bangladesh. We also have with us Justice Tariq Ul Hakim, honorable Judge of the Supreme Court of Bangladesh, and Mr AF Hassan Ariff, Senior Advocate of the Supreme Court and former Attorney General for Bangladesh. Ms Susan Ward, Chief of party, AED, is also present with us at this session. On behalf of Odhikar, I thank you all for being here.

Before we start, I just like to highlight on the major areas in which Odhikar has been working

for more than a decade. Although we concentrate particularly on civil and political rights, we have, I think, also worked in various other related human rights issues from time to time. If you think of issues such as the abuse of Section 54 of the Code of Criminal Procedure, jail reform, the situation of children and women in jail, custodial death, impunity, torture and all other important issues related to the human rights and establishment of civic and political rights in Bangladesh, I think Odhikar is in the forefront in the major movement for change, improvement and reform. In particular, I think we have all right to be proud that it was because of our data and resources and discussions on the issue of children in jail, that the number of children who were incarcerated therein were taken note of and removed and jail reform took place last year.

The issue that we are discussing today has two major targets --witnesses and victims. Any innocent victim, who suffers direct and indirect threat of physical, emotional and financial harm as a result of a commission of crime, should be protected by criminal justice. Therefore, the term "victim" also includes the spouse, legal guardian, parent, child, sibling or family members of any victim.

Again, a witness is someone who has information or evidence concerning a crime and provides information regarding the knowledge to a law enforcement agency. Their statements are vital evidence and it is crucial that they too be extended protection from external threats to person or property.

Our understanding that in a very economically advanced country, victim and witness protection can be ensured, has become old-fashioned. Even given the socio-economic status in South Asian countries, I would say, this particular aspect of judicial legislative and legal system is possible to some extent but has not been discussed in great detail. Rule of law has not taken root properly.

On this note, we will start today's programme and I request our working partner, Ms Susan Ward to say a few words about the 3 years of Odhikar and AED cooperation.

Susan Ward, Chief of Party, AED: Mr Justice Husain, Mr Justice Hakim, Mr Ariff, Dr Siddiqui, distinguished guests, good morning. It is an honor for me to join all of you and Odhikar today at this discussion on victim and witness protection under a national legal regime. I represent AED, Academy for Educational Development, an international NGO, with headquarters in the USA and activities throughout Southeast and South Asia and many other countries in the world.

In Bangladesh, we manage the human rights advocacy programmes. BHRAP-USAID funded initiatives to foster and advocate for a national environment in Bangladesh that respects human rights and protects vulnerable groups, especially women and children, from human rights violations. We support efforts of Bangladeshi NGOs like Odhikar that lead to systematic changes in the way human rights are perceived by the citizens and leaders and the way they are incorporated into the policies of everyday life.

We are currently working with 15 NGOs advocating for human rights programmes in 61 districts throughout the country. We focus on issues primarily in violence against women in Bangladesh, children's rights, prevention of human trafficking, and access to justice. We support NGOs' technical assistance outreach in capacity building.

Odhikar is one of BHRAP's earliest grantees and unique among our partners' because of its sole

focus on legal agencies and human rights. As experts and defenders of human rights, I don't have to tell any of you the great importance, sensitivity and risk involving human rights violation by law enforcement agency. Ideally, human rights should be a top priority for law enforcement agents and a consideration in all actions we take. Unfortunately, this isn't really the case anywhere.

In Bangladesh, an emerging democracy with serious resource constraints, high levels of corruption, and a political and legal system that is not really well equipped or willing to deal with human rights violation, it is especially important that citizens' political and civil rights are carefully safeguarded. Transparency International in Bangladesh has repeatedly identified the law enforcement agency as the most corrupt institution in the country. The reasons are many and are quite complicated. But none can justify the abuse of human rights violation either by a law enforcement agent or an institution.

BHRAP support for Odhikar is based on our belief that it is a government's responsibility to protect the human rights of its citizens. And the government is obligated to live up to its international commitments to enforce the law and to ensure the human rights.

We also believe that a citizen in a democracy has the obligation to hold the government and its agencies accountable. The work of watchdog groups like Odhikar makes this possible. BHRAP has supported Odhikar's investigation, research and publication in human rights violation projects for almost 3 years now. Through this project Odhikar monitors 12 police stations in and around the Dhaka metropolitan area and documents abuses of Section 54 of the Code of Criminal procedure, Section 86 of the Dhaka Metropolitan Police Ordinance, and under the Special Powers Act 1974 - both of which allow arrest and detention without a warrant or order from a magistrate, on 9 different grounds for up to 24 hours. And both of which are sources of significant controversies.



A section of the guests present in the discussion meeting

Through the BHRAP project, Odhikar also conducts fact-finding missions and reports on human rights violations, including arbitrary arrest and detention, torture in remand and other forms of physical and verbal abuse committed by the law enforcement agency. Results of the activities are regularly documented and disseminated to the media and directly to the relevant government officials, agencies and ministries.

Odhikar's police station monitoring, its investigations of abuse and advocacy of initiatives have already gone through the report's highlighted specific cases--and the need for systematic reports raising awareness among the general population and bringing pressure to bear on policymakers and government official has been recognized and applied. For example, last year the Dhaka Metropolitan Police institutionalized a Code of Conduct, something that Odhikar and other human rights group advocated for. Odhikar's monitoring and fact-finding investigations had led to complaints registered by police, charges being followed up and other actions to help individuals to get access to justice and hold those responsible for human rights violation accountable.

BHRAP partners are all engaged in some forms of advocacy. They work on advocacy to tackle the human rights issues on a variety of levels in communities, in media, among policymakers and government officials. Common and critical to all of these issues, no matter how varied they may be, is a need of solid and reliable data. Police monitoring is an excellent source for securing just this type of information. The information Odhikar provides through police monitoring and investigation is used by national and international groups analyzing human rights in Bangladesh and is extremely valuable for media reporting on human rights violations to highlight corruption and also to show the challenges and constraints facing law enforcement agents so that the effective and necessary reforms can be implemented. The focus of today's meeting on victim and witness protection is chosen by Odhikar, based on a need identified by an ongoing monitoring and investigation process.

BHRAP is proud to work with Odhikar and we look forward to seeing them further their advocacy and take their monitoring investigation and documentation on human rights violation the next step. To provide primary data on human rights abuses, to catalyze, to lobby for reform needed, to provide a solid foundation to increase respect for human rights and to ensure that law enforcement agencies are in the frontline of the defense of the human rights violation, the work of organizations such as Odhikar are vital.

So, I'll just close by congratulating Odhikar on their important and difficult work, not only with BHRAP in the last 3 years, but since their inception in the last 10 years. I am very much looking forward to participating in today's discussion. Thank you.

Tariq Ul Hakim, Honorable Judge, Supreme Court of Bangladesh: Odhikar, with the support of the Academy of Educational Development of the US Agency for International Development, has been, for a long time, monitoring incidents of human rights abuses. One of their findings is that victims and witnesses continue to remain in an environment of insecurity and uncertainty, even after they take recourse under the protection of law. The laws in Bangladesh do not have any specific practice for providing protection to victims and witnesses. Victims are threatened of dire consequences by the perpetrators of crime if they file cases against them. Similarly witnesses do not come forward to provide evidence against offenders

due to insecurity providing protection to victim and witnesses is essential to ensure justice and to address human rights violations. Lack of evidence caused by lack of interest from victims and witnesses to provide evidence due to lack of protection and insecurity results many perpetrators of human rights violations go unpunished. Odhikar has been advocating for long time for a legal regime for victim and witness protection and trying to draw the attention of government policy maker to this issue.

Human rights activists from other South Asian countries have come here today to discuss the scenario of victims and witnesses protection in the countries of this region and to formulate comprehensive recommendation for the South Asian perspective.

A victim is someone who has suffered direct threat physically, emotional or financial harm as a result of the commission of a crime. In any democratic and civilized social system victims of offences ought to be given protection. Such protection should be given to them not as a mere charity but as an outcome of one of their rights. Other rights of the victims may include to be treated with dignity and respect, the right to be protected from intimidation from harm, the right to be informed about the criminal justice process and so on.

A witness is anyone, on the other hand, who has information or evidence concerning a crime. For proper investigation of an offence and conviction of the perpetrators of crime, the witness of an offence should be guaranteed protection as well as given certain rights.

These may include the right to protection from intimidation and harm, the right to be informed concerning the criminal justice process, the right to reparation etc. Unfortunately, apart from a few provisions in specific statutes, there is no legislation guaranteeing any right to protection. The Code of Criminal Procedure 1988, the Evidence Act of 1872, the Children's Act in 1974, Acid Crime Control Act 2002, Women and Children repression Prevention Act 2000 (amended in 2003) specify certain provisions to ensure victims' protection.

Under the Code of Criminal Procedure victims may file a denial -- *a naraji* -- petition in relation to the final report of the police. Victims also have the right to submit evidence and to make submission to the magistrate. A victim, however, cannot claim compensation in criminal proceedings. A court hearing a criminal case has the discretion, however, to order compensation when imposing a fine as a sentence or part of a sentence by relying on Section 545-1(B) of the criminal procedure court.

Under sections 151, 152 of the Evidence Act 1872, the court has the discretion to forbid any question which appears to it to be intended to insult or annoy, or a question, though proper, appears to the court needlessly offensive in form. The Children's Act 1974 describes certain rights for children. Section 12 specifically requires the certain persons should not be in court when a child is examined as a witness. Section 17 similarly prohibits the publication of anything disclosing the identity of a child involved in cases.

Under the Women and Children Repression Prevention Act 2000 (as amended in 2003) the victim and witness' right to trail in camera, safe custody and right to privacy, has been recognized by the law. Section 14 puts restrictions in the matter of disclosure of the identity of the repressed woman and child in news media. Section 9 of the Acid Crime Control Act 2002 entitles victim's compensation from the accused. Furthermore, Section 28 of the Act gives the Tribunal absolute power to decide the necessity of custody of victims irrespective of their consent.

Recently, the High Court Division, in the case of Tayazuddin and Another vs. The State, a case relating to the crime of acid burns, recognize the government's duty to protect and safeguard the rights of its citizens, including victims and witnesses of offences. The court stressed on the right of a victim to have a fair trial and noted that it is to see that a victim of a crime can have a fair trial without fear and insecurity.

In the case of Al Amin and others vs. The State (51DLR, High Court Division, pg 154), the court observed that the object of sentencing should see that the crime does not go unpunished and the victim of crime as well as the society has the satisfaction that justice has been done. Court must not only take into account the rights of the criminals but also the rights of the victims of the crime and society at large while considering appropriate punishment.

The topic chosen for deliberations today has wide ranging ratification. I commend the organizers for making this effort and wish the participants all success. Thank you.

AF Hassan Ariff, Senior Advocate, former Attorney General for Bangladesh: This subject is something that South Asian countries have been discussing for quite some time, including a consensus to have a common protocol for the SAARC. A comparative study has shown that the justice system in our country in the South Asian region is more flawed not because of lack of statutes, but because of lack of procedure of laws, for lack of emphasis in certain areas which have recently cropped up in the justice delivery system, in particular criminal justice delivery system.

As Justice Tariq Ul Hakim has pointed out, the objective of the criminal justice system is to ensure equilibrium in the society, that the offender in a crime does get justice in the sense that he is not able to repeat the same crime. It is the responsibility of the court of justice to take the offenders out of the society and seclude them in prison so that the society is free from the activities of such an offender.

We read in the newspapers almost everyday that another victim has been threatened or intimidated by the offenders. This is, in fact, not a small offence or small crime; this is a great crime because this is putting a spanner in the works of the judiciary system. You start with complaint; you will meet witnesses that will give you documents that will support your complaint. When the law enforcement agencies go for investigation, they will not only ask you about the complaints but also gather information for purpose of making an arrest. For effective prosecution, he needs witnesses. Then again at the prosecution stage, trial stage, the court will not convict an offender merely because complaints have been launched against him, the court needs evidence that the offence has been committed by the person against whom the complaint has been made. The court will need witnesses.

A witness plays a vital role, especially the first witness- the victim himself or herself. If these witnesses and victims are kept away from the court, then the whole system fails. The court is unable to convict, the prosecution is unable to prosecute, and the investigating agencies are unable to investigate. And as a result, the number of unpunished offenders swells in the society. And we perhaps in Bangladesh are feeling the crunch of it. The number of criminals moving around in the society has reached an unbearable situation, making an unbearable atmosphere. We generally call them terrorists, though not of an international dimension but in our context.

We are in such a situation that you cannot hold a wedding ceremony unless you buy peace with the local terrorists--this is a fact, a reality in our society. So, we need to do something. The judiciary and the legislative must do something together so that the offenders face trial without intimidating the victim and the witness. And that is what we have been trying to evolve a legal system to make some improvement in the law, some addition, alteration or amendment in the law, so that witnesses and victims may get protection.

There are innumerable instances where convictions could only be obtained after the victim or witness could approach the higher authorities. This is not possible for each and every citizen of the country. So, we need a legal system where the victim and witness get protection automatically. Protection does not mean merely escorting her/him, from the house or residence to the court, but a system where the offender will face an additional punishment for intimidating or threatening the victim or witness. And the punishment should be so stringent and adequate in terms of compensation that would have a deterring effect - that is, it would deter the perpetrator and his family and friends from intimidating and threatening victims and witnesses.

We have among us honourable judges and I hope they will make some recommendations that will ultimately pass on to the government and legislators so that the criminal justice system can really give benefit to the society at large. It is ultimately the human rights of citizens that are affected if we do not give this protection. I have a right to justice, the right to have access to justice. No one can take this away from me.

This, access to justice does not mere mean access to court and police protection. Access to justice means that the justice delivery system must work efficiently and independently and threats and intimidation are hindrances that need to be removed.

Chief Justice of Bangladesh, Syed J. R. Mudassir Husain: Respected Chairperson of this function, distinguished guests, members of the media, ladies and gentlemen present, Assalamu-Alaikum and Good morning to you all. I fell very honoured to be here at the inaugural session of a discussion meeting on a very important subject. I offer my heart felt thanks to both the organizers and supporters for holding this timely discussion meeting on an extremely pertinent subject.

In the present millennium the fast changing domestic, regional and global scenario in terms of emergence of new norms, the openness of economy, advancement of science and technology and digital revolution in communication systems have posed more challenges to the justice delivery system than ever before. Crime is an inevitable, general aspect of every society. In the present situation of the world, it is clear that rapid social changes are giving rise to greater criminal activities which must be over come by the law in the criminal justice system.

In our criminal justice administration, we face various problems and difficulties; however, certain amendments have already been made and attempts are also being made for further amendment in certain areas. In the present scenario, the provisions for the protection of witnesses and relief given to the victims that existing in our criminal justice system cannot be said to be adequate. For successful prosecution and administration, there is need for a long term structural solution to secure the safety of the witnesses and the right of the victims to have legal claim for damages and compensation against the illegal wrong done to them; and these are to be regarded as their human rights as well as their legal right. I think these rights should be protected



Participant from Nepal Subodh Pyakurel speaking in the working session. He is flanked by Rukshan Fernando from Sri Lanka and Syed Fahim Monaem, Managing Editor of the *Daily Star*

under a legal framework.

The victims of crime and those who witnesses criminal offences are vitally important for the proper administration of criminal justice. The guarantee of protection to the victim witness as well as other witnesses is not only for the ends of justice but also for peace and the stability of the country. Our judicial activist role should be conducive to the eventual access to the justice for all those who require it regardless of their means of standing.

It is heartening to note that our courts are not lacking behind to assume jurisdiction and grant a right of redress to an applicant who alleges a violation of any right, despite the absence of legislative provisions regulating such right. I do believe that a fruitful discussion and deliberation among the participants will bring about a new dimension on the subject.

With these few words, I wish the grand success of this workshop. Once again I thank all of you for giving me a patient hearing.

Tasneem Siddiqui: It seems that we are going to have a stimulating discussion today. We heard Susan Ward highlight Odhikar's cooperation with AED and she showed that the information that Odhikar provides through its police monitoring and fact-finding work is used by national and international groups in analyzing human rights in Bangladesh. And it is extremely valuable for media reporting on human rights violation. These reports also show the constraints and challenges faced by law enforcing agencies and officials and how effective measures may be taken for reform. Odhikar brings the whole agenda forward by such fact-finding and reporting.

Our second speaker, Justice Tariq Ul Hakim, also highlighted on protection as a part of rights. Giving charity to an individual who is a victim or witness does not fulfill protection. It is part of

the whole judicial system. Ensuring the protection of victims and witnesses as a part of right is a part of the enforcement of rule of law in any South Asian context. We have heard our honorable former Attorney General, Mr. Hassan Ariff, highlight the common protocol for the protection of victims of witnesses of the South Asian region. He has also dwelt on the need to broaden the scope of protection from just escorting the witness to the court to providing all kinds of support during the whole period. We are also thankful to our Chief Justice for his views and recommendations for effective access to justice for all through the legal system in Bangladesh.

Today we have among us legal experts from Bangladesh, members of civil society and those who are working on human rights in South Asia. Before ending this inaugural session, I will just let you know that we will be hearing Mr Arafat Ameen who is a researcher of Odhikar, Mr. Saeed ur Rahman from South Asian Forum for Human Rights, Pakistan, and Professor Buddhadeb Chowdhury from the Department of Anthropology, Calcutta University, who will be representing CARID India. We also have Mr. Subodh Pyakurel from Nepal and Mr. Rukshan Fernando from Sri Lanka who will enlighten us on the situation of victims and witnesses in their countries. With this, I would like to end the inaugural session. Thank You.

First Working Session:

Presided by: Mr. Farhad Mazhar, Columnist, Alternative Development Activist

Country Paper Presentation

4. Mr. Arafat Amin, Researcher Odhikar
5. Dr. Saeed ur Rahman, South Asia Forum for Human Rights (SAFHR), Pakistan.
6. Prof. Buddhadeb Chaudhuri, CARID, India.

Mr. Farhad Mazhar: Welcome to all to the second session. In this session, we will learn about the situation of victims and witnesses in South Asia and whether there are any laws protecting them and their rights. We begin this session by hearing from Arafat Amin, a lawyer and human rights activist.

Arafat Ameen, Odhikar: My paper involves the position of victims and witnesses in Bangladesh and how they suffer from intimidation.

Efficiency of output or impact with regard to criminal cases to a considerable degree depends on the system of security guarantee of victim, witness, suspect, defendant and the officials dealing with the criminal case. Such system shall become effective in case of encroachment upon or threat to life, health or property aimed at prevention of their obligations as well as official and civic duties fulfilling in the area of legal procedure.

In Bangladesh where organized crime seems to more and more threaten national security the issues of protection of criminal procedure participants from criminal trespass are of particular importance. Finding of truth with regard to criminal case becomes problematic due to the fact that witnesses and victims fearing violence over them and their relatives as well as direct or implied threats avoid participation in investigation and consideration of cases. In recent years growth of number of unlawful encroachments upon life, health and property is observed. Threats, intimidations and unlawful acts are applied towards the members of their families. Criminal impact also takes place with regard to judges and officers of law machinery who investigate criminal cases.

Witness intimidation includes threats against the victims of crimes strikes at the root of the criminal justice system by denying critical evidence to police investigators and prosecutors and by undermining the confidence of whole communities in the government's ability to protect and represent them.

Two forms of witness intimidation are hampering the investigation and prosecution of crime throughout Bangladesh:

- ⇒ overt intimidation, when someone does something explicitly to intimidate a witness; and
- ⇒ implicit intimidation, when there is a real but unexpressed threat of harm, as when rampant gang violence creates a community-wide atmosphere of fear. Most overt intimidation occurs only when there is a previous connection between the defendant and the victim, and when they live relatively close to each other.

It is very difficult to ascertain the precise extent of witness intimidation in Bangladesh, because no scientific research has been conducted on the problem yet. But it is agreed that witness intimidation is widespread, that it is increasing, and that it seriously affects the prosecution of violent crimes.

Intimidation -- whether of an individual or a community -- may involve the following tactics:

- ⇒ physical violence,
- ⇒ explicit threats of physical violence,
- ⇒ implicit threats,
- ⇒ property damage, and
- ⇒ courtroom intimidation.

Attempts by gangs or drug dealers to promote community-wide non-cooperation may include the public humiliation or assault, or even execution of victims or witnesses (or members of their families), as well as isolated public acts of extreme brutality that, intentionally or unintentionally, terrify potential witnesses.

High incidence of threats of physical violence against victims, witnesses, and their families is present in the society. Threats are much more common than actual violence but that threats were often just as effective in deterring cooperation because in gang- and drug-dominated communities these threats are credible. Threats against a victim's or witness's mother, children, wife, or partner were cited as being particularly effective forms of intimidation.

A third common form of intimidation, reported in almost every jurisdiction, involves indirect intimidation, such as gang members standing outside a victim's or witness's house, nuisance phone calls, and vague verbal warnings by the defendant or his or her associates. Only slightly less common than the three types of intimidation described above is intimidation involving the destruction of property: drive-by shootings into a witness's house, fire-bombing, burning of houses, hurling bricks through the window of home, and other types of violence.

Another common form of intimidation occurs when friends or relatives of the defendant direct

threatening looks or gestures at a witness in the courtroom or courthouse during a preliminary hearing or a trial. Court-packing by gang members is a particularly effective form of intimidation. Gang members may demonstrate solidarity with the defendant -- and make clear their readiness and ability to harm the witness -- by wearing black (symbolizing death), staring intently at the witness, or using threatening hand signals. If judges and prosecutors do not understand the meaning of certain gestures or other nonverbal threats, they may fail to address these explicit attempts to intimidate the witness. In other cases, the judge may be aware of what gang members are doing but feel that ejecting these individuals from the courtroom would violate their right to freedom of expression or the judiciary's duty to provide an open trial.

Less common forms of intimidation include economic threats (in domestic violence or fraud cases) and threats concerning the custody of children, deportation, or the withholding of drugs from an addicted victim or witness or from addicted members of his or her family.

Some reasons for recent Increase in Intimidation in the country include the following:

- ⇒ a profound lack of respect for authority,
- ⇒ the expectation that their own lives will be brief or will be lived out in prison,
- ⇒ a sense of powerlessness and social inadequacy that can lead to the formation of gangs or neighborhood crews,
- ⇒ the ready availability of very powerful firearms,
- ⇒ a willingness to use those firearms for almost no reason or in retaliation for the most minimal slight to their extraordinarily fragile egos, and
- ⇒ lastly, and ironically, the increased penalties being imposed on those convicted of violent crime, which can raise the stakes of a prosecution."

Certain types of individuals are more likely than others to engage in witness intimidation or to be its targets. It is suggested that, if witness intimidation is known to be aggressively prosecuted in a jurisdiction, the primary intimidators will most likely be the gang, family, or friends of the defendant rather than the defendant himself. Even in the absence of aggressive prosecution, intimidation in gang-related cases is rarely carried out by defendants themselves; other gang members usually take on this responsibility. Gangs may also be ruthless in their self-protection: sometimes a gang member who becomes a defendant is seen as a potential threat to the gang and is therefore targeted for intimidation or execution.

Anyone is a potential victim of intimidation; there are some factors that increase the chance that a witness will be intimidated:

- ⇒ the initial crime was violent;
 - ⇒ the defendant has a personal connection to the witness;
 - ⇒ the defendant lives near the witness; and
 - ⇒ the witness is especially vulnerable
- ⇒ residents of gang-dominated neighborhoods often fall into more than one of these categories, greatly increasing their exposure to intimidation.

Incarcerated witnesses and juvenile witnesses are also especially vulnerable to intimidation.

Witnesses who are in jail or prison are easily identified by offenders (who may themselves be either inside or outside the facility), and because they cannot hide, they are easy prey to other inmates, including the defendants in the case at hand or defendants' associates or family members.

Juveniles are another especially vulnerable group because they are often less able or less willing to take precautions against being located by would-be intimidators, and because they are more susceptible to family or peer pressure not to testify. Juveniles may endanger themselves by contacting old friends and visiting old neighborhoods.

Despite the diversity of individuals associated with witness intimidation, most explicit intimidation occurs only when there is a previous relationship or other connection between the defendant and the victim and they live relatively close to each other. Prosecutors and police agree that the most dangerous time for a witness is between the arrest and the trial of a defendant. Although there was some variation by jurisdiction, in general, as the trial approaches, the victim or witness becomes a more likely target, and the long trial delays experienced in most jurisdictions allow ample opportunity for intimidation. The second most dangerous period for victims and witnesses is during the trial itself. Very few intimidation attempts are made at the scene of the crime (although violent crime is in itself intimidating) or at the time of arrest. However, in cases involving community-wide intimidation, the witness may feel endangered from the moment he or she is aware that the crime is gang-or drug-related.

The Criminal Procedure Code 1898 of Bangladesh is absolutely silent about the protection of victims and witness in Bangladesh. Besides no law relating to the protection of witnesses yet been enacted till today. In spite of the increasing rate of crimes in the country the legislators did not adopt any measures to protect the victims witnesses. It is necessary that we should take appropriate steps to this matter. Besides that building of effective system of witnesses and victims protection is impossible without respective organizational, resource, information and other types of this activity support. Organizations of state protection of criminal proceeding participants include conceptual matters of administrative nature, resource and information support of state protection; if the matters remain unresolved it will be impossible to bring the above into practice. These issues relate to formation and support of activity of special sub-units called upon to realization of security resources; organization of interaction of these sub-units and inquiry, investigation, public prosecution and court authorities; functioning of social and legal system of protection of criminal proceedings participants; set up of special funds for assistance to victims of unlawful acts and other problems of administrative level. Their successful solution in many respects predetermines success of public defense of subjects of procedural criminal relations as a whole. Without implementation of the said provisions, without a due basis for protective activity with regard to participants of criminal proceedings there is no point to speak about effective operation of the system of their protection.

Farhad Mazhar: Thank you, Arafat, I think we already have an excellent empirical context to start discussion about possible legal regime for victim and witness protection. I think he already explained the nature of intimidation, methodological difficulties of assessing how we are going to check the intimidation and also the lack of protection of witness and victim and also some

concrete suggestions to how to discuss about that. Now I request Dr Saeed ur Rahman from Pakistan to present his paper.

Saeed ur Rahman, South Asia Forum for Human Rights, Pakistan: I think Mr Arafat has already elaborated the problem we are facing in Pakistan in his presentation, since the situation is similar to Bangladesh. In Pakistan, we don't have any system to protect the victims and witnesses. And on top of that, we have a system--which I am going to discuss later--which convicts a victim into a criminal. I'll also provide some background of why we don't have a system of witness and victim protection.

Pakistan inherited the legal structures of the British Empire in 1947 and, therefore, had a legal regime that followed the structures of the Common Law system. Alongside this system existed other systems of justice dissemination such as the jirga System of the Federally Administered Tribal Area. The local traditions of distributing justice were also practised, but without an explicit approval from the state: for example, the system of panchait in the villages of Punjab and the Vadera acting as the judge in Sindh. These different legal systems co-existed within Pakistan at the time of its inception and continue today in different forms.

The tribal system of justice operates in areas collectively labelled the 'Federally Administered Tribal Areas'. The State of Pakistan has no legal jurisdiction over these areas, except in the form of the Office of the Political Agent, who is a representative of the Federal Government and mediates between the Tribal Areas and the Government. The tribes are constitutionally and jurisprudentially free to conduct their own legal and social practices except when they have to interact with the Political Agent. The Political Agent administers government subsidies to the tribes and the arrival and departure of people to and from the tribal area. The rights of a victim and/or a witness under the tribal legal system are controlled by the *jigra* (assembly) system. The Chief of a Tribe heads a *jigra* and the Political Agent is the adjudicating authority. The *jigra* comprises of prominent people and elders of the tribe who pass judgement on civil and criminal proceedings. The rights, suitability to testify, and the safety of a victim or witness are determined by the consensus of the *jigra*. This is a parallel legal system and has so far successfully resisted all forms of modernisation.

Another parallel legal system in Pakistan is the Shariah Law. The Islamic legal system was introduced by the Martial Law regime of General Zia ul Haq. In February 1979, Zia ul Haq started the process of his brand of 'Islamisation' of the Legal Regime in Pakistan by introducing the punishment of flogging. This was the background for the promulgation of the Hudood Ordinance in 1979. Under this legal system, a number of human rights were severely curtailed and/or eliminated. For the first time in the history of Pakistan's legal structures, sexual intercourse outside marriage was criminalized. This Ordinance obliterated the difference between sexual intercourse with consent and rape and converted both into offences (*zina and zina-bil-jabr*) respectively. According to this legal system, it was possible that a (female) victim of rape could report the rape and, if unable to provide sufficient supportive testimony, be convicted of sex without marriage. The legal requirement of four adult Muslim males of good character as witnesses of the act of rape virtually eliminated the possibility for the victims of rape to seek redress. The distinction between the victim and the criminal was erased. In this legal regime, where the distinction between the victim and the defendant is arbitrarily determined, it becomes difficult to speak of the rights of the victim and witness protection.



Working session proceeds on. Farhad Mazhar, alternative development activist of Bangladesh speaking. He is flanked by Odhikar Researcher Arafat Ameen and Buddhadev Chowdhury from India

The safety of the accused involved in apostasy or blasphemy, though legally guaranteed throughout the trial, is not socially guaranteed. Many accused persons have been extra-judicially killed. In some cases, this has happened outside the court after the release. The law that makes the arrest and trial mandatory of a person accused of blasphemy was added through an amendment to the existing blasphemy law found in British Common Law. Clause 295 (c) of the Pakistani Penal Code is a violation of the basic human rights of freedom of opinion, belief and expression. Many non-Muslims, such as Christian and Ahmediyyas, have been accused of blasphemy even though their religious beliefs are based on the non-acceptance of the Islamic faith. In this legal framework, a basic human right, the right to freedom of belief, can also be converted into a criminal act. Difference in faith, when expressed, can easily become a crime. There is no guarantee of personal safety once a person is involved in this legal imbroglio because even police officials are biased against the accused in this scenario.

The army in Pakistan enjoys impunity from legal sanctions and punishment. The army chiefs have often suspended the Constitution of Pakistan itself. Therefore, other than the parallel legal systems of the Federally Administered Tribal Areas and the Hudood Ordinance and Shariah courts, a third parallel system of justice - or injustice- distribution exists. With President Musharraf occupying the dual posts of the President and the Chief of Armed Forces, the army has increased its control over all spheres of life in Pakistan. As far as the legal sphere is concerned, a victim of a crime perpetrated by a member of the Armed Forces is not likely to have access to any system of redress. The most brutal example of the unlimited power enjoyed by the Armed Forces in Pakistan can be the series of incidents at Okara Farms. The power of the state when combined with the complete militarisation of the state itself becomes a formidable

force against basic freedoms and human rights.

Pakistan, with several parallels and mutually conflicting legal systems, remains a poor performer in the arena of human rights. It is not a signatory to many international conventions, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The state in Pakistan celebrates its impunity from accountability and legal prosecution and therefore becomes supra judicial. A crucial question from the perspective of a citizen can be: how can an ordinary citizen remain legal in a state which itself suspends its own constitution? The government of Pakistan does not encourage moral behaviour in its citizens because it often operates without a constitution, with naked power, and by creating many separate domains of legality within a single national constituency. The government of Pakistan reserves a state of exception, as far as legality is concerned, for itself. By operating through exceptions and impunities, the state encourages the citizens to emulate it. As an arbiter of a valid contract, the state of Pakistan fails to act as a moral agent, it promotes immoral and illegal behaviour in the citizens. To survive such a state, the so-called "ordinary" individual often becomes as insensitive to human rights as the state and, hence, the process of brutalisation of an entire population is set in motion.

Farhad Mazhar: Thank you Saeed for all the empirical information, analysis and insights into the gaps inside South Asia regarding the protection of victims and witnesses. Some of the issues raised are very important and the colonial legacy is common to us all. The problem with parallel laws is also the question whether the law can function without the multiple existence of the power. The existence of parallel law in a feudal system where multiple powers are completing within a state having one constitution and one single regime is quite interesting.

We will now hear about the situation of victims and witnesses in India from our friend, Professor Buddhadeb Chowdhury of the Department of Anthropology, Calcutta University.

Buddhadeb Chowdhury, Department of Anthropology, Calcutta University: Thank you, Chairperson and distinguished participants. I must admit one thing at this meeting, I cannot claim this should be a comprehensive paper focusing on the issues and problems of the victims and the witnesses so far as India is concerned. But I would just like to share some of my experiences regarding this issue.

I'd like to start with a recent incident. Two years ago on a cold January night, Joyita Bala Das was allegedly raped by 5 Border Security Force men. Her husband and eldest daughter, who witnessed the crime were murdered. With nowhere to go and no one to tell, that 32-year-old woman found refuge in the unlikeliest of places, the Presidency Jail. Her rapists though roam free. We had conducted a study on prisoners in jail and we came to know about this incident. Today Joyita Bala Das is too afraid to even step outside her safe house. She fears she too may be eliminated. Clutching her 4-year-old daughter's clothes she spends her days like a normal prisoner of the state. Joyita has been languishing in jail since January 14, 2003. She doesn't, however, have any hope of life outside. Her case rarely came up for hearing in the past 2 years. She has been to court only twice. In her first appearance in the Bashirhat Court, she was sent to Presidency Jail in "safe custody". Till now she has had just one visitor, her brother Jagadis Das. Since he could do nothing for her, he stopped visiting.

Her life is now better than the ordeals she has survived. She claims to be from Bena village of North 24 Parganas and was married to a Bangladeshi and settled there. The family was on its way to Bena where they were intercepted by BSF patrol at the border. Joyita, her husband and two daughters were taken to the BSF's 122 Battalion outpost. Police records show that she was taken to the Battalion's Assistant Commandant Ronit Kumar Shome and raped not just by him, but by four others as well. Her husband and eldest daughter who witnessed the incident were killed. Their bodies were dumped in a punctured country boat and set afloat on the Ichhamati river. Police found the bodies later.

The police closed the case but never got to interrogate the accused. Joyita helped the police as much as she could. She showed them the place where she was raped, identified the 5 accused persons and underwent medical tests. She thought that she could bring the rapists to book. She was wrong. A few weeks into the investigation, the investigation officer Subodh Chakravarty wrote to the then IG BSF, South Bengal, seeking permission to question the five accused persons. Nothing was heard of it thereafter. In the last 2 years no lawyer has taken up her case. As a final resort the jail superintendent intended to request the Law Department to assign her a government lawyer. So, this is the case of a victim.

Now, in India, a victim has a marginal focus in the criminal justice system in which arrest, prosecution and punishment are included. The police therefore investigate the offence allegedly to have been committed and charge the accused on its own discretion without any participation from the victim. Even at this stage, the victim is not given any opportunity for expression on matters related to bail, quantum of sentence, appeal against inadequacy of sentence or of acquittal. There is a need, therefore, to increase the level of participation of the victim in the criminal justice system not only for the well-being of the victim but for also to achieve larger goal of criminal justice.

It is clear from the laws present in India that the victim has inadequate participation in the criminal justice system. At the international level victims' rights have been enlisted in the declaration of basic principles of justice for victims of crime and abuse of power.

Farhad Mazhar: Thank you Buddhadeb Chowdhury for your insights. I am sure your paper will be taken note of by Odhikar and preserved. I hope the victim you talked about finally gets justice. We will now hear from Dr. Abrar, who is not only a popular academician but also a comrade in the human rights arena.

Dr.C.R. Abrar, Department of International Relations, Dhaka University: Thank you Odhikar for giving me this opportunity. This is a learning process for me. It is also gratifying to note honorable members of the bench, side by side with jurists, senior government officials, activists and experts discussing this issue that is so pervasive in this region. I'm no jurist neither a lawyer. I have been researching on migration with my colleagues at the Refugee and Migratory Movement Research Unit (RMMRU), and now we have information that 200 migrants came back to the country empty handed. Most of them know who is involved behind their failed migration. They have wasted their life because they have to repay the money and they do not want their family members to face the same problem. The agents are very powerful people but state is there to help migrants. However, the migrants are too scared to seek help, because the people involved are capable of doing anything. The returnees tell us: please don't bother us.

Leave us alone. We will get on with our life. 200 hundred people came back with lot of rage. They cried for justice. However, later on they did not advance any further family pleas not to get involved with any more trouble. So, they decided to not to go for justice. Such people are both victims and witnesses and need protection so that they are no longer afraid to seek justice.

Odhikar has organized a very timely initiative and I would like to congratulate them for such efforts. Establishment of human rights and restoration of human rights is a multi faceted struggle. We must realize that even though the state is present, it is not a homogeneous entity. It contains the oppositions, ruling party, the bureaucracy, the bad elements and the good elements within the system. We cannot push it all aside saying that we can do without; we have to work with the state in order to realize the goals and all these exercises.

We have to work to establish human rights. There are also non-state factors and we have to find ways how to deal with them. These are the criminal syndicates, the gangs who thwart any move even initiated by the state. We all know that in fear of Kala Jahangir people had to pay extortion money. Instead of going to the law enforcement agencies, they thought that it was better to pay the gang and surrender. This is not really a third world phenomenon; there some congressmen who are also involved with hampering the establishment of rule of law. The papers presented today are similar and the focus is on the point that there is no such system in any of these countries to ensure the protection of the victims and witnesses and we are taking this important message home. It is very nice to hear a judge commenting that the common conception that the judiciary is conservative may be a wrong conception and that protection of victims and witnesses is not mere charity but a right. It is one of the finer moments of the programme to have a pro-active statement coming from the sitting judge.

The issues of rights not to be intimidated, the right to reparation, to be treated with dignity, this is all very important. The researchers and media and other people involved with victims and witnesses must respect the privacy and dignity of the person and also of the survivors, their families, and relatives. There is an obligation on the part of the state to inform the witness what are the consequences. These important issues have come about to the deliberation of today. At the end of the day, even though I am a victim, I always try to establish my claim, my right. At the same time, I am also helping my state to establishing rule of law. So there is responsibility on the part of the government to take care of me, to give me protection. I think this is very important. Most of the case studies we examine today involve the poor, the marginalized, the ethnic, religious, linguistic minority groups, women and children who are adversely affected. Rich people also get affected but they have the resources of disposal, to protect themselves. These are the people who are adversely affected and disproportionately affected. Any mechanism needs to bear in mind that we must target these people to provide the services. One of the most important things is commitment to the political leadership. It is true that police service do not have the resources. The state does not have the necessary gear and technology and all that, but I think it is the most important thing to have commitment of political leadership.

There are also perceptions about bail and misuse of bail. The problems of the law need to be checked. Often we see that the administration says we are vulnerable with the issue of bail. At the end of the day both the executive arm of the state and the judiciary is responsible to uphold the rule of law. Technology may help them in this area. In this age, judges of India or Bangladesh or Pakistan may not be aware of the state or advancement of law in other countries

of the region. So important judicial decisions may be posted in a website where the judges can look at the points and that would help them in giving sound judgment. The issue of a South Asian Treaty, the common shared tradition and past experience could also help to combat the problems. I also think there is a great deal of introspection needed on the part of the civil society institutions. In our society the people are divided into many parties, be it a political party or a professional or cultural or legal institute. On the question of human rights in whatever organization we are involved with, we have to be constantly vigilant. It does not matter whether my preferred party is in power, we should not always blame the government and ask it to do the right thing but we should also have our own soul searching.

Finally, I want to disagree with the Chair on the issue of the whole idea of universality. It's not the Islamic tradition that is followed in the discriminatory laws of Pakistan. Unfortunately, the way they are presented only reinforced on the idea of the need for the universality of law. Everything that originated in the West should not be necessarily discarded in a simplistic way.



A section of the participants in a working session of the discussion meeting

Farhad Mazhar: I do not have any objection to Professor Abrar's last words that we must discuss the issues related with the problems of the law we have in relation to the victim and witness protection system. What I see is this: that until and unless we can present something as universal we shouldn't use any adjective to a particular abuse. Therefore, we should refrain from using phrases such as 'Islamisation' and 'Hinduisation' of the law.

Shaheed, Pakistan: When we come to the South Asia perspective we have a lot of debate on violence against women and children. However, a few cases of the plight of farmers have been mentioned. Saeedur Rahman of Pakistan has mentioned one case in Pakistan involving okra farms, where the military tried to evacuate the farmers who were there for over a hundred years,

cultivating and having their livelihood there. This case has been mentioned because the military was involved, but there are many other cases where the landlords are evacuating the farmers in a much, much larger scale and for other reasons. I would like to raise the issue that it is seldom that human rights activists work on the protection of the farmers and sometimes they wonder whether farmers rights are human rights or not. I would like to bring up this issue because most of the human rights violations rise from the economic marginalisation or economic inequality we see here in our country. 40 percent of people are below the poverty line and believe that inadequate access to justice is the main reason of their poverty. In order to seek justice, a peasant farmer has to pay a big amount of money to go to the court and at the end of the day he will not get justice from the court. Those are the people who are victims and witnesses that never get protection. They do not come forward because they are marginalised and they will be further victimised if they come forward to seek justice. Therefore, economic inequality should be addressed if we want the human rights situation get better in our country. I would also like to say that it is not only the victims we need to think about. We must think about the rights of the people who have committed crimes, who are in jails, the situation inside the jail is very hostile. There are people incarcerated who committed a minor crime because of a situation that they could not control and who must then spend their lives in jail to wait for justice. There are many people in the jail that did not commit a crime, like children and women. They are forced to live in jail and a criminal environment and never get the chance to become a civilized citizen. We should think about whom we are calling criminals and who have made them criminals? These people didn't have the chance of education; decent living or earning a livelihood so that they could overcome their poverty. As a nation we should not let such things happen. Such inequality can and has also resulted in the formation of criminal gangs. There are people who used to live in peace in the village but due to the increase in rural poverty and the fact that rural youth have no livelihood option, because of lack of education, and no access to lands, they have joined gangs and started committing crimes. In Saeedur Rahman's speech, the Hudood Ordinance in Pakistan resulted in a higher scale of violence against women due to the fact that women claiming to have been raped failed to produce acceptable evidence of four people. That, however, is not the only reason; it is a very complicated issue. As far as violence against women is concern, the issue is a global one and there are many cases where women do not get justice from the system. When I was in the US, a case involving the Kennedy family became very controversial. I was there for four years, and observed that the case concluded without the victim (a young woman) receiving any justice. I think economical marginalisation leads to this kind of human rights violation. It is aggravated if there is more poverty and fewer resources that the state has. I am not defending the state because the state has failed to realize the importance of the issue; the citizens have rights to protection. The other day Subodh from Nepal was saying that the citizens created a State because they want the State to defend their freedom. But actually the State is violating the rights of people and is not protecting the people's rights. Pakistan is not a signatory of the Convention Economic, Social and Cultural Rights. I will site a couple of example about cultural rights in Pakistan. The party that was organised was a Civil Servants Club party in Pakistan, and we found that the farmers could not enter the dining room wearing a lungi. In an area like the Punjab, where the lungi was almost a national dress, this club barred entry to those wearing the same. The question thus arises about the identity of such civil servants and so called civil citizens of the society who are depriving the people from following their own culture. That also leads us to the case in France where Muslim women are forbidden to wear

scarf. The human rights activists have failed to protect the rights of the people who have been barred from choosing their attire and wearing any dress. I think we need to protect cultural rights so the world remains beautiful in the cultural diversity.

Farhad Mazhar: This floor is now open for all, we are inviting questions.

Deena Siddiquie: In the context of Bangladesh, we do have unfortunately one kind of provision for women who are victims and women who are accused of crimes. If the victim goes to the police station to report rape or domestic violence, with the decision of the magistrate they can still be taken into custody, even though it is 'safe custody'. Now the provisions of safe custody have been changed a little, where a woman can be taken into safe custody only if the magistrate thinks it fit. We all know that safe custody is anything but safe. I think that needs to be considered. Again we are discussing the violence against women in the public sphere, but in the case of the private sphere there are different orders of intimidation and social stigma. I have done many a research work on this issue and there are many women who refused to testify even when they are brutalised. There are also social reasons as well as legal procedures and difficulties that have to be identified, laid open and addressed. Women even in the deathbed refuse to testify against their husband. You know this happens in dowry cases. We need to look more deeply into the issue of private/domestic acts of violence against women for variety of reasons. Partly because of the whole legal system and because we all tend to construct the family in viable space; we all know these arguments. Furthermore, it is not just the criminal gangs wandering around undeterred in the country, but the profound disrespect to the authority that also causes crime to escalate.

Sanjeeb Drong: I would like to know more about the tribal laws and the feudal system in Pakistan. My question: is there any self-rule or self-governance system within the constitution for the tribal of Pakistan?

Samia, Action Aid: Action Aid is dealing with cases and we find that submitting a charge sheet is really very difficult and there is a lot of mobilisation needed. We are dealing with two incidents. One of them is in Khulna, where this political leader is involved in many criminal cases, including an acid violence case, where the crime was perpetrated by one of his paternal cousin brothers. Many influences are working against the case, making it very difficult to place the charge sheet.

About the cultural rights that Shahed Zia was talking about: he has termed the wearing of Hijab as a cultural right, but what if one does not want to practice the Hijab. Would this be considered as a freedom of choice in Pakistan?

Farhad Mazhar: No one wants to respond to the question of safe custody. May be we all agreed with what Deena Siddiquie has said.

Saeed Ur Rahman: Federally administrated tribal areas have traditionally registered off all forms of centralised governments even in the time of the British Empire, so even a British ruler could not occupy these areas except through a political agent. There was no direct rule. The said areas are between or around the borderlines of Pakistan. Between Pakistan and Afghanistan therefore, they were on the border of the British Empire. In 1947 they joined the government but not in such a way that they could be subjected to the rule of the government, so they have their

own judicial system. It is a problematic situation in a sense that sometimes the political theorists say that it is an autonomous situation. But this autonomy, if seen from a universal perspective or global perspective, often produces some strange examples of justice system. For example, in the case of rape, the victim can give her brother the right to rape the sister of the perpetrator. So another crime is committed as the result of the justice contribution system. A crime against the criminal is considered as justice. So there are some problems like that. Again, there are not schools there like in the provinces. This is because the tribal people think that by inviting the government schools, or inviting other institutions into their areas, their traditional structural system will collapse. Whether autonomy is a right to the tribal people or it contributes to the sufferings of their subjects - I don't know how to resolve this.

Shahed: Hijab is nothing that is written constitutionally, it is a cultural norm and all women are free to choose whether she should wear it or not, and there are many women not wearing it in Pakistan.

Buddhadeb Chowdhury, India: At the international level, victims' rights have been enlisted in the declaration of basic principles of justice for victims of crime and abuse of power. The declaration provides victims of crime and abuses of power the right to be a party to criminal proceedings against the accused. Victims have been defined as persons who individually or collectively suffered from harm including physical and mental injury, emotional sufferings, economic losses and substantial impairment of their fundamental rights through acts or omissions that are in violation of criminal laws operative within states. Under the declaration a person may be considered a victim regardless of whether the perpetrator is identified, apprehended or prosecuted or convicted. And regardless of the familiar relationship between the perpetrator and the victim, the declaration provides that the victim also includes where appropriate, the immediate family or dependent of the direct victim and persons who suffered harm in intervening to assist a victim. Victims should be treated with compassion and respect for the dignity they are entitled to; access to the mechanisms of justice and to prompt redress. Judicial and administrative mechanism should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible.

Now I would like to discuss very briefly about trafficking of women and children, which is a common problem in South Asia. Trafficking and commercial sexual abuse of women and children is one of the fastest developing businesses run by the criminal syndicate throughout the world. It is said that the global trafficking enterprise generates upto US 7 Billion Dollars every year, with the report based on UNIFEM, nearly 7 lakh persons, mainly women, have been trafficked within and across international borders. Nearly 2 million children have been abused and trafficked throughout the world every year. In India nearly 15% of victims of commercial exploitation are children below the age of 15 and another 25% are children below the age of 18. That is 40% of the women in prostitution are children below the age of 18. This is based on a study by Social Welfare Advisory Board, Government of India. It is said that 5% of women and girl engaged in prostitution in India are from Nepal and Bangladesh.

In the USA a large number of children and women are trafficked to European countries. It may be mentioned that trafficking is the manifestation of a large number of developmental problems like population explosion, increasing unemployment situation and lack of alternative



Odhikar President Dr. Tasneem Siddiqui delivering her speech. With her are USAID Bangladesh Mission Director Gene V George and Advocate A.F. Hassan Ariff.

opportunities for employment. This has led the rural population to migrate to the towns for livelihood. Customs and other traditions and social practices like child marriage, dowry, devdasi system in South India have their roots in the past, contributing to the increasing phenomenon of trafficking. There are a number of studies of the sexual abuse of children appearing in the media regularly. Girl children from the very birth are subject to discrimination. Girl children mostly get less care and protection that child development needs. The demand for girl children in sex market is ever increasing more so with the increasing awareness, fear and cases of AIDS in every region of the world. The belief is that having sex with a minor or a virgin will prevent the contraction of AIDS. In India, poverty remained the single largest reason for women and girls being trafficked. There are nearly 3 lakh children in prostitution today. But officially the number is around one lakh. They leave the family with the offers of job opportunities, marriage, adaptation, and those who fall into the trap, ultimately reach brothels. Child sexual abuse is increasing in India alarmingly. The type of sexual abuse that takes place includes molestation and sexual harassment by relatives, teachers, drivers of school buses and others. It is often found that the children will be doubly victimized because of the fact that the police investigation and questions asked to her in the court of law embarrass her and open the wounds again. Many of such victimized children have informed councilors that they do not want to go back to their home as they may be sold again. There are also a number of cases where the children have been ostracized and stigmatized by the community and the families are mostly reluctant to take them back. Only in a handful of cases does family counseling become helpful in restoring and reintegrating their family. The street children, railway platform children and other such marginalized and homeless children are not only be harassed by police from time to time in the

name of eviction, etc., but also become vulnerable during their adolescence and often become victims of sexual exploitation by hoodlums and even by the neighbors. Many also turn to cheap drugs. Ultimately they might be picked up and sold to the brothels and even trafficked to other cities. There is another category of children known as 'missing children'. Recently in an article in a national police journal, one of the IG of Police Mr. Nair, wrote that 15 to 20 thousand children get 'lost' every year, of which 15 to 20 % are traced and the rest remain untraced. Where do these children go? It is an easy guess that most of the children are trafficked and sold to the brothels. Community leaders, religious leaders and even family members have not accepted these victimized girls and the abusers that are caught get freed due to pressure by vested interest and powerful groups. There are government and NGOs run homes for such girls, as is provided in the national plan of action 1988, or under different Acts. India has signed CEDAW as well as SAARC Convention for Preventing and combating Trafficking in Children and Women for Prostitution. The country is bound to follow the norms and sections of these Conventions and Acts. The Prevention of Social Exploitation Act, 1988 provides shelter for rescued girls and women, restoration of such to their families in case of cross-border trafficking. These are also provisions for counseling, vocational and educational training and recreation in all the homes run by the government and NGOs. In most of the cases the family does not want to take back the girl child on the pretext that a daughter/other daughters of the family have to be given into marriage and they cannot take back the trafficked and sexually exploited girl because they will be socially boycotted. There are some families and parents who, after several family counseling session, have agreed to take back the girls who have fallen victim to sexual attacks or trafficking. The fact remains that most of the girls remain unaccepted to the community and families. Lot of awareness rising at the community level needs to be done in order to bring about attitudinal changes towards the victims. The existing situation in the lower judiciary and police stations and their methods of treating such victims must change radically. To change such situations mass awareness programs should be organized. Sensitisation of police, panchayet, and judiciary on this issue is vital for restoration and reintegration of victimized girls. For economic independence, vocational training and financial help must be ensured for such girls for social reintegration. Poverty alleviation programs need to be taken up in the economically backward areas. Young adolescents need to be educated on sex and sexuality and how to protect themselves at times of necessity. There are number of NGOs and other organizations in India and also the State government that have developed shelter homes keeping in mind the welfare and rehabilitation of such victimized girls.

Lastly, let me give you an example of another type of victim. It happened a few months back on a hot day somewhere in south India. A thirsty person came near a well to drink water. For doing so, the person was not only severely beaten but also sent to police station on different charges. Unfortunately the reason was that the well was made for the use of people of the 'higher caste' and the person belonged to a scheduled caste. So he was not allowed to take water from that well. To my mind this is another case of victimisation. To protect the interest of the victim and witness, one cannot ignore the socio-economic and political dimensions. The victims are often the results of the given socio-economic and political process. Since this is an inequality, the cases may not come up at the appropriate level and be referred for justice.

Farhad Mazhar: These issues need to be considered as well. However, these are not universal cases, but particular cases. When a particular case is important- Jogitabala for example, and the

law not only brings the evidence, it is the task of the law and state to make the law visible, to recreate the event, so that the trail may go on. When the trail goes on, law interprets law in the court and it becomes a further law. The justices present here are familiar with the term of precedence of law.

The second issue is the trauma and stigma put on trafficked women and children and our own perceptions regarding trafficking. I witnessed one such People's Tribunal, where these women raised their voice. Their methodology was to make the silent voices heard in the society- without making the women victims embarrassed. We must integrate this aspect in the law to protect victims and witnesses. Coming to the third issue, caste cases are a difficult issue for the law. If caste is a law in a particular culture, how can a law be formulated against such existing law? We have to make justice available for everybody - irrespective of religion, nation and race.

Justice Sharif Uddin Chaklader: As SAARC nations, we are facing the problem of trafficking. As the justice of the High Court, dealing with cases of trafficking, I face the difficult and almost impenetrable hurdle that we have evidence up to our border, and no evidence coming from across the border. In such a situation, we have no other option but to give the benefit of doubt to the offender. There is a special law called Women and Children Repression Prevention Act to combat trafficking. But we have no special court. So, I suggest that there should be a special court to deal with cases of trafficking. Recently I visited the lower court to find that women and children victims of trafficking have been jumbled up and kept with offenders of other crimes. The judges of the district level face difficulty in identifying laws provided for trafficking and also lack awareness and training in the issue of human rights and gender issues. Another point is that we are still following the British system of law in which compensation is a must. In these types of offences there should be no relaxing of justice and the deposition and statement of the victim must be taken to be the truth.

The accused must be given the chance of self-defence. Everything lies on the victim to prove the accused guilty. When victim is controlled, there is no legal evidence to support him. Under the British system there is a Section in the Code of Criminal Procedure called section 161, which provides for the statement given by the victim when he or she is rescued. Unfortunately, such statements are not taken seriously immediately. My suggestion is when the victim is rescued; his or her statement must be taken immediately. If the statement is taken immediately, it is almost always probable that in these cases she is telling the truth. If the statement is taken later, after a span of time she may not speak the truth for different reasons - fear, intimidation, threats, etc. So, this system of not taking the first statement into consideration must be abolished. When a case is filed by FIR or by complaint, there is an investigation according to procedure. In many cases the report of the investigative officers are considered as the final report in the absence of any naraji petition or objection by the court. Before accepting the final report, the investigative officer must be examined by the court in order to prove his report. In our society the investigative officer is not free of influence by the powerful people. Mr. Tariq ul Hakim and I were in Nepal, where we witnessed a declaration that there should be a SAARC court for trafficking, since it starts in one country and involves other countries afterwards. My law may not be acceptable to the Indian law. Indian law may not be acceptable by the Nepalese. So, there must be a common law to combat trafficking because this is a regional problem. Without a single law the influences by the people concerned cannot be ruled out.

Farhad Mazhar: Some of the suggestions coming from a Justice of the Supreme Court are very important. The SAARC Convention is limited within the issue of prostitution. However, women and children are not only trafficking for prostitution, they are trafficked for forced marriage, bonded labor and to become camel jockeys and many other reasons. The capacity of the state to recreate the event before the living presence of the law is vital. The capacity is lacking in all the SAARC countries.

ASM Shahjahan: I thank Odhikar and AED for discovering the victims. We deal with the judiciary system, the crime, and the case but hardly with the individual victim. This topic is fundamentally humanistic and it comes from a commitment of social justice. We have discussed about the protection but I want to suggest some points relating to the treatment the victims and witnesses get from the criminal justice system, from the media, from the court and other associated people. If they are not given protection, they get threats, insults and harassment from the perpetrator, his family or his sympathisers. We have been talking about recorded victims. But the unrecorded victims are many fold and they do not refrain from seeking justice only because of the fear of reprisal. Becoming a victim again is the fear they experience continuously. Many crimes remain unreported. What is the position of a victim in the justice system? Victims' interaction with the police, the prosecution, with the court? And whose interest does the law serve? Whose interest does the criminal justice system serve? Whose interest does the criminal government serve? Do they serve the need and want of the victims? Is the victim only the victim? You know those who have been traumatized become the victim; those who are dependent upon the victim are also victims. And the victims are belittled in a word or environment where might is right. Crimes are interpreted in our law as attacks against the state. And state becomes the party against the accused or offender. In this situation, from the very beginning the state become primary and the victim becomes secondary. We often take into consideration the relationship between the offender and the victim in cases of domestic violence. Parasitical relationship, exploitative relationship, destructive relationship, oppressive relationship and also street crimes are issues that also need to be discussed. The culture of blaming the victim also needs to be seriously addressed. Have we found out who are blaming the victims? Why victims are being harassed in many places and by whom? What it means to be a victim? How soon are victims are forgotten? Have we kept a list of the victims? Do we remember them? In what extend his statements or comments are considered? The police often give empty promises of protection where the victims are given protection for two days. On the third day the protection is withdrawn. What is needed is a permanent victim and witness protection squad, quick response, investigation of the threat and its punishment should be exemplary. The relationship between a victim and the defense lawyer is far from amicable. Fear of harassment or danger stops the witness from giving statements and creates a rift between him and the victim. Victims of yesterday, we are sorry, we apologize to you. Victims of today, we promise you, empty promises and victims of tomorrow, let us do something concrete for you. In a situation like this, the victims say, "I don't need any more harassment, save me from your dog."

Second Working Session

Presided by: **Syed Fahim Munaim**, Managing Editor, The Daily Star

Country Paper Presentation:

1. **Mr. Subodh Raj Pyakurel**, Chairperson INSEC and Board Member, SAFHR, Nepal
2. **Mr. Rukshan Fernando**, Sri Lanka

Syed Fahim Munaim: Good Afternoon to all of you! This morning we heard many fascinating discussions, regarding the protection of victims and witnesses and the situation in some south Asian countries. The discussants were very vocal. This afternoon we would like to carry on this trend because it is an important issue. Although my session has been scheduled for the afternoon, I came to the morning sessions to understand the perspectives of the other countries as well. It is a learning process. I am not a lawyer, nor judge, nor an expert. I am from the media. Throughout the morning session I was waiting for someone to bring up the role of media in each of the States represented here. However, all we are talking about was essentially that the media has to be a partner in order to disseminate information and to highlight the plight of victims and witnesses. In fact I want have the liberty to mention that we have a special page called 'Law and our Rights' and one of the paper presenters has had one of his very interesting and readable articles published in that page. Now I have some in-house announcements, as paper presenters we have Subodh Pyakurel from Nepal and Rukshan Fernando from Sri Lanka. Discussants at this session include Nurul Alam, Asif Nazrul, Naima Haider and Maqsoodul Haque. I must thank Odhikar, which is one of those organizations that come up with such timely and pertinent issues. I must confess here that as a media person we are lacking behind and would like to be involved in the process of disseminating what is going on in the country.

Subodh Raj Pyakurel, Nepal: Any innocent victim who suffers direct/indirect threats or physical, emotional, financial harm as the result of the commission of a crime should be protected by the criminal justice system. The term "victim" also includes the spouse, legal guardian, parent, child, sibling, or another family member for any victim who is under 18 years of age, incompetent, incapacitated or deceased. Institutional entities are also considered victims. Any person who is culpable for the crime being investigated is not considered a victim.

A witness is someone who has information or evidence concerning a crime, and provides information regarding this knowledge to a law enforcement agency. Where the witness is a minor, the term includes an appropriate family member. The term "witness" does not include defence witnesses or those individuals involved in the crime as a perpetrator or accomplice.

Victims and witness who are innocent and are not aware of any wrong committed against them deserve to be protected against loss and injustice. There can be no justice for the victims until society acknowledges that a crucial principle of criminal justice is to protect and rehabilitate or compensate the victims properly and adequately. The victims are considered and treated as a burden of society and they are left totally without resources in a complete devastation. Without touching their problems sincerely, the study of the Constitution as a fundamental law of the land and the application of other statutes as the essence of rule of law itself in a real sense remain incomplete.

Victims experience physical, financial and psychological/emotional impacts of victimization. At the time of the crime, or upon discovering that a crime has occurred, victims are likely to experience a number of physical reactions to the event. These may include increased heartbeat, hyperventilation, shaking, numbness, dryness of the mouth, etc. Victims may also suffer a range of physical effects including insomnia, loss of appetite, lethargy, headaches, muscle tension, nausea etc. As for financial impact of crime, victim may incur costs such as: repairing property or replacing possessions, installing security measures, accessing health services, participating in the criminal justice system for instance attending the trial, obtaining professional counselling to

come to terms with the emotional impact, etc. In terms of psychological injuries, some victims suffer acute stress disorder, or develop PTSD (post traumatic stress disorder) or other adjustment disorders from victimization.

Women crime victims are more vulnerable to sexual and other abuses and to abuses at the hands of government penal agencies. Most of Nepal's police are not trained to deal with crime against women and often do not take women's reports seriously. Rape victims and victims of domestic abuse are often not dealt with sympathetically. Women complainants are intimidated by the bureaucratic procedures and few cases end in convictions. In many ways prostitutes are victims of society and also deserve sympathetic treatment. Training on how to deal with these sorts of cases is just beginning for Nepal's police. There are no government shelters for victims of domestic abuse.

Victims have the right to be treated with dignity and respect. In Nepal victims only enjoy a limited right of representation in trials and do not enjoy the right to appeal against acquittals or the withdrawal of cases. There is no law to respect the right of victims to information about the status of their case during prosecution or trial. Victims have the right to be protected from intimidation and harm. In Nepal victims are often not protected from further victimization even where cases have involved personal violence, no law compels the prosecution to inform victims if accused persons are released on bail, victims' fear of retaliation are not considered while conducting bail hearings, no efforts are made to protect victim's interests during trials, during trials victims are required to come out into the public glare and have often to face inconvenient and irritating questioning by defence lawyer, courts often fail to exercise their powers to protect victims from unnecessary media attention.

Long delays in holding hearings and disposing cases are the norm in Nepal. Nepal's courts are generally reluctant to grant bail even where the accused does not pose any threat to society. While adjudicating the cases judges often fail to justify their decisions and often refer faulty laws ignoring the level of intent and other important factors. Lack of provisions for the use of judicial discretion in many cases and the lack of guidelines where it can be used also hamper the adjudication process.

Victims have the right to compensation providing they meet certain criteria. Such as, financial compensation to victims who have sustained significant bodily injury or impairment of physical and mental health as a result of serious crimes. In Nepal only the Torture Compensation Act 1996 and some other laws provide for compensation to be paid to victims.

The low level of reporting and the failure to use systematic techniques to gather evidence and interview witness often undermines crime investigation in Nepal. Mistreatment to the suspects and detainees and forced confessions are commonplace. Suspects are often denied their constitutional rights such as being informed of the grounds for their arrests and access to legal counsel. The whole system shows a lack of concern for victim's right to restitution, compensation and information.

The proper treatment of victims is a key part of a fair and just legal system. In Nepal victims of crime and their families often suffer not only from the crimes committed against them but also by the state failing to offer them security and assistance to help them recover. They are rarely accorded sympathy or respect and the many shortcomings of the Nepalese criminal justice

system deny justice to them. Nepali laws in regard to the protection of victim and witnesses are very few and generic. They do not deal specifically with the protection of the victim and witness of the crime. We need a concrete and specific law to address the issue. In Nepal there are no such safeguards and The Constitution of Kingdom of Nepal 1990, and provisions in the chapter on court management of the Country Code (*Muluki Ain*) have tried to address this issue but it does not speak in detail about the victim and witness protection mechanism. Besides, the District Court Rules, Appellate Court Rules and Supreme Court Rules have some provisions in this regard.

Regarding the application of the prosecution, the victim and witness can give evidence from behind a screen but this principle has not been fully translated into Nepalese laws. There are no such safeguards and so victims and witnesses are often afraid to come forward and report crimes and participate in hearings. Nepalese law does not even make provisions to compensate witnesses for any costs incurred in reporting a crime or attending hearings.

The promulgation of the 1990 Constitution of the Kingdom of Nepal has been the most important step taken so far to set the conditions for protection of victims and witness in Nepal. Nepal has committed itself to upholding international human rights standards by modelling its Constitution on the rights and principles enshrined in the international instruments. Article 14 spells out Nepalese Citizen's rights to fair criminal justice.

Though there are certain fundamental rights in the Constitution, these constitutional rights do not cover the rights of the victims. The existing criminal justice system in Nepal is under crisis of forced investigation and false prosecution. Yet, the basic mechanisms of prosecution and crime investigation have not been implemented systematically. There are numbers of crime scenes, which have resulted in the victims being in an unsecured as well as unsheltered condition, homeless and in starved conditions too. But there is no legal provision to provide them proper and needful rehabilitation and compensation. It is wrongly presumed that rehabilitation is to be provided to the victims of natural disaster or calamity only. So far the accused and the convicted criminals are well looked after with regard to lodging, food and medical treatment at the state cost.

The judiciary is responsible for applying the principles of international human rights laws at the national level for the protection and promotion of human rights. However, most of Nepal's judges are reluctant to do this partly because of unfamiliarity and also due to their conservative outlook. With its still traditional outlook and functioning style, the court seems less concerned with the need for a victim-friendly approach to the social justice system. It still seems to be callous to the sufferings and losses of the victim. To ensure the rule of law through the justice system, the court should always have a positive attitude towards the victim. To this end, it is also imperative first to strengthen the judicial system with the articulation of clear-cut roles and responsibilities of police and government prosecutor and other supporting bodies. Secondly, the evil practices being adopted by various quarters towards polluting the purity of law should be weeded out.

Nepal is a signatory to important treaties, relevant to the protection of victims and witnesses. Though the signing up of the international conventions is relatively straightforward, implementation is much more difficult where embedded traditional value systems, lack of

recourses, a strong commitment of the government and political and bureaucratic will, practices often fail to follow the domestic legislation. Section 9 of Nepal's Treaty Act, gives precedence to provisions of international treaties ratified by Nepal over domestic laws, Nepalese law fails to cover many provisions laid out in the constitution and international instruments ratified by Nepal.

The Constitution of Nepal has emphasized to guarantee the basic human rights to every citizen as the preamble of the Constitution reads " AND WHEREAS, it is expedient to promulgate and enforce this Constitution, made with the widest possible participation of the Nepalese people, to guarantee basic human rights to every citizen of Nepal". By virtue of this constitutional guarantee, twenty-three numbers of different groups, associations and forums related to human rights are registered. One of their objectives relates to watch whether an accused or a person suspected for crimes is ill-treated or they are deprived of exercising the fundamental rights, prescribed by the constitutional provisions. They are found standing for the betterment of the accused as well as the convicted criminals.



From left to right: Shahed Zia from Pakistan, Subodh Pyakurel from Nepal, Buddhadev Chowdhury from India, Saeed-ur Rehman from Pakistan and Rukshan Fernando from Sri Lanka

The situation of crime victims in Nepal seems deplorable and pathetic to an inexplicable extent, despite constitutional guarantees and legal provisions for the protection of human rights of the vulnerable. As such, the country's justice system is in dire need of improvement through necessary changes in legislature. But this would not be possible unless the legislation is amended to help the enactment of the "Victim and Witness Protection Act" with incorporation of the victim-focused justice components and establishment of the "Camera Court". Our society, though more dynamic than ever before, is not proactive in respect of fighting out social evils. The victim justice system would not improve without a change in social attitude towards the

court, the accused and the victim. Since social justice is more perceivable and tangible than legal justice, the legal institutions of today are required to restructure the existing legal system so as to enshrine the principles of rule of law in the country's justice system.

In a democratic system, the question of free and independent judiciary should not be controversial. But it is also imperative that judiciary must be knowledgeable and far-sighted, fair and impartial, and objective and independent. As this is not happening to the desired extent, the country is now in dire need of people who dare speak the truth towards enhancing dignity of the court to ensure the qualities it is to be endowed with. Contrary to this, people are afraid of speaking the truth about the ineffectiveness and insincerity of the court. To make good things happen, our society is in dire need of strong and committed political leadership capable of creating a more humane society, rich in moral values and committed to social justice. To this end, non-governmental organizations and civil society have a significant role to play. Some of the recommendations are as:

⇒ Need of promulgation of law to address the victim and witness protection. The legislative framework needs improving by introducing new statutes, removing outdated ones and redrafting badly written laws. As far as possible Nepal's laws should follow the standards of the international instruments ratified by Nepal.

⇒ The traditional procedural law needs to be changed in order to make it compatible with the provision of the constitution. Measures must be undertaken for active role of the public prosecutors for implementation of constitutional rights in investigation proceedings.

⇒ The authorities should diligently enquire into all cases of suspected intimidation of witnesses and establish a witness protection program in order to put an end to the climate of fear that plagues the investigation and prosecution of such cases.

⇒ Another important feature that requires consideration is the need for an efficient witness protection scheme that would ensure that witnesses are not intimidated and threatened. The absence of a witness protection scheme seriously affects criminal justice. Victims are frequently and seriously threatened, many fear to pursue their complaints. Meanwhile, despite a lot of talk about how to deal with increased crime, there have been hardly any efforts to develop a witness protection scheme. The most vulnerable persons are those who complaint against the state authorities, and particularly police officers accused of torture.

⇒ The victims are not entitled for the compensation. The victims are totally forgotten and neglected in the system. Thus, victim compensation act is urgently needed.

Syed Fahim Munaim: from the paper of Subodh Pyakurel, it is quite revealing to know what is going on in Nepal. I am sure that lot of people over here only knew that the king has all the power but we did not know to what extent. We can feel with Nepal because we have gone through the same situation when we were under the power of the autocratic regimes. In the case of victims and witnesses, your main problem seems to be that the state does not generally recognize the plight of victims and witnesses at all. You say that the country is in a volatile state in regard to questions of victims, and your comment that the victims will remain victims because whatever power the state has and whatever state the judiciary is in, the judgments are implemented by the state. This only reinforces the matter. We talk so proudly about SAARC

initiative, SAARC cooperation, SAARC friendship, but fail to see that one of the member countries is going through such a state of affairs. I think if the SAARC convention is implemented, the Nepalese people will, get some relief. In this case the role of media whether it is print, broadcasting or electronic becomes so very important. I would say, as far as Nepal is concerned, that you still have some independence in the judiciary. The country that has no independent judiciary, does not have the touch of democracy. It is quite interesting that in a country where 80 percent of the area is under the control of the Maoists - although 'control' is not the word that Shubodh wants to use - then I should say "is in the 'grip' of the Maoists", that the media is free. During the army regime under HM Ershad, I can recall an incident when two students got killed. Our headline was 'Two students of Dhaka University were Killed', but the General said that we could not use the word 'student' and must change the title to 'Two People studying in Dhaka University were Killed'. However, we did not change the words, since the death of students would provoke instigation all over. This is how we thought. I now request Rukshan Fernando from Sri Lanka to throw some light on what is going on in Sri Lanka.

Rukshan Fernando, Sri Lanka:In Sri Lanka (and generally in Asia) where the use of scientifically advanced techniques to investigate crimes and human rights violation are not so common, either due to lack of political will or ignorance of due authorities, the testimonies of victims and witnesses are all the more important. More and more victims of human rights violations are bravely coming out to file action against perpetrators and to seek justice. In this process, they become key witnesses, and their testimonies become crucial in ensuring justice and holding human rights violators accountable.

In addition to the victim's own testimony, the testimony of others is equally important in upholding the rule of law and justice. Unfortunately, more and more witnesses are also becoming victims if human rights violations for the sole reason of living up to their consciousness and bearing witness to human rights violations.

Now, what is the primary role of the state? Victims and witnesses are entitled to the full protection and security entitled to all citizens under a national legal regime- in addition to the human rights obligations on the concerned state. This indeed is a minimum standard, and underlines a state's responsibility to protect its citizens under any and all circumstances.

Victims and witnesses can become potential Human Rights Defenders. By virtue of participating actively in pursuing justice against human rights violations, victims and witnesses become active Human Rights Defenders. The rights of human rights defenders and state's obligations to uphold these rights and ensure a safe and conducive atmosphere for all such activities, is clearly laid out in the Human Rights Defenders Declaration. This states that: Victims and Witnesses have a right to give evidence and testimony. Victims and Witnesses have a right to benefit from an effective remedy and protected in the exercise of the above rights.

Now, what is happening in Sri Lanka? Due to the ethnic conflict, massive human rights violations have been taking place- particularly in the war ravaged North and East of the country. These were perpetrated by state forces as well as non state armed groups. (Arbitrary arrests, torture, extrajudicial killings, disappearances, displacement etc.). The present cessation of hostilities has reduced such violations-but as the "no war-no peace" situation continues, and peace processes seem stalled, such violations continue. Lesser known, but equally serious are the

violations suffered by thousands of people in two southern insurrections, that lasted between 1987-1990.

Since 1977, neo-liberal and capitalist economic policies have also brought about large-scale violations of economic, social and cultural rights. Many business enterprises, transnational corporations and law enforcement authorities are behind such violations. Since about three years ago, religious tensions have also escalated, resulting in the burning of places of worship and attempts to restrict freedom of religion through legislature. In the past few years, a High Court Judge has been killed; staff from the Attorney General's office and National Human Rights Commission have been harassed and threatened. Lawyers, media personalities and human rights defenders have also been threatened. In this scenario, how can victims and witnesses- often ordinary, poor people be assured that know they and their loved ones will be safe?

I would just like to present two case studies here of Mr. Gerald Pereira and Mr. Michael Anthony Fernando. Police tortured Gerald Pereira in 2002. In 2003, the Sri Lankan Supreme Court awarded him record damages for this violation of his rights and integrity. On 21st Nov. 2004, Mr. Pereira was shot on his way to work, and died three days later. He was due to testify in a criminal case against the afore-mentioned policemen on 2nd Dec. 2004.

Mr. Fernando has filed several cases of human rights violations by several prison guards who had tortured him, while he was in custody after being sentenced to a term of one year imprisonment on the basis of alleged contempt of court in a highly criticized judgment. After serving his time in prison, he had received several death threats about which he complained to the local authorities as well as to the UN Human Rights Committee. On 9 January 2004, the UN Human Rights Committee, in pursuant of Rule 86 of the Committee's Rules of Procedure, made a request to the Sri Lankan government to adopt all necessary measures to protect the life, safety and personal integrity of the author and his family members, so as to avoid irreparable damage to them. [United Nations High Commission for Human Rights Reference: G/SO 215/51 SRI (7)]

However, there was no response from authorities. In February 2004, there were attempts on his life. Mr. Fernando subsequently left the country, in view of the inability and unwillingness of authorities to guarantee his security.

Some key issues can be highlighted from these case studies:

- ⇒ Victims are often threatened-during trial, before trials and even after. Even when the matter is such that the Attorney General files cases!
- ⇒ Multiple and continuing victimization-as evident in the above case studies, most victims end up being continuously victimized-being threatened, abused over and over again.
- ⇒ In many cases, threats to victims and witnesses target family members- and in many cases, the lives of family members, including children, are affected by threats, intimidation and harassment on victims and witnesses.
- ⇒ Victims and Witnesses are often forced to rely on protection from the perpetrators of human rights violations. In many instances, perpetrators of human rights violations continue to serve in the respective areas.

- ⇒ Police and even powerful local politicians often offer bribes to poor victims and witnesses, as incentives for not testifying and withdrawing cases against them.
- ⇒ Fabrication of false charges create frustration as well as practical difficulties for witnesses and victims, thereby making some of them either reluctant to testifying or withdraw cases.
- ⇒ Victimization by delayed court cases- including instances where witnesses travel far to come to court, giving up their daily livelihood and other important personal matters- and end up the whole day languishing in courts, and being asked to come again.
- ⇒ Threats to immunity- danger of victims and witnessing not coming forward to give testimony.

Based on the number of cases where victims and witnesses have been assassinated, tortured, threatened, many local and international human rights groups particularly the Hong Kong based Asian Human Rights Commission, have been urging the Sri Lankan government to establish a witness protection program. Even the UN Human Rights Committee had stated that "The authorities should diligently enquire into all cases of suspected intimidation of witnesses and establish a witness protection program in order to put an end to the climate of fear that plagues the investigation and prosecution of such cases." (CCPR/CO/79/LKA (future) HUMAN RIGHTS COMMITTEE Seventy-ninth session). However, all such requests remains answered to date-and there is no indication that there will be a positive response in the near future.

The United Kingdom, United States of America, Canada, and Australia all have witness protection laws. In some laws, such as in UK, threatening a witness can be considered "contempt of court". Assistance available to victims and witnesses under these laws includes measures such as physical protection, relocation, new identity, housing, medical, job training assistance in obtaining employment and even temporary subsistence funding. The procedures for applying for such a program, criteria and processes are laid out in law. In the case of South Africa, the Witness Protection Act establishes an "Officer for Witnesses Protection" within the Department of Justice.

Finally, I would like to make some recommendations for how not only Sri Lanka, but other south Asian countries can move forward. Firstly, incorporating norms and minimum international HR standards related to victim and witness protection into domestic law is a must. Continuing advocacy for special laws must go on, drawing on from available legislature and best practices in other countries. The speedy resolution of court cases and other such inquiries by due authorities is necessary, in addition to this being a basic human right, it will also enable witness protection programs to be more effective and finally, the many domestic human rights protection mechanisms (E.g. Courts, National Human Rights Commission, Ombudsman etc.,) must each consider establishing comprehensive mechanisms to protect victims and witnesses engaging their respective mechanisms. The ICC case, though obviously different in scope and mandate, would be a good mode!

Syed Fahim Munaim: It seems that the same old record has been playing since this morning. We had country papers from Bangladesh, India, Nepal, Pakistan and Sri Lanka. I am sure that the participants will agree with me that we are getting a more or less similar picture. Fernando commented that the focus in all the South Asian countries is on torturing and the police are

justifying that this is the only way to make sure that the victim's confess. He also questioned the very fact that what can the ordinary people do in a system like that. The main crunch of the justice system in South Asia or Asia is on the poor. Lot of people have pointed out that justice has never come to the aid of the poor. Some case studies have been discussed here and Fernando pointed out that there were difficulties in picking up the case studies. And I am sure that the other discussants will face the same problem in picking up case studies, because there are so many of them. If you go through today's newspaper, you will find many other similar cases as well. People are shot in the court, they are abducted, and even though we have democracy, so many questions still remain unanswered. My interest comes back to the media, because we have another course that people take. We can pick up a case and keep on following it till we prove that a person has been victimized and we can identify the powerful parties who are trying to pressurize him/her. The press has to keep hammering and bring it all out.

Now I would like to invite Nurul Alam to share his thoughts on South Asian Regional Initiatives that may be taken in this area.

Nurul Alam, Executive Director, South Asian Partnership: I am not a lawyer, I am just a development worker. SAP is involved with the multi-faceted development of human rights and violation against women. We have been running a secretariat, which has been supported by AED. This is actually involved with coordination activities among the SAP members in Bangladesh. In case of the protection of victim and witnesses what is the role of SAP Bangladesh? We have assisted in the creation of a Protocol for the protection for victims and witnesses in the crime of trafficking in South Asia.

Having considered the need for a common outlook and for common principles to inspire, guide and protect the victim of and witness of a crime in the protection and enhancement of the human environment, and to meet the end of justice, some South Asian organizations working in the area of trafficking and human rights and the 'South Asian Regional Initiative/Equity Support Program' are undertaking the endeavour to create a regional victim witness protection protocol for South Asia. SAP, Bangladesh is proud to be a part of this initiative. If the protocol is adopted, social workers believe that the inherent weakness in the present prosecution system for traffickers may be reduced to some extent, if not eliminated.

Objectives of the proposed protocol include:

- * To protect and safeguard the rights of women/children victims and witnesses of trafficking and commercial exploitation and sexual abuse of children and women against intimidation, retaliation and secondary victimisation.
- * To amend, review and implement the SAARC Convention on preventing and combating trafficking in women and children for prostitution
- * To recommend amendments to national legislations
- * To attempt better interpretation and enforcement of laws
- * To provide an advocacy tool for organisations and NGOs
- * To create an official support system for women and children within the police and court systems

* To facilitate bilateral agreements within the region

* To initiate Public Interest Litigations

According to the Protocol, the State parties are responsible for

i. providing that in any criminal proceedings relating to trafficking or commercial sexual exploitation or abuse any victim /witness of trafficking or commercial exploitation or sexual abuse may be given protection upon an application filed before the court by the said person or any members of her/his family or any other person associated with the case or the Court on its own motion or suo motu or in those cases in which the Court thinks fit to do so and gives appropriate directions. A risk assessment and decision to be made by the Court on the necessary level of protection in each case.

ii. providing that the responsibilities of the witnesses include: a) to testify before and provide information to all designated law enforcement officials in appropriate proceedings in connection with or arising from the activities involved in the offence charged;b) to cooperate with respect to all reasonable requests of officers and employees of the Government and c) be accessible to the law enforcement agencies, who are providing protection under this protocol and to regularly inform the appropriate officials of her/his current activities and address.

iii. providing residence facility, special protection, economic support, travel expense, medical treatment, etc. to witnesses of trafficking and commercial exploitation or sexual abuse.

iv. providing that the special rights and status which should be accorded to trafficking victims must be preserved whether or not they act as witnesses.

v. providing that in all criminal cases the fact of the entitlement of the victim/witness to the protection and benefits provided shall not be admissible in evidence to diminish or affect his/her credibility.

vi. providing that: all proceedings involving application for securing protection and the action taken thereon by the persons (Court Officials, Police Officers, Technical Support Providers or any person involved with the protection procedure) shall be under obligation to keep all the information and documents confidential. Violation of the confidentiality of the said proceedings/actions to be an offence.

Furthermore, according to the protocol, the States have the responsibility of ensuring the following:

1. That any witness given protection who fails or refuses to testify or to continue to testify without just or reasonable cause, when lawfully obliged to do so, may be prosecuted for contempt. If s/he testifies falsely s/he shall be liable to prosecution for perjury.

2. Necessary steps, such as, victims must be separated from the accused, after the rescue operations and should be treated with respect and dignity by the police and other authorities. The concerned/relevant magistrate or judicial officer or the members of the competent authority, as the case may be, to visit and supervise the rescue home, periodically, preferably once in a month to ensure adherence to court orders and directions.

3. That the Victim/Witness Protection Protocol covers the following in the area of

prevention of trafficking and commercial exploitation or sexual abuse : In consultation with the various agencies of the state and concerned non-governmental organisations, source locations, areas and transit points will to be identified, to reduce or eradicate the possibilities of trafficking of women and children.

4. Support and recognition to women's self help groups at the village level or to the local bodies unit level watch-dog system to prevent trafficking and ensuring safe migration. They must take effective measures to battle those social customs, traditional practices that are fostering and feeding directly into the trade of trafficking of persons. In certain circumstances, the children of prostitutes need to be protected from their own family/guardians.

5. Compensation by exploiters to the victims to be considered. The assets and funds confiscated during anti-trafficking operations and investigations should be used to fund future anti-trafficking programs and operations.

6. That repatriation should be carried out depending on how safe and nurturing the family environment is for the victim. Repatriation will be done after their stay in a protective home. They will provide adequate financial assistance for meeting the needs of rescued victims during travel while repatriating them to their families or institutions in source areas. Repatriation to be done only with the consent of the victim. The survivor being repatriated should be counseled and prepared to return to the country of origin by way of medico-psycho-social care and basic life-skill empowerment so that the survivor is enabled to be reintegrated in mainstream life. State will also reimburse emergency expenses incurred by the police or other authorised escorts.

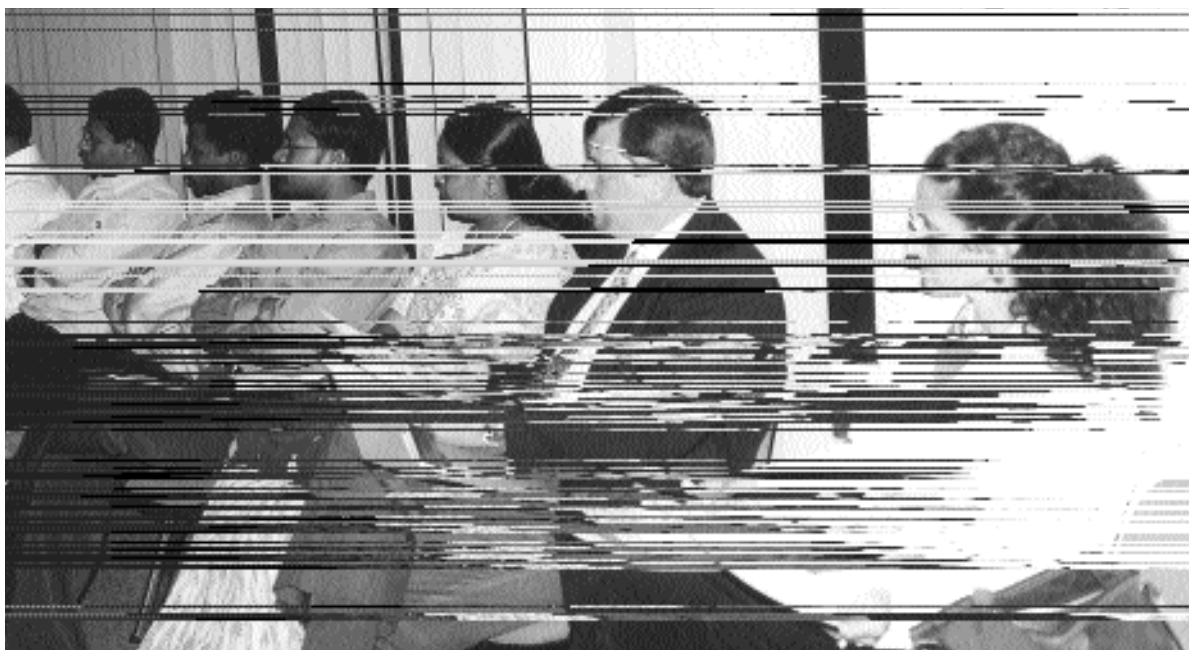
7. That the trafficked victims will be equally provided with the access to formal and non-formal educational opportunities, depending on child's need and interest. They also will formulate special schemes like employment guarantee schemes, agricultural subsidies, and medical support to provide assistance to the families of trafficked child victims.

The Protocol also states that all victims willing or necessary to testify should be given a full witness protection program. They must be kept in the safe custody of a well-guarded rehabilitative institution. During a trial the victims should be protected at all times and separated at all times from the accused. The Court may provide for the victim/witness to give evidence by means of a live link or recorded videotape or arrange trail in camera if necessary.

According to the Protocol, the State Parties shall grant to each other mutual cooperation and assistance in the areas of investigations, inquiries, trial, extradition, legal help and exchanging databases and any other assistance that may be required in consistency with the objectives of the protocol. The State parties must establish a monitoring body in each country within the region for the purpose of monitoring the implementation of the protocol.

Asif Nazrul: The central theme of today's seminar is very familiar to all of us. When we speak about the victim and witness protection, I would like to ask every one in this room whether he/she has not yet become a victim of crime, corruption and misuse of power, I think everyone is. And every one of us has directly or indirectly witnessed crime, corruption and misuse of power or bad governance in one way or another. Unfortunately, the problem is that sometimes we do not feel comfortable representing ourselves as victims and witnesses, because we know the consequences of claiming so. We have seen what happened to the victims of the more

grievous offences like rape, murder or dacoity. So, we have learned lessons from that and have stopped identifying ourselves as victims or witnesses. I think this enforces the argument about the needs of victim and witness protection. Every country has the same story, the same history, and the same sufferings of the victims. Firstly we have to conceptualize what do we need to do to protect the witnesses and victims. I think one interesting document is the UN Declaration dealing with basic principles of the victim and crime, in which it is clearly written that victims need to be treated with compassion and respect. And they are also entitled to justice and prompt redress. The Rome Statute and Section 3 of the Rules of Procedure and Evidence, find that victims and witnesses need many types of protection, which must be ensured. This includes adequate reparation; 'reparation' is not only the reinstatement of the property but also compensation and rehabilitation. And the compensation must be ensured from the perpetrator/criminal himself. The victims must be afforded to the right to security, the right secrecy during the investigation level and must give the right to participate in the court proceedings. There are other documents that have also provided for the institutional arrangements. They have talked about the victim and witnesses unit, they have talked about the victims participation and reparation unit and also thrust funds. If we compare our national legislation with one role model of international law, we all understand to what extent we are lagging behind. The only provision I find which is relevant with the victim and child protection issue is the Legal Aid Law, which talks about giving some type of help to the victims of crime, and to some extent the witnesses as well. Hasan Arif is here and he can tell us what is happening with this scheme and how this scheme is being misused by parties and lawyers. First we need to change the social mindset, we must think about the plight and sufferings of the victims and witnesses of serious crimes. Before I finish I want to say something about the role of the media. If we look at popular papers such as *The Daily Star* and *Prothom Alo*, they are doing fine, they are reporting crime, doing follow-ups, exposing the criminal, I thank them from the core of my heart. But these two national dailies do



From right to left: AED Chief of Party Susan Ward, USAID Bangladesh Director for Democracy, Governance and Education Todd Sorenson, USAID Program Officer Habiba Akhter and other participants

not constitute the whole media in this country. Today, news has been published that a middle aged person tried to assault a female student of Shahjalal University. This person has four wives and two maidservants at home, with whom he can do whatever he wants. But four newspapers published the name of that girl. If a newspaper reveals a victims name, the department she studies in, you can easily understand that media is subjecting that girl to further social isolation and stigmatization or even social degradation. This is not a new phenomenon in Bangladesh. The other day in another seminar we were talking about the victims of trafficking. And we agreed on that issue that there should be some guidelines, some code of ethics in case of covering their news. We have scanned several newspapers and it is quite alarming that the names and identity of the victims of trafficking have been exposed in those newspapers. In one of the most well established and well-circulated dailies in Bangladesh the pictures of the victims were even printed. That newspaper published a story of an 18-year-old girl who was trafficked to the Middle East and was rescued afterwards. What benefit is the paper giving her by printing her story with her picture? Isn't it a further victimization of the girl again?

Syed Fahim Munaim: Thank you for your speech and definitely you have provoked me to speak. We have told the reporters to not to print the names, identity or pictures of any rape victims. We don't even print any picture of any gruesome murders. No point of victimizing the victim again. However, as you say, there are both good and bad elements of the media. Believe me we are also a part of the society, we have relatives all around, we are part of the whole country. So, what we print we can be subjected to that as well. I will definitely talk to other editors when I will get time. It is also true that newspapers never ever get the chance to know the entire system, the laws, the procedures and the whole process. Our honorable judges are here, this is their subject, and they know all those things associated with it. A media person or a reporter is not specialized in this particular area and they don't know everything. May be you would say that it is your problem, not ours. Why don't you get people specialized in this sector? We are looking into the matter and we are definitely focusing on that. Because it is not an issue of one person versus another, it is an issue of the country, human beings and justice.

Maqsudul Haque: Firstly I will disagree a little with Subodh Pyakurel. I am known as a cultural activist and columnist to the public but professionally I am a risk analyst and my risk covers all areas from Afghanistan to Vietnam on a daily basis. To be entirely honest I think that the media in Nepal is free. I get to read almost all the online newspapers on a daily basis, because it is my job to read them. We do not get any information on the extent of the violence and the plight of victims because of the fact that the Nepalese media is so badly censored on the internet. It is the free media blockers of Nepal that tell the world what is going on in Nepal. Similarly when there is a bomb attack in London, the people were not reading The Observer or the mainstream media, they were reading what the blockers were saying and who were giving more information than the mainstream. Consequently here we are in such a situation where the role of media is far more serious. By implication I think that the media not only in Bangladesh but also in the whole world is a part and parcel of the whole system of oppression. It is a trickle down process. It may begin by a compilation of a couple of Ps together: first it is the politician, secondly it is the police, third is the PR and finally the press. They have the same character. The character is oppression, the character is demeaning, and they do it with a sort of impunity that is unheard elsewhere in the world. In Bangladesh, I was the victim of both the state as well as politics. If you want to read my case, it is available on the website of Odhikar. There you will

see how the press, the police and politicians ganged up to victimize me for three days. I was subjected to torture everyday for basically no crime other than a cultural crime. There was no law to punish me under. So, there we are. I would like to say that the harassment starts when we pointed out a victim, giving out details to the press. Take, for example, the 500 or so members of the so-called religious groups like JMB. You have about 500 people up there behind the bars and subject to all kind of torture. We have decided that they are criminals and must be punished and by implications of all newspapers, say all of the 500 hundred mullahs should be hung and strangled to death. We are victimising them. Let us look back to the past where the same thing happened in 1995-96 when Awami League was in power. We had something called Harkatul Zehad, similar to the JMB. We had thousands of people rounded up and the media was making stories, but what happened after that? They went to court and each and every one of them including the so called foreign militants has walked free. I think among all these 500 people in jail today, one or two will be convicted and the others will go free. So, how has the media served national interest here? With no kind of sympathy for the so-called fundamentalists, we have to think on some issues: have we given them the opportunity to defend themselves? Have we given them the benefit of doubt? Have we thought of the 450-500 families out there? Have we thought of their mental degradation and how much they have lost in terms of their self-esteem? So, I think we are talking about a big area, the victimization and oppression. But let's not forget one thing that we, who belong to the civil society or the civilized society, are the worst oppressors.

Rajeendra, Law student from Nepal: I was here at an Actionaid programme. The Nepalese paper presenter gave a broad picture of Nepal; I would like to add a few things. Basically, our laws are not to protect victims, they only punish the perpetrator. There is no welfare package, rehabilitation, and compensation for the victim. That is the nature of our justice system. There is a political unrest in Nepal now. Recently there were many human rights violations perpetrated by the government security forces and non-state actors. Apparently the Nepalese press seems to be free, but practically they are not free. Journalists have been killed and also face psychosocial problems because of the Maoists and government. For example, the security forces arrested a person illegally, when we filed a torture compensation case, he was again victimised. In another case, one of the members of the Maoist cadre faced sexual assault by one of her fellow comrades and she came to police station to complain. She was victimised again.

Nadira: South Asian Partnership: It is clear that we need a strong victim and witness protection protocol, law or convention. We have all agreed that we are lacking such laws and systems. Now after hearing that there has been an initiative taken I must congratulate SARI Equity, SAP and NSI. To develop that regional protocol, we had to go through the protocols of these countries, because this problem is national as well as cross border. Now that the protocol has been prepared, the question arose as to how we can place this protocol at the national level advocacy and regional level advocacy programmes? At the regional level the advocacy has already started, facilitated by the SARI Equity group. And at the national level, the protocol has already been handed over to the SAARC secretariat at Nepal. We have to ensure that it is taken into serious consideration by the SAARC governments.

Syed Fahim Munaim: I think that Odhikar will take this under consideration.

Sanjeev Drong: All over the world it is recognized that we, the indigenous people and the

minority, are the main victims of human rights violations. All know about the killing of Alfred Shoren in 1999, Santal and Garo leaders have also been killed. And the indigenous people do not get the justice for the crimes perpetrated against members of their community. In the Madhupur case, when one policeman was killed, the Forest Department filed a case against six thousand Garos, and we all know that the Department cannot prove the crime of the accused. Again, although everybody knows these cases are false, still the magistrate takes them. If we ask for a new law for protection of witness and victims, then there should be some provisions in this law through which the protection of indigenous and minority people will be assured.

Syed Fahim Munaim: You have been very specific about the indigenous people, but since victims are victims the rights for all types of victims should be protected in general.

Subodh Pyakurel: I will give some specific remarks. The question is until and unless the people do have the political power, none of the declarations or treaties or laws are going to work. Though we have all those rights, even if the State may not have ratified them, the documents may give inspiration to the judges in making very pro-active decisions. We can say a judiciary activism has been seen. A question was raised whether media in Nepal is free or not. The Maoists have killed more than 12 journalists so far. Before I came here, we had to send seven people to rescue 12 other journalists from a remote area. Still the press people are writing about the violence and dare to take the risk. Because of their hard work, the government could not bring the proposed Code of Conduct to the media persons. So, in a way they are free in a way they are not.

Adoption of Recommendations and Future Plan of Action :

Moderated by: **Mr. Subodh Pyakurel**, Chairperson INSEC and Board Member, SAFHR, Nepal

Subodh Pyakurel: from the day's deliberations we have got sufficient directions to follow for the protection of victims and witnesses in South Asia. We have got inspiration from the participants regarding what should be our way forward. This is the session for the adoption of recommendation and future action plan. At a previous meeting, we agreed that there should be a South Asian Network for Torture and Impunity, or SANTI. The network is led by CARID, the NGO run by Professor Budhhadeb Chowdhury.

Rajendra: What is the structure of SANTI and how does it work?

Adilur Rahman Khan: SANTI was formed here in 2003 and then we tried to develop it further. This time at the SAARC People's Forum in Tangail, this issue came up. We have discussed there how to form a victims' forum. We need to consolidate this world more. Prof Budhhadeb Chowdhury has taken the responsibility in Kolkata. CARID will be responsible for coordinating SANTI for the next two years. The structure is loose; the organizations who are interested to work with this issue will become a partner of the network. So, if you are working on the area of torture, then you are most welcome.

Recommendations from the Rapporteur's points :

A. The Treatment of a Victim and a Witnesses:

1. There should be a clear definition of a victim and a witness.

2. Victims must be given some compensation, rehabilitation and/or reparation.
3. An additional punishment should be given to the person who intimidates victims and witnesses.
4. We need a long term structural system to protect the rights of victims and witnesses rather than another law. Implementation of present laws is more important now.
5. Before giving the final report the investigating officer must be examined.
6. The statements given by victims under section 161 of the Code of Criminal Procedure, and other statements that are given to the police should be examined thoroughly. There should be some mechanism to look after the whole system.
7. Police should undergo gender training and be gender sensitized.

B. The Laws and the Legal System

1. We should make the law of bail more stringent for very serious crimes like murder, rape, trafficking. There are top terrorists in the country that get bail 13-15 times, but the child prisoners never get any bail.
2. An independent, accountable and responsible judiciary is a must. The loopholes and lackings in the laws should be weeded out and laws should be reviewed, amended and, if necessary, repealed.
3. There should be some special court to combat trafficking.
4. We can take examples from the provisions of the Rome Statute to formulate a law for the protection of victims and witnesses in our countries.
5. The treatment the victim should get from the court and defense lawyer must be identified.
6. We need to look at the prison system to see whether it is causing further degradation and sufferings of the victims. There are many notorious criminals who control the whole crime scene from behind bars.

C. The Role of the Media

1. A Code of Professional Ethics has to be created and implemented by all the media - whether written or electronic, to ensure the protection of victims and witnesses, especially women and child victims. This Code may be one used by all the media or in-house and used by the paper/channel internally.

D. The Role of the Internet

1. The important judicial laws and regulations in the region should be posted in a website for judges, lawyers, the media, activists, etc.
2. Developing a website constituting of human rights organizations and the specific areas in which they work. This would be helpful for victims and witnesses seeking help and also help the people choose who to consult, communicate with and get information for any sort of help.

E. The Politicians and the Government

1. There needs to be serious political will to establish a concrete set of rules for the protection of victims and witnesses in the countries of the region.
2. Criminalisation of politics and political pressure on law enforcing agencies has to be curtailed and controlled.

Md. Rouf: Justice delayed is justice denied, there are many cases that linger for a long time for an uncertain period. And the more the case lingers the more victims are going to suffer. So, the cases relating to violence against women and children should be completed within a reasonable time. Close monitoring system for the witnesses should be developed in the national and local level. The participants will be happy to know that that the Ministry for Home Affairs is going to establish female based police stations. In every police station there will be a separate investigation unit for female victims.

Selina, Ain O Shalish Kendra: a question for the representative of the Ministry for Home Affairs. We also give legal aids and safe custody. We have many cases where female children and women who are not victims of incidents are also kept in safe custody and jail. Many of these girls are missing children who get lost from their parents. We help them find their parents and through court we release the children and hand them over to the legal guardian. They are the subject of deprivation and psychological torment. What can be done for such girls?

Md. Rouf: when a child is missing you must file a GD. When a missing or trafficked child is rescued then the matter should go to the court. Now we are establishing a mechanism where when a victim is rescued and the family is not available or cannot be identified, she should be handed over to the NGOs who have shelter homes. The Bangladesh National Women Lawyers Association has a shelter home in Agargaon, if you visit these shelter homes you will find 84 victims who have recently been repatriated from Abu Dhabi as camel jockeys. This is our present mechanism for the rehabilitation of the trafficked victims.

Syed Fahim Munaim: Being in the media, the issue of professional ethics is more or so the internal policy of a newspaper. The newspapers are extremely sensitive. They have their own policies; they do not want to be dictated by anyone, whether it is an agency, government or any other organization. So, the efforts should be more so in the form of a personal approach or a personal letter to the editors and the publishers and producers.

Saeedur Rehman: I have serious problems with the word victim, except the case of murder. In the case of all other crimes the word should be survivor. The word victim fixes the condition of the receiver of a criminal act. For example if somebody is targeted by a criminal act his/her first attempt is to survive, to survive from the after affects or trauma. By using the word victim, we are sort of fixing the person in one particular moment in time. The fact that he/she overcame the criminal act perpetrated against him/her, makes a survivor.

Nadira, SAP Bangladesh: From the social context I want to request you all not to see this victim witness protection thing from one angle. It is directly involved with the livelihood of some people - some of which are illegal. For example, when the Adamjee Jute Mills was closed down, all the employees, who could be considered victims of consequence, went back to their own areas where some have started a number of illegal activities.

Susan Ward, AED: I have just two few comments. I suggest that we should not forget to keep in mind the human rights content, because somebody mentioned, while discussing who is a victim and what is a victim, I think it may not be very popular but if we think of it from a human rights perspective we have to remember that every one is entitled to human rights and that includes criminals. They should be brought under the law and punished for their criminal activities but that does not mean that torture is okay.

Closing Session

Presided by: **Mr. A. F. Hassan Ariff**, Senior Advocate, Supreme Court and Former Attorney General for Bangladesh

Hassan Ariff: I am recapitulating the suggestions that came from the discussions. The first one was the need of a definition of a victim. I think this is more semantic than a real need, but from the organizations point of view, of course there will be an attempt to define a victim and a witness. The second suggestion was that there should be an arrangement for compensation for the victims. Suggestions came for enhancing punishment for the perpetrators, which will have the effect of deterring others from terrorizing victims and witnesses. The suggestion has also come for special court and instead of going for a new structure, let's go for an implementation within the existing legal regime. There should be procedural checks and balances, and in the process of investigation, the victims and witnesses must be allowed to more participation. We can take assistance from the Rome Statute, in case of victim and witness protection. Another suggestion was that there should be a partnership with between media; and there should be an approach by the media regarding the development of professional ethics. The legal aid system was discussed and the need for an effective mechanism and machinery of giving assistance and protection to victim and witness raised. An elaborate discussion on how the present system is working was done all day. The law of bail should be reexamined to stop its misuse was another recurring issue. The prison system is another important issue, because the syndicated criminals are very strong. In case of the identity of the victim I think the victim should never ever be an element in the report, we should talk about the offense, not the victim. A positive note was the announcement that the Home Ministry is going to have a separate female police cell in every police station. This brought the suggestion that there should be a police station watch body in every police station. Girls in safe custody are a separate issue that has a broader aspect of victim and witness protection. Ultimately we must not forget the human rights perspective of the whole issue. Denial of human rights will not help us in protecting victims and witnesses.

Subodh Pyakurel: All the countries of the south Asia must come together and work strongly to protect the victims and witness, and we have to work with our grassroots people so that this will be interlinked with our awareness building and people's solidarity movements from the respective countries and that will emerge too as a regional movement.

Gene V. George, USAID: This discussion is the first step towards recognizing the need to have proper legislation and a system to protect both victims and witnesses. The rights of the victims and witnesses to testify freely are indispensable for the proper functioning of the judicial system. Therefore, the protection of their rights is at the core of access to justice. It is essential for any democratic country striving to develop a modern criminal justice system to be able to properly served and defend both victims and witnesses. In south Asia, the incidents of violence against

women and children occur in alarming rate. Unfortunately very few incidents are reported to the law and enforcement authorities. In no small part, the fear to be victimized again during the investigation and trial period created due to the lack of adequate legal provisions for victim protection least number of cases have been reported and even lesser number of the cases that goes under trial. The protection of victim and witnesses is particularly vital to combat gender-based violence. A female victim who remains unprotected is vulnerable to threat and intimidation. Victims and witnesses of gender-based crimes require special supports counseling services, and protective measures. Any legislation must recognize this special need. I have heard that most of the countries of South Asia do not have specific laws, policies or guidelines to protect victims and witnesses before or during the trial. The provisions are generally insufficient to adequately protect the people involved. For example, the Code of Criminal Procedure in Bangladesh does not contain any provision for the protection of victims and witnesses. Other legislation does and occasionally they refer to this, but do little to provide some safety for these groups.

USAID Bangladesh currently sponsoring the human rights advocacy programme in Bangladesh through AED. This initiative supports and strengthens the organizations who are working with the vulnerable groups - especially women and children - for basic human rights violations. Under these initiatives, AED assists Odhikar to investigate human rights violations through applied research and monitoring the treatment of detainees by law enforcement agents. This is providing Odhikar with first hand understanding of the crucial needs to properly protect victims and witnesses in order to sustain a functioning judiciary system. It is also worth mentioning that USAID is funding the South Asia Regional Initiatives Equity Support Program. SARIQ has several regional action forms that focus on enhancing the policy discussion among South Asia countries on a variety of issues. These working groups have presented the representation of both government and civil society.

Legally trying to deal with the issue is not sufficient, it's like trying to clap with one hand. It needs to have two parts. The other part is attitude change. In these societies it is important to change the attitude of common people so that they recognize the importance of the victim and protection, it is the government agents, officials, politicians, civil society, community leaders and the whole structure that needs to be addressed so that the legal framework will be placed. You should all keep that in mind that a legal framework is not everything to achieve the goal.

I am pleased to see the representation from the region from countries like India, Nepal, Pakistan, Sri Lanka and host Bangladesh, This topic is a regional topic and in South Asia the close proximity of the countries in working together is also important to set a regional platform the people can work towards.

USAID is committed to the protection and promotion of human rights. Human rights cannot be given and taken away. These are the rights that are accorded to individuals because they exist. And we should continue to work to the efforts of our partners and show greater respect to human rights. A stronger press preference, a rule of law, and increase access to justice are a must.

Other Major Achievements Made: Linkages and Networks

Dissemination of information relating to human rights abuses is crucial for awareness generation among the people. It also helps in alerting the government of areas where improvement and review are necessary. Odhikar, therefore, strongly believes in the power of the press and uses the print media to highlight information collected during fact finding and monitoring activities.

The three years of work in the area of thana monitoring and fact finding and dissemination of information, supported by the AED, has greatly benefited Odhikar, as it has been able to contribute to some changes that the Government is planning to bring about in the area of law enforcement and Criminal law.

As mentioned previously, as part of the AED-supported project activities, Odhikar held three regional discussion meetings during the three project years of 2003, 2004, 2005. The key objective was to have a comparative situation analysis of particular human rights issues in other countries of the South Asian region and regional human rights organizations.

The three regional meetings helped Odhikar gather enough material to make comparative studies and also enabled regional participants to take back information to use in their own programmes and projects. Success stories were also shared, which could be replicated in other South Asian countries. Bringing human rights advocates from South Asian countries to discuss, reflect and recommend on particular human rights issues created additional support to civil society consensus building behind important and relevant issues and helped formulate means and ways by which advocacy with policymakers could be brought about.

The regional discussion meetings also facilitated the discovering of diversified perspectives of particular human rights issues. It enriched the quality of research in all the participating countries.

Linkages and Networks Formed as a result of the AED project:

Since Odhikar disseminated its findings in the local dailies and since the discussion meetings were also used by Odhikar as a platform to highlight the results of its fact finding and monitoring work, the state of law enforcement and related issues in Bangladesh were aired in a public forum, where representatives of various Ministries, law enforcement and other

government organs were present. As a result, there were other successful outcomes of the project work.

Such achievements were as follows:

- In the very first such regional discussion meeting, the participants from South Asian region formed a human rights network titled South Asian Network against Torture and Impunity (SANTI). There was the desire to continue with the network to further discuss human rights issues in regional perspective. New member organizations from the South Asian region have now joined the network and subsequent regional discussion meetings were participated by members of the network.
- Over the last three years, the discussions and recommendations made in the regional discussion meetings created strong civil society positions on particular human rights issues in all the countries represented.
- The main recommendation made in the 2003 regional discussion meeting was adopting an agenda for police reform for preventing police impunity. Some suggestions and ideas on how this could be brought about came from country practices and NGO efforts in other South Asian countries. In 2004, the Government of Bangladesh started a preparatory project for police reform with assistance from UNDP and DFID. It is expected that this project will look into police impunity through its several sub-components.
- The main recommendation made in the 2004 regional discussion meeting was to bring reform in criminal justice system of the country. In 2005, it was stated by the Minister for Law, Justice and Parliamentary Affairs that the Government of Bangladesh was working on bringing necessary changes in the prevalent criminal laws. The World Bank supported Legal and Judicial Capacity Building Project will work on criminal justice reform in its second phase (planned to begin from 2007). GOB planned reforms in criminal laws and criminal justice reform project are expected to pay attention to the criminal responsibility for torture aspect as was discussed in the 2004 regional discussion meeting.
- The topic of the 2005 regional discussion meeting was on the issue of victims and witnesses protection. The key recommendation was to draft a victims and witnesses protection law for Bangladesh and to do advocacy with Law Commission, Ministry of Law and other policymakers. A draft law has already been made. Forum Asia, a regional human rights organization has proposed Odhikar to do further research, in collaboration with the UK based organization Redress Trust, on a comparative analysis on victims and witness protection laws of other countries and to hold a series of consultations and public advocacy events in support of enactment of the drafted law.
- At the 2005 regional discussion meeting, a representative of the Ministry for Law, Justice and Parliamentary Affairs stated that the Government was planning to create separate police units for female and child victims, with trained police personnel.

The plans made by the Government and the relevant projects and programmes it will be implementing in the area of law and law enforcement reform will be keenly monitored by Odhikar and may, in the future, form the bases of another programme.

Annexure: 1

Fact-finding reports 2005

Nabi Hossain was hit by Police bullets in Kishorganj

On the basis of a news report titled "Firing on the Procession of Awami League: One killed" published in various dailies, Odhikar sent a fact finding mission to collect further information on the incident and did so by conversation with local people, interviewing family members of the victim, physicians, police of Karimganj, political leaders and the Additional Police Superintendent of Kishorganj. Odhikar also interviewed one of the victims of the incident, BSL leader Jahurul Haque Tipu, who was also injured.

Tipu told Odhikar that after the death of former Finance Minister Shah A.M.S. Kibria, leader of Karimjang Awami League and former MP Dr. Mijanul Haque took up different political activities. On February 7, 2005 a public meeting was arranged at the A. Hakim High School premises, which is on the west side of a bridge beside the Gujadia market near Karimganj police station. The announcement of the meeting was convened on February 2, 2005. But on February 5, local BNP leaders called another meeting at the same time at the Eidgah (field for Eid prayer) near the same venue. Both the venues were too close to each other.

Dr. Mijanul Haque led a procession with sticks and funeral clothes as a mark of protest against the BNP-called meeting. On February 7, approximately 2/3 thousand people were attending the the demonstration. When the crowd reached the Gujadia market, they threw down their sticks when police requested them to do so. Suddenly pieces of bricks and stones were thrown towards them from the rally of BNP activists. Police allegedly started to baton charge the participants of the AL rally. At one stage of the clash between Awami League and BNP supporters, police fired on the supporters of the AL and Nabi Hossain (30) was hit with a bullet and killed.

Odhikar talked to Liton (22), who was hospitalized after the incident. He told Odhikar that he was not involved with any of the political parties. While returning from the market, he got stuck in the clash and started running away, whereupon the police fired on him.

Some severely wounded workers belonging to the Awami League, A. Karim, Hafiz Uddin, Rafiq and Mohammad Liton said, "Police along with BNP cadres started firing on us since we were the activists of Awami League." One of the local leaders of AL, on condition of anonymity, informed Odhikar that it was a pre-planned attack on the rally of Dr. Mijanul Haque by the BNP leaders and Police. They intentionally called the meeting at the same time to create chaos. They allegedly created obstructions while AL supporters were taking the injured to the hospital.

Brother in law of the deceased Nabi, A. Salam informed Odhikar that he was an active member of the Awami League and passed his livelihood by painting houses and doing house hold chores. On that day, after lunch, he went to the rally with Dr. Mijanul Haque. At around 8 PM on February 8, the police took away the dead body of Nabi and arranged a funeral prayer and buried it without handing over to his family.

BNP leader Rashidul Haq of Namapara village narrated a different story. As per his statement, the BNP arranged a meeting at the local Eidgah field where Dr. Mijanul and his followers entered with sticks and started chanting offensive slogans. The situation got worse and according to him, it sparked off the clash. The AL activists also attacked the police who then opened fire.

A Medical Officer of Mymansingh Medical College, under condition of anonymity, said that all the injured people had marks of fighting and bullet wounds on their bodies. They were all under treatment. One official of the postmortem team told Odhikar about the bullet injury found in the body of Nabi. The postmortem was done in the Kishorganj district hospital. A local grocer, Sobdar Ali was also an eyewitness to that firing incident. He stated that when the firing started, he found Nabi dead by a bullet hit in the abdomen.

Acting Officer-in-charge of the Karimganj police station, Anisur Rahman said to Odhikar that he filed a case as a plaintiff against Dr. Mijanul Haq with 40 others as the accused and 5-6 hundred anonymous persons as accused as per the complaint (case no. 9, date: 07/02/05). It was filed under the sections 147/148/149/323/325/326/332/333/353/307/302/427 of the Penal Code. He also said that one of the accused, Suruz Mia, was an Awami League leader and had been arrested and kept in custody.

About the allegation of not handing over the dead body to the family of Nabi, the police stated that Rahima Khatun, mother of the deceased and other villagers were allowed to see the dead body and took part in the funeral prayer. He did, however, agree that police officials supervised it all.

Additional Police Superintendent of Kishorganj, Jaynal Abedeen, informed Odhikar that since the two meetings were arranged at the same time and in places very close to each other, there was high probability of clashes and for that reason the administration assigned magistrate Amirul Islam, Fazlur Rahman and TNO K.M Ruhul Amin along with 60/70 police, including a reserve force, to maintain discipline and keep any unexpected situation under control.

Jaynal Abedin also alleged that the former MP of the Awami League took a procession of 2/3 thousand people with sticks and while passing through the meeting of BNP they threw stones and bricks at them and that instigated the clash. The magistrates and the TNO with 20/25 police were also injured during the clash. At one stage, when the situation went beyond control, the Magistrates ordered to fire. The Additional Police Superintendent also added that at first police lobbed 50 rounds of tear gas, fired 150 rounds of bullets from shot guns and finally fired 39 rounds of bullet from rifles. A case was filed in the Karimganj police station and an investigation was going on.

The arrested activists of Awami league, including Dr. Mijanul Haq, received bail from the High Court on February 22, 2005. They filed two cases in the cognizance court. One murder case was filed against the officer-in-charge (OC) of Karimganj police station, Anisur Rahman; chairman of Karimganj district BNP, Md. Rafikur Rahman; General Secretary Advocate Monsur Alam; Senior assistant secretary Advocate Shafiuzzaman; BNP Secretary of Gugadia Union Nurul Islam; Secretary of BNP student wing of Karimganj Shafikur Rahman with 81 other accused along with 100/150 anonymous people. Dr Mijanul Haq was the plaintiff of the case. Another case was filed against 46 anonymous people and the plaintiff of the case was one Abul Hashem.

Two Killed by Coastguards and Forest Guards in Lakshampur

Odhikar did an on-spot investigation into the incident of the killing of two people and the injury of more than 50 people by the coastguards and forest guards at Lakshampur in February 2005.

At around 10 am on February 13, coastguards and forest guards from Bhola fell upon the helpless people of Telichar at Telichar Chairman Bazar under the police station of Ramgati, on the pretext of arresting robbers. At one stage, the local people launched a counter attack. Subsequently, the coastguards and the forest guards fired 25 rounds of bullets killing two people on the spot and leaving five others injured. As a result, the people flew into a rage and surrounded them. They kept the coastguards and forest guards confined for about an hour. During the incident the mob snatched three rifles from the coastguards. When alerted, a squad of police from Chargajaria Police Camp rushed to the spot. The police brought the situation under control and rescued the coastguards from the people 's wrath.

According to locals and the police, on the day of the incident, fourteen forest guards led by Aminul Islam, the ranger of Daulatkhan Forest Department under the District of Bhola and seven members of the coastguard led by Md. Shahidul Islam, the Zonal Commander of Bhola Coastguard, conducted an operation at Telirchar under the police station of Ramgati to arrest timber thieves and pirates. When they failed to recover the lost timber belonging to the forest department, they started detaining local people indiscriminately in the name of nabbing pirates in the adjacent areas of Chairman Bazar under Dakshinchahar Gajaria Union on the bank of the river Meghna. When the people formed a mob to protest the incident, members of the coastguard opened fire on them, killing two people named Shahabuddin (45) and Ayub Ali (25) on the spot.

Two witnesses of the incident, Kamal and Abdur Rab, told Odhikar that at around 10 am on February 13, two people named Farook and Ayub Ali were weeding a chili field adjacent to Chairman Bazar. Suddenly they heard sound of whistle blowing and saw a group of people, dressed in green and white with sticks in their hands rushing towards the "bazar." First they interrogated one Farook, who was working in the chili field, about the timber thieves and the pirates. At that time, three other people were working in the adjoining field. The members of the coastguard and the forest guards started beating Farook with a stick when he denied any knowledge about the pirates. Two people who were working in the next field then told the guards that they had seen two unknown people running away. But the guards did not pay heed to them. Rather they fell upon them too. When Farook was hurt, his wife informed the people of the "char" (river island) of the incident. Getting the news, the people rushed to the spot and there took place a row between them and the guards that led the guards to baton charge the people and damaging their shops. Then people from the neighboring areas surrounded them and the coastguard members opened fire on the crowd at random, leaving some people injured. In counter action, the people fell upon them compelling them to escape. While escaping they kept on firing and killed Ayub Ali (25) and seriously injured four others-Jasim, Sattar, Gafur and Jakir.

When they (the guards) were trying to escape, the propeller of their trawler got stuck in a fishing net. When Shahabuddin was trying to free his net from the heel of the trawler, the coast-guard members fired at his head killing him on the spot. A team of coastguards managed to escape.

However, six of them were held by the people of the island. The agitated people snatched three rifles from their possession. When informed of the incident, a squad of police led by Sub-Inspector Farooq, the Officer-in-charge of Gajaria Char Camp, reached the spot and rescued the guards from the people. At that time there was a scuffle that left SI Farooq and the coastguards injured. However, the police rescued them and took them to the camp. The Officer-in-charge of Ramgati Police Station, M. Khorshed Alam and the Thana (local government) Executive Officer Humayan Kabir Khandaker visited the spot and brought the situation under control by assuring the people of justice through fair investigation. The injured members of the coastguard were transferred from Gajaria police camp to Ramgati police station.

The homeless people evacuated from Uttar Char Gajaria, when it was engulfed by the river Meghna, took shelter in Telirchar. The government offered no support or assistance to them. During the regime of the last Awami League Government some shelters were built on the island for the homeless people who became homeless due to river-bank erosion. They began to live a very miserable life on public lands. The island is under the jurisdiction of the Forest Department. However, it is alleged that the Union Parishad (local government) Chairman, Abdur Rab has control over everything in this island. It is said that the Chairman gave shelter to the riverbank erosion victims on this island because he is the chairman of Dakshinchar Gajaria. A "bazar" (small market) of Telirchar has been named after him. The area of the island is about 15 square miles. The inhabitants said that there are more than 5000 households there. The chairman forces every household to give him a large amount of money as extortion which may vary from Taka 200 to 500, based on the economic condition of a particular household/family. What is more deplorable is that the staff of the Forest Department very often invade the households of the distressed people and cause a lot of damage. It is alleged that they even set fire to their houses. When asked about why the Forest Department staff behaved this way, the island people said that the Forest Department staff harass them by bringing false allegations of felling trees from the forest against them. According to the residents, the fact was that the timber smugglers from Bhola and its neighboring areas used to fell trees and take them away in connivance with the forest guards. Contrarily, the blame was put on the inhabitants of the island.

A case (number 7, dated 13.2.05) regarding the incident was filed with Ramgati Police Station by the coast guards bringing allegation against unidentified 60 or 70 people of Telirchar. The case was filed under the Sections 341/342/332/333/353/379/302 of the Penal Code. The incident stated in the FIR does not match what allegedly happened. The complainant of the case, Shahidul Islam who is the Zonal Commander of the coastguard has made a fabricated FIR of the incident to divert the real incident to a different course. What is stated in the FIR is that acting on a tip off, when he approached Telirchar with a 24 member squad of coastguards and forest guards to arrest the sea-robbers who were staying at Telirchar, as reported, they (the sea robbers) sensed their presence and started fleeing with an engine boat. They asked the robbers to halt but they shot at them in return. When members of the coastguard chased the sea robbers, they ran through the canal of Telirchar and reached Chariman Bazar. When the coastguards and the forest guards approached Chariman Bazar, the robbers lying in wait for them attacked them with machetes. The coastguards retaliated by shooting in the air. The robbers then hit the complainant's head with a knife, causing him to fall into water. Then they fired bullets to defend them, killing two people. At that time the robbers snatched three arms from them, loaded themselves with three magazines and kept firing. Fortunately, the bullets missed them and hit

some of the robbers.

While talking to Odhikar about the incident, the Officer-in-charge (OC) of Ramgati Police Station, Md. Khorshed Alam said there might be an inconsistency between the FIR and the actual incident. Police were investigating the incident. In addition, a four-member Home Ministry enquiry team consisting of a Magistrate of the District of Bhola, Commanding Officer of the coastguard, Ranger of the Forest Department and the Assistant Police Superintendent of Lakshmipur, Md. Anwar Hossain, was investigating the incident. The OC said that the people who were killed were very poor. However, they did not have to meet this tragic fate if the coastguards were not attacked and their rifles were not snatched. When asked about the question of Shahabuddin's and Ayub Ali's killing due to shooting from the attackers, as is stated in the FIR, the OC said the primary investigation had found that they were hit by the bullets from the coast guards. The people of the area fled for fear of harassment. The police managed to recover three rifles that were snatched. However, nobody was arrested. The OC assured that nobody other than those who were involved in the incident would be arrested. When he was asked if the members of the coastguard and the forest guards of Bhola informed Ramgati Police station of the operation they made, he said they were not informed beforehand. Moreover, in case of operations from one district to another or from jurisdiction of one police station to another, the district or police station where the operation is to be conducted must be notified. However, the coastguards did not follow this rule in this case.

Young man tortured to death by RAB

The news about the death of a young man by RAB was published in most of the national dailies. On the basis of the news, Odhikar carried out a fact-finding of the incident. Odhikar talked to the local people, members of the deceased's family, police and hospital authority.

It was learnt that the deceased Delowar Hossain (27), was the sixth son of Jamaluddin of village Jainpur in Sonargaon under Naraynganj District. He was a shopkeeper by profession. His father told Odhikar that Delowar used to work in the shop of Fazal Mia who had a transport and fuel business. On February 20, he was caught by RAB. Torture made him unconscious and he passed 18 more days in coma and expired on 6 March 2005 in the Dhaka Medical College Hospital.

Bazlur Rashid, elder brother of Delowar, informed Odhikar that at around 12 a.m. on February 20 they were informed that RAB had arrested Delowar from the shop and along with one Habu took him to the Adamjee office of RAB-3. Habu had been detained from Meghna Ghat.

As soon as Bazlur heard about the arrest, he called Delowar at his cell phone but it was answered by someone else who introduced himself as Delowar's friend at first but after that told him about the arrest of Delowar. He also informed Bazlur that after collecting information, they would decide what they would do with his brother.

That day approximately at 11 pm they informed Bazlur that Delowar was admitted to the Dhaka Medical College Hospital. Next morning they rushed to the hospital and found him severely sick. He was unconscious in the custody of police. At first he was placed in the terrace but after

that he was shifted to bed no. 16 of ward no. 30. Bazlur added that Delowar never regained his senses and expired in coma at around 8.30 am on March 8.

Physicians and nurses of the hospital said that it was really difficult to survive after RAB torture. Delowar had a head injury and there was an accumulation of fluid in the cranial cavity, which was diagnosed by CT scan. From the knee to his toes, there were marks of torture. His legs were sore and fractures were found in his toes. Black marks of torture were also found on his buttocks. Physicians guessed that he was tortured with such material and in such a way that no marks of injury was clearly visible on the body but internal damage was caused which was the reason for the accumulation of fluid.

Rashid also said that RAB officials came to see him everyday and told the hospital authority to cure him. For that they said that they would spend as much money as needed.

Delowar died in the morning, at around, 8.30 am on March 5, 2005. Magistrate Sayed Mojibul Haq, in the presence of RAB officials did the autopsy of the dead body and he was instructed by RAB officials about how to write the autopsy report. On March 7 the postmortem report was handed over to the deceased's family. "He was not involved in any politics and not even a General Diary was filed against him in Sonargaon, where he live," Bazlur added.

Nazrul, eyewitness of Delowar's arrest told Odhikar that he was the owner of a few three wheelers and for that he had to stay in the intersection from where Delowar was picked up most of the time. That day at around 11.30 m, he sat beside the shop of Fazal Mia and found Delowar purchasing some apples for his sister's house. A bus stopped there and some people were looking for Delowar. They caught and picked him up. Nazrul also told Odhikar that he knew Delowar since he was young and that Delowar was not involved in any kind of criminal activities.

After arresting Delowar and Habu, the RAB officials filed a case (number 20, Dated 20/2/05) in the Sonargaon police station under the Speedy Trial Act. The plaintiff of the case was Nayek Subedar Year Ahmed. SI Shamim, the Investigation Officer of the case, told Odhikar that at around 8 pm on February 20, RAB officials handed over Habibur Rahman Habu to the Sonargaon police station and informed him that another arrestee was admitted in the Dhaka Medical College Hospital. He also said that Habu could not walk properly at that time. He was taken to the court the next morning. In the complaint, it was mentioned that Habibur Rahman and Delowar were arrested from the Ferry Ghat while collecting illegal tolls from vehicles.

Another source of the Dhaka Medical College informed Odhikar that Delowar was admitted to the hospital at 10.05 pm and at that time he was unconscious. His physical condition deteriorated due to accumulation of fluid in the cranial cavity. He also had injuries on his legs. He was taken to the Neuro-Surgery Ward and on March 6 he expired at 8.45 am. But when Odhikar talked to RAB 3, they declined to say anything about the matter.

Anwar Hossain (20), the younger brother of Delowar, informed Odhikar that RAB officials took him to their car near the Pirozpur Union Council Office and interrogated him. He worked in a nearby factory and RAB officials, after talking to his manager, set him free.

It was normal to file a case of unnatural death or a GD but that did not take place. Local police said that since he died in the Medical College Hospital, the case should be filed in Ramna police

station but no such case or GD was filed there. The deceased's father Jamal Uddin demanded a neutral and impartial inquiry of the matter and punishment of those responsible.

From the information received, the reason behind Delowar's arrest was not clear. But the mode of operation, accountability and transparency of activities of RAB have been questioned due to such deaths. Odhikar demands impartial and proper investigation in this regard.

***Jugantor* photo journalist physically harassed by RAB**

On 15 March 2005, there was a newspaper report with the title 'Photo Journalist tortured by RAB'. On the basis of that report Odhikar carried out a fact-finding mission into the matter. Odhikar talked to victim SM Gorky, the Chief Photojournalist of the Daily Jugantor and visited the site of the incident.

Odhikar came to know that on 14 March 2005, SM Gorky, the Chief Photojournalist of the Daily Jugantor was attacked by a team of RAB-3 while he was taking photographs of RAB men who were beating three young men near the Baitul Mukarram area. RAB officials detained him for a long time and damaged his camera and film.

S.M Gorky informed Odhikar that on March 14, at around 6 p.m. he was returning to the Jugantor Office on his motorcycle after he had covered a procession of the Awami League at Bangabandhu Avenue. When he came near the south gate of the Baitul Mukarram Mosque, he saw the RAB officials beating three youths. Some of them were in uniform and some of them were in civil dress. He stopped there for some snaps of the incident. No sooner had he taken the photographs, than two RAB officials attacked him. Other RAB officials joined in and started beating him.

They scolded him for taking their pictures and snatched his digital camera. They dragged him to their car and kicked him. They took him to the office of RAB-3 at Tikatuli. There a RAB official, possibly a Major, insulted him with abusive language. He ordered that Gorky be detained and also threatened him that they would file a false case of extortion against him. After keeping him confined in an isolated place for 15/20 minute, they took him to another official, possibly the Commanding Officer and a Lieutenant Colonel. He behaved politely with him, apologised for their behavior and released him. Before releasing him they had deleted all the incriminating photographs from his digital camera.

SM Gorky further informed Odhikar that he was still ill due to torture of RAB. He consulted Dr. Pran Gopal Shaha for the treatment of his ears. The physician informed him that his ear drum had been affected.

RAB-3 personnel did not respond to Odhikar's request for a meeting and declined to provide any information. They informed Odhikar that they already gave their statement to the newspapers. Their statement, as published in the newspapers, is given below:

"Leader of RAB-3 Lieutenant Cornel Faruk said that for last two days a team of RAB had been staying at the Baitul Mukarram area. On Monday evening RAB captured three illegal toll collectors when they were collecting tolls. At that time, a mob snatched them from RAB and started beating them. Gorky happened to be there and was taking pictures of the incident and was also attacked by the mob. RAB officials rescued him from the mob and took him to their office by car."

Alleged fabricated news about the rape of a young girl by Ansar personnel

On March 14, 2005, there was a newspaper report titled "One young girl raped at Police Camp in Jessore, two Ansar closed, departmental case filed". Odhikar investigated the incident. Odhikar talked to the local administration, villagers, the so-called victim and a local journalist.

The alleged victim Heera Khatun (16) informed Odhikar that they lived in Adampur village under Jessore District. On 12 March (Saturday) at around 10-30 am, she went to the nearby Dhalgaon Bazar to buy a geometry instrument box. While returning home, she went to the house of Gani who was her relative. At that time two Ansar personnel were eating muri (husked/puffed rice) in Gani's house. Rini, niece of Gani was Heera's classmate. She returned home after having a chat with Rini. When she was in Gani's house, two Ansar personnel offered her muri but she refused. Beside that she had no interaction with them.

She was very shocked when the villagers wanted to force her to acknowledge the incident of rape. She claimed that no such incident with those Ansars had taken place. She added that only after the news had been published in newspaper, she came to know that they had raped her.

Joygunnasa, (35) mother of Hera informed Odhikar that she had two sons and one daughter. Heera, a student of class X was the eldest. Her husband worked in the Benapol Port as a day laborer and married there for a second time. Rarely did he come to their house and give them small amounts of money. She could not maintain her family by this little amount of money and she had to work as a servant in the local police camp. Thus she earned her livelihood and covered the expenditure of the education for her children. When asked whether Heera was violated or not, she informed that it was completely a rumor. She had some land conflict with the neighboring people and they spread this rumor out of enmity. When asked to name those people, she refused to say anything in this regard.

When asked if she had filed any case or if any medical examination of her daughter had been done, she said that as no such incident took place at all, there was no question of filing a case.

Foshiar, one of the most senior neighbors of that locality informed Odhikar that he came to know about this incident from the newspaper the next day. Before reading that, he had not heard anything from anybody in the village.

A young businessman of Bitabilla Bazar, Arif Hossain (24) informed Odhikar that Herra's mother Joygunnasa worked as a cook in the camp when SI Saleem alias Mizan was in charge of the camp. It was locally known that there was an illicit relationship between SI Mizan and Joygunnasa. Besides, there was a land dispute between Herra's relative Gani and his neighbors. That is why neighbors of Gani spread this rumor.

Bachhu Mia (28), one of villagers of the Jamdia village informed Odhikar that on the day of the alleged incident, at 10:30 am when Heera went to her uncle Gani's house, no one was there. So what happened there could not be known. But Heera was there for 20 to 25 minutes.

Shefaly Begum, wife of Gani and his mother told Odhikar that on that day they were at home the

whole day and no such incident could take place. But Bachhu Mia claimed that Gani sent his wife to her mother's house and she was not there on that day.

Md. Bazlur Rashid Mia, acting in charge of the Bagrapara police station informed Odhikar that on 12 March 2005, at around 12.30 pm, Shamsur Rahman, former Chairman of Jamdia informed him by cell-phone that two Ansar officials of Bitabilla camp, Jaharul Islam (1911175) and Liakat Hossain (1913174) were caught when they wanted to rape a young girl named Heera. At that time he was busy with a case of robbery at Arpara Bazar. After receiving the message, he ordered SI Hadayet to investigate. SI Hadayet was on duty at a S. S. C. examination center. After finishing his duty he went to Gani's house and there he found that the two members of Ansar had already gone back to their camp.

The next day when the news was published in the newspaper, Additional Police Superintendent Faruk Ahmed came to Bagrapara police station in the evening. Then he went to the spot with APS Faruk and recorded the statement of the villagers, Heera and her mother Joygunnasa. As per their statements, no rape incident took place.

According to local correspondent of the Daily Manavzamin, Heera Khatun was raped by two Ansar personnel. As per the report of the newspaper, when Heera went to file a case, she was confined by those Ansars. As the power went off, they took a chance and violated her.

During fact-finding, Odhikar found that the distance between the spot and the camp was 1 km., which contradicted the report published in newspaper. The newspaper report said that the camp and the house were adjacent.

On March 16, Heera and her family called a press conference at Jessore Press Club where Heera read out a written statement. By terming the newspaper report as fabricated, Heera said in her written statement, "I have no alternative without suicide. Because of the fabricated report I am feeling humiliated and it is a scandal to my personality. I cannot live in this society." Answering the journalists she said that she knew nothing about the incident and learnt it from newspaper and from the people of her locality.

Officer-in-charge of the Bagrapara police station informed Odhikar that there was no case filed in this regard. However, two Ansar personnel were closed in Jessore District Police line because they went outside the camp without informing or registering a cause in the registrar of the camp.

RAB personnel involved in robbery of Tk 7.8 lakh from a cattle trader

On March 24, a news report titled "RAB Sergeant Caught Red-handed During Robbery, 6 more Members flee with Tk 7.8 lakh Booty" was widely covered in newspapers. Odhikar sent its fact-finding team to collect further information on this event.

Odhikar came to know that four members of RAB-4 and their two sources threatened a cattle trader, Ratan Ali, of being killed in crossfire and robbed Tk 7.8 lakh and a cell phone from him

at Courtbari in Gabtoli. A sergeant of the Rapid Action Battalion (RAB) was caught red-handed while five of his accomplices managed to flee with the money on March 23, 2005 at around 12.15 am. Sergeant Atiq was handed over to the Mirpur police Station and on the basis of information provided by him, two of his colleagues were caught from the Magbazar area by the joint operation of police and RAB-2.

The victim, Ratan, informed Odhikar that on March 23 at around 12.15 am, RAB Sergeant Md. Atiqur Rahman (34) S/O Majibor Rahman and Sergeant Oliullah, S/O late Mejbah Uddin with their other five colleagues in plain clothes came to his house at Coatbari in Gabtoli under Mirpur Thana by two CNG-run three-wheelers. Ratan was about to have lunch after returning from the cattle market. Identifying themselves as RAB members, they started searching the house. "They found Tk 7.8 lakh in my house and grabbed the money," he said. The gang took money in a hurry and threatened him with death in 'crossfire' if he disclosed the robbery, the cattle trader said.

When they were going back, Ratan followed them and on the way he met his landlord Khokan. Ratan asked Khokan whether they were RAB officers. Then Ratan in desperation started shouting for help and neighboring people rushed to the scene. Six of the robbers managed to escape by the waiting three-wheelers, but the locals nabbed Sergeant Atiq. After the incident, police of the Gabtoli camp took him first and later he was taken to Mirpur police station.

Ratan also said that he was in this profession for the last 10 years and came to Dhaka for seeking a livelihood. He usually imports cattle from the border area and has a valid license for that purpose. He collected money the night before the incident, which was grabbed by RAB along with his cell phone.

Ratan Ali filed a case (number 74(3) 05) in the Mirpur police station under Section 4/5 of the Speedy Trial Act against six accused.

Following information provided by Atiq, who was drawn into the RAB from the Bangladesh Air Force, the investigation committee of RAB-4 has already recovered Tk 2.5 lakh from two other RAB officials, Sergeant Oliullah and Constable Khorshed Alam from the Magbazar area. These three were produced in court and they were ordered to be remanded for three days. A joint operation of RAB and police arrested Babul who was also involved in that robbery.

Other accused persons had escaped. Odhikar fact finder found officials of RAB-4 interrogating Atiq and Khorshed. All who were related with that robbery were terminated from their job and were also prevented from joining their respective mother organization. RAB has assured Ratan Ali of security and other support needed. A RAB official, on condition of anonymity, said that 'exemplary punishment' would be given to the accusee for the crime. Another RAB official scolded Atiq and commented that only a few blacksheep shattered the reputation of RAB.

SI Shajahan, the investigating officer of the case, said that the accused persons were taken to the police station for 3 days remand and were interrogated there. Besides, they would also try to find out their probable involvement in other such incidents. They also guessed that the two who fled were the main planners of the incident and by arresting them they would be able to obtain the whole picture and recover the rest of the looted money.

Over One hundred workers Wounded during Police Shoot-out at Savar EPZ

Odhikar sent a fact finding team on the basis of the news report titled 'Police Charge at and Shoot at Garment Workers of Savar EPZ: Hundreds Wounded' published on April 10, 2005 in various dailies. While investigating into the matter, Odhikar talked with residents of the area, victims, the concerned police of the Savar police station and various other possible sources.

It was learnt that the ownership of Honorway Textile Apparels Limited, a foreign-owned garments factory at the Dhaka Export Processing Zone, was caught in a dispute over the past few years. A Mr. Horsa, a citizen of Hong Kong, was the Managing Director of the organization since its initiation in 1994. He was terminated from the position in 2004 due to allegations from the garment workers against him for illegally confiscating money from their respective provident funds. Horsa went to court and due to ownership dispute the High Court asked that the garments factory be shut down on April 9, 2005 till further notice. The next day, on April 10, Mr. Remon, the current Managing Director of the factory shut it down. It was learnt that over 1600-1700 employees worked at the factory.

Odhikar interviewed Anwar Hossain, a bullet-hit factory worker. Anwar informed Odhikar that he had arrived at 9 am on April 10 for his daily duties only to find the factory closed. Soon, hundreds of other workers arrived and learnt about the situation. Anwar further stated that April 10th was also the date they were supposed to receive their salaries. Not finding any of the owners there, the workers moved towards the BEPZA office, where Ansars, on duty at DEPZ area and BEPZA security forces attacked them. They beat up the workers, which upset them. Kamal Akhter, General Manager, BEPZA, at the BEPZA office informed them that they could do nothing as the factory had been closed under directive from the court. Akhter asked them to leave. This upset the workers more and caused the police to charge the workers with batons and lob tear gas shells at their group. Anwar said that the police chased the workers for half a mile from the DEPZ main gate. The workers retaliated with bricks and the police answered this with bullets. Hundreds of laborers were thus wounded. Bullets hit Anwar as well during the clash.

Anwar alleged that the whole situation was a plot by the factory owners who closed down the factory with BEPZA's tacit support. As Police filed cases against them, the workers are now fugitives from their own homes. Some are surviving on a meal per day, as they were not even paid.

Mohammad Arshad, a shop-owner at the DEPZ area and an eye-witness of the whole incident told Odhikar that Police charged at the procession of workers on their way to the BEPZA office and also shot rubber bullets at them. The shots scared him into shutting down his shop. Hundreds of employees lay wounded on the streets from the police attack and shootout. Arshad added that some employees were extremely poor. Possibly the news of not being paid enraged them. Without trying to calm them down, Police shot at them and arrested some. Workers can no longer be found in the area, after this incident. As cases were filed at Savar police station, the employees have already fled away, said Arshad.

Under a directive from the court, BEPZA authority asked Honorway Garments owners to close

down the factory, said a senior official of BEPZA to Odhikar, under condition of anonymity. BEPZA authorities were unaware that the employees were supposed to receive their salaries on that date. The enraged workers threw bricks at Kamal Akhter, the General Manager and injured him. Police came to his aid and tried to bring the situation under control, according to the official.

Abdul Haque, a member of the BEPZA security force told Odhikar that on that particular day, hundreds of Honorway Garments factory workers ignored the security force and damaged various items at the BEPZA office. To bring the situation under control, police soon arrived and charged the workers away from the office. Some members of the security force were also injured during the incident, said Haque.

Nazrul Islam, Officer in-Charge of the Savar police station told Odhikar that on April 10, 2005 he was informed by BEPZA office authorities that hundreds of garment workers had surrounded the BEPZA office premises. Instantly, Islam arrived at the scene along with UNO Salahuddin Nagri, Abul Bashar Talukder, Circle ASP, Savar police station and three platoon policemen, only to be attacked by bricks thrown from the procession of workers. Police charged at the procession. Abul Bashar Talukder was wounded by one of the bricks thrown by the workers. Police fired blank shots. Immediately afterwards, Police fired a few rounds from their shotguns in self-defense. He informed that a few workers were hurt. Islam told Odhikar that 10 to 12 policemen were wounded during the incident. A case was filed at Savar police station and 13 workers were arrested in this regard that very day.

Nazrul Islam, as the plaintiff, filed a case at the Savar police station. The case number is 44 dated 10/04/05, under Sections 147/148/149/448/353/332/323/325/443/307/506 of the Penal Code. Over 2000 workers have been made suspects in the case.

A Child Killed by Indian Border Security Force in Comilla

On the basis of an information received from a local source, Odhikar sent a fact-finding team to Akhaura, Comilla to investigate the killing of a child by Indian Border Security Force.

From the spot the team came to know that at around five thirty in the afternoon of 16 April 2005, approximately 12 members of the Indian Border Security Force (BSF) entered 300 yards into Bangladesh territory, crossing pillar number 2022-3H at the zero point of the Bangladesh-India border at Hirapur in Brahmanbaria. When in Hirapur, they began a search of the village. Approximately 100 Indian nationals, who had crossed in from the Lankamura border area in Agortola, Tripura, accompanied them. The search party ransacked several houses in the Bangladeshi village of Hirapur, causing panic among the residents, several of whom fled with the news to the nearby Bangladesh Rifles (BDR) camp at Fakirmura. When the BDR personnel approached the village, bullets fired by the BSF greeted them. The BDR fired back in reply, killing Assistant Commandant Jibon Kumar and injuring Constable K.K. Surender, both belonging to the BSF. Ten-year-old Nahid Akhtar of Boro Kuripaika village was killed when the BSF opened fire.

Border Outpost Commander, Nayek Subedar Dipak Kumar of the BDR camp at Fakirmura told Odhikar that on 16 April 2005, an Indian national called Ramdhon Pal entered into Bangladesh territory with 20 bottles of banned Phensydil and 60 Indian rupees. On his arrest by the BDR it was found that he was a smuggler, who used the Lankamura-Hirapur border crossing to enter and leave Bangladesh. According to Dipak Kumar, the search of the Hirapur village by the BSF and civilian Indians was aimed at rescuing him. The BSF were pressurizing the BDR to release Ramdhon Pal, but the latter refused to do so without authorization from their superiors and told the concerned BSF officers that this sort of request required an official letter and a flag meeting between the two parties. Dipak Kumar further stated that the BSF occasionally entered into Bangladesh territory and randomly fired. They stated that the BSF needed no official permission to fire from their weapons. There are, however, no records of BDR personnel entering India or randomly firing from their weapons.

Odhikar also interviewed residents of the Hirapur village. Mohammad Ismael of the village echoed Dipak Kumar's statement that the invasion had been carried out in retaliation to the arrest of the smuggler Ramdhon Pal. He said that some of the villagers had initially tried to fight back to protect the village but the Indians were too strong and when they were joined by the BSF, the villagers fled. On finding a near-empty village, the invaders began ransacking homes. Ismael said that his home and the home of his five brothers were looted. His pregnant wife was also injured and she was later taken to the local health complex. The Indians took away two goats and some chickens from the home of rickshaw-puller Khalilur Rahman. His home was also ransacked.

Umeda Khatun, a widow, told Odhikar that her home was invaded as well and the invaders broke her cupboard and took away money and gold ornaments. They also took her television. When she tried to stop them, they assaulted her. Umeda said that after she lost her husband, she had to sell what little land they had owned to educate her younger son and send him abroad. Her elder son, Humayun, is a farmer. Whatever little she had been able to keep, the Indian rioters either broke or took away. She confirmed that when the BDR came to the village, exchange of fire took place between them and the BSF. She said that the bullets rained on the village and she fell on the floor of her home to avoid being hit. Many villagers fled towards the town to escape the exchange of fire and a lot of homes were hit.

Nasreen Begum, the mother of the deceased child, Nahid Akhtar, told Odhikar that her daughter had been playing in the yard behind the house, which was about a kilometre away from where the BDR and BSF were firing at each other. The residents could hear the shots, but did not know what was happening. Suddenly, Nahid stumbled home clutching her little chest, and fell on the floor. At first, her family did not know what had happened to her. By the time they realized that she had been shot, Nasreen, a student of class three, was dead.

On 17 April 2005, after the incident, the BSF proposed a flag meeting. Commanding Officer of the Seventh Rifle Battalion, Lieutenant Col. Kamruzzaman of the BDR and Commandant Mrittunjoye Kumar of the 131 Branch of the BSF attended the meeting. Odhikar also met with Lt. Col Kamruzzaman, who said that even though the BSF admitted that the body of Jibon Kumar and the injured K.K. Surender were recovered from Bangladesh, they began blaming the BDR, stating that BDR personnel had entered into India through Lankamura in order to arrest the smuggler Ramdhon Pal and when the BSF started to chase them, they ran back into

Bangladesh. This is not humanly possible, since to enter Lankamura, one has to cross two large hills and cut his way through a strong barbed wire fence. At the meeting, the BDR expressed their condolences over the death of Jibon Kumar and also stated that the death of an innocent child was also a great tragedy.

The body of Jibon Kumar and injured K.K. Surender were handed over to the BSF at the flag meeting. At the request of the BSF, no post mortem was done by the BDR, who had retrieved the body from the village at around one in the morning of 17 April. The BSF also requested the BDR to recover and hand over the 5.56mm rifle, 3 magazines and the wireless set belonging to K.K. Surender. At the flag meeting, the BSF accused the BDR of arresting the smuggler Pal from the Indian border. In retaliation, the BDR stated that the BSF had arrested Bangladeshi nationals Kamal Mia (32) on 13 April and Jitu Mia (16) on 16 April, 2005.

Lt. Col. Kamruzzaman told Odhikar that the arrogant and intimidating attitude of members of the BSF was very common. He also said that the BSF was now erecting a barbed wire fence 150 yards into the legally stipulated 'no mans land' of Bangladesh-India border, violating international law. Apparently they had been warned not to do so, but to no avail. There had even been some skirmishes between the BSF and the BDR over this fence, the most recent one being on 16 February 2005. The BSF has already completed erecting 44.66 kilometers of this 73-kilometre fence, with authorisation from the Indian Government and senior BSF officers.

According to Col. Jahangir Alam, commander of the Comilla sector BDR, the relationship between the BSF and BDR is cordial at the officer-level. Both Bangladeshi and Indian nationals cross the border, and smuggling is common. If a petty offender is apprehended he is usually handed over at a flag meeting. He admitted that the incident that took place on 16 April was very serious and that the BSF wanted to forcefully take back Ramdhon Pal. At the flag meeting that was held after the incident, Col. Jahangir Alam stated that even though the Indian side (BSF) admitted to the recovery of K.K. Surender from 250 yards inside the Bangladeshi territory, they accused the BDR of arresting Ramdhon Pal from within the Indian territory, and wrote a statement to that effect, stating that Ramdhon Pal was grazing cattle and goats when the BDR arrested him. According to the BDR, Ramdhon Pal was arrested inside Bangladesh territory on 16 April, at around 3:30 in the afternoon with Phensydil and Indian currency in his possession. On the morning of the same day, another Indian national, Anil Kumar was arrested for smuggling as well. However, the BSF made no statement regarding Anil Kumar. Their sole focus was on Ramdhon Pal. According to Col. Jahangir Alam, this is proof that the invasion of the village was pre-planned.

At the flag meeting, the BSF were asked why they had illegally entered Bangladesh territory with weapons. In reply, the BSF allegedly stated that they did not know that the BDR would fire at them as soon as they entered Bangladeshi territory and that they had entered to negotiate the release of Ramdhon Pal. However, there is a standard procedure for requesting such releases, that both sides are aware of. This sort of entry does not at all fall into the category of standard procedure.

After the incident, both India and Bangladesh have strengthened their border security. The Indian side has deployed a lot of heavy artillery and weapons as well as additional forces. The border areas were in a state of high alert during filing of this report.

Traders bullet-hit in Roumari

A news was published in different national dailies regarding an incident of police firing on traders on April 19, 2005. On the basis of that news Odhikar sent a team of fact finder to Roumari. Odhikar talked to some injured eyewitnesses, victims, relatives of the victims, local political figures, Upzilla Nirbahi Officer (UNO), the officer-in-charge of the local police station, the medical officer of Roumari health complex and local people during the investigation.

Ayesha Aktar, wife of Helal Uddin alias Helal (28) who was shot and admitted to the Rangpur Medical College Hospital informed Odhikar that, her husband was a day laborer and an electrician. They had four members in their family including her mother in law and daughter. That day (April 18) her husband went to the market and came across a dispute between the UNO and the traders in front of the shop of one Nurul Huda. At one stage, the UNO went to the police station. After some time, Helala went there with the traders. There the traders had a clash with the police and Helal was shot and severely wounded. A bullet hit his chin and tore his tongue. At first he was taken to the Roumari Health Complex and from there he was referred to the Kurigram District Hospital. When his physical condition began to deteriorate, he was transferred to the Rangpur Medical College Hospital.

Ayesha Aktar also informed Odhikar that the tongue of her husband had to be cut due to the injury. Odhikar found him crying, as he was unable to talk. Physicians of the Rangpur Medical College Hospital said that the physical condition of Helal was critical.

Another victim of the incident, Rashedul (18) informed Odhikar that on April 18, 2005 at around 10 am he went to the market and found that the local people had surrounded the UNO and learnt that he (UNO) was collecting tolls in the name of the mobile court from every shop. The UNO was freed from the situation with the help of police and hundreds of people followed him. He (Rashedul) also went along with them and at one stage people started throwing stones at the police station. Police opened fire in response and one bullet hit his leg.

Sirazul Islam, a primary school teacher said to Odhikar that UNO Md. Delower adopted unfair means in every sector and collected tolls. That day, when he was asking for money as fine from the shop traders, the local people and the small traders became infuriated with him.

Abdus Salam, younger brother of trader Samsul Huda, said that on April 18, the UNO came to their shop and asked for his trade license. He answered that the license was with his elder brother who was away from the shop at that time. On hearing that, UNO claimed Tk.6000 as a fine. By that time, a crowd gathered in front of the shop. The UNO collected Tk 500, as fine due to the pressure of the crowd and provided a receipt of that money. After that he collected fines in the same manner from some other shops. The people were getting angry and at one stage surrounded him. Police came and rescued him. The UNO went to the police station with the police force and the mob followed him. An excited mob at one stage started throwing bricks and stones at the police station. Consequently, police opened fired on them and a few people had been injured. Traders were not opening their shops in protest against a case filed against them by the UNO. Innocent people were injured by the bullets of police but unfortunately police made them accused in the case.

Medical Officer of the Roumari Health Complex, Dr. Mozaffar Hossain told Odhikar that, on April 18, 2005 at around 2.00 pm, nine people came to the health complex with injuries and all of them were injured by bullets. Among the injured, the physical condition of Helal Uddin and Akbar was extremely serious and they were sent to the Kurtigram District Hospital. From the registrar book of the Roumari Health Complex, Odhikar collected the names of the nine victims. They were, Helal Uddin (28), Akbar (45), Dulu Mia (14), Rana (14), Rashedul (15), Shahinur (15), Jaidul (16), Lal Mia (28) and Rubel (28). All of them had bullet marks on their body.

The UNO Md. Delowar Hossain told Odhikar that on April 18, 2005 he went to the Roumari market with the mobile court for regular checking on purity of the food, the proper weight and the illegal use of poly-bags. Butcher A. Hakim was fined for using incorrect weight for his scales. Tin trader, Samsul Huda was fined Tk. 500 as he failed to show his dealing license. When they went to fine Jahirul's tea-shop, he and other traders organised the mass people and said that they did not want operations of the mobile court. At one stage they went to the police station when people became furious. Then the local terrorists and traders attacked the police station with at least two thousand people of that area. They poured petrol on and set fire to one government vehicle and started breaking the property of the police station. At one stage the arrogant mob tried to enter into the police station to kill him. To control the situation, the police opened fire. At first he ordered them to fire blank shots and after that that told them to aim at the legs. He also said that he had filed a case as plaintiff under the Speedy Trail Act.

Acting Officer-in-charge of Roumari police station Abdul Mazid informed Odhikar that during that incident he was not in the police station. He came to know of the matter when the UNO went to the market to run a mobile court and wanted to see the trading license of some traders. The UNO, to save his own life and to control the whole situation, provided a written order to open fire. On the basis of that written order, the ASI charged on the mob. Police used 5 rounds of tear-gas, 30 rounds of Kartuj, 12 round of bullets of pistols, 3 rounds from Chinese Rifles and 7 rounds from 3-0-3 rifles. The UNO filed a case (number 7, dated 18/04/05, Section 4 (1)(2)/5 of the Speedy Trail Act/2002) against 72 known and two thousand five hundred unknown people. Police arrested 18 people that day and produced them before the court.

ASI Ahsan who fired on the mass told Odhikar that on the basis of the written order of the UNO he opened fire. He was with the UNO when he went to the market with the mobile court. He also said that if he had not started firing, the mob would have killed him and the UNO.

Medical officer of the Rangpur Medical College Hospital told Odhikar that the physical condition of Helal and Akbar was not good. As Helal's mouth was injured by a bullet, a portion of his tongue had to be removed.

Two workers were killed by police in Majhir Ghat, Chittagong

After the getting information from human rights defender on killing of workers by police in Chittagong, Odhikar sent its fact-finding team to collect detailed information about the incident. Odhikar came to know that on April 21, 2005 at around 6 pm police went to arrest Mahabubul

Haq Ety, who was the Secretary of Chittagong Majhir Ghat Workers League. The workers of the Ghat (small port) tried to obstruct the arrest and police brutally tortured one worker. It caused a fury among the workers and they created a barricade on the road. They also threw stones and bricks towards the police, which made the latter furious and initiated indiscriminate firing. Two workers were killed and ten (10) persons including 4 police-men were severely injured.

Jamal Udin, shopkeeper of Majhirghat area told Odhikar that on April 21 evening Ety was seen talking to a few people in front of his office. At that time two groups of police came under the leadership of SI Abdus Sattar and arrested him. While they tried to take him to the van, the news spread among the workers of the Ghat and some workers tried to free him. They created obstacles on the road by parking their lorries haphazardly across it. While they were creating the barricade police beat a worker. It made the workers furious and they started throwing stones and bricks towards the police. Then the police opened fire and Shajahan (50) and Shahabuddin were hit and expired in the hospital. At least 8/10 workers were injured. The total Majgirghat area was turned into a battle field. Hundreds of furious worker set fire to the police van (Chatto-Matro-cha-11-0114). Bricks and flung by the workers injured $\frac{3}{4}$ policemen. Continuous firing made workers retreat and RAB and Armed Police came to take control over the situation. After their arrival the situation was came under control. Odhikar asked Jamal Uddin the reason of the arrest of Ety. He said that Ety was arrested under an extortion case. He also added that, as per his knowledge there was no such allegation against Ety and he was very famous among the workers. If he was involved in collecting tolls, then it was not possible to be a famous like him. He also said that this incident would influence the forthcoming City Corporation election.

Emdadul Haq Chowdhury Sipon, Ety's nephew, informed Odhikar that his uncle was arrested for political reasons. His uncle was a long-time resident of that area and took active interest in the Awami League. There were approximately more than one hundred store houses in the port area. Ety extended his hand to the well being of the workers and was very popular among them. The followers of rival party BNP became envious of his popularity. There was no case or GD against him, but our fact finder found extortion cases against him in Kotwali, Bandar and Doublemooring Police stations. About these cases, Shipon said that they were all false and fabricated and were to harass the worker of the Awami League before the upcoming election. He also said that the Majhirghat area was an Awami influenced area. If the BNP harassed AL leaders and supporters by arresting and filling cases then they could easily benefit in the upcoming election. Thus the rivals engaged the police force to arrest Ety he added.

Officer-In charge of Double Mooring Thana, Kutubur Rahman, informed Odhikar that there were 3 cases and a few GDs in different police stations against Ety. On April 20, 2005 at around 11 am he claimed Tk. 2 lacs as toll from Zakir Hossain, a jute trader from Dhaniapara and Stand Road. Ety beat him and also threatened to kill him if he did not pay that money. After the incident, Zakir filed a case against Ety in Double Mooring Thana (case number 26, Date: 21/04/05, Section 143/448/385/323/380 of the Penal Code). Besides that there was another case in Bandar Thana, case no. 10, date 21/04/05 under sec 407/109 of the Penal Code and the last one was filed in Kotwali Police Station (Case no. 24, Date: 18/04/05, Section 406/420/511 of the Penal Code).

Allegedly, the police went to arrest him under some specific cases, but his cadre group started

throwing stones at them. Four policemen were severely injured by that attack. At first Police fired blanks to control the situation but they became more furious and attacked. Then the police started firing on the mob, finding no other way and two workers were shot. They were taken to the Chittagong Medical College Hospital and one Shajahan expired that night and Shahabuddin died the next day. On the other hand Sub inspector Daroga Shirajul Islam was admitted to CMC in a critical condition. Workers broke his hand. A case was filled against 27 named accused and against 400 unknown people. (Case number 28, date: 21/04/05, Section 143/144/148/149/323/325/332/ 333 /353/307 of the Penal Code). Twenty-three people were arrested and among them 2 were dead.

On the other hand, Zakir mentioned in his case that on April 20, 2005 at around 11am near Bibi Mosque of Majhir Ghat Stand road, when he went to supply the jute bags Ety, with two other known miscreants (mastans), claimed two lak taka from him as a toll. When he refused to pay the money they started to beat him. He managed to escaped and rushed to his residence in Dhaniaapara. The gang of terrorist followed him and rampaged his house and snatched tk. 2500 from the telephone drawer. But when Odhikar talked to a phone -fax trader, named Salauddin near the mosque, he said that there had been no such incident that day. Salt trader, Nurul Islam said the area was normally free from extortion and all traders were united. All traders ran their business with no trouble. A jute bag and trader Jahangir said that there was no trader named Zakir in this business. He also said that there was a clash with workers and police in Majhir ghat area recently. Two workers died in that incident. Answering a question about Ety he informed that people knew him as a reputed person. He owned transport agencies and a garments business. Besides that, their family was also known as a wealthy family and possessed a lot of land and property. Workers relied on him. He was working in favor of Mayor Mohiuddin for the upcoming election.

On the other hand, Saluddin said that the resident of this area had a strong support for the Awami League. Ety was arrested to influence the election. At least eight workers were living there who were voters also. They could do anything for Ety. After the clash with police a case was filled against at least 400 workers of that area. Workers left the place. Armed police battalion were placed there. Work continued by borrowing workers from other areas. Traders were immensely affected by this and on the other hand workers who had fled and their family members were living inhumanly and near starvation.

Odhikar went to the house of Zakir at the address mentioned in the case and found that the house belonged to Yeasin and no one named Zakir was living there. Caretaker Shakir Ahmed said that police and intelligence officials also came in search of Zakir.

Police officials of Double Mooring police station could not provide any clear answers. Investigating Officer SI Ratan Krishna was not available at the station. Second officer, Shah Newaz said that the investigation was continuing and if it was found that Mr. Zakir Hossain had filed a false case, necessary action would be taken against him.

On the other hand, a case was filed in the district magistrate court by Ghat and Storage Secretary Md. Samshuddin, against Police Commissioner Ajad Hossain and 14 other police officials. The case was filled on April 26, 2005.

Police tortured a suspect of a murder case in Rajshahi

Odhikar sent a fact finding team for collecting information about the incident of torture on a suspect in a murder case at Uttar Kajipara under Matihar Police Station of Rajshahi, which was reported in different national dailies on April 26, 2005. During the fact-finding pursuit Odhikar talked to the victims, the accused Inspector and the Matihar Police Station authority.

While talking to Odhikar, the victim said that on the night of 28 February 2005 a tube- well mechanic named Sadek Ali (35) was killed allegedly by terrorists at a place between Hariyan and Mahendra, adjacent to Rajshahi by pass. Sadek's father, Abdul Kader filed a murder case under Matihar Police Station, however, none were named as accused in the case. The police arrested four suspects named Lokman Hakim, Kamrul Islam, Abdur Rashid and Ali Hossain, and produced them before the court. When police went to arrest one Shariful Islam, an Awami League activist and son of one Yousuf Ali of Uttar Kajipara, on the basis of the statements given by the arrested people, he tried to escape from the police by hiding in a Chatal (a raised flat area used for drying rice by big rice traders). But the police discovered him, took him in their custody and started to beat him. When Shariful's family members came to save him from police custody, the policeman kept beating them indiscriminately. At one stage the police even insulted Razia, a housewife and ripped her dress in public and chased her around the house. Police atrocities went on for about an hour. At one stage villagers surrounded the policemen. When the police realized that the situation was going downhill, they went away releasing Shariful. At least twenty people including Yousuf Ali (70), Rajia Bibi (58), Rajia (25), Nafura (45), Arjina (30), Mojibar Rahman (45), Shariful Islam (28), Korban Ali (48), Abdus Samad (50), Rajon (7), Jahangir alias Alamgir (32), Matin (28), Lalif (26) Shariful (24), Liyakat (22), Shyamoli (19) and Beli (19) were injured by the police.

The accused Sub Inspector of Matihar Police Station, Khater Ali, who is investigating officer of the Sadek murder case and Sub Inspector Abdus Salam refused all allegations of torture and said that when the police were raiding Nural Amin's house, his younger brother, Shariful Islam ascended the roof the house to hide. They asked him to come down but he refused and they forced him down. They arrested him as they mistook him for being Nururl Amin. At that time the female members of Nurul Amin's family started shouting, "Robbers! Robbers!." Hearing that the villagers rushed to the spot and surrounded the police started them with sticks. The female members of his family tried to have Shariful Islam released by force. At one stage the police got involved in a scuffle with the women and a woman's blouse was torn a little. According to the villagers and Nurul Amin's family members when the police realized that the arrested person was not Nurul Amin, they handed Shariful to his father and left the place. So no question of torture might arose.

Akram Hossain, the Officer-in-Charge of Matihar Police Station, told Odhikar that the Chairman of the Belpur Union Parishad, Mukul and Maniruddin, Chairman of the Harigam Union Parishod came to the police station on the morning of March 25 and complained against the police atrocity orally. When they were asked to lodge a written complaint, they said that they would do so on March 26. But no one had made any complaints as yet. The OC said if any complaint was lodged against the police it would be investigated. If the allegations were proved,

recommendations would be made to the higher authority to take departmental inquiry and disciplinary measures against the policemen so accused and found guilty

The police have allegedly tortured Yousuf/Sadek Ali who was an activist of Awami League and his family members. During the raid the police tortured the members of that family including the old man and his wife as well. Moreover, they insulted a number of female members of that family. But this incident was a sequel to Shariful's hiding inside the home because he was a suspect in the Sadek murder case. Such brutal torture by the police without specific grounds or warrant was a grievous violation of human rights. Assured by the neighbors and the police officers to get justice, the victims had not lodged any case but they demanded punishment on the policemen who were guilty of that crime. In the meantime the police officers had taken away their agreement of compromise on the other hand, departmental inquiry has been started against the police.

Youth killed in Police Custody in Homna, Comilla

Odhikar sent a fact-finding team to collect detailed information about the incident of the death of a young man in Homna police station in Comilla. The incident was reported in different national dailies on May 13, 2005 under the title, "Youth Killed in Homna Thana Custody in Comilla". While finding facts on the incident Odhikar talked to the victim's family including his mother and younger brother, the Upzila Nirbahi Officer (UNO), the Officer-in-Charge of Homna Police Station and the local people.

During the fact-finding pursuit Odhikar came to know that there was a robbery in the house of one Fazar Ali, near Homna Sadar on May 10, 2005. Mr. Fazar Ali informed Odhikar that a gang of 15/20 robbers robbed his house at around 1:30 am that night. Five to seven robbers broke into his house by breaking windows and tied up Azizul Huq and Tajul Islam his two sons. The robbers broke his wooden cupboard. They looted gold ornaments weighing 3240 grams and taka five thousand and five hundred in cash. While leaving his house the robbers threatened him saying that they would shoot him if he informed the police or lodged any case. Fazar Ali came to know that on the same day the robbers planned to rob Raja Mia's dairy farm at Baghmara. Raja Mia chased the robbers away with the help of other people. The robbers then hurled bombs in order to flee but the locals were able to catch one of them. A troop of patrol police came to the spot at around 3 am and took Hanif to the police station. They did not torture Hanif as long as he was under their control. The police asked Fazar Ali, victim of the robbers to file a case on May 11, but he did not do it for fear of the robbers. On May 12 he came to know that Hanif, the robber, hanged himself with his "lungi". But he did not see Hanif's dead body.

Raja Mia from Baghmara told Odhikar that he received a news of robbers looting some where at Baghmara at 12:30 am on May 11. He was also informed that the robbers might be coming to loot his dairy farm. On hearing the news he started towards his farm. On the way to the farm he found the robbers in Fazar Ali's house. Then he gathered the people of the neighboring areas and chased the robbers. They caught one of the robbers by the name of Hanif, half a kilometer off

the spot and handed him over to the police. He said that the people did not assault Hanif. The robbers threw three or four bombs. The next day he came to know that Hanif had hung himself in the police custody.

Hanif's mother, Kartia Begum told Odhikar that she had lived in Pakistan with her son. She had returned to Bangladesh four years ago and, thenceforth, she had been living from hand to mouth with her four sons as a domestic assistance. Hanif was a rickshaw-puller. Sometimes he tortured her, she added. She was glad when she got the news of Hanif's arrest on May 11, 2005. She did not go to the police station to release her son.

At 2 o'clock on May 12, 2005 the police came to her house and told her that the Officer-in-Charge had called her. She went to the police station where the Officer-in-Charge informed her that her son Hanif had been sent to Comilla Medical College Hospital for autopsy. He asked her to make necessary arrangements to bury him. She told the officer that she had no money to make arrangements for doing so and that she did not want her son's dead body. Then she left the police station. She did not grieve at her son's death, she said. She did not want to see Hanif's dead body.

Hanif's younger brother, Danish told Odhikar that his brother was ill tempered. He used to idle away his time and did not work well. Danish was hardly on speaking terms with his brother. They did not go to see their brother's dead body.

Chand Mohammad, a local resident told Odhikar that Hanif's family was so poor that they did not even have the ability to make arrangements for burying his corpse. Hanif had no other guardians, nor did he have any relatives to protest for him. Police did not let them see Hanif's corpse, he said. On November 12, 2005 in the morning the police sent his dead body to Comilla Sadar for autopsy.

Jafar Ali, the Officer-in-Charge (a) of Homna Police Station, told Odhikar that the locals caught one of the robbers red handed as they were trying to escape after looting Fazar Ali's house on May 10 and handed him over to Assistant Sub Inspector Lokman Hossain who was on patrol at 3 am. Lokman Hossain took him into custody under Section 54 of the Code of Criminal Procedure. Since Fazar Ali did not file any case against Hanif, the Police filed a case against him at 10 am the next day. He was at the office on the night of May 11, the OC said. At 1:30 am the constable on duty told him that Hanif had entered the toilet nearly half an hour ago and had not come out. The moment the OC heard, he rushed to the custody cell and asked Hanif to open the door of the toilet. Getting no response from inside, he broke the door and found that Hanif had hung himself by fastening his "lungi" to the rod of the ventilator fan of the toilet. Feeling his pulse the OC made sure that he was dead. He informed the higher authority immediately about the incident. Hanif's hanging dead body was brought down at 8 o'clock in the morning the next day in the presence of the Upzila Nirbahi Officer. When Hanif's mother was asked to take her son's corpse, she declined to receive it, the OC added. After the postmortem his deceased body was handed over to Anjuman Mafidul Islam of Comilla. The OC said, "We could not produce him before Comilla court which is 80 KM from Homna on May 11 due to the small number of policemen."

He was due to be produced before the court on May 12. At 10 am on May 11 a case was filed against Hanif with Homna Police Station. The case was filed under the Section 3/4 of the Explosive Substance Act by ASI Lokman Hossain. The case number was 7, dated 11.5.05.

Mr. Mallik Sayeed Mahbub, the Upzila Nirbahi Officer told Odhikar that the OC of Homna Police Station informed him about the news of Hanif's death over telephone on the night of May 11. The next day morning he found Hanif's deceased body hanging in the toilet of the custody. He made the inquest report of the deceased. According to this report, the eyes of the corpse were closed and about an inch of the front part of his tongue was sticking out. His tongue had been bitten and his mouth was emitting saliva. He found a minor injury on Hanif's left elbow. "I could not say anything about what actually happened until I have received the postmortem report," the UNO said. While investigating the toilet where Hanif had hung himself, Odhikar's fact-finding team found the toilet door intact, though the OC told them that he had broken it to open. The custody was about nine feet high. The water tap of the toilet was one and a half feet from the floor. As the police stated, to hang himself Hanif had fasten his 'lungi' with the rod by standing on the water tap which was a half feet from the floor. According to the inquest report, the height of the corpse was five feet and four inches which was slightly contradictory with the situation narrated by the police officials.

Death of a worker in Gazipur

Odhikar sent a fact finding team to collect detail information about the incident of the death of a worker by police torture at Kaliyakore in Gazipur. The incident was reported in different national dailies of May 21, 2005. During the fact finding Odhikar talked to the victim's wife, brother, neighbors, police and the concerned hospital authorities.

Odhikar's fact-finding team came to know that the deceased, Anil Chandra Sharker was the son of late Maharay from the village of Syedpur under the police station of Kaliyakore. He was married and had a son of five months. He had been working as a transport-worker in Shafipur at Gazipur.

When Odhikar's fact finders went to Anil's house, they found his wife Kalpana Rani (22), had been ailing since the death of her husband. While talking to Odhikar, she grieved over her husband's death and worried about her son's future. Anil had tried to save his brother Sushil from police arrest. Sushil was not available during Odhikar's fact finding. Odhikar was apprised that Sushil was absconding in fear of arrest. However, Odhikar was able to talk to him when he was told about the fact finders and came to see them.

Sushil (35) informed Odhikar that at around 3 am on May 11, 2005 the police awakened him from sleep and asked him to go to the police station with them. There were four policemen in the squad. Two policemen pulled him by the collar while taking him to the police station, he added. At that time their neighbor, Halima alias Falani (30) was with them. Pointing to Halima a policeman said to him, "You have had sexual intercourse with this woman so we are taking you to the police station." When they were a short distance from the house, Sushil's younger brother Anil came and requested the police to free his brother. At that time he heard Anil's screams behind him when two policemen pushed him forward. Afterwards, the police took him to the police station. Some important persons of his locality came to release him from the police station, and it was then that he came to know that Anil had been admitted to the Mirzapur Kumudini Hospital in a deteriorating condition. When he went to see him in the hospital, the

doctors informed him that Anil was vomiting blood. After two days of his admission the hospital authority asked them to transfer him to another hospital. Then he was admitted to Enam Hospital at Savar, where he expired at 10 or 11 o'clock in morning on May 20, 2005, Sushil also admitted that Anil was suffering from other diseases as well. He had been discharging blood through his urinary tract. He had returned home before the incident after having been treated for 3 or 4 days in the Mukti Clinic at Savar.

Ajiron, an eye witness of the incident, told Odhikar that at about 3 am on May 11 her mother and she came out of their house on hearing a scream and saw the police taking Sushil into custody. The police also arrested a woman by the name of Falani, who, as Ajiron remarked, was related with anti social activities. When the police were pulling him towards the police station, Anil rushed to the police and implored them with tears to release his brother. He even held the police's hands. They kicked him. Then he fell down on the ground and screamed. A policeman scolded him vulgarly and told others that he should also be taken to the police station. Then they requested the police not to arrest Anil as he was physically ill. The police only took Sushil. Anil was laid on the ground for a while. Afterwards, he got up and ran to the 'Member' of their locality to request to free his brother from the custody of police.

Kiron Bala (42) Anil's elder brother's wife, told Odhikar that after returning from the member's (UP Member) house Anil was weeping beside his parents' grave. (Here it should mention that the Hindus usually cremate their deadbodies but those who are poor bury their dead bodies as they cannot afford the cost of cremation). When he returned from the graveyard, he started to vomit, blood. As his physical condition worsened he was admitted to the Kumudini Hospital.

During the fact-finding pursuit the local people told Odhikar that Anil had been ill for a long time. All his neighbors knew that he had some diseases, which caused blood to discharge during urination.

SI Sohrab, who was the officer in-charge of that raid in Sushil's house, told Odhikar that Sushil's neighbor Falani made a complaint to the police station that Sushil and another person had raped her. He was charged with the case by the Officer-in-Charge. They were due to go to investigate the incident in the evening. But as Falani, the complainant/victim of the case, delayed in coming to the police station, they decided to inquire into the case managing some time on the way to some other inquiries. Falani was with the police during their operations. He captured Sushil from his house, at around 3 am. While they were talking him to the police station, his brother, Anil requested the police to free his brother. Then SI Sohrab assured him that his brother was being taken to the police station only for interrogation. When he moved ahead, Anil was talking to the constable behind him (SI), who held Sushil. After interrogating Sushil and negotiating with respectable persons of his locality the Officer-in-Charge, Lutfur Rahman, became sure that the incident of rape as claimed by Falani was false. Then Sushil was released from the police station. On May 20, 2005 he came to know that Anil had expired in the hospital. Anil had already been seriously ill. Moreover, they did not even push him let alone torture him. Enam Hospital authority has certified that his death was due to "Hepatic renal syndrome", said the sub inspector, Sohrab.

Sohal, a doctor of Enam Medical College Hospital, told Odhikar that Anil was admitted to the hospital on May 19. During the time of his admission he was vomiting blood. His liver was damaged. He expired on May 20, 2005. No post-mortem was carried out on his dead body and no case or general diary was filed in this connection.

Death of a young person in prison in Narayanganj

On May 27, 2005 a report titled "Jubaleague Leader's death in Rupganj Police Custody" was published in most of the national dailies. Based on that report, Odhikar sent a fact-finding team to collect information about the incident. During fact-finding, Odhikar talked to the victim's family, the villagers, officials of the police station and concerned prison officials.

During the period of fact-finding Odhikar came to know that Akter Hossen (35) was the third son of late Motaleb Mia of Bolaikha village in Rupganj police station under Narayanganj district. He was a small trader and had a shop in Vhulta market.

On 17 May 2005 police of Vulta camp arrested Akter under a theft case from his own home and sent him to Rupganj police station. The next day he was produced before the Court and from there taken to Prison.

He was admitted to the Narayanganj Sadar Hospital on May 24, as he fell sick in Prison. For his deteriorating physical condition, he was shifted to the Dhaka Medical College Hospital on that day. He expired there on the same day at 6.15 pm.

Sultana Rizia (32) the younger sister of Akter, informed Odhikar that on May 16 police came to arrest Akter and returned as Akter was not available at home. The next day in the early evening ASI of Vulta police line, Mohsin, in civil dress with some other police surrounded their home. She was inside the house and on hearing the news of the arrest of her brother she came out. There she found that police had tied Akter by a gamcha (a kind of woven towel). When she wanted to know why he had been arrested and whether they had an arrest warrant along with them, police officials behaved rudely with her. Akter informed her that the police had taken Tk 4000 (Four thousand taka) and his mobile phone. She took the mobile phone from the police officer but they did not give back the money they snatched from Akter. Before leaving police also told her to bring Tk 5000 and meet them in the police station.

Ruhul Amin (25) the younger brother of Akter told Odhikar that at 10.30 am, with some of his friends, they went to the police station to see his brother. He was then informed that Akter had been taken to Court. The Munshi of that police station told him that on February 04, 2005 an incident of robbery took place in Rozia Memorial Hospital and Akter had been arrested as an accused of that case.

Rabiul (12) another younger brother of Akter informed Odhikar that on May 19 he went with one of his friend to the Narayanganj District Jail to see his brother. He bought a tk 20 ticket and waited all day in vain.

Akter Hossen's wife Helana Akter told Odhikar that on May 20 at around 1.30 am she woke up by the hue and cry in the house and came to know that her husband had expired in Dhaka Medical College Hospital. Police of the Vulta police camp sent this message to her husband's older brother Waliullah who was a Organizing Secretary of Vulta Union Parisad. Helana further informed Odhikar that at the time of arrest, her husband was physically sound and normal. However, she did admit that he was an alcoholic and drug addict and had been treated twice.

Anwar Hossain (32) cousin of Akter told to Odhikar that on May 25 Akter's father-in-law and his son and others went to Dhaka Medical College Hospital to receive the corpse. They found

Akter's dead body out side ward number 7 and came to know that Akter had been admitted to this ward. Then magistrate was examining the body in order to make an inquest report and he found a kind of yellow saliva coming from the mouth of the body. After finishing the postmortem they took the dead body. Anwar also informed Odhikar that Akhtar was slightly alcoholic and was treated for this.

One of the local shopkeepers Sohel Miyan (20) informed Odhikar that Akter was not involved in any kind of criminal activities that he knew of, but he knew that Akter was an alcoholic.

Abdul Barak the acting jailor of Narayanganj District Jail told Odhikar that on May 18 they sent Akter to jail. At that time Akter was fine. After 2/1 days he became sick. Akter informed the jail authorities that he was suffering from acute stomach pain and had a burning sensation in his chest.

On May 21 while Akter's physical condition became serious he was admitted to the Narayanganj Hospital. As there was no improvement of his health he was shifted to the Dhaka Medical College Hospital. He expired there on the same day.

Duty Officer of Rupganj Police Station SI Tariqul, informed Odhikar that on May 17 he was on duty. At around 8:05 pm ASI Mohsin, of Vulta police camp handed over Akter to them. When Akter was in custody he became crazy for heroin. Akter was arrested under a theft case at Daudpur Rozia Memorial Hospital. The case number is 21, dated 4/5/05. SI Tariqul also informed Odhikar that the plaintiff of the case was mentioned as 'unknown' when it was filed. Investigation Officer SI Azad came to know from a source and for that Akter was arrested in that theft case. Akter was not tortured by anyone in custody, he claimed.

The investigation officer, SI Azad of Raupganj Police Station, told Odhikar that as a suspected accusee they gave a requisition to Vulta poice camp to arrest Akter. On May 17 they arrested Akter and handed him over to the police station. He was not tortured by them. Akter was a drug addict and he became crazy for white sugar (heroin) in the custody. Besides that he had been arrested before in an extortion case.

SP Circle Farhat Islam was responsible for the judicial investigation of this case. He informed Odhikar that he had already interviewed the victim's relatives, neighbors and others.

From the source at Dhaka Medical College Hospital Odhikar came to know that there was no marks on the dead body of Akter and that his stomach was infected.

An unnatural death case was filed in the Ramna Police Station. The case number is 29/05, dated 28/5/05 at 10:30 am, Custody no 18212/05 and the Investigation Officer was SI Shah Alam.

Jubo League leader Suman shot dead by RAB in Dhaka

Odhikar sent a fact finding team to collect information about the incident of the killing of a Jubo League Leader named Suman, which made news in different national dailies on June 01, 2005 under the head line, "Jubo League Leader Suman Shot Dead by RAB". Odhikar talked to the family of the victim, the local people and the concerned police.

Abul Qulam Azad alias Suman was the first son of Mr. Abdul Hakim who was a resident of 259/1, West Goran (Purbo Goran) under the police station of Khilgaon. Suman worked as a Cashier in a company named Laurel Enterprise at the tempo stand at Goran. The RAB members arrested him from his office at 9:30 pm on May 30 and took him away, the victim's family alleged. The next day at around 4 pm the police of the police station of Khilgaon recovered Suman's body from the Banosree area of Khilgaon.

Suman's mother, Amela Begum has been dumbstruck since the incident. She managed to talk to Odhikar in brief. She said that at around 8:30 pm on May 30, 2005 Suman left home for work. Mr. Abdul Hakim, Suman's father, told Odhikar that they were a lower middle class family. Suman is the eldest of his two daughters and a son and was unmarried. When he (Suman's father) was returning home at around 10 pm, one of Suman's friend, informed him that RAB had picked up Suman. On hearing the news he rushed home and then went to Khilgaon Police Station with Suman's mother. Having kept them waiting till 11 pm, the police officers told them that RAB had arrested Suman. Suman's father went to the DB Office on Minto Road for information about Suman but found nothing. Then he and his wife went to the office of RAB-3 at Tikatuli at around 2:30 am. When he was asking the constable on duty at the gate about Suman's arrest, he saw a white jeep waiting to go out. He saw Suman in that jeep. After a while a constable came, scolded them and turned them out. They returned home at around 3 am. When seeing Suman in the jeep he presumed that RAB was going to hand Suman over to the police station. He went to the police station again at around 5 am and saw Suman lying inside the pick-up, wearing jeans and a grey full-sleeved shirt. His shirt was drawn up to his chest. He then realised that Suman was no longer alive. He went to Suman's maternal grandfather and informed all of the matter. Suman's father alleged that RAB killed his son to gain political interest.

A worker of Laurel Enterprise, Roni (16) informed Odhikar that Suman, Bidyut, Hanif and he were in the spot at around 9 pm. At that time three people wearing civil dress were strolling outside the shop. All of a sudden they entered the shop and asked their names. When Suman said his name, they tied his eyes with a piece of black cloth. Afterwards, they tied Bidyut's and Hanif's eyes in the same way. Later, they pointed a pistol towards Suman and said, "Don't make a phone call to your leader". Then they took them away by taxicab.

A worker of a neighboring shop, Rubel (18) informed Odhikar that he had come out of his shop on hearing the hue and cry and saw RAB had arrested Suman, Bidyut and Hanif. At that time he saw three people wearing jackets used by RAB.

Local Jubo League Leader, Shahabuddin informed Odhikar that Suman was the Joint Convener of the Jubo League of Ward No. 25. He planned to compete for the position of president in the next convention. Shahabuddin also said that earlier Suman was involved in BNP politics. He joined Awami League nearly a year ago.

After his joining Awami League he started participating actively in different political programs. In the meantime he brought out a leaflet on the debatable Khilgaon Flyover, bearing a message from the former Member of Parliament (Awami League) Saber Hossain Chowdhury. He had an argument during Jumma prayer with the Vice-president of Dhaka Metropolitan Chhatra Dal, Rubel regarding distribution of leaflets. At that time Rubel threatened Suman. As Suman was a good organizer, the local Awami League became stronger after Suman's joining the party, said

Shahabuddin. He commented that Suman had been killed before the next parliamentary election to weaken the Jubo League, and that it was a cold-blooded killing.

Rustam Ali (40), a neighbor of Suman, told Odhikar that Suman was not involved in any terrorist activities that he knew of. He was actively engaged in Aawmi League politics.

Along with Suman, RAB arrested two others workers of the shop, Bidyut and Hanif. Hanif's elder sister, Parul, told Odhikar that at around 10 pm on May 30, her cousin Aatur informed her of the news of the arrest of Suman, Bidyut and Hanif by RAB. She rushed to her eldest brother and gave him the news. The next morning they learnt that RAB had killed Suman.

Having heard the news they thought that Hanif and Bidyut had also been killed by RAB, but later learnt that Hanif and Bidyut were under RAB custody in the office of RAB-3 at Tikatuli. When he went to the RAB-3 office at around 5 pm Hanif's brother was asked from the gate of the RAB office to go to Khilgaon Police Station. He went to Khilgaon Police Station at 9 o'clock at night and was kept waiting upto 3 am. He was worried when they were not brought to the police station even at the dead of night, thinking that RAB had killed them too. Receiving news from Bidyut's brother, saying that Bidyut and Hanif were brought to Shabujbagh Police Station, Hanif's sister went to Shabujbagh Police Station in the morning, on June 1, where she talked to Hanif. Hanif was looking very panicky in the custody, she said. He was frequently asking about Suman's funeral-prayer. He burst into tears while asking about Suman. Parul said that Bidyut's father asked her to collect taka seven thousand to save Hanif from the case and stop him from being taken into remand. But they were too poor to collect taka seven hundred, let alone taka seven thousand. Only two weeks ago, Hanif joined Laurel Enterprise at a monthly salary of taka two thousand. Suman himself got the job.

While talking to Odhikar Mr. ABM Enamul Huq, the Commissioner of Ward 25 said that he did not know Suman well but Suman's father was quite familiar with him. As a Ward Commissioner he is quite informed about the wicked boys of his area. He never heard any allegations against Suman. There was a program at the Goran Tempo stand on June 1 on the occasion of Zia's death anniversary. Coming to the program he came to know that Suman had been killed by RAB and went to Suman's house. "My innocent son has been killed." Suman father said to the Commissioner in a plaintive voice. He took part in the funeral-prayer (Janaja) for Suman at noon. Several thousand people participated in his funeral-prayer, if he was a wicked person, so many would not have been there he argued. RAB has committed a grievous crime by killing him, he said.

Sub Inspector Sattar from Khilgaon Police Station, who discovered Shuman's body told Odhikar that on a tip-off, they went to Banosree area at around 4 am, where they found a dead body holding a revolver in his hand lying near Block-F in the Banosree area. Then they saw 5/6 RAB members with black uniform. They took the dead body to the police station. Later, they identified him as Suman by the papers in his wallet. While discovering the body, Sub Inspector Rejaul and a few other policemen were with him, SI Satter added.

Two separate cases have been filed with Khilgaon Police Station regarding the incident. The first case was filed under the Section 19 (Ka) 19 (Cha) of the Arms Act by BJO 147 Senior Warrant Officer, Rahim Ullah (45), RAB-3, Tikatuli. The case accused Suman (22), son of Abdul Hakim, 259/1, Purbo Goran (West Goran), Khilgaon, Dhaka. Sub inspector Satter was investigating the

case. The other case was filed under Section 312/34 of the Penal Code, the case number being 76, dated 31/5/05. The plaintiff in the case was the same person, that is Rahim Ullah, the Senior Warrant Officer, RAB-3. The accused in this case is unidentified. Sub inspector Ziaul Huq Khan was investigating the case.

In the first information report the Warrant Officer, Rahmat Ullah stated that at 3 am on May 31, 2005 when they were on a regular, mobile night duty at Khilgaon, they got a tip off saying that a few terrorist had gathered on Road 5 of Block F. The Sub Inspectors Rashidul Bari and Md. Hanif Ahmed, Sub Inspector Ahmed Ali, Md. Abdul Latif., Constable Abdul Based (Number 1912523), RAB-3 Tikatuli, Dhaka P. C. 2071/05 reached the spot. Seeing their presence the criminals opened fire at them and they retaliated. After 10/12 minutes' exchange of bullets they found a person lying in the east corner of House 28, Road 4, Block F. He was found holding a revolver with bullets in his hand. They found a wallet in his pocket, from which they identified him as Suman, son of Abdul Hakim whose residential address was 259/1, Purbo Goran (West Goran), Khilgaon, Dhaka. When Khilgaon Police Station was informed of the incident, they took the dead body to the police station.

The investigation officer of the case, Sub Inspector Ziaula Huq told Odhikar that he had received the inquest report but the postmortem report was yet to be received. The investigation was underway, he added.

Dhaka Metropolitan Magistrate, Md. Mamun Al Rashid made the inquest of the deceased at the Dhaka Medical College Hospital morgue at 16:00 o'clock on May 31, 2005. The magistrate said in the inquest report that he examined the corpse from head to foot and found signs of injury on his forehead, half an inch long scratch on the upper part of his nose, a quarter of an inch sign of injury on the upper left eye brow. He received fire bullet injuries in the left part of his chest and one injury in the left side of his stomach. He received four bullet injuries in the left side and one injury in right side of his back. No other parts of the dead body have any injuries. The length of the corpse was 5 feet and 4 inches.

When contacted, RAB-3 did not provide any information to Odhikar.

A case was filed with Shabujbagh Police Station on May 31, 2005 against Bidyut (21) and Hanif (22). The case number is 60(S) 2005, dated 31 May 2005. Sub Inspector Arshad Ali, who is investigating the case told Odhikar that RAB handed over Bidyut and Hanif with three cocktail bombs to the police station at 9:45 pm on May 31. The case was lodged by Saifur Rahman. The accused were produced before court the next day but remand was not yet sought. When asked if there was any case filed earlier against Suman, the Officer in Charge of Shabujbagh Police Station expressed his limitation to provide any information about the matter.

On the other hand, different national dailies, referring to a senior police officer of the Eastern Zone of Dhaka Metropolitan police, reported that there were three cases filed earlier against Suman with Shabujbagh Police Station. The cases were: a murder case (No. 62(6)1996, a rape case 20(1)97 and a case of theft (No. 21 (1) 97).

From the information of fact-finding Odhikar found all the statements of the victim's family and RAB were conflicting. According to the local people, the witnesses and the victim's family RAB arrested Suman from his work place. While arresting Suman RAB arrested two other people by

the names of Hanif and Bidyut, and handed them over to the Shabujbagh Police Station. But RAB claims that with a gang of criminals Suman was at the Banosree area during the incident. There was a gun battle between the RAB and the criminals. During the fight Suman was killed in the crossfire. On the other hand, people are raising questions about RAB activities as they are evading the real fact of arresting Suman from his workplace. This kind of killings by law enforcement agencies raised question about their accountability.

Youth dead in police custody at Brahmanbaria

Odhikar sent a fact-finding team to collect detail information about the incident of the death of a young man in the custody of the Brahmanbaria Police. The incident was reported in different national dailies on June 04, 2005. In order to find facts Odhikar talked to the relatives of the deceased, Office-in-Charge of the Brahmanbaria Sadar Police Station, Officers of the Detective Branch of the police and the local people.

While talking to Odhikar Ebrahim Mia, a cousin of the victim, Ershad, told Odhikar that a tin-dealer named Suman Mia, a small trader at Bayish Mouja Bazar under Nabinagar Police Station was assassinated on March 21, 2005. After the incident a murder case was filed with the Ashuganj Police Station against the victim's cousin, Ershad and some other persons. Ershad had been absconding after that incident. When he returned to the village on June, 01, his rivals group caught hold of him, beat him and then handed him over to the police. On June 3 they came to know that Ershad had hanged himself inside the custody of the Brahmanbaria Police Station, Ebrahim added. However, he expressed his suspicion about the incident. How could a person hang himself with a rod, which was only four feet off the ground? asked he. Ershad's father, Siddique Mia was another accused person in Suman's murder case, said Ebrahim.

Johirul Islam, a local, told Odhikar that Ershad was a burglar and a killer. He was an accused in Suman's murder case. He also added that he found no sign of torture on Ershad's dead body but a black mark on the neck. Suman's family was alleged to be a burglar's family and all of his family members had been absconding since the incident.

Kawser, a Sub Inspector of the Detective Branch of police told Odhikar that Suman Mia, a tin-dealer at Bayish Mouja Bazar under the Nabinagar police station was assassinated on March 21 and was left just outside Ashuganj police station. A murder case (number 4 dated 22.03.05) was filed with the Ashuganj police station the next day. The case was filed under Section 302/34 of the Penal Code. Ershad was accused in that case. The murder case of the Ashuganj Police Station was transferred to the District Detective Branch of police a few days ago. When Ershad came to the village of Amtali under Nabi Nagar Police Station on June 01, local people caught him and beat him. DB Police was informed about him and they took Ershad into their custody at 9 pm that day. Ershad was sent to Brahman Baria Sadar Thana after receiving medical treatment from the Sadar hospital. The next day (June 2) Ershad was taken to remand for three days. As there was no custody in the DP Police Office, Niranjana, an Assistant Sub Inspector of DB police left him in the Sadar Thana police custody at 9 pm after the interrogation. On the morning of June 3 they received news from the police station that Ershad had hanged himself with his 'Lungi'. He found black marks on his neck and his tongue was bitten between his teeth. Ershad

was not tortured during remand, he said. The Post-mortem report will reveal the mystery of the death, he added. An officer of the DB police said that he that he thought Ershad had the chance to commit suicide due to negligence of the police.

The Second Officer of the Brahman Baria Police Station told Odhikar that the DB police left Ershad in the Thana Custody at 9 pm on June 2. Ershad hanged himself by fastening his 'Lungi' with the rod on the wall of the custody. A first class Magistrate, Habibur Rahman made the inquest report on the corpse, where he reported that the tongue of the deceased was sticking out between his teeth. He found black marks on his neck. Jasim himself was also present during the inquest. The DB police was dealing with Ershad's case. He was not tortured in the police custody. He guessed that Ershad might have committed suicide thinking about the punishment he would receive if found guilty.

The source of the department of forensic medicine of Brahman Baria 'Sadar' Hospital said they could say nothing about the death as the post-mortem report was yet to be made. However, the symptoms the dead body wore gave the impression that the victim had hanged himself.

Sub Inspector Jasim, the Second Officer, said that no other arrestees were in the custody on the night of June 2. A case of unnatural death (UD) was filed with the Brahman Baria 'Sadar Thana' regarding the incident. The case number is UD no.1 dated June 6, 2005.

As part of the fact finding mission, Odhikar's fact-finding team visited the custody where Ershad hanged himself. Odhikar team found that the wall of the custody was four feet high and on the wall there was a heavy rod. Ershad allegedly fastened his 'Lungi' to the rod and hanged himself.

A young businessman in death-bed due to Police Torture in Rajshahi

On receipt of a report from Odhikar's human rights defender in Rajshahi, Odhikar carried out a fact-finding mission on the torture of a young businessman by police in Rajshahi. The report reveals following facts.

On 7 July 2005, Rajshahi police arrested businessman Selim Jafar Babu (30) when, after appearing at the court in a case, he was returning home to Chandipur behind Rajshahi Press Club under Rajpara police station. SI Nur Hosain of Rajpara police station arrested Selim and took him to the station forcibly. Selim was produced before the court as a suspect in a mugging case. He was taken into remand for 2 days on 13 July. It was alleged that SI Nur Hosain physically tortured Selim in remand. It was also alleged that General Secretary of Rajpara unit of BNP A.S.M.Habibul Alam Rana beat Selim on the head with a stick inside the police station. Torture deteriorated the physical condition of Selim, causing loss of sense and he was hurriedly admitted to Rajshahi Medical College Hospital on 15 July. At around 11.30 pm that evening, he regained his consciousness. Rajshahi Metropolitan Police Commissioner, physicians of Rajshahi Medical College, officer in charge of Rajpara police station and journalists went to see him in the hospital.

Younger brother of the victim, Rakibul Islam Rubel, informed Odhikar that after arresting and taking his brother Selim to Rajpara police station, his brother was openly beaten by police on the police station balcony. He further stated that when he protested the incident, SI Nur Hosain beat

him as well. He alleged that local BNP leader Kailya Rana was putting pressure on the complainant of another mugging case to give false witness in the court that Selim was involved in the mugging incident. Selim told Odhikar that he and 12 other construction contractors were supposed to get Taka 12 lac as a bill from BNP leaders Kailya Rana and Shahjahan for construction work of the Public Health Department. Besides he would get additional Taka 45 thousand from BNP leader Shahjahan. He alleged that they simply gobbled the money and were trying to harass Selim by using the police to avoid giving the money. He alleged that they threatened him in hospital in presence of police personnel.

The accused BNP General Secretary of Rajpara unit A.S.M.Habibul Alam Rana, in a press conference held on 19 July, denied the allegation and termed them as false and baseless. He stated that there were eight cases filed against Selim in several police stations of Rajshahi. He also branded Selim as a criminal and extortionist. He denied any involvement in the incident and claimed it as a propaganda against him.

The alleged police officer SI Nur Hosain could not be contacted because he was on one-week leave during the fact-finding. When contacted over his personal cell phone (collected from Rajpara police station), he denied any physical torture on Selim but said that Selim was beaten only twice with a stick. On the other hand, the officer in charge of the Rajpara police station, Ruhul Amin completely denied any torture on Selim. He also denied that any political leader beat Selim inside the police station compound. When asked why Selim was admitted to Rajshahi Medical College Hospital in a critical condition and who were responsible for his situation, the officer in charge avoided any direct response adding that there were 5/6 cases filed against Selim.

The complainants of the mugging case revealed completely different information. They informed Odhikar that on 30 May, 2005 distribution officers of a medicine company (Glaxosmithkline), Mostak Ahmed and Yoiusuf Ali were going to the IFIC Bank with Taka 217644 by a rickshaw. Three young men on a motorcycle grabbed the money from them in broad daylight in front of the Shiva temple near Rajshahi Central Jail. The muggers stabbed Mostak and Yousuf with a knife. Mostak Ahmed filed a mugging case (number 30, date 30/05/05, Section 394 of the Penal Code) in Rajpara police station against unknown criminals. Police showed Selim as a suspect in this case, produced him before the court and took him in remand. On 15 July, the complainant of the case, Mostak Ahmed was invited to the Rajpara police station to identify the probable muggers. But he categorically said that the muggers were tall and of black complexion. There was no similarity between Selim and the muggers.

The inhabitants of Rajpara locality told Odhikar that police did not arrest Selim initially in any particular case. Subsequently he was shown as suspect in the mugging case. They further stated that Selim became a victim of internal political and personal rivalry between the President of District BNP and former Member of Parliament Azizur Rahman and Rajpara unit BNP Secretary General A.S.M.Habibul Alam Rana. They had a conflict between them on the sharing of money earned from the construction business and police harassed and tortured innocent Selim by taking the side of one of the rival groups. They opined that the officer in charge of Rajpara police station should not evade responsibility for the incident. The relatives of the victim termed the incident as result of political conspiracy and rivalry.

Masum killed at Crossfire by Detective Police

There was a newspaper report titled 'Meritorious Student Masum Killed in so-called Crossfire of the Detective Branch of Police'. Odhikar did a fact-finding of the incident and found following facts.

It was revealed that on 8 July 2005 at 8 pm, Masum's family went to attend a family festival at Mehedi Community Centre in Mohammadpur. At around 10 pm, Masum received a call in his cell-phone and went out of the community centre. After a while, his father Khandaker Abul Khair called in his cell-phone but found it dead. Since then they could not find any trace of Masum. On returning home, Masum's family started searching for him through relatives. At around 12 the same evening, they contacted Mohammadpur, Adabor and Mirpur Police Stations. Finding no trace of Masum, his father became frustrated. The next morning (9 July) they received news, from TV channel ATN Bangla, of the death of one Golakata ("Cut throat") Masum in a crossfire of Detective Branch of Police. From that news, they could identify that it was their Masum who became the victim of this crossfire.

Masum's father informed Odhikar that Masum was the fourth out of five children. After passing out of high school with good results, he got admitted in the graduate course in Management Science at Jagannath University College. He was never involved in politics or in any criminal activities. He used to spend most of his time in academic and cultural activities. He also had interest in sports. Masum was a good student, he had a special position in his family. The family was financially well of and according to late Masum's father, "There is no reason for Masum to turn into a criminal since he had neither poverty nor illiteracy." He alleged that the Detective Police wrongly killed his innocent son and then tried to portray him as a criminal. No complaint of the case was found filed against him in police stations. He commented that members of the 'Cheetah' unit of Detective Police, including Assistant Commissioner Rafiqul Islam and Inspector Nurul Alam, were involved in the operation and should be interrogated about Masum's death.

People living in the Sher Shah Suri Road of Mohammadpur informed Odhikar that many of them did not know Masum well. They came to know of him after the news of his killing by police in a crossfire was published in the newspapers. They claimed that there was nobody called 'golakata' or 'gharkata' Masum in the locality. Land lord of Masum's house Wadud Sarker stated: "Masum's family has been a tenant of my house for the last ten years. So far as I know, Masum was a good student, I have never found him gossiping or fighting with anybody in the locality. I found him busy in singing and playing guitar very often."

Sources in the Dhaka Medical College Hospital informed Odhikar that Masum was shown as an unnamed death in the hospital record. He was brought dead from the Rayerbazar Intellectual Memorial to the emergency room of the hospital in the morning of 9 July 2005. Police SI Iqbal Hosain brought the dead body. His body was sent for post-mortem at 3.30 pm the same afternoon. The reason of death, as has been found in hospital records, was head injury. While identifying Masum's dead body, his father found signs of bullet wounds in his head (1), hand (1) and belly (3). No sign of injury was found in any other part of the body. He alleged that detective police killed his son intentionally and in a planned way.

Masum's father further said that after retiring from his Air-force job, he started a transport and other small businesses in Dhaka. His ancestral home was in Bhola District where he had developed some business disputes with the Chairman of Nilkomol Union, Iqbal Hosain Likhon; officer in charge of Char Fashion police station of Bhola, Moslemuddin; and with Forkan Sikder, Abdus Sattar Haoladar and Shahidullah of the same area. To harass him, his opponents filed two cases against him, which were dismissed by the sub-judge court of Bhola. Masum's father filed compensation cases against his opponents for harassing him and these are now pending adjudication. He further said that after filing this case, he has been facing threats from his opponents and he suspected that they might have instigated the police into killing his son.

It has been found from the Mohammadpur Police station that after Masum's killing by the detective police, they filed a robbery case [number 19 (7) 05] and an illegal arms case [number 20(7) 05] against him. The complaint of the case mentioned that seven/eight criminals were found taking preparation with arms for a robbery near the Rayerbazar Intellectual Memorial. On getting secret information, police conducted a raid in the area when the criminals started shooting at the police. Police fired in response and one person died while the rest fled. Subsequently it was known that the dead person was famous criminal Khandaker Iqbal Hosain Masum alias 'Golakata' Masum, who was an accused in four criminal cases.

The Deputy Commissioner of the Detective Branch of police Shahidul Islam, when contacted, denied making any comment on the incident. The Public Relations Division of the Detective Branch informed Odhikar that there were four cases against Masum (Mohammadpur PS, number 96, dated 30/06/2003, Sections 302/34, Penal Code, Mohammadpur PS, number 4, dated 2/11/2003, Sections 302/109/34, Penal Code, Mohammadpur PS, number 43, dated 12/11/2003, Sections 302/34, Penal Code, Ramna PS, number 74, dated 26/12/2003, Sections 302/34, Penal Code).

They added that Masum was a notorious criminal. The Officer in Charge of Mohammadpur police station Shahinur Khan declined to make any comment without seeing whether there was a case filed against Masum in police station records. The press release of the Public Relations Division of the Detective Branch stated that Masum was not recorded as an accused in any case. However, one accused named Alamgir Mallick in cases filed against him, mentioned the name of five persons including that of 'Golakata' Masum in his confessional statement made under Section 164 of the Criminal Procedure Code. It is to be mentioned that another person named Masum was arrested in a double murder case under Ramna police station. But that Masum and our victim Masum are not the same persons. The press release was silent about that other Masum.

Masum's family members informed Odhikar that after Masum's killing, police detectives have kept them under constant surveillance. They are threatening Masum's family members to not to talk to human rights activists or journalists. Threats over the telephone are being given not to file a case on the incident. Mohammadpur police station did not file a case when Masum's father went there to do so on 16 August 2005. Masum's father Abul Khair is adamant that he will file a case against the detective branch of police. Accordingly, he filed the case against nine members of the detective police and a Union Council Chairman on 18 August 2005 in the Court of Chief Metropolitan Magistrate in Dhaka. The persons against whom he filed the case are: Chairman of the Nilkomol Union of Bhola Iqbal Hosain Likhon; Inspector of the Dhaka

Metropolitan Detective Police Nurul Alam; Sub-Inspectors Shafiuddin Sheikh, Bodiuzzaman, Afan Ullah, Irfan Hosian, Abdul Hakim, Bazlur Rahman; Constables Abul Hashem and Ali Haider- all members of Detective police.

Death of a Businessman Caused by Police Beating in Dhaka

On 12 July 2005, Odhikar was informed by one of its human rights defenders, about death of a small businessman due to police beating in Sripur, Dhaka. Odhikar conducted a fact-finding of the incident and talked to relatives of the victim, witnesses, the duty officer of the concerned police station, clinic authorities and local inhabitants.

An eye-witness Zobeda Khatun, described the incident to Odhikar. According to her, on 11 July 2005 at around 3 pm, 7/8 persons were playing cards in an under-construction tin-shed building in Beraid, a suburb of Dhaka City. At that time, 4 plainclothes policemen entered the room. As soon as he saw them, the victim Hamidul (45) tried to flee by jumping through the window of the room. While he jumped out of the window, he fell to the ground and police started chasing him. After going a short distance, he fell on the ground again and police caught him. As soon as police caught him, they started kicking him. Hamidul was requesting the police not to kick him and to set him free. However, police did not pay heed to him and took him to a nearby police outpost. According to Zobeda Hamidul looked sick while police were taking him to the outpost.

Another eye-witness of the incident, Abdul Motaleb was cutting grass in a nearby field. According to him, Dulal of East Keora village borrowed some money from the victim Hamidul. On that day, Hamidul entered into that room to get the money back from Dulal. Five minutes after he entered the room, four policemen came in and started austing people inside. Hamidul jumped out of the window of the room and fell on the ground. Police started kicking him brutally and Hamidul became sick. Abdul Motaleb said he could not walk and police were found dragging him on by pulling his shirt. After two hours, Motaleb came to know of his death. He found some signs of torture on Hamidul's body. Motaleb further informed Odhikar that card gambling too place regularly in that room and Sripur police sometimes raided that place to snatch the money. He opined that Hamidul died due to brutal police behavior.

Another eye-witness of the incident, Achia, told Odhikar that Hamidul was looking very sick when police were taking him. He asked for some water from the police but the police did not give him any. Achia herself went forward with some water to give to Hamidul but the police did not allow her to do that. The other people present there did not dare to help Hamidul. She further said that Hamidul was very gentle and modest. He never took part in the gambling.

Elder brother of the victim, Shamsuddin, told Odhikar that Hamidul went to that village to attend an invitation that day. After attending the invitation, he took the opportunity to see Dulal and request him to give his money back. After narrating the incident as described before, Shamsuddin opined that it was due to police torture that Hamidul died. He saw Hamidul's dead body in hospital and found signs of torture on Hamidul's belly, wrist, neck and feet. Wife of the victim, Rokeya Begum told Odhikar that she wants justice for the killing of her husband and would file a case soon.

The Al Hera Hospital authorities informed Odhikar that on 11 July 2005 at around 3 pm, 4/5 people brought injured Hamidul to their hospital. Lot of saliva was secreting out of his mouth but no sign of injury was found on his body. As soon as he was brought to the hospital, he was given oxygen. Despite that, his condition continued to deteriorate and it was decided to send him to hospital in Dhaka. A car was arranged for transporting him to Dhaka but for unknown reasons, he was kept in that hospital. After half an hour, Hamidul expired.

Duty officer of Sripur police station, SI Faruque, told Odhikar that police went to that village to arrest Dulal since there was an arrest warrant against him. As soon as police arrived there, people inside Oli's house tried to flee. One of them, Hamidul, got injured after jumping out of a window. Police arrested him and brought injured Hamidul to Al Hera Hospital where he died. He denied any police torture on Hamidul. He claimed that Hamidul was a cardiac patient. SI Faruque alleged that after Hamidul's death, his relatives and friends damaged some cars on the Dhaka-Mymensingh Road and police dispersed them. Superintendent of Gazipur District Police suspended ASI Delwar and ASI Abdul Halim for their alleged involvement in this incident. He commented that the true reason of Hamidul's death can be known only after a post-mortem report is available.

Two cases have been filed in the Sripur police station. Those are UD case no. 22, dated 11/07/05 and another law case no. 6, dated 11/07/05, accusing 8/10 people, including Hamidul.

A Youth Injured due to RAB Torture

On 17 July, there was a report published in the major national daily newspapers titled: 'A Youth Injured due to RAB Torture'. Odhikar did a fact-finding of the incident and talked to the victim, physician, police and eye-witnesses. The victim Abu Bakkar Sultan Bitan (33) has been working as Executive Director of Harvest Group, a private business company. He is the youngest of 6 children of late Abu Bakkar Sultan of Satkhira. He is currently living in Uttara Residential area.

As has been revealed, on 15 June 2005 at around 7.15 pm, the victim Bitan along with some of his friends was going to attend a religious function in Sector 4 of Uttara Residential area. On the way at Jashimuddin Road, they got stuck in a traffic jam. Bitan got down from the car and found three persons beating a car driver, which caused the traffic jam. He protested and became engaged in a quarrel with those three persons. After sometime, two cars full of Rapid Action Battalion (RAB) forces arrived on the spot. They blind-folded and handcuffed him and started beating him. At one stage, they told him to run but he did not do that in fear of getting shot by them in the name of crossfire. Many people assembled at the spot. Then RAB members took him to the office of RAB-1. As soon as he got there he was beaten again. He was taken to the second floor of the office and was beaten there several times. Several individual RAB members beat him separately. All his belongings, including his cell phone were taken away by RAB. As a patient of asthma, he used to keep an inhaler with him for emergency reasons and that was also taken away by RAB. When he wanted the inhaler back, RAB members commented, "He will die normally, we do not need to kill him by crossfire". At one stage of torture, he was beaten by a steel rod and a hammer on various parts of his body with his legs and hands tied up. At a sudden hit near his left knee, he was about to lose his consciousness. Then a man and a woman entered

into the room. They were those he was quarreling with on the street before RAB brought him to their office. The woman, on entering the room, said, " He is still alive, kill him immediately." Subsequently he came to know their names as Ashraf and Farida Yasmin. They were husband and wife. Both of them were ASP of Police and were working in RAB. Afterwards, Bitan was brought down to the ground floor from the second floor and kept blind-folded. By listening to the talks around, he could understand that some high official had phoned to save him from RAB atrocity. He was tortured for further 15/20 minutes despite the telephonic intervention to set him free.

Bitan further informed Odhikar that his brother-in-law was Deputy Commissioner of North Zone of Dhaka Metropolitan Police and it was due to his intervention that he (Bitan) was set free at around 11 pm in the evening. Before his release, he was forced to sign blank piece of paper. Initially he refused to do so but after some more physical torture, he was compelled to sign.

Bitan's wife Tania Sultana Joy (28) told Odhikar that at around 10 pm that evening, she came to know that Bitan had been taken away by RAB. She then went to the RAB-1 office with one of her relatives. After waiting there for long time, she was told that Bitan would be set free and that she should leave the RAB-1 office. On hearing this, she came out of the office and was waiting outside. Her relatives brought Bitan out of the office and took him into the car. She found his two legs bleeding inside the car. Bitan was admitted into the Central Hospital where the on-duty physicians expressed surprise at his physical condition. He could not move his legs, his total body became inflated and a surgery had to be done on his left leg. His left knee was fractured due to RAB torture. His asthma had also worsened.

An eyewitness of the incident, a staff of Janata Bank Uttara Corporate Branch, on condition of anonymity, informed Odhikar that during the incident, he found a tall, healthy man quarrelling with two/three persons. At one stage, that tall man punched on the face of one of the others, which immediately caused bleeding. After sometime, RAB forces in black uniform came and took him away.

The security guard of a nearby house, Harmuz Ali, stated that he went to the spot at the last stage of the incident and found RAB members trying to take a tall, healthy, blind-folded and handcuffed man to their vehicle. He was beaten randomly when he refused to get into the car and this caused him to fall down on the ground. Then RAB forcefully took him into their car and drove away.

During the filing of this report, the victim Bitan was under treatment in the Central Hospital. The concerned physician Dr. Obaidul Haque, informed Odhikar that his condition had improved but signs of torture were found all over his body. He further commented that Bitan was hit, particularly on his two legs, by something and heavy.

In this incident, two general diaries were filed in the Uttara police station. Sepoy Manik of RAB filed a general diary on 16 July the number of which is 1202. Bitan's sister Khadiza Rahman filed another general diary on 17 July the number of which is 1280. SI Abu Sayeed has been made the investigation officer of the incident. He informed Odhikar that he would seek permission from the Court of the Chief Metropolitan Magistrate for investigating the incident. He would start investigation after getting the permission.

When contacted, RAB declined to provide any information on this.

Allegation of Rape of an Indigenous Woman by Police in Rajshahi

A fact-finding was done of the incident regarding the rape of an indigenous woman by police when she went to file a complaint of gang-rape in Rajshahi. Odhikar was informed of the incident by its human rights defender in Rajshahi. The fact-finder talked to the victim, physician, police, witnesses and local inhabitants.

The victim, Sajuni Mardi (35) informed Odhikar that she first married 10 years ago. After she gave birth to a boy, her husband left her. She got married for the second time to Jogen Tudu who had been married twice before. They have four children. On 25 July 2005 at around 1 am at night, four people from the village Surshunipara Mission of Kakonhat, Benedik Murmu (35), Simon Soren (48), Farian Hasna (30), Moses Tudu (30) and Sumesh Soren came to her house in a drunken state. They forcefully took her to a nearby paddy-field and Benedik Murmu and Simon Soren raped her while the three others held her down and muffled her. She fell unconscious and found herself alone when her senses returned. She started shouting and her cousin Satish Mardi came to rescue her. She told Satish about the whole incident. The next day (26 July), the alleged perpetrators and her husband kept her under watch for the whole day so that she could not get out of her home. She spent the day lying in bed. On 27 July at around 9 pm, she managed to go to Kakonhat police outpost with her cousin Satish and a local person Mansur Rahman. A constable and an SI, Shamsul Haque, were in the police outpost. SI Shamsul Haque told Satish and Mansur to wait outside his room. He then began to say obscene things to her and at one stage touched her body. She protested, came out of his room and informed Satish and Mansur that the SI did not file her complaint. At 2 pm during that night (28 July), the night guard of Kakonhat, Budhu, came and told her, "SI has told you not to file any case and in exchange he will pay Tk. 10 thousand to you." She disagreed to the proposal. After sometime, Budhu called Benedik Murmu and Simon Soren and raped her with their assistance. The next day, on 28 July, at around 12 pm, she and her cousin Satish Mardi, went to Godagari Police Station and informed the police about the whole incident. Police filed a case taking her signature on a blank sheet of paper. At around 3 pm on the same day, she went to Rajshahi Medical College and got admitted in ward number 23. Her medical test was done on 30 July. She was then taken to a one-stop crisis center of the medical college.

The cousin of Sajuni, Satish Mardi told Odhikar that on hearing her screaming in the night of 25 July, he went to her house and was informed about the rape incident from her. He said that since the perpetrators were influential, he hesitated to take the victim to the police station to file a case or to complain to the community leaders. To avoid further assault from the perpetrators, he, along with another local person named Mansur, took Sajuni to Kakonhat police outpost in the night of 27 July. SI Shamsul Haque was then on duty in the outpost. He told Satish and Masnur to wait outside his room and invited the victim, Sajuni. They waited for around half an hour outside. Only one constable was on duty in the outpost at that time and no other person went in. After half an hour, Sajuni came out of the SI's room with her face red. On the way home, she was weeping and told them that the SI told her, "You were raped two days ago, evidence of rape has already been destroyed by this time, there is no use bringing allegation of rape against the

perpetrators, you need evidence for that." Saying this, the SI raped her and told her, " Now you will be able to prove that you were raped by those perpetrators." She further said that the SI forbade her to tell this to Satish. Afterwards Satish got her admitted to the Rajshahi Medical College Hospital. Satish further commented that the victim was not telling the exact facts in fear of police because according to him, the police told the victim not to tell anybody about the exact facts. He claimed that he himself could not stay at home in fear of the perpetrators.

Odhikar also talked to Azlus Beshra of the same village. He said that despite having four children and a wife, he had developed a relation of love with the victim Sajuni. He fled with Sajuni to another village at the end of March 2005. On 24 July, when he and Sajuni returned to their own village, the villagers decided to set up an arbitration meeting with community leaders for trial of their illicit relationship. In the evening of 25 July 2005 the village chief, Simon Soren, and around 80/90 people of the village gave the verdict of beating them with cane 15 times each for their illicit relationship. They were both made bald and a fine of Taka 2000 (taka 1000 each) was imposed on them. However, it started raining at that time and the penalty of imposing fine could not be settled. Mardi stayed at his home that night. He commented that Sajuni was not raped on the night of 25 July because she stayed with him at his home. On their failure to pay the fine, the arbitration sat again on 26 July and gave them 15 days time to pay the fine.

The village chief and key accused of the case, Simon Soren, told Odhikar that according to customary religion of the indigenous community, a married woman cannot mix with other men when she is living with her husband and a married man cannot marry for the second time while he has his first wife living with him. In this case, both Azjus Beshra and Sajuni Mardi committed an offence by violating religious rules and as such they were sentenced through community arbitration. He termed Sajuni as a woman of bad character. He further stated that on the night of 25 July, the arbitration ended incomplete at around 2 am and Sajuni was sent to the house of Azlus Beshra in the presence of around 60/70 villagers. He termed the allegation of rape brought against him as false and commented that it had destroyed his image as village and community leader. Among the villagers present in the village arbitration in the night of 25 July, Johorlal, Anil Mardi, Patrick Soren, Benjamin and Suchitra termed Sajuni as characterless and her illicit relationship with Azlus Beshra, who had already a wife and four children, was shameful for the indigenous community. They agreed that she got angry at the village arbitration/trial and filed false case of rape against the innocent village chief and others. They pointed out that in the rape case filed, the time of the incident was mentioned as 1 pm while the arbitration ended at 2 pm and it was incomplete.

Husband of the victim, Jogen Tudu told Odhikar that he used to live in his in-laws house. He and Sajuni had four children. His wife fled with his neighbour Azlus four months ago. For looking after his children, he married for the second time two months ago. Sajuni told him to leave but he continued to stay because as per customary rules of the indigenous community, as a husband living in in-law house, he was entitled to get one pair of cattle, 12 maunds of rice and some money from his wife if his wife told him to leave. However, Sajuni did not agree to give him these things. On 25 July, the village arbitration was incomplete and that is why, he did not take his wife back home. Sajuni spent the night with Azlus. Jogen termed his wife Sajuni as a liar and characterless.

The officer-in-charge of the Kakonhat police outpost, SI Shamsul Haque told Odhikar that on 27 July 2005 at around 8 pm, Sajuni Mardi, Satish, and Mansur came to Kakonhat police outpost. Sajuni told him, " On 25 July in the evening, some villagers took me to a nearby paddy-field and raped me" While she was talking to him, Satish and Mansur were waiting outside his room. Sajuni was insisting on fileing a case. He suggested that she do so it in Godagari police station because no case could be filed in the police outpost. Then she left. The SI commented that failing to file a case, Sajuni got angry and brought false allegations of rape against him. He further commented that if the allegation against him were true, Sajuni would certainly have filed a rape case against him the next day in the Godagari police station, which she did not. On the allegation of rape against him, he said, "How is it possible to rape a woman in presence of 3/4 constables and two outsiders in the police outpost?" He added that Sajuni did not bring an allegation of rape against him but others did. He also termed Sajuni as a woman of bad character.

The officer-in-charge of the Godagari police station, Nurul Amin, told Odhikar that the allegation of rape against the police was completely false. He claimed that SI Shamsul Haque was not a man of bad character. He further said that Sajuni Mardi did not make any allegation of rape against any police officer in her case.

The particulars of the case filed by Sajuni Mardi are: Case number: 30, Date: 28/07/05, Law: Section 9(1)/30 under amended Prevention of Repression against Women and children Act 2000, Accused: Benedik Murmu (35), Simon Soren (48), Farian Hasna (30), Moses Tudu (30) and Sumesh Soren

Police Torture of a Businessman in Chittagong

On 27 July 2005, Odhikar came to know from its human rights defender in Chittagong, of an incident of police torture on a businessman in Chittagong. Odhikar conducted a fact-finding of the incident and talked to the victim, the concerned physician and police.

The name of the victim was Tazuddin Chowdhury Tazu (28). Son of late Shahabuddin Chowdhury, he is a restaurant businessman and used to reside in Jamal Khan Road in Chittagong City. He informed Odhikar that on 25 July, while he was sitting in his restaurant 'Agra Fort', the Assistant Commissioner of Detective Branch (ACDB) of the Chittagong Metropolitan Police, Gazi Muhammad Jashimuddin, came to his restaurant with two constables at around 4.15 pm. After descending from his car, he entered into the restaurant shouting abuse against the victim. On seeing the police car, the guard of the restaurant Rafique saluted them but the ACDB said to him, "This is a guard of an illegal business, beat him and throw him in the drain." His accompanying constables immediately started beating Rafique with their cane sticks. There was no one inside the restaurant except the owner Tazu himself and a job-seeker Anwarul Islam Razu. On entering the restaurant, the ACDB started beating Tazu with his cane stick. The other constables also followed him and started beating the waiters of the restaurant. At one stage, Tazu wanted to know the police allegation, against him. However, the ACDB, without paying heed to him, continued beating and allegedly said, "You run an illegal business and now want to know about your offence?" Victim Tazu allegedly said, "Sir would you please tell me what illegal

things I am doing in my business, if necessary I will do business following your instructions." Despite saying this, he was allegedly beaten continuously. Then he was arrested and taken to the office of the detective branch. At around 6 pm the same evening, some local newspaper reporters went there and wanted to learn about Tazu's arrest. The ACDB Jashim responded that they had arrested Tazu on receiving secret information against him and he would be set free if the allegations were wrong. The newspaper reporters present there were Rittik Nayon of the Daily Azadi, Riaz Haider of the Daily Purbokon, Shahidullah Shahrier of the Daily Jugantor and a correspondent of the Daily Sangbad. The ACDB also assured them that Tazu would not be tortured. But from 8 pm to 10 pm, Tazu was allegedly severely beaten with his head hooded with a black cloth. He was beaten mostly on his knees and lower legs. About the beating, Tazu told Odhikar, "At such merciless beating, I thought that my legs would be estranged from my body." The ACDB was outside his office during the two hours and he returned at around 11 pm. On returning, it is alleged that he also participated in beating Tazu. On getting informed by family members, some newspaper reporters, including Rittik Nayon of the Daily Azadi, went to the DB office and wanted to know if there was any case or diary filed against Tazu. The ACDB denied having any and told them that Tazu would be freed. He was set free at around 2.30 am that night.

Tazu's younger brother took him to a clinic at around 3 am. After keeping him there for one day, he was taken home where he has been under the medical care of Dr. Basu Ray and Dr. A.K.M. Nasiruddin. Till the filing of this report, Tazu was feeling better physically, except for some pain in his legs and waist. Dr. Nasiruddin informed Odhikar the Tazu's leg veins had been severely damaged due to the beating. Even if he recovers from the torture, he would have to suffer for the rest of his life, added the physician. He further said that Tazu would never be able to do any heavy work and his mental state may have been damaged due to tension and trauma.

The younger brother of Tazu, Jashimuddin commented to Odhikar, "It is the responsibility of the State to arrange employment for its citizens. But my brother created employment on his own without the State's help. Our three families are dependent on his business. Now the State wants to stop my brother's business by attacking it. If this continues, how will we survive, shall we starve to death?"

A regular customer of the Agra Fort Restaurant, Sirajuddin, who is a businessman, told Odhikar, "I used to see Tazuddin daily. I never found anything of bad character in him, neither did I find anything irregular or obscene in his restaurant."

The accused ACDB, Gazi Muhammad Jashimuddin, was promoted and transferred as Additional Superintendent of Police to Sylhet on 31 July 2005. His replacement did not want to talk to the Odhikar fact-finder on the issue of Tazu's torture. On 15 August, an ASI named Abdus Salam told the Odhikar fact-finder that the case was former ACDB's personal issue and nobody in the police or detective branch was interested to comment on it.

An Adolescent Girl Raped by Police in Dhaka

Odhikar carried out a fact finding mission on the incident of rape of an adolescent girl by police. Odhikar received the information from a local NGO. It was initially reported that a member of the reserve police, Nayek Nurul Islam, deceived Margina Akhter (16) by taking her to a

residential hotel at Mohakhali on the promise of providing her with a job. After taking the victim there, the accused, with help from hotel staff, raped her twice and left her there unconscious. After regaining consciousness, she came out of the hotel, came to the Farmgate area and requested a police sergeant to help her go to Jessore. The sergeant sent her to Gabtoli Bus Terminal with another person. There she disclosed the facts to the local people who took her to police at the Mirpur police outpost and Mirpur police station where a case was filed.

Margina informed Odhikar that she came to Dhaka from Mymensingh en route to Jessore on 27 July 2005. On the way, she lost her bag with all her money and could not get to Jessore. At the Gabtoli Bus Terminal in Dhaka, she sought help from people but none came forward. Helpless Margina was sitting at a tea-stall for a long time. The owner of the tea-stall, Afzal (60), on listening to her problem, gave her shelter for that night. The next day, he brought her to the Gabtoli bust terminal. At that time, two patrol police came to his tea-stall and one of them offered her work in his home. Initially, she refused but after the assurance of a good salary, she accepted the offer. At around 8 am in the morning, the accused Nayek Nurul Islam hired an auto-rickshaw and started for his home with Margina. After around 15/20 minutes, he stopped the auto-rickshaw, paid for it and left her telling her to wait at a roadside place. After ten minutes, he came back wearing civilian clothes and took her to a nearby bus stop by a rickshaw. There he kept her waiting for half an-hour and went somewhere to make a phone call. Then he came back and got into a bus with her. After a bus ride for about an hour, he got down from the bus with her and took her to a building across the street. There, a person of around 25/30 years of age unlocked a room and Nurul Islam sent that person to bring some snacks. It was at around 11 am in the morning. Nurul Islam told her that his wife would be coming and requested her to get inside the room. As soon as she entered the room, he closed the door and started touching her. She shouted out in fear and the accused held her mouth and undressed her. After that, the accused raped her twice.

When asked, the victim expressed her ignorance about the name or location of the hotel since she was a newcomer in Dhaka City. She informed Odhikar that initially she could not understand that the place was a hotel. After the incident, the accused Nayek Nurul Islam left her and the hotel person got her out of the hotel. From there, she came to the city's Farmgate area on foot and was weeping beside the road. A traffic police sergeant came forward and asked her where she would like to go. On hearing her destination, he sent her with a person to Gabtoli bus terminal. That person requested another police to get Margina into a Jessore-bound bus but that police did not help her. Finding no other way, she started weeping again sitting in the terminal. The other passengers became curious and on listening to her ordeal, they started looking for Nayek Nurul Islam, the alleged perpetrator. Failing to find him, they took her first to Mirpur police outpost. Police from Mirpur police station came to the outpost and took her to Mirpur police station. On listening to the incident in detail, they filed a case and sent Margina to Dhaka Medical College Hospital for treatment.

The officer in charge of the Mirpur police station informed Odhikar that the case was filed under Section 7/9(1)/30 of the Prevention of Repression against Women and Children Act, the number of the case was 94, dated 28/07/05. Margina could not tell them the name of the perpetrator. According to her description of the perpetrator, Nayek Nurul Islam was arrested on 29 July 2005 from police line. In a primary interrogation, he admitted that he took Margina on the

commitment of engaging her in household work but denied the allegation of raping her. He did not disclose the hotel he took the victim to and who helped him in committing the offence. He was taken in remand for two days for further interrogation. Police have been found to be very active in the investigation of the case and have expressed optimism about finding the collaborators of the accused.

The officer in charge further commented that in filing any case, the place of occurrence of offence is very crucial, but in this case, the victim could not specifically say where she was raped. It is also important because it would determine the jurisdiction of the concerned police station. Although the victim was sent to Dhaka Medical College, her medical test could not be done immediately because of the weekend closure. She was kept in a one-stop crisis center of the hospital for her protection and for preventing damage of any evidence of rape.

The investigation officer of the case, SI A.B. Siddique informed Odhikar that the accused gave a confessional statement under Section 164 of the Criminal Procedure Code but did not admit his involvement in any rape incident. During interrogation, he disclosed names of his accomplice and the name of the hotel. Police arrested his accomplice Zakir Hosain who was a hotel staff. It was found that the incident took place in room number 15 of the third floor of Hotel Jamuna International in Mohakhali. Both the accused and his accomplice have been sent to Dhaka Central Jail. Although the medical test of the victim was done on 30 July, its report had not yet reached the investigation officer. Till filing of this report, the victim was under safe custody by order of a magistrate.

Allegation of Torture of Two Brothers in Police Custody in Rajshahi

On 29 July, Odhikar was informed by its human rights defender in Rajshahi, about an incident of torture of two brothers in police custody in Boalia police station in Rajshahi. On the basis of that information, Odhikar sent a fact-finding team to collect detail information of the incident. During the fact-finding mission Odhikar talked to the family members of the victim, local people, Officer in Charge of the Boalia police station and hospital authorities.

According to Nazrul Islam, brother-in-law of the victims Sohel and Jewel, Azizur Rahman Sohel (26) is student of the Mathematics Department of Rajshahi College and Atiqur Rahman Jewel is studying Islamic History at the University of Rajshahi. Both of them are second year graduate students. They run a private student hostel in their own residence in Nerala at the Barnaly Circle of Rajshahi town. On July 16, 2005 Abdur Rashid of Chardharmapur village of Bhaolarhat upzilla under Chapainawabganj district came to rent a place in the hostel. He paid Tk. 500 as the monthly rent of a seat in the first floor and Tk. 500 as advance. On July 25, 2005 Rashid along with some musclemen demanded the advanced money (Tk. one thousand) back saying that he would not be staying there. On this issue, he had an argument with Jewel and Sohel.

On July 27, 2005 at around 9.30 pm Sohel was standing on the culvert near their house and talking into his cell phone. Suddenly police came and started slapping and beating him. Seeing that, his younger brother Jewel came forward to rescue him from the police. Police SI Hafizur Rahman ordered the other officers to catch Jewel as well. Police beat, slapped and kicked them

both and took them to the Boalia police station in a police van.

Next day, on July 28, 2005 after going to the police station Nazrul Islam came to know that Abdur Rashid had filed a case against Sohel and Jewel. He found his brother-in-law unconscious in the police station. Later they were shifted to ward No. 6 of the Rajshahi Medical College Hospital. After becoming physically stable, they were taken to the police station but there they fell ill again. At around 12 pm they were shifted to ward No. 6 of the Rajshahi Medical College Hospital. Nazrul commented that due to physical torture by police, Jewel had lost his mental stability.

Md. Masud, elder brother of Jewel and Sohel told Odhikar that police tortured his brothers on July 27 after taking them to the police station. Quoting one of the victims Sohel, he added that after taking them to the police station, police at first kept them in lock up. After 12 am, they took Sohel to another room where SI Hafizur beat him with a rough wooden stick. After that they took Jewel to another room and beat him severely. At around 3 pm, SI Hafizur tied the eyes of Sohel and took him to a room where he was given electric shock to his fingers. SI allegedly said "You behaved impolitely with the police and I will kill you both." Police also allegedly gave electric shocks to Jewel. Masud added that the police was influenced by the false case filed by Abdur Rashid and tortured his two brothers. Lying on a hospital bed, Jewel became scared because of police threats to kill him in crossfire. Doctors informed Masud that Sohel's liver function might have been damaged. On August 01, Sohel and Jewel were produced in court, which, refusing bail for them, ordered them to be put in jail custody. On August 02, Jail authorities were ordered to send Jewel to the Pabna Mental Hospital. "Before arrest, both of my brothers had sound mental health", Masud added.

Neighbour of the victims, Sufia Begum, told Odhikar that on July 27, police came and started beating them (Sohel and Jewel). They were taken to the Boalia Police Station and when they were under treatment in Rajshahi Medical College Hospital she visited them and saw marks of torture on them.

From the source at Rajshahi Medical College Hospital, Odhikar came to know that on 28 July 2005 at around 8 am, police brought Sohel and Jewel to hospital and took them back after they had slightly recovered. On the same day, they were brought again at around 12 pm and got admitted in ward # 13. On condition of anonymity, the hospital authorities informed Odhikar that when the two brothers were brought in, they were severely sick and signs of torture were found all over their bodies. They were released from hospital on 1 August 2005.

Officer-in-charge of Boalia police station, Aslam Iqbal, informed Odhikar that a person named Abdur Rashid filed a case (Case No 38, dated 27/07/05, sections 386/323) against Sohel and Jewel on 27 July 2005. Accordingly, a police force led by SI Hafizur Rahman went to arrest them from their private dormitory, Nirala. He claimed that when informed about the case, Sohel and Jewel started misbehaving with police. At one stage of the wrangle, they got involved in a physical fight with police. Police then beat them with their brothers and arrested them. After bringing them to the police station, both the brothers got sick and were admitted to hospital on 28 July. He categorically denied any allegation of torture of the two brothers by police. He informed Odhikar that during the arrest, they had some physical tussle with police, which might have been responsible for their subsequent illness. For assaulting police, they filed a case (case # 39, sections 332/333/353) against the two on 27 July 2005.

Torture of a Political Activist by Police in Rajshahi

On 6 August 2005, Odhikar, came to know from its human rights defender in Rajshahi, of the torture of a Jubo League (youth front of the opposition Awami League) leader in Bagmara police station. Odhikar conducted fact-finding of the alleged incident.

It has been revealed that on 31 July 2005, a quarel over a petty matter (beating of a goat) took place in the Akkelpur village of Ganipur union under Bagmara police station. Several houses were ransacked and a case (number 1, Section 326 of Penal Code) was filed by Abdur Razzak of the same village against 12 accused persons in Bagmara polis station. The main accused in this case was Jamaluddin who was Organizing Secretary of Ganipur Union Jubo League. On 4 August 2005, Jamaluddin went to the local Madariganj Bazaar. When coming back home after shopping, he was arrested by SI Mizan of Bagmara police station. As soon as he was arrested, SI Mizan started beating Jamaluddin ruthlessly. After taking him to the police station, he was again beaten by police several times and got seriously wounded. The next day, the matter was brought to light and local people took him to the local health complex.

Jamaluddin told Odhikar that on 4 August 2005 when he went to Madariganj Bazaar, SI Mizan told him that a case had been filed against him. He started slapping him and beating him with a stick in front of the people. Then he was taken to the police station in the evening and there he was beaten several times by police. His left wrist, fingers, and both feet were broken. He became seriously ill and was taken to Bagmara Health Complex the next day. After getting released from there, he has been absconding. In fear of losing his life due to police threats he took medical treatment from other private clinics. He alleged that when he was beaten in the police station, the complainant of the case. Abdur Razzak, Besharot and local BNP leader Sultan Shah were there. He also alleged that those people paid bribe, to the police for beating him.

Jamaluddin's wife Josna Banu told Odhikar that she was being threatened by complainants of the case after her husband Jamal had absconded. They were even threatening her daughter. She complained that she had to spend time in panic among people who were mostly supporters of the ruling BNP party.

Local BNP leader Sultan Shah told Odhikar that he went to the police station on that day for a personal matter and was not aware of the Jamal incident. He denied allegations of his involvement in the torture of Jamal. He also claimed that he was a small businessman and had a good reputation in the locality.

SI Mizanur Rahman of Bagmara police station said to Odhikar, "I arrested Jamal from Madariganj Bazaar as an accused in a case and took him to the police station." He admitted slapping Jamal after arrest but denied any further beating or torture on him. When asked who beat Jamal, he avoided a direct reply. When asked why Jamal was admitted in the local health complex, he expressed his ignorance.

Considering the circumstantial fact, it has been inferred by some locals that local political rivalry may have played a tacit role in the arrest and torture of Jamal, because Jamal was a witness in another murder case, where the key accused belonged to the ruling BNP. Workers of the local BNP filed the case against Jamal over a trifle matter just to prevent him from give witness in another case where BNP workers were involved.

Allegation Against Police of Killing a Political Activist

On getting informed on 20 August, from national newspapers of the death of a political activist by police, Odhikar conducted a fact-finding of the incident and talked to the family of the victim, local inhabitants, police and hospital authorities.

The victim, Suman Ahmed (26) was the second of nine children of Abdul Malek of Shahidnagar, Lalbagh, Dhaka. He was general secretary of ward # 60 of the Volunteers League, an associate organization of the opposition Awami League. He was married and had a son. According to his wife Doly Begum (20), Suman and his family were sleeping at home in the evening of 18 August. At around 1 am, police knocked at their door. Sensing police presence, Suman went out through the window of their first floor room. His wife opened the door and police made a search inside their house. Suman's wife saw two informers, Nirob and Sayeed, with the police. Nirob took the police force to the back of the house. After a while, police left and she and her brother-in-law Suzan started looking for Suman. Suzan climbed up to the roof of the two-storied building in search of his brother and after a while shouted from there, "Suman bhai is lying here." She rushed there and found Suman's body stuck between the roofs of two houses. An electric wire was lying over his body. Suzan took the dead body out of the gap. She further said that police informer Nirob had come to their home that noon, had lunch with them and demanded Taka 10 thousand from Suman. Suman refused to pay that and this is why Nirob killed Suman with help from police.

Younger brother of the victim, Suzan, told Odhikar that on the same night at around 1 am, he heard some loud voice and coming out of his room, he found his sister-in-law (Suman's wife) talking to police. He listened to Nirob, police informer, telling someone over a cell-phone that Suman had died. After police left, they started searching for Suman and found him lying on the roof of their house. He found an electric wire over Suman's body. He removed the wire and brought down Suman's body. They took the body immediately to Dhaka Medical College Hospital where the on-duty physicians declared Suman dead.

Suman's father Abdul Malek told Odhikar that he came to know of Suman's death after Suman was taken to hospital. He further said that Suman, as general secretary of ward # 60 Volunteers League, observed the death anniversary of Bangabandhu on 15 August 2005 with a big arrangement. He is of the opinion that after that event, local BNP leaders killed Suman through SI Mahfuz, SI Atiar and police informer Nirob of Lalbagh police station.

A local grocery shop owner, Abdul Kader, told Odhikar that at around 12.45 am that evening, three plain-clothes policemen came to his shop and told him to close it. He immediately closed his shop and went back home. After a while, on hearing loud voices, while having dinner, he came out of his house and came to know that Suman's condition had become critical due to a massive electric shock and he had been taken to hospital.

Suman's arresting officer, SI Mahfuz, told Odhikar that police went to Suman's house on the evening 18 August to arrest him with an arrest warrant. Suman's wife opened the door of the house and after searching, they found that Suman had fled. Then he and his police force returned to the police station. The next morning, he came to know that Suman had died. SI Mahfuz further informed Odhikar that a few cases were filed against Suman, but he could not tell the

number of those cases or the laws under which they were filed.

A case of unnatural death (number 22, dated 19/08/05) was filed in Lalbagh police station by Suman's father Abdul Malek. The investigating officer of the case is SI Hafizul Haque Prophan. When contacted, he told Odhikar that an investigation was going on and refused to give any information on the findings. He added that the finding of the investigation would be dependent on the findings of the post mortem report.

Suman's post mortem was done in Dhaka Medical College Hospital from where it has been gathered that Suman died due to an electric shock, not due to any torture.

Allegation of Involvement of a Police Officer Behind the Killing of a College Student in Dhaka

On 14 September 2005, there was a newspaper report titled "Killing of College Student Kamrul Islam Momen: Allegation of Involvement of Rafiqul Islam, the officer-in-charge of the Motijheel Police Station." Odhikar conducted a fact-finding of the incident and talked to local inhabitants, relatives of the victim, Kafrul police station officers and high officials of the police department.

Father of the victim, Abdur Razzak informed Odhikar that they lived at 155, North Ibrahimpur under Kafrul police station. The number of his neighboring home was 154 owned by Rafiqul Islam, the officer-in-charge (OC) of Motijheel police station. He bought that piece of land 5/6 years ago. There was no dispute between Abdur Razzak and the former owner of the neighboring land. But as soon as OC Rafiqul Islam bought the land, disputes regarding land demarcations started between him and Abdur Razzak. Abdur Razzak further stated that when he constructed a boundary wall on his own land, the OC Rafiq demolished it using some local miscreants. He alleged that Rafiq had good relations with an alleged top criminal, Taj, who very often threatened him and his sons. Taj said to them over telephone, "OC Rafiqul Islam is my elder brother, if you get into trouble with him, I will kill your whole family." Abdur Razzak further said that previously he fixed several dates to sit and to solve dispute but OC Rafiq never turned up on those days and rather continued to threaten his family. On receiving threats from OC Rafiq, Abdur Razzak complained to the State Minister for Home Affairs, Police Commissioner of Dhaka and RAB but with no result. He alleged that criminals had killed his son Momen at the instruction of OC Rafiq.

Elder brother of Momen, Saiful Islam told Odhikar that his younger brother was a third year graduate student of Management Studies at Dhaka Commerce College. On 13 September 2005 at around 7 am, he went out and after going a few yards, he was shot by criminals near house # 178. He embraced death after being taken to hospital. OC Rafiq himself, and Taj, regularly threatened them. Since OC Rafiq bought the plot next to their own home, he started demanding part of their plot. Despite repeated proposals to sit to discuss and solve the issue, OC Rafiq ignored them and threatened to acquire part of their plot. After killing Momen, he continued to threaten them to withdraw the case filed against him. In the face of continued threats Shamsul Islam, the other elder brother of Momen, filed a general diary (GD # 980) in Kafrul police

station. He further said that previously they had filed three general diaries in Kafrul police station seeking police security but got no help from them. He added that criminals not only threatened them on behalf of OC Rafiq but also demanded money from them. After the death of Momen, the other members of the family have become concerned about their own security because of OC Rafiq being the first accused in the case.

Local inhabitant, Faridur Rahman, informed Odhikar that Kamrul Islam Momen was a very gentle and modest person. He also knew about the land boundary dispute between the victim's family and OC Rafiq. He opined that due to that dispute, Momen might have been killed by criminals associated with OC Rafiq.

The second officer of Motijheel police station, SI Sharafatullah informed Odhikar that OC Rafiq has been closed and the case was being investigated by Additional Commissioner of the Dhaka Metropolitan Police Faruq Ahmed. The investigating officer informed Odhikar that investigation was going on and declined to give any information on the findings before the investigation was over. He commented that if OC Rafiq's involvement in the incident is proved departmental action would be taken against him.

The officer-in-charge of Kafrul police station Molla Nazrul Islam informed Odhikar that the victim's father Abdur Razzak filed a murder case (Case # 17, dated 13/09/05, Sections 302/34/109 Penal Code) against 26 accused persons. The main accused of the case is Rafiqul Islam, officer-in-charge of Motijheel police station. He further stated that on 14 September 2005, nine of the accused were arrested and taken into remand for interrogation, drives were going on to arrest the other accused. The second officer of Kafrul police station Nasimul Islam was investigating the case. He also said that adequate security measures had been taken to provide protection to Momen's family.

On 2 October, OC Rafiq was suspended from his position

'Mysterious' Death of a Person in Police Custody in Gaibandha.

The victim Shamsul Haque (55) hailed from village Borogobindpur of Polashbari Thana of Gaibandha District. He was married and had a daughter. He was working as a peon in the office of a construction company in Dhaka. On 9 October, Polashbari police arrested him (with assistance from Motijheel Police Station of Dhaka) from Dhaka as an unidentified accused person in connection with a case under the Woman and Child Repression Act. He was taken to Polashbari Police Station at around 11 pm the same evening. Since the court was already closed, he was kept in the police station. On 10 October, when he was about to be sent to court, he fell ill. Police took him to Polashbari Health Complex from where it was recommended that he be transferred to Rangpur Medical College Hospital for better treatment. Accordingly, he was taken to Rangpur Medical College Hospital and admitted in the medicine department there. During treatment, he died on 16 October 2005. His post mortem was done there and the dead body was handed over to his family.

Shamsul Huq's wife informed Odhikar that her brother had fled with a girl of the locality called Jannatul Khatun and got married. A case was filed in that regard by the girl's family where the

victim was made one of the accused. When police rescued both the brother and his wife from Dhaka, her husband Shamsul was also there and police arrested him. During the arrest, relatives of the girl severely beat Shamsul in front of police and brought him to Polashbari in a bad condition. His condition deteriorated there and he was transferred to hospital where he died. She further said that her husband did not suffer from any major disease and was the only earning member of the family and his death has caused the family to fall in great uncertainty. She posed the question whether the complainants of a case have a right to beat the defendant despite availability of police, a legal system and court. Other relatives of the victim commented that Shamsul was a gentle person and are of the opinion that police might have beaten him to death.

The local inhabitants were afraid of talking to Odhikar in fear of police action. Salam, Rafique and Rahim of the same village informed Odhikar that Shamsul tried to solve the incident of the marriage of his brother-in-law but alleged that police, after taking bribe from the other side, beat him to death.

SI Niren of Polashbari Police Station informed Odhikar that the victim was arrested as an unnamed accused in a case (number 25, dated 31/08/2005) of elopement filed on 30/08/2005 by Abdul Hye, father of the girl Jannatul Khatun, under the Prevention of Repression against Women and Children Act. After more than one month of filing of the case, the couple were caught in Dhaka in the house of victim Shamsul Haque. They were brought to Polashbari Police Station the same day and Shamsul Haque fell ill the next day when he was being taken to court. He was taken to hospital for treatment where he died.

The physician who did the post mortem of the victim's body in the Rangpur Medical College Hospital was on leave and could not be contacted. The physician under whose supervision the victim was admitted told Odhikar that he did not find anything unusual while treating the victim. The post-mortem report could actually show the reason for death. However, local villagers are of the opinion that the victim became ill due to police torture and died subsequently. Police asserted that the prime accused of the case was arrested and there was no reason to beat the unnamed accused Shamsul Haque.

Death of an Accused Person in Police Custody in Dhaka

On 3 December 2005, there was a newspaper report on the death of a person in police custody in Dhaka. Odhikar conducted a fact-finding of the incident and collected information from the wife of the victim, police administration, hospital authorities and local inhabitants.

According to information collected, the victim Shafiuddin (35) used to carry out a small business of collecting and selling garbage. On 3 November 2005, he joined Prince Plaza, a shopping mall in Dhanmondi, in Dhaka as a security guard. Since 20 November 2005, Shafiuddin stopped going to work. On 30 November, he did not return home. On 2 December 2005, some journalists and plain-clothes policemen informed his wife that he had died of cardiac arrest. His wife immediately rushed to the Dhaka Medical Hospital and identified her husband's body. Some plain-clothes policemen gave Taka 1000 to her with the advice to take the body home. Accordingly, she brought her husband's body back home (house No. 55/4 Mohammadpur) that evening. There were bruises on the body and the head was inflated. The victim's wife is of

the opinion that he might have been tortured to death. She informed Odhikar that her husband did not suffer from any heart problem and was never involved in any criminal activity. She alleged that plain-clothes policemen had offered her an additional Taka 2000 for cooperating with them but she refused to take the money.

The owner of Shafiuddin's house informed Odhikar that he had rented her house and lived there with his wife and one child. According to her, the victim was not involved in any criminal activity. Their economic condition was very bad and they could not pay the house rent regularly. It was also gathered that the victim did not go to work for 10/15 days before his death. Plain-clothes policemen did not allow anybody to see the victim's body. The house owner also thinks that Shafiuddin might have been killed by police. It was also revealed that plain-clothes policemen hurriedly sent the dead body to Shafiuddin's village home.

A Local human rights activist, Mehedi, informed Odhikar that police brought Shafiuddin to the police station on the evening of 30 November 2005 and produced him before the court on 1 December. The Court granted remand for three days for interrogating him and police brought him back to the police station at 6.30 pm the same day. At around 7.30 pm, when he was being taken to Agargaon Mehedi alleged that he was looking sick. Mehedi further said that the victim was not tortured in the police station but he was drug addict.

According to SI Emdad of Mohammadpur police station, there had been a robbery of a jewelry shop in Prince Plaza of Dhanmondi on 29 November 2005. The owner of the shop filed a robbery case (number 60) in the Mohammadpur police station. The investigation officer of the case, SI Ismail arrested Shafiuddin on 30 November, sent him to court on 1 December and the court granted three days of remand for interrogation. The accused was brought back to the police station at around 6.30 pm and the investigation officer took him to Agargaon at around 8 pm to apprehend the other accused. On the way, Shafiuddin fell ill and he was taken to the Sahrawardy Hospital where he died. Post mortem of the dead body was done but the report was not available. SI Emdad denied any beating of the victim. Police filed a case (number 59, dated, 1/12/05) of unnatural death. The Investigation Officer of the case SI Ismail could not be traced despite several attempts.

The Emergency Department of the Sahrawardy Hospital informed Odhikar that police brought Shafiuddin dead to hospital at around 9.30 pm on 1 December. Some signs of beating were found on his body. This was also corroborated by a source of the Autopsy Department of the Dahaka Medical College Hospital. The body was taken to the laboratory for further tests of which the report was not available till the filing of this report.

Five People Killed by Companyganj Police in Noakhali

A news report titled "Five Killed by the Police in Companyganj " was published in several newspapers on October 21, 2005. Based on that report, Odhikar sent a fact-finding team to collect information about the incident. During fact-finding, Odhikar talked to the police, administrative officials of the concerned area, local people etc.

On 20 October 2005, in Bashur Hat bazar under Companyganj Upzilla, 40 km east from Noakhali Sadar, a fuming mob came to the Companyganj police station at around 8.30 in the

morning to protest the robbery of a jewelry shop and blamed the inefficiency/negligence of police officials. Police fired on the mob, which caused the death of 5 people and injury of 15. At least 50 more people were injured due to police baton charge.

Bashur Hat Bazar was traditionally important at a famous business center for many years. A lot of people of that area work in the Middle East, Europe, America and people of this area have business relationships with relatives living in those continents. That is why their living standard is comparatively quite higher than in other parts of our country. In that Bazar there are 25/30 jewelry shops and the gold business is profitable. In the middle of the bazar there is a shop named Shilpi Jewelers. The owners of that shop run some other businesses as well.

One of the owners of the shop, Haji Taj Uddin Shahin, informed Odhikar that, like other days he shut down his shop and went home, which is on the upper floor of the shop. During the month of Ramadan, after the tarabi prayer, the shop was usually kept open till the late hours of 10.30-11pm. At around 2-2.30 am that night, one of the staff of that shop informed him of the incident of robbery and at the same time he also heard the sound of breaking windows in the ground floor. The entrance of the building was locked and when he came down to the shop, he found that the grill was broken and there was nothing in the shop. As estimated by him the robbers took 320-'bhari' gold, taka 15 lacs and the iron safe which weighed approximately one ton. The total loss amounted to Taka 50 lacs. They took everything in a minibus and fled away towards Bene Road. He ran to the nearby police station immediately, which is only 200 yards far from the shop. SI Shudhanshu Chakrabarty was on duty along with some constables.

Haji Shaheen informed the police about the incident and requested the on-duty officer to take urgent action. But the SI didn't pay attention to his request. He also requested him to use his wireless and communicate with other police stations, especially the one in Dagan Bhuyain. The SI informed that with his wireless, he could communicate only with the Majjdee police station. The SI went to the house of OC, Md. Ayub and talked to him. Haji Shaheen alleged that the police did not take any prompt action and misbehaved with him as he was insisting that they take prompt action.

After visiting the place, the SI talked to the OC and took Haji Shaheen in his van and went towards Dagan Bhuyain. Haji Shaheen informed Odhikar that if the SI informed the nearby police station, Dagan Bhuyain, Mahipal and the highway police of the Dhaka-Chittagong road, police could have caught that minibus with the robbers.

On the way to Dagan Bhuyain they stopped in a place named Dudh Mukha and asked a pedestrian about the mini bus. The pedestrian said he saw a minibus rushing towards Feni. If the SI talked to Dagan Bhuyain police station, there was a chance to catch them. But he did nothing. At around 3 pm near Dagan Bhuyain, they found some police and talked to them. At that time he talked to a pedestrian who also saw a minibus rushing along the way.

Still the SI did not contact any one. Near Mahi Pal mosque the SI took his cell phone and talked to OC Ayub. Haji Shaheen gave allegations that it was the negligence of police and if they had informed the nearby police stations and took prompt action they would have caught the robbers.

The next day, OC Ayub said to the Secretary of the Bashur Hat traders association, Aftab Ahmen Bachhu, that if Haji Shaheen filed a GD in the police station then he might rescued the stolen

goods. On his comment, the traders became suspicious of the OC's probable link with the incident of robbery.

As it was the month of Ramadan, most of the people of that locality learnt about the incident during the time of Sehere and during the Fazar prayer when they gathered in the mosque and burst into anger against the OC. Two similar incidents took place before and the OC did nothing. At first the traders assembled in the market. Getting this news, the UNO of Companiganj, Md. Zafar Alam, came to the place and after investigating the spot requested the angry mass to have patience.

At around 8.30 am, thousands of people gathered in front of the police station and protested the robbery incident. Traders stated that the police charged on them with batons and beat them with sticks on the order of the OC. They also fired some blanks.

Farmer Nando Mohan Killed by Police in Thakurgaon

From the human rights defenders of Thakurgaon, Odhikar came to learn of the death of Nando Mohan and sent a fact-finding mission there to collect information regarding the incident leading to his death.

Nando Mohan Kalthu Barman was an inhabitant of Sharali village under the sadar thana of Thakurgaon district. He was a farmer. His family included wife Shefali, daughter Motika and two sons Parimol and Santosh Barman.

His wife informed Odhikar that on November 22, 2005 her husband Nando went to Shibganj for some family affairs and did not return alive.

Jadab Barman, brother in law, of Nando said that Nando was shot by police, when there was a clash instigated by a land dispute. To learn of the facts of the matter more clearly he narrated the history of that land dispute.

In Thakurgaon there was a lawyer named Jonaki Lal who was residing there before liberation of the country. His son Jotish Roy, who was clinically insane, left home and never returned. Grand daughter and son in law of Jonaki Lal are still living in that locality. Mr. Lal had property of around 66 acres in Sharali, East-Parpugee and 293 dag (location of land) in two other *mouza* (location of land). During his lifetime he sold 52 decimals of land in Sharali village and went to India in 1967. The rest of his property was taken care of by his daughter Beena Pani Roy and her husband. Later they gradually sold most of the property. A few portions of the property are still in the possession of Joydev Barman, son of Thebendro Nath Barman.

In 1967, a lawyer named Ishak took possession of the house of Janaki Lal built on 14 decimals of land. Through an exchange deed, he also claimed the ownership of the 66 acres of land owned by Mr. Lal. However, claiming it illegal, Beena Pani Roy and Thebendro Nath filed a case against him the same year. They won a decree in their favor in 1974 and the case was shifted to the higher court.

In 1993, Ishak got a judgment regarding the exchange deed in his favor. In 2005 the case was again transferred to the local court and he got a judgment in his favor. According to that

judgment, Fazley Rabbi Chowdhury, son of Ishak, claimed the property. By that time Mr. Ishak had expired and during his life time though the case was going on, there was no dispute over the land. However, when Fazley Rabbi tried to take possession of the land, by that time the land was already transferred through several owners and divided by ownership. It is now now under the possession of Hindu and Muslim families.

When both the parties claimed the ownership/possession of the land, the District Commissioner of Thakurgaon, appointed Monjur Alam Prodhan, Assistant Commissioner (land), as a receiver of the crops for proper distribution among the possessors November 14, 2005.

The receiver announced on November 21, 2005 that the crops of those lands would be sold in auction. On November 22, 2005 when he came there with a police force, farmers gathered around. The receiver thought that they were going to be attacked by the crowd and he panicked and ordered police to open fire on them. Nandu was passing by that place and died on the spot, hit by a bullet.

After that, AC (land) filed a case against 22 accused persons and 500/600 unnamed persons on the grounds of creating obstruction in a public function. On the other hand, the family of Nandu also filed a case against the OC, Roushan who was responsible for the shooting. Odhikar tried to talk to the receiver, Monjur Alam Prodhan, Assistant Commissioner (land) but could not contact him. One of his colleagues told Odhikar that they had the plan of coming back if farmers would obstruct in the cutting crops. But as the crowd of farmers were about to attack them, the situation turned worse, which forced the AC (land) to order open fire. He declined to say anything more.

Advocate Balorum Guho Thakurta, Secretary of the Hindu, Buddha, Christian Trust, is one of those who were taking the side of Nandu. He told Odhikar that the land dispute was going on for a long time. He added that the way Fazley possessed the land was completely illegal. His strong influence on the administration caused the death of Nandu. After his death they wanted to organize a protest procession but failed to do it in the sadar district, as the administration did not give them the permission to do so. He also demanded a judicial inquiry into the incident.

Indiscriminate Police Firing on a Crowd in Kushtia

The incident of police shooting, causing the death of three persons, including a school student on 29 December in Doulotpur of Kushtia was reported by an Odhikar human rights defender. Odhikar did a fact-finding mission and collected information from the family of the victims, injured persons, witnesses, local people's representatives, influential people, government people and other concerned.

Bakul Mandal (40), father of killed school student Ratan (17), informed Odhikar that his son was coming back home after attending lessons with a private tutor that day. On the way, he became a victim of indiscriminate shooting of the police. He claimed that Ratan was not involved in the clash between the villagers and the police.

Rina (22), wife of another victim Azam Ali, informed Odhikar that her husband was not involved in the clash, he went there in search of his son and was shot in his stomach by a stray bullet.

Family members of another victim Mizanur Rahman (23) were not found at home during fact-finding. Victim's uncle Mantu Mandal informed Odhikar that the victim's mourning parents went to Rangamati to stay with their another son there.

One of the injured victims, Abul Kashem (45) described the incident to Odhikar. According to him, farmers are legally bound to sell sugarcane to the sugar-mill but due to negligence and mismanagement of the sugar-mill authorities, farmers had to crush sugar-cane themselves. On 28 December at around 11.30 am, a group of police led by a magistrate came to Gaccher Deoar village and took away the cane crushing machine of Akhter Mandal. Then they went to seize another crusher machine from the Bhurka Para village. The owner of that machine, along with 12/13 people, requested police not to take away the crusher machine. In response, Police initially lobbed tear gas and shot rubber bullets at the crowd and then shot at them. Victim Abul Kashem was shot in his left leg. 12/13 people were also injured by rubber bullets, it has been gathered.

Sabur (20), another injured victim was hit by rubber bullet in his left leg and back, Gias (22) was shot in right hand and hit by rubber bullet in his left hand.

One of the witnesses of the incident, Azizur Rahman (35) said that he also went to request police not to take away the crusher machine of Akhter Mandal but in response, police pushed him on the ground and beat him. Then villagers from the Gaccher Deoar village and villagers from the Bhurka Para village attacked police from the north and the south sides. Clashes started between police and the villagers and police started retreating.

Another witness Bulbul (26) added that when the villagers from both villages were advancing towards police, they were pelting stones which forced police to lob tear gas in response. When police started retreating from the spot, the villagers burnt a fire in front of the police convoy and cut the tire of the last lorry of the convoy. Then police started shooting rubber bullets and receding towards the west. Villagers started pelting stones on the police and tried to snatch back the crusher machines. At that point, police started shooting on the crowd, which caused the death of Azam and Ratan and subsequent death of Mizan in hospital. Five other people, including a child were also shot at. Police left the spot through haring bone road.

Another witness Tazul Islam (30) informed that indiscriminate police firing caused the death of a cow and the severe injury of a nine year old child who is on death bed in hospital. He commented that police could discuss with villagers but instead, they opted for harsh measures. According to another witness Mohsin (65), villagers became so violent that police could not leave the place without firing on the crowd.

A local political leader Abdul Bari said that the long-time negligence of the sugar-mill authorities towards the farmers made them aggrieved. The sugar mills have a legal right to collect sugar cane from the farmers and farmers have corresponding right from the mill authorities, he added. Mill authorities did not help the farmer in getting loans, other permits or sugar cane collection lists, but prohibit the use of crusher machines when farmers do that. A local government member Ramzan Ali commented that if police could pay heed to farmers' appeal of not taking away the crusher machines, the situation would not have deteriorated.

The officer-in-charge of Doulotpur police station Abdul Hye Sarkar informed that two other incidents of clash on the same issue between police and villagers took place on 22 November and 5 December. Two separate cases were also filed on those incidents. But on the December 28 operation, they were not aware before, he claimed. This was planned by magistrate and district

police and police station simply took part in the operation, he added.

The post mortem of the deceased was done by Assistant Registrar Dr. Motaharul Islam in Kushtia General Hospital. He denied to tell anything about the cause of death of the victims.

The Magistrate Abdul Aziz Mia, who ordered to shoot at the crowd, after describing the incident, commented that when the villagers became violent and were about to attack, the police force started to retreat. But there was no sufficient space for turning around which forced them to take to the paddy fields. Then villagers surrounded them with sticks and machetes and started throwing stones at them. Police then lobbed tear gas to disperse them. But the crowd became a violent mob and they burnt a fire and cut tires of a police lorry. Police then fired 69 rounds of rubber bullets. Ten policemen were injured. The magistrate himself got injured on the right side of his face and his leg. Failing to bring the situation under control, he ordered to open fire on the crowd. He claimed that without doing so, it was not possible to save life and property.

The District Commissioner of Kushtia, Jamal A. Naser Chowdhury also commented that the magistrate instructed to shoot as last resort. He further stated that a one-member investigation commission comprising of Additional District Commissioner M A Ahad has been formed and the commission has started working. The commission has been instructed to submit its report in week. Executive investigation would also take place, he added.

It has been revealed that the clash between police and local villagers is nothing new in the area. Inefficiency and negligence of the sugar mill authorities are responsible for this. They do not provide permits regularly to the farmers or develop any list for supply of sugar cane to the sugar mill. Uncertainty in sugar cane collection forces farmers to crush sugar cane illegally.

Two cases have been filed in this regard. The case particulars are:

⇒ case # 25, plaintiff Habibur Rahman, Manager sugar cane collection, Jagti Sugar Mills, Kushtia, Sections 143/341/332/333/353/307/427/34 Penal Code, dated 28/12/05, specific accused 13 and unknown accused 250-300.

⇒ case # 26, plaintiff Babar Ali, Gaccher Deoar, Section 326/302 Penal Code, dated 28/12/05

Murder of Two Young Men in Khulna

On 26 November, Odhikar received information from the local human rights defender in Khulna regarding the death of two young men by police in Khulna. Odhikar did a fact-finding of the incident and talked to family of the victims, local journalists, police administration and inhabitants.

One of the victims was Bulbul Haoladar (30), son of Ismail Haoladar (60) and Aleya Begum. The mother and younger brother of Bulbul told Odhikar that Bulbul was unmarried. He had a video shop business near Hotel Alishan in Goborchaka area of Khulna. According to them, on 22 November, at around 11 am, a group of plain-cloth policemen, identifying themselves as detective police, came and took Bulbul away in a microbus. For the next two days, his family members could not trace him despite a rigorous search. On 25 November, at around 9 am, police from Sonadanga police station came and informed them that the deadbody of Bulbul was found lying behind Khulna Medical College. Bulbul's family members immediately rushed to the spot and found the body there. Bulbul's brother Jewel informed Odhikar that they found a group of

police led by SI Emdadul Huq of Sonadanga police station at the spot. SI Emdad did an inquest of the dead-body and sent it to the Medical College Hospital for autopsy. Jewel commented that looking at the dead-body, anybody could guess that he was tortured. Victim Bulbul was very handsome but his back was found broken and inflated. Cuts were found on his face. Signs of hanging were clearly visible on the neck, two arms were found broken, spots of injuries were found on the right leg and toe.

Alem, journalist and friend of victim Bulbul, told Odhikar that he saw Bulbul waiting in the room of duty officer of Sonadanga police station in the afternoon of 23 November but could not talk to him due to his pre-occupation. When he came to know of Bulbul's death, he became surprised. He added that personally Bulbul was a modest and simple man and he had no dispute with anybody. He used to live a very simple life. Alem opined that police might have killed him due to some grievances.

A neighbouring businessman, Khalid informed Odhikar that he was staying in his shop when 4/5 people came in a microbus and started looking for Bulbul. Initially Bulbul did not pay heed to them. When they started using abusive language and identified themselves as detective police, Bulbul came out of the shop. The plain-cloth police dragged him out by holding him by his collar and took him to their vehicle.

His mother told Odhikar that Bulbul was never involved with any political party. He was calm and peaceful by nature and had good relations with local people. She thinks that her son was not killed for any personal conflict with anybody. She stated that in the afternoon of the same day, an anonymous person called over telephone and demanded Taka 10 thousand in exchange of release of Bulbul. She is of opinion that it was police who killed her son for not getting money demanded from her.

Some neighbours of victim told Odhikar, on condition of anonymity, that Bulbul was an active worker of an outlawed underground political party 'The Sarbaharas'. They think that he might have been killed due to internal conflict of the party.

SI Emdadul Huq of Sonadanga police station informed Odhikar that he himself did the inquest of Bulbul's dead-body. He stated that Bulbul was an active member of the Tapan Group of the banned underground extremist organization 'Janajuddha'. He further opined that another person named Asim Kumar (28), whose deadbody was also found, was member of the same group and both of them were killed due to inner conflict of the group. Odhikar did not find anybody at the address of the other victim Asim Kumar.

Dr. Syed Mahbub Hafiz of the Forensic Department of Khulna Medical College Hospital informed Odhikar that both the victims died due to injuries caused by beatings. Autopsy reports were yet to be finalized till this fact-finding. It has been gathered that a case (number 6, section 304 of the Penal Code) of unnatural death has been filed in this regard.

Annexture: 2

Country Papers that were presented
at the Discussion Meeting

Victims and witnesses protection: Some preliminary thoughts

By Jesmul Hasan*, Bangladesh

A victim means a person who has, directly or indirectly, suffered harm, physical or mental, or to his/her property, as a result of commission of any offence/crime punishable under the law of the State. Victims do not include individuals only it may include organizations. A witness is the person before whose eyes the offence takes place or who has information or knowledge of the offence and is ready to testify about it before any court or investigating authority.

Victims and witness protection for administration of justice

Providing protection to victims and witnesses of a crime is important for ensuring administration of justice. Administration of justice means upholding of 'right' and punishment of 'wrong'. A victim is a person whose right is violated by a wrong committed by an offender. Both victims and witnesses play important role in administration of justice. Upholding the rights of victims is done by trial and adjudication of the offence. But what happens when the trial goes on and final adjudication takes time? During this period, providing protection to victims and witnesses is important. A victim has already been wronged once for which trial of a case takes place. However, before that, if there is apprehension that victim might be wronged again during trial, extending protection to him/her is part of the total process of administration of justice. According to the definition provided by Salmond, administration of justice means maintenance of right within a political community by means of force of the State. What does it mean by maintenance of right of a person whose right has already been violated? It means returning to the victim his/her right either directly or providing him/her compensation or punishment of wrong done against him/her. During the process, the victims and witnesses may be in the face of further vengeance from the wrongdoer. That is why providing protection to them is important for ensuring administration of justice.

In modern States, justice is administered by courts according to law. If the law of the land does not provide protection to victims and witnesses, courts do not have options to ensure protection to victims and witnesses. Here comes the issue of protecting victims and witnesses for de facto rule of law.

Victims and witness protection for rule of law

According to A.V. Dicey, rule of law means (1) absence of arbitrary power i.e. no man is above law; (2) equality before law i.e. every man is subject to law and jurisdiction of courts; (3) individual liberties. If the law of the country does not provide protection to victims and witnesses, that law cannot ensure individual liberties as an element of rule of law. If the perpetrator or offender of a crime remains beyond the hands of law and/or jurisdiction of courts

and continues to harm victims and witnesses of a crime, arbitrary power prevails and as such, rule of law is absent. By rule of law, Professor Wade prefers the connotation of law and order within community rather than anarchy or disorder. Thus if a rape victim in a community is continuously threatened by perpetrators not to file a case in a police station and she does not find protection with police, can it be said that rule of law exists in that particular community? In interpreting the concept of rule of law, Professor Wade adds that judicial decisions in disputed cases are important for rule of law and declared rules of law should provide in matters both of substance and of procedure. Thus even if the law of the land does not have provision for protection of victims and witnesses, it is the judiciary which can, by taking into consideration of particular circumstances and by its judicial interpretations/decisions ensure such protection to ensure de facto rule of law.

Human security perspective of victims and witness protection

Unlike traditional concepts of security, which focus on defending borders from external military threats, human security is concerned with the security of individuals. For some proponents of human security, the key threat is violence; for others the threat agenda is much broader. In a legal and prosecutorial perspective, victims and witnesses need to be protected for their survival and participation in the prosecution

Why survival? Survival is a right

According to Article 3 of the Universal Declaration of Human Rights (UDHR), everyone has the right to life, liberty and security of person. This provision speaks of survival rights of victims and witnesses. If victims and witnesses do not survive and die due to post-offence vengeance of the offender/perpetrator, it amounts to violation of their rights for a second time.

Why participation? Participation is a right

If security of victims and witnesses is at stake, they cannot take part in prosecution of the offender. They are supposed to produce evidence and give testimonies against the offender. Proper trial of any offence requires participation of victims and witnesses in prosecution. Their evidence is the best evidence and may be the only evidence against the offender, so their protection is essential. This has been asserted in the Universal Declaration of Human Rights (UDHR), which states in its Article 10 that "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of the rights and obligations..."

Human rights perspective of victims and witness protection

Right to protection of law is a fundamental right of victims and witnesses. Article 31 of the Constitution of Bangladesh ensures this right by stating that enjoyment of the protection of law, and to be treated in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

Victims and witnesses, like common human beings, have universal inherent right to protection. As stated in Article 12 of the Universal Declaration of Human Rights (UDHR), "no one shall be

subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation". Everyone has the right to the protection of the law against such interference or attacks.

When should protection be given?

Generally, victims and witnesses need to be provided with continuous protection in three stages of prosecution:

Investigation/pre-trial stage

Immediately after an offence is caused, victims and witnesses need protection. They may be passing a traumatic stage, which is a vulnerable time for them. An offender may have a continued grudge against victims or may develop a new grudge against witnesses. This phase starts with the making of a first information report and ends with the filing of a charge sheet. The act of filing a charge-sheet may anger the perpetrator of the crime, who has been intimidating the victim and witnesses in order to make them stop proceeding with the matter. This stage is crucial because police try to unearth facts and evidence during pre-trial/investigation stage. Physical security and psychological counseling for the victim and also for witnesses are essential during this time. Preventive measures need to be taken to check recurrence of offence.

Trial stage

During this stage, facts and supporting evidence are produced in court and victims and witnesses participate in the prosecution. To thwart the trial process, the offender may try to bar the participation of victims and witnesses. Security of victims and witnesses is important to protect them from other obstructions of trial. In case of non-bailable offences, the under trial offender/accused is put in jail, which is a protective measure for victims and witnesses. But accomplices of behind-the-bar offenders/accused might cause further harm to victims and witnesses during the trial period.

Post-trial stage

This stage is comparatively less dangerous for victims and witnesses than the other two stages. However, this period is not totally risk free. A convict may, out of vengeance, attempt to cause further harm to victims and witnesses either directly or through accomplices. So protective measures for victims and witnesses need to continue up to a certain period of time after the trial ends. Repatriation and rehabilitation are also part of post-trial protection of victims and witnesses.

How to ensure protection for victims and witnesses

A political State has three organs in executive, legislature and judiciary. Responsibility for ensuring protection to victims and witnesses lie with all these organs.

Role of the Legislature

Bangladesh does not have any specific distinct legislation to provide protection to victims and witnesses. A few criminal laws have inadequate provisions to provide protection to witnesses, but not to victims. In the background of the increasing number and diversified kinds of crimes, victim and witness protection legislation needs to be enacted urgently. Many of the rural people,

either victims or witnesses tend not to file cases or refrain from giving witness/evidence in court due to fear of reprisal from the offender/perpetrator. It is the responsibility of the legislature to enact relevant law in this regard to protect victims and witnesses and to create environment for them to get access to justice.

The Role of the Executive

The key role of the executive organ of the government in victims and witness protection is to arrange all necessary measures to ensure security. Police force is under the jurisdiction of the executive and as such has the main responsibility to provide protection to victims and witnesses.

Police in Bangladesh are largely insensitive to the plight of victims and witnesses of crime. Limited physical resources and inappropriate deployment of human resources to other areas of policing further constrain police capacity in this regard. Isolation from the community, gender bias, inadequate training, poor supervision and lack of accountability are some other reasons for police being unable to provide protection to victims and witnesses.

Lack of understanding by police of psychological trauma, absence of adequate support mechanisms- particularly in the case of female and child victims and witnesses - and non-disclosure of information critical to successful prosecution lead to denial of access to justice by victims and witnesses. Police generally, but women police specifically, do not received adequate (in many cases any) training in domestic violence, sexual assault, and other offences against women that are crucial to providing relevant support services for victims and witnesses.

A number of NGOs already provide direct support services to victims and witnesses, specially in the area of trafficking and acid violence. However the police have not developed systematic and effective partnerships with such NGOs wherein police could be the referrers and NGOs the primary support givers.

Role of Judiciary

The Judiciary is the guardian of rule of law and human rights. For proper and effective administration of justice, the judiciary, despite the absence of specific laws, can, through applying its judicial mind, interpretation and independence, ensure protection for victims and witnesses. Theoretically, one of the core functions of judiciary is declaration of rights of individuals. This is done where rights of parties are uncertain. What a court does is that it gives an authoritative declaration of the rights of the person concerned. Protection of victims and witnesses can come under this purview of the court's jurisdiction.

Conclusion

Victims and witness protection is an urgent issue, which cannot be addressed overnight. It involves many facets basic to human existence and is crucial for administration of justice. Protection of victims and witnesses within a legal framework requires the application of rule of law, removal of barriers to access to justice and above all human rights concerns.

** The writer is a human rights activist*

Victims and witness protection: In search of a legal regime in Bangladesh

By Arafat Ameen*, Bangladesh

Introduction:

The efficiency of the output or the impact of the outcome of criminal cases depends, to a considerable degree, on the system of security guaranteed to the victim(s), witness(es), suspect(s), defendant(s) and the officials dealing with the criminal case. Such system becomes ineffective in cases of encroachment upon or threat to life, health or property aimed at the prevention of their obligations, their official and civic duties of fulfilling the roles that they play in the area of legal procedure.

In Bangladesh where organized crime seems to threaten national security more and more, the issues of protection of the participants in a criminal procedure/proceeding from criminal trespass are of particular importance. Finding of truth with regard to a criminal case becomes problematic due to the fact that witnesses and victims, fearing violence for themselves and their relatives, as well as direct or implied threats, avoid participation in investigation and consideration of cases.

In recent years, the growth of a number of unlawful encroachments upon life, health and property has been observed. Threats, intimidation and unlawful acts are applied towards the members of their (victims and witnesses) families. Criminal impact also takes place with regard to judges and officers of the legal machinery who investigate criminal cases.

What Is Witness Intimidation?

Witness intimidation -- which includes threats against the victims of crimes -- strikes at the root of the criminal justice system by denying critical evidence to police investigators and prosecutors and by undermining the confidence of whole communities in the government's ability to protect and represent them.

Overt intimidation, implicit intimidation, and misperceived intimidation may operate separately or in tandem. Furthermore, each instance of actual intimidation or violence against witnesses by gangs or drug-selling groups promotes the community-wide perception that any cooperation with the criminal justice system is dangerous.

Overt intimidation, because it may be publicized widely in the press or by word of mouth, may contribute to an exaggerated perception of the risk of injury. As bad as intimidation may be, the public often over estimates both its likelihood and the danger it represents. Moreover, community-wide and misperceived intimidation can be as harmful to witness cooperation as explicit threats. A public perception that the criminal justice system cannot protect the citizens of a community is as effective in destroying the ability of police investigators and prosecutors to do their jobs as any specific threat. As a result, prosecutors, police administrators, and victim/witness program administrators need to prevent all types of intimidation.

The Nature and Extent of Witness Intimidation in Bangladesh

Two forms of witness intimidation are hampering the investigation and prosecution of crime throughout the country:

- ⇒ Overt intimidation, that is, when someone does something explicitly to intimidate a witness; and
- ⇒ Implicit intimidation, or when there is a real but unexpressed threat of harm, as when rampant gang violence creates a community-wide atmosphere of fear. Most overt intimidation occurs only when there is a previous connection between the defendant and the victim, and when they live relatively close to each other.

Some traditional approaches to Witness Protection used in the developed countries

There are some traditional approaches to witness protection used in developed countries that may also be applied in our country.

- ⇒ requesting high bail to put and keep intimidators behind bars,
- ⇒ prosecuting intimidators vigorously,
- ⇒ making a conscientious effort to manage witnesses, and
- ⇒ enhancing basic victim/witness program services.

All too often, these traditional approaches are not sufficient to prevent intimidation or actual harm to witnesses, or to motivate them to testify. Nevertheless, innovative twists can make these measures more effective, and using them makes a symbolic statement that the criminal justice system takes witness intimidation seriously.

Relocating Intimidated Witnesses

The basic victim's witness protection program service - which could also be used in Bangladesh - includes provisions for relocating genuinely endangered witnesses, confidential witness relocation is the core protection service that all witness protection programs need to provide. There are three levels of relocation:

- ⇒ emergency relocation - placing the witness and his or her family in a hotel or motel for up to a few weeks;
- ⇒ short-term or temporary relocation - using a hotel or motel for up to a year or placing the witness with out-of-town relatives or friends; and
- ⇒ permanent relocation - moving the witness between public housing facilities or providing a one-time grant to reestablish the witness in new private housing.

Preventing Intimidation in Courtrooms and Jails is also required

In Bangladesh, gang members and associates of defendants often appear in court in order to frighten witnesses into not testifying. Since the threat may be very subtle and because judges often feel that the constitutional requirement of a public trial prevents them from removing such individuals from the courtroom, it is often difficult to stop this kind of intimidation.

Nevertheless, judges have to take steps to remove gang members from the courtroom, to segregate gang members and other intimidating spectators, or to close the courtroom entirely to spectators.

Incarcerated witnesses who are targets for intimidation in gang- and drug-related cases require special protection, including separation from the defendant within the same correctional facility or transfer to a nearby correctional facility, and separate transportation to court to testify.

Reducing Community-wide Intimidation

An atmosphere of community-wide intimidation, even when there is no explicit threat against a particular person, can also discourage witnesses from testifying. Prosecutors and police investigators should try to reduce community-wide intimidation through community-based policing and prosecution and other strategies.

Developing or improving the Witness Protection Program and Comprehensive Witness Security Program

Whenever possible, jurisdictions can combine the range of witness protection approaches into a coordinated, comprehensive, and formal witness security program. A witness security program should be structured carefully in order to maximize the use of shared resources, reduce prosecutor and police investigator involvement with time-consuming witness management tasks, and minimize civil liability of the prosecutor's office and police department. To achieve these goals, a comprehensive witness security model includes an organizing committee, an operational team, a program administrator, and case investigators. Formal interagency cooperation among the groups involved in protecting witnesses is essential to achieving these goals.

The Nature and Extent of Witness Intimidation: Key Points

- ⇒ Because in most jurisdictions the problem of witness intimidation has only recently begun to have a major impact on the investigation and prosecution of crime, there appear to be no steps taken by the Government that address the issue.
- ⇒ All the Prosecutors, police officers, judges agree that there needs to be an effective and comprehensive way in which to protect victims and witnesses and that witness intimidation is widespread, increasing, and has a serious impact on the prosecution of crime across the entire country.
- ⇒ Sometimes witnesses feel intimidated even when they are in no actual danger.
- ⇒ In addition to fear, a witness may be deterred from testifying because of strong community ties, a deep-seated distrust of law enforcement, or a personal history of criminal behavior.
- ⇒ Intimidation takes many forms: it may involve physical violence, explicit threats of physical violence, implicit threats, property damage, and intimidation in the courtroom or from the jail.
- ⇒ Most explicit intimidation is said to occur only when there is a previous connection between the defendant and the victim and they live relatively close to each other.
- ⇒ Intimidation is most likely to occur between arrest and trial -- especially as the trial date approaches -- but it also occurs frequently during the trial itself.

Gang-Inspired Fear: A Particularly Pervasive Problem

Both case-specific and community-wide fear of retaliation are often fed by the fear that incarcerated gang members will return quickly to the community after serving brief sentences or will be able, from behind bars, to arrange for friends or family members to threaten potential witnesses. Because connections between incarcerated gang members and neighborhood gangs are often uninterrupted, most witnesses no longer feel that imprisonment of the defendant pending trial, or even after conviction, can ensure their safety in the community.

The mere fact that a crime is gang-related can be sufficient to prevent an entire neighborhood from cooperating. This type of community-wide intimidation is especially frustrating for prosecutors and police investigators because, while no actionable threat is ever made in a given case -- thereby precluding conventional responses -- witnesses and victims are still discouraged from testifying.

Fear Is Not the Only Reason Witnesses Do Not Testify

It is argued that fear is only one of several factors that may deter witnesses from testifying; strong community ties and a deep seated distrust of the criminal justice system can also be formidable barriers to cooperation. Many of the communities in which gangs operate are worlds unto themselves -- places where people live, attend school, and work all within a radius of only a few blocks beyond which they rarely venture. As a result, victims and witnesses are often the children of a defendant's friends or relatives, members of the same locality as the defendant, or classmates or neighbors. Furthermore, community residents may regard many of the crimes for which witnesses are sought as private "business matters" among gang members or drug dealers, rather than as offenses against the community which should inspire willing civic participation in the process of law enforcement. To many, the police are "outsiders" who do not understand or care about their problems.

At the same time, most of the key witnesses who need their protection in gang- and drug-related cases are themselves "bad guys" -- or, as is often said, "today's witness is tomorrow's suspect." Some witnesses are even said to be "commuter victims" -- drug dealers and gang members who were on their way to committing a crime when they were victimized. These individuals are often unwilling to testify, not necessarily because they fear retaliation, but because they want to avoid any contact with the criminal justice system if there are (real or imagined) outstanding warrants against them, if they think they might be arrested for having broken the conditions of their release, or if they have developed a lifelong dislike for and mistrust of police officers and prosecutors.

It is also observed that many members of some minority and ethnic groups avoid cooperating with the criminal justice system for cultural reasons, including a sense of group loyalty that makes them reluctant to testify against members of their own culture.

How Serious Is Witness Intimidation in Bangladesh?

It is very difficult to ascertain the precise extent of witness intimidation because no scientific or social research has been conducted on the problem yet. However, it is agreed that witness intimidation is widespread, that it is increasing, and that it seriously affects the prosecution of violent crimes.

Intimidation - whether of an individual or a community -- may involve the following tactics

- ⇒ physical violence,
- ⇒ explicit threats of physical violence,
- ⇒ implicit threats,
- ⇒ property damage, and
- ⇒ Courtroom intimidation.

Attempts by gangs or drug dealers to promote community-wide non-cooperation may include the public humiliation or assault, or even execution of victims or witnesses (or members of their families), as well as isolated public acts of extreme brutality that, intentionally or unintentionally, terrify potential witnesses.

Explicit Threats of Physical Violence

A high incidence of threats of physical violence against victims, witnesses, and their families is present in the society. Threats are much more common than actual violence but the threats were often just as effective in deterring cooperation because in gang- and drug-dominated communities these threats are credible. Threats against a victim's or witness's mother, children, wife or other close family member were cited as being particularly effective forms of intimidation.

Indirect Intimidation

Another common form of intimidation, reported in almost every jurisdiction, involves indirect intimidation, such as gang members standing outside a victim's or witness's house, nuisance and threatening phone calls, scaring the victims or witnesses children and vague verbal warnings by the defendant or his or her associates.

Property Damage

Only slightly less common than the other types of intimidation described above is intimidation involving the destruction of property: fire-bombing, burning of houses, hurling bricks through the window of home, and other types of violence.

Courtroom Intimidation

Another common form of intimidation occurs when friends or relatives of the defendant direct threatening looks or gestures at a witness in the courtroom or court premises during a preliminary hearing or a trial. Court packing by supporters of the defendant or gang members is a particularly effective form of intimidation. Gang members or supporters or friends of the defendant may demonstrate solidarity with the defendant -- and make clear their readiness and ability to harm the witness. If judges and prosecutors do not understand the meaning of certain gestures or other nonverbal threats, they may fail to address these explicit attempts to intimidate the witness. In other cases, the judge may be aware of what gang members are doing but feel that ejecting these individuals from the courtroom would violate their right to freedom of expression or the judiciary's duty to provide an open trial.

Other Forms of Intimidation

Less common forms of intimidation include economic threats (in domestic violence or fraud cases) and threats concerning the custody of children, deportation, or the withholding of drugs from an addicted victim or witness or from addicted members of his or her family.

Some reasons for recent Increase in Intimidation:

- ⇒ a profound lack of respect for authority,
- ⇒ the expectation that their own lives will be brief or will be lived out in prison,
- ⇒ a sense of powerlessness and social inadequacy that can lead to the formation of gangs or neighborhood crews,
- ⇒ the ready availability of very powerful firearms,
- ⇒ a willingness to use those firearms for almost no reason or in retaliation for the most minimal slight to their extraordinarily fragile egos, and
- ⇒ lastly, and ironically, the increased penalties being imposed on those convicted of violent crime, which can raise the stakes of a prosecution.

The Primary Actors in Witness Intimidation

Certain types of individuals are more likely than others to engage in witness intimidation or to be its targets.

Types of Perpetrators

It is suggested that, if witness intimidation is known to be aggressively prosecuted in a jurisdiction, the primary intimidators will most likely be the gang, family, or friends of the defendant rather than the defendant himself. Even in the absence of aggressive prosecution, intimidation in gang-related cases is rarely carried out by defendants themselves; other gang members usually take on this responsibility. Gangs may also be ruthless in their self-protection: sometimes a gang member who becomes a defendant is seen as a potential threat to the gang and is therefore targeted for intimidation or execution.

The Most Likely Targets of Intimidation

Anyone is a potential victim of intimidation; there are some factors that increase the chance that a witness will be intimidated:

- ⇒ the initial crime was violent;
- ⇒ the defendant has a personal connection to the witness;
- ⇒ the defendant lives near the witness; and
- ⇒ the witness is especially vulnerable
- ⇒ residents of gang-dominated neighborhoods often fall into more than one of these categories, greatly increasing their exposure to intimidation.

Incarcerated witnesses and juvenile witnesses are also especially vulnerable to intimidation.

Witnesses who are in jail or prison are easily identified by offenders (who may themselves be either inside or outside the facility), and because they cannot hide, they are easy prey to other inmates, including the defendants in the case at hand or defendants' associates or family members.

Juveniles are another especially vulnerable group because they are often less able or less willing to take precautions against being located by would-be intimidators, and because they are more susceptible to family or peer pressure not to testify. Juveniles may endanger themselves by contacting old friends and visiting old neighborhoods.

Despite the diversity of individuals associated with witness intimidation, most explicit intimidation occurs only when there is a previous relationship or other connection between the defendant and the victim and they live relatively close to each other.

When does Intimidation Occur?

Prosecutors and police agree that the most dangerous time for a witness is between the arrest and the trial of a defendant. Although there was some variation by jurisdiction, in general, as the trial approaches, the victim or witness becomes a more likely target, and the long trial delays experienced in most jurisdictions allow ample opportunity for intimidation. The second most dangerous period for victims and witnesses is during the trial itself.

Very few intimidation attempts are made at the scene of the crime (although violent crime is in itself intimidating) or at the time of arrest. However, in cases involving community-wide intimidation, the witness may feel endangered from the moment he or she is aware that the crime is gang-or drug-related.

Laws relating to Witness Protection in Bangladesh

The Criminal Procedure Code 1898 of Bangladesh is absolutely silent about the protection of victims and witness in Bangladesh. Furthermore, no law on the protection of witnesses has yet been enacted. In spite of the increasing rate of crimes in the country the legislators did not adopt any measures to protect the victims and witnesses. It is necessary that we should take appropriate steps to this matter. Besides that the building of an effective system of witnesses and victims protection is impossible without respective organizational, resource, information and other types of support for this activity.

** The writer is a researcher of Odhikar and advocate of the Supreme Court of Bangladesh.*

Victim and witness protection - Sri Lankan perspective

By Rukshan Fernando (Ruki)*, Sri Lanka

1. Role of Victims and Witnesses in Promoting and Protecting Human Rights:

Significance of Victims and Witness testimonies: In Sri Lanka (and generally in Asia) where the use of scientifically advanced techniques to investigate crimes and human rights violation are not so common, either due to lack of political will or ignorance of due authorities, the testimonies of victims and witnesses are all the more important.

Victims becoming Witnesses: More and more victims of human rights violations are bravely coming out to file action against perpetrators and to seek justice. In this process, they become key witnesses, and their testimonies become crucial in ensuring justice and holding human rights violators accountable.

Witnesses becoming victims: In addition to the victim's own testimony, the testimony of others is equally important in upholding the rule of law and justice. Unfortunately, more and more witnesses are also becoming victims if human rights violations for the sole reason of living up to their consciousness and bearing witness to human rights violations.

Primary role of the state: Victims and witnesses are entitled to the full protection and security entitled to all citizens under a national legal regime- in addition to the human rights obligations on the concerned state. This indeed is a minimum standard, and underlines a state's responsibility to protect its citizens under any and all circumstances.

2. Looking at victims and witnesses from the framework of Human Rights Defenders:

⇒ By virtue of participating actively in pursuing justice against human rights violations, victims and witnesses become active Human Rights Defenders.

⇒ The rights of human rights defenders and state's obligations to uphold these right and ensure a safe and conducive atmosphere for all such activities, is clearly laid out in the Human Rights Defenders Declaration. (Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms-1988)

⇒ In the light of the HRDs declaration:

⇒ Victims and Witnesses have a right to give evidence and testimony (Article 1: Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms)

⇒ Victims and Witnesses have a right to benefit from an effective remedy and protected in the exercise of the above rights. (Article 9: everyone has right to benefit from an effective remedy and to be protected in the event of the violation of those rights)

3. The Sri Lankan case:

3.1 Background:

⇒ Due to the ethnic conflict, massive human rights violations have been taking place-particularly in the war ravaged North and East of the country. These were perpetrated by state forces as well as non state armed groups. (Arbitrary arrests, Torture, Extrajudicial killings, Disappearances, Displacement etc.) The present cessation of hostilities has reduced such violations-but as the "no war-no peace" situation continues, and peace processes seem stalled, such violations continue.

⇒ Lesser known, but equally serious are the violations suffered by thousands of people in two southern insurrections, the last between 1987-1990.

⇒ Since 1977, neo-liberal and capitalist economic policies have also brought about large-scale violations of economic, social and cultural rights. Many business enterprises, transnational corporations and law enforcement authorities are behind such violations.

⇒ Since about three years ago, religious tensions have also escalated, resulting in the burning of places of worship and attempts to restrict freedom of religion through legislature.

⇒ In the past few years, a High Court Judge has been killed; staff from Attorney General's office and National Human Rights Commission have been harassed and threatened. Lawyers, media personalities and human rights defenders have also been threatened.

⇒ In this scenario, how can victims and witnesses- often ordinary, poor people be assured that know they and their loved ones will be safe?

3.2 Case studies:

i. Mr. Gerald Pereira

Police tortured Gerald Pereira in 2002. In 2003, the Sri Lankan Supreme Court awarded him record damages for this violation of his rights and integrity. On 21st Nov. 2004, Mr. Pereira was shot on his way to work, and died three days later. He was due to testify in a criminal case against the afore-mentioned policemen on 2nd Dec. 2004.

ii. Mr. Michael Anthony Fernando

Mr. Fernando has filed several cases of human rights violations by several prison guards who had tortured him, while he was in custody after being sentenced to a term of one years imprisonment on the basis of alleged contempt of court in a highly criticized judgment.

After serving his time in prison, he had received several death threats about which he complained to the local authorities as well as to the UN Human Rights Committee. On 9 January 2004, the UN Human Rights Committee, in pursuant of Rule 86 of the Committee's Rules of

Procedure, made a request to the Sri Lankan government to adopt all necessary measures to protect the life, safety and personal integrity of the author and his family members, so as to avoid irreparable damage to them. [United Nations High Commission for Human Rights Reference: G/SO 215/51 SRI (7)]

However, there was no response from authorities. In February 2004, there were attempts on his life. Mr. Fernando subsequently left the country, in view of the inability and unwillingness of authorities to guarantee his security.

iii. Mr. Mohamed Priyantha

Mr. Priyantha is a torture victim, who filed a charge of torture at the National Human Rights Commission (NHRC) and the National Police Commission (NPC), against the officer-in-charge (OIC) and a police constable from the Horana Police Station. He has been threatened and intimidated by the police in an effort to pressure him to withdraw his complaint.

Following his detention, Priyantha has consistently been receiving messages from the perpetrators demanding him to withdraw his complaint against them. A friend informed Priyantha that the perpetrators had been looking for him and that he would be killed if he continues with the case filed before the NHRC and NPA. He then filed the matter in a police station in Vavuniya, which is approximately 250 kilometers from his home for fear of his life.

Despite the charges against the perpetrators, no sanctions or restrictions have been imposed on them. In fact, they have continued to work in the same police unit where the incident of torture took place.

3.3 Key issues:

- ⇒ Victims are often threatened-during trial, before trials and even after. Even when the matter is such that the Attorney General files cases!
- ⇒ Multiple and continuing victimization-as evident in the above case studies, most victims end being end of being continuously victimized-being threatened, abused over and over again.
- ⇒ In many cases, threats to victims and witnesses target family members- and in many cases, the lives of family members, including children, are affected by threats, intimidation and harassment on victims and witnesses.
- ⇒ Victims and Witnesses are often forced to rely on protection from the perpetrators of human rights violations. In many instances, perpetrators of human rights violations continue to serve in the respective areas.
- ⇒ Police and even powerful local politicians often offer bribes to poor victims and witnesses, as incentives for not testifying and withdrawing cases against them.
- ⇒ Fabrication of false charges create frustration as well as practical difficulties for witnesses and victims, thereby making some of them either reluctant to testifying or withdraw cases.
- ⇒ Victimization by delayed court cases- including instances where witnesses travel far to

come to court, giving up their daily livelihood and other important personal matters- and end up the whole day languishing in courts, and being asked to come again.

⇒ Threats to immunity- danger of victims and witnessing not coming forward to give testimony.

3.4 Continuous requests for Witness Protection remain ignored by the government:

⇒ Based on the number of cases where victims and witnesses have been assassinated, tortured, threatened, many local and international human rights groups particularly the Hong Kong based Asian Human Rights Commission, have been urging the Sri Lankan government to establish a witness protection program.

⇒ Even the UN Human Rights Committee had stated that "The authorities should diligently enquire into all cases of suspected intimidation of witnesses and establish a witness protection program in order to put an end to the climate of fear that plagues the investigation and prosecution of such cases." (CCPR/CO/79/LKA (future) HUMAN RIGHTS COMMITTEE Seventy-ninth session).

⇒ However, all such requests remains answered to date-and there is no indication that there will be a positive response in the near future.

4. Learning from beyond South Asia:

⇒ Though my primary focus is no Sri Lanka, I believe it is useful for us bear in mind some developments on the subject beyond Sri Lanka and South Asia.

4.1. International Criminal Court:

⇒ Establishment of Victim and Witness Protection Unit within the Registry (Rome statute- article 43.6)

⇒ Emphasis on taking appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. (Rome statute- article 68.1)

Three main focuses:

- ▶ Participation in the proceedings
- ▶ Protection (Including to family members- and covers security, counseling, possibility to withholding the identity of victims and witnesses, and special attention to women and children)
- ▶ Reparation

4.2 Laws in other countries:

The United Kingdom, United States of America, Canada, and Australia all have witness protection laws. In some laws, such as in UK, threatening a witness can be considered "contempt

of court". Assistance available to victims and witnesses under these laws includes measures such as physical protection, relocation, new identity, housing, medical, job training assistance in obtaining employment and even temporary subsistence funding. The procedures for applying for such a program, criteria and processes are laid out in law. In the case of South Africa, the Witness Protection Act establishes an "Officer for Witnesses Protection" within the Department of Justice.

4.3 The case of Thailand and Philippines:

4.3.1 Thailand:

The Protection of Witnesses in Criminal Cases Act 2546 (2003) came into force in 2004, under the Office of the Witness Protection under the Ministry of Justice. It is too early to judge the effectiveness of this mechanism, but the very existence of the mechanism is a step in the right direction.

In April 2005, Ms Anghakana Wongkrachain, the wife of disappeared lawyer Mr. Somchai Neelphaijit, who had received intimidations and threats due to her persistent local and international campaign in seeking justice for her husband, was accorded protection under this law.

Though this is a positive step, the fact that authorities offering protection are also suspects in the disappearance of her husband, and the manner in which the protection was offered has made Ms. Ms Anghakana Wongkrachain uncomfortable.

4.3.1. Philippines:

The Witness Protection Security and Benefit Act, aims to protect witnesses and grant them certain rights and benefits to ensure their appearance in investigative bodies/court.

Once a person/witness has been accepted under the witness protection program, he/she shall have the following rights and benefits:

- ⇒ To have a secure housing facility or, when circumstances warrant, to relocation and/or change of personal identity at the expense of the program.
- ⇒ To have a means of livelihood and financial assistance from the program for his support and that of his family.
- ⇒ Not to be removed from or demoted in work provided his/her employer is notified through a certification to be issued by the Department of Justice. Further, he/she shall be paid his/her equivalent salaries or wages corresponding to the number of days of absence.
- ⇒ To be provided with reasonable traveling expenses and subsistence allowance.
- ⇒ To be provided with free medical treatment, hospitalization and medial expenses.
- ⇒ If a witness is killed because of his participation in the program, his/her heirs shall be entitled to a burial benefit of not less Ten Thousand Peosos P 10,000.00 (around exclusive of any other benefit he may be entitled under the Program.
- ⇒ In case of death or permanent incapacity, his minor or dependent children shall be entitled

to free education from primary to college level in any state or private school, college or university as may be determined by the Department of Justice, However, if the witness covered by the scheme fails or refuses to testify, he would be liable for contempt and also for perjury, if he testifies falsely or evasively.

However, there are doubts about the effective functioning of this program, in the light of the ongoing harassments, threats and intimidations of victims and witnesses. In 2005 May, a senior police officer as well as a regional director of the Commission on Human Rights had claimed that they have not been able to pursue investigation due to absence of witnesses. It is indeed time to inquire reasons as to why relatives, colleagues of human rights defenders shy away from pursuing justice- in the present climate of extrajudicial killings, it is not surprising that witnesses also fear for their lives, in the absence of a effective protection mechanism.

5. Way forwards:

Incorporating norms and minimum international HR standards related to victim and witness protection into domestic law

⇒ UN Victims Declaration (The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted By the United Nations General Assembly in resolution 40/34 of 29 November 1985)

⇒ UN HRDs Declaration

⇒ ICCPR (International covenant on Civil and Political Rights) and other UN Human Rights treaties

⇒ Existing domestic legislature

⇒ Continuing advocacy for special laws - drawing on the above, as well as from available legislature and best practices in other countries;

⇒ The speedy resolution of court cases and other such inquiries by due authorities- in addition to this being a basic human right, it will also enable witness protection programs to be more effective;

⇒ The many domestic human rights protection mechanisms (E.g. Courts, National Human Rights Commission, Ombudsman etc.) must each consider establishing comprehensive mechanisms to protect victims and witnesses engaging their respective mechanisms. The ICC case, though obviously different in scope and mandate, would be a good mode!

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6. Acknowledgements and References:

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Victim and the Issue of Human Rights

By Prof. Buddhadeb Chaudhuri*, Kolkata, India

“Victims” have been defined as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within States, including those laws proscribing criminal abuse of power.

Let me start with an incident.

Two years ago, on a cold January night, Joyeeta Bala Das was allegedly raped by five Border Security Force (BSF) men. Her husband and eldest daughters, witness to the crime, were murdered. With nowhere to go and no one to turn to, the 32 years old woman found refuge in the unlikeliest of places- the Presidency Jail. Her rapists, though, roam free.

Today, Joyeeta Bala Das is too afraid to even step out of her safe house. She fears she too may be eliminated. Clutching her four-year-old daughter close, she spends her day like a normal prisoner instead. Joyeeta has been languishing in the jail since January 14, 2003. She does not harbour any hope of life outside. Her case rarely comes up for hearing in the past two years; she has been to court only twice. In her first appearance at a Basirhat court, she was sent to Presidency Jail in 'safe custody.' Through out all this time, she has had just one visitor - her brother Jagadish Das. He could do nothing for her, so he stopped visiting.

For Joyeeta, however, this life is better than the ordeal she survived. She claims to be from Bena village in North 24 Parganas, West Bengal, India and married a Bangladeshi and settled there. The family was on its way to Bena, when they were intercepted by a BSF patrol at the border.

Records at Basirhat police station show that Joyeeta was raped. What she underwent was worse. Joyeeta, her husband and two daughters were taken to BSF's 122 battalion outpost. Police records show she was taken to battalion's Assistant Commandant Puneet Kumar's room and raped, not just by him but by four others - head constables Gaya Prasad, G. Birbhan Singh, Kanan Singh and constable Hanuman Thapa. Her husband and eldest daughter - eyewitnesses to the incident - were killed. Their bodies were dumped in a country boat, the boat punctured and set afloat on the Ichhamati river. Police found the bodies later.

The police probed the case but never interrogated the accused. Joyeeta helped the police as much as she could. She showed them the place where she was raped, identified the five accused

persons and underwent medical tests. She thought she could bring the rapists to book. She was wrong, A few weeks into the probe, the investigating officer, Subodh Chakraborty wrote to the then IG, BST (South Bengal) seeking permission to question the five. Nothing was heard of the matter thereafter. In the last two years she has been in jail, no Lawyer has taken up her case. As a final resort, the jail Department intends to request the Law Department to assign her a Government Lawyer.

The instances of violation on women, including rape, is found in different places and the victims generally belong to the weaker sections of the society, dalits, tribals or the poor. Often the women of the disadvantaged sections of the society are tortured or raped to show or prove the dominance of the higher castes or the economically dominant sections of the society. It is unfortunately often used as a tool to crush the dissent or protest or to teach a lesson to those who have the courage to protest. The women are invariably the victims and the agencies of the state administration, the police, para military forces and the army are responsible for the violation. Such violations of human rights are often justified on the pretext that such women belong to lower castes or a tribal community where the women often work outside to earn and have less restriction on movement compared to the higher castes or economically dominant sections of the society.

This naturally raises a very pertinent question. Can the responsibility of a crime and consequent punishment vary depending on the socio-economic background of the victim and the perpetrator?

Recently, the Supreme Court has set aside 20 judgments of Justice Narain Singh Azad of Madhya Pradesh High Court awarding cursory prison terms, ranging from a few months to a few years, to persons found guilty of rape, an offence that attracts a punishment of 7 to 10 years' rigorous imprisonment.

The reason given by Justice Azad for such punishments is interesting.

"The convict is an illiterate labourer from a rural area belonging to a Scheduled Tribe...It appears to be a fit case to reduce the sentence to the period already undergone," Justice Azad had noted.

Now, what does literacy and caste have anything to do with a crime, particularly a heinous one like rape? The apex court felt so. Chief Justice R.C. Lahoti, Justice G.P. Mathur and Justice P.K. Bhabha unanimously said that the manner of disposal of the cases "exhibited a complete non-application of mind" and have to be reheard by the high court.

The state deserves a pat on the back for filing appeals in the apex court without being bothered about caste equations. According to standing counsel C.D. Singh, over 100 judgments of cursory punishment given by Justice Azad were appealed against in the Supreme Court. Many are still pending.

Not all high courts can be faulted for insensitivity. But the Supreme Court has, more than once deprecated such disturbing trends of high courts awarding cursory punishments in rape cases.

The apex court has never minced words towards accused in rape cases, not since the uproar over its 1978 judgment in the infamous Mathura rape case. It had acquitted two policemen of rape

charges saying 16-year-old Mathura did not raise any alarm and there was no sign of struggle as there was no injury on her person. It agreed with the trial court verdict, which was set aside by Bombay High Court, that she was habituated to intercourse!

There has been a paradigm shift in the apex court's approach since then.

Signs of the shift came in the Rafique case judgment in 1980, in which Justice Krishna Iyer said, "When a woman is raped, what is inflicted is not mere physical injury but the deep sense of some deathless shame..." and added that the response of the judiciary cannot be muted to such grave human rights violation.

The Supreme Court has not looked back since. It took serious note of the fact that rape accused invariably attempt to cast aspersions on the chastity of the victim and term her of easy virtue to convince the court that his unpardonable act is condonable.

In 1991, in the case of State of Maharashtra vs Madhukar N Mardikar, the Supreme Court put a legal halt to such pleas. It said: "The unchastity of a woman does not make her open to any and every person to violate her person as and when he wishes, She is entitled to protect her person if there is an attempt to violate her person against her wish. She is equally entitled to protection of law. Therefore, merely because she is of easy virtue, her evidence cannot be thrown out." Former CJI and Chairperson of National Human Rights Commission Justice A S Anand says: "Rape is a crime more serious than murder as it destroys the very soul of the hapless female."

Another pertinent issue may be mentioned here. The right to self-defense does not extend to handing out a disproportionate response to the aggressor. In a significant ruling, the Supreme Court has ruled that the victim could land on the wrong side of the law if the harm caused to an assailant is much more than required to defend oneself.

In an important rider to the valuable right, the court said a person on the receiving end of violence cannot, on the basis of injury received, claim to justify the retaliatory blows on the aggressor as exercise of the right to self-defense. If retaliation is excessive, the law will not support claims to self-defense.

This ruling was handed out recently by a Bench of Justice S B Sinha and Justice R V Raveendran while delivering two judgements in cases where the right to self-defence was invoked. One incident related to forcible cutting of paddy and the ensuing violence in Bhadsa, Purulia. The second had to do with a clash in Devanandpur, UP, over burning of 'Holika'.

Justice Sinha said private defense could be used to ward off unlawful force and to prevent it, to avoid unlawful detention and to escape from such detention. For defending one's land, moderate force could be used, he said. Defense of dwelling house, however, stands on a different footing. The Bench noted that the right to self-defense could not extend to causing the aggressor's death in cases like robbery, house-breaking by night, attempt to set house afire and theft.

The court said it was aware of circumstances under which a person is forced to exercise the right to private defense. However, it said: "Right to private defense cannot be exceeded to cause more harm than necessary..... It is also well-settled that a right of private defense is unavailable to the aggressor. The need to act must not have been created by the conduct of the accused in the immediate context of the incident which was likely or intended to give rise to that need."

Perhaps it would not be out of context to mention the case of another major victim group. Trafficking and Commercial Sexual Abuse of Children affect a large population. It may be mentioned that global trafficking industry is rated as the third most lucrative business after arms and drugs. The common belief is that trafficking takes place from one country to another but trafficking takes place from one province to another and from one city to another and also from rural areas to urban areas. It is not only the phenomenon for under developed or developing countries but also equally applicable to developed countries. Even countries like USA a large number of children and women are trafficked from European countries.

It may be mentioned that trafficking is the manifestation of a large number of developmental problems like population explosion, increasing unemployment situation and lack of alternative opportunities for employment.

Customs and other traditional social practices like child marriages, dowry, debdasi etc. having their roots in the past, contribute to the increasing phenomena of trafficking. There are a number of reported cases of incest and sexual abuse of children appearing in the media regularly. Girl children from their very birth are discriminated. Mainly, they get less care and protection, their developmental needs are often remain uncared for; education, vocational training and other opportunities available to a girl child is still much lesser than her male counterpart. The demands for girl children in the sex market is ever increasing and the increasing number of AIDS affected populations in every region of the world have added to the recruitment of girl children. 'Customers' believe that they will not get the infection if they have sex with a minor virgin.

In India, poverty remained the single largest factor for women and girls being trafficked. There are nearly 3 lakhs children in prostitution today but officially this number is around 1 lakh. The touts and pimps look for natural calamities like floods, draught or earthquake and reach the place to recruit children. They lure such families with the offer for job opportunities, marriage, adoption etc. and those who fall trap ultimately reaches the brothels.

Child sexual abuse is increasing in our country alarmingly. The type of sexual abuse that takes place includes incest, molestation and sexual assault by relations, teachers, drivers of school bus and others. It is often found that such children are doubly victimized because of the fact that during the police interrogation and the questions asked to her in the court of law make her relive the horror she has suffered.

Many of such victimized children have informed that they do not want to go back to their home as they may be sold again. There are number of cases where the children have been ostracized and stigmatized by the community and as such the families are mostly reluctant to take them back. Only in a handful of cases family counseling proved to be useful to restore and reintegrate to their families.

The street children, railway platform children and other such marginalized and homeless children are not only harassed by police from time to time in the name of eviction etc., but also become very vulnerable during their adolescence and often become victim of sexual exploitation by local hoodlums and even by their neighbours. Ultimately many of them are picked up and sold to brothels and even trafficked to other cities.

There is another category of children known as 'missing children'. Recently in an article in the

National Police Journal one of the Inspector Generals of Police, Mr. Nair, wrote that there are 15 to 20 thousand children who get lost every year. Hardly 15 to 20% of these children could be traced. Where do the untraced children end up? It is said most of these children are trafficked and sold to brothels.

Society has looked down on these victimized girls and has hardly come to their rescue. Community leaders, religious leaders and even family members have not accepted these victimized girls and the abusers mostly go scot-free. There are Government and NGO run home for such girls as is provided in the National Plan of Action (1998) or under different Acts. India has signed CEDAW and The Rights of the Child Convention as well as SAARC "Convention on preventing and combating trafficking in women and children for prostitution" and is bound to follow these norm and standards through administrative and legislative measures.

The National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation 1998 provides for shelter homes for rescued girls and women, restoration of such girls to their families and repatriation in case of cross border trafficking.

In most cases the family does not want to take back the girl child on the plea that the other daughters in the family have to be given in marriage and as such they can't take back a sexually exploited or trafficked girl because the family will be socially boycotted. The fact remains that most of the victims remain unaccepted into the family and to the community. A lot of awareness raising at the community level needs to be done for attitudinal change towards such victim girl. Even a passing remark made to such victim might make her mentally deranged and might instigate and attempt to take revenge on society or even suicide.

The system that prevails in the police and judiciary while dealing with such female victims need to be changed radically. It is found that such victims change their name and addresses with fear that her family would be informed and she will be accused/blamed. In several cases it has been found that they ultimately give actual names and addresses after counseling has been given for a few months. Once the FIR is made it is difficult to change the record and put in the actual name. It makes thing difficult for such a girl to be restored back to the family even if the family is agreeable to take her back. The process takes a long time before she is actually restored back to her family.

Now let me narrate another incident to mention another type of victim. Last June, during the hot summer month, a person felt very thirsty in a village of South India and tried to drink water from a village well. After collecting water from the well, just as he was about to drink it, he was severely beaten and a number of charges were made against him. His only crime was that he belonged to a low caste and the well was meant for the use of those of higher castes. Here a person is victimized because of his low socio-economic status and caste.

In India, one may find another category of victims who suffer often due to socio-political reasons. Whenever there is any communal tension and conflict, people suffer and become victims of circumstance. In the context of administration of justice, a witness plays a very crucial role in protecting the rights of the victims. One cannot overlook two important issues in the context of protecting and promoting the rights of the victims. One is the socio economic background of the victims and the other is the background of the offender. If the victim belongs to low socio economic status and the offender belongs to high socio economic status, it often

becomes extremely difficult to get a witness and provide protection to him/her. The same is applicable if the State is the offender. The victim and witness are often pressurized and it becomes extremely difficult to provide appropriate evidence.

The jurisprudence of compensation to victims of crime found expression in the 1960's in the West. In India, the jurisprudence of victim's rights is emerging very gradually, with compensation to the victim at the fore, breaking ground for the inclusion of various other rights like those required for reparation and restitution. The United Nations Commission on Prevention of Crime at the 7th U.N. Congress at Milan in 1985 adopted a Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

In India, a victim has a marginal focus in the criminal justice system, in which arrest, prosecution and punishment are effectuated by the State. The police, therefore, investigate the offence alleged to have been committed and charge the accused on its own discretion without any participation from the victim. Pursuant to this, the accused is tried, and if proven guilty he/she is penalized by the Court. Even at this stage the victim is not given any opportunity for expression on matters related to bail, quantum of sentence, and appeal against inadequacy of sentence or of acquittal. There is a need therefore, to increase the level of participation of the victim in the criminal justice system not only for the well being of the victim but also to achieve the larger goal of criminal justice.

The provisions in the Code of Criminal Procedure, minimal in scope but relevant for a victim are as follows:

Section 357 Makes provision for the compensation of the victim for the loss or injury suffered by him/her.

Section 301(2) States that a private person may appoint his/her own pleader to prosecute any person in any court, but the pleader can act only under the directions of the State Public Prosecutor or Assistant Public Prosecutor. The pleader can submit written arguments with the permission of the Court after the evidence is closed in the case. This provision needs to be amended to provide the victim the right to appoint his/her own pleader who may function independently as prosecutor.

Section 377: Provides the right to appeal against the inadequacy of sentence to the State and the complainant has no say in the matter.

Section 378: Gives the complainant the right to appeal if the case was instituted upon complaint and special leave by the High Court is obtained. This provision has not been made for proceedings initiated on a police report.

Section 401(1): Provides that the complainant may invoke revisional jurisdiction to the High Court or Court of Session.

Section 235(2) & 248(2): Provides the accused on conviction, with the opportunity to be heard on the question of sentence, before passing a sentence on him according to law. The victim does not have right to be heard on the question of sentence to be passed on the accused.

It is clear from the above provisions, that the victim has an inadequate degree of participation in the criminal justice system.

At the international level, rights of victims has been enlisted in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power [G.A. res.40/34, annex, 40 U.N. GAOR Supp.(No. 53) at 214, U.N. Doc. A/40/53 (1985)]. The Declaration provides victims of crime and abuse of power the right to be a party to the criminal proceedings against the accused. Under the Declaration a person may be considered a victim, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The Declaration provides that the term "victim" also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

The Declaration provides following rights by a victim of crime:

1. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress.
2. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible.
3. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.
4. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.
5. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to :
 - ⇒ (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes.

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⇒ (b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

6. Victims should be informed of the availability of health and social services and other relevant assistance, and be readily afforded access to them.

Hence, there is a need, in accordance with the principles developed by Indian Courts and international human rights bodies, for a national policy addressing all the issues relevant to the victim's interest for his/her monetary and psychological support.

Justice Delayed is Justice Denied

Mass Crimes in India : A Challenge to Our Democracy

By Teesta Setalvad*, India

Indian pluralism and diversity has thrived and survived despite the severe challenges of the past century. While these challenges have been of various kinds, economic, social and political, it is the response of our democratic system to these that will ultimately provide an accurate assessment of whether or not our institutions and wings of democracy are geared for the maximum good of the maximum number; of whether real democracy in any sense has evolved in India after we became independent; whether our Structures of Democracy and our Institutions have truly evolved structures and systems that address the needs of the Indian people. Electoral democracy we have but do we have democracy in the real sense? Have the structures and institutions of democracy been genuinely democratised?

The pathetic and low rate of justice delivery in our criminal justice system is one area that has suffered from systemic and value based failure. While at many times of larger crises like communal or caste pogroms the judiciary is perceived as the last resort or final saviour, the huge backlog of cases that clog our courts and the utter failure of the judiciary to effect time bound trials (criminal trials could drag on 10 years and a civil suit to 25 years) has made a mockery of the justice delivery systems.

Witness vulnerability and protection has become a live national issue once again with the unfortunate turnaround of Zahira Shaikh in the BEST bakery case. But if we rise above the personality and look at the issue, what does this once again tell us? The desire for justice and retribution, for a victim and eye witness to a ghastly and horrendous mass crime -where near and dear ones have been snatched away because of their community or caste-is and can remain strong if we have an effective justice delivery system, if the system aids and supplements every human beings desire to right wrongs that have been committed. But if the system makes a mockery of the tragedy, drags cases on (what has happened to the 1984 prosecutions is a case in point) can ordinary eyewitnesses and victims actually be expected to have the same zeal for right and retribution 10, 20 years on? They need emotional closure and need to move on. The system needs to radically reform itself so that we can proudly say that justice delivery and the rule of

law are maxims that Indian state and society lives and swears by.

The low conviction rate in India's criminal justice system for all crimes poses a fair but harsh question to all wings of the Indian state. If this is the state of affairs for stray individual crimes, what happens when there are mass crimes perpetuated against a particular tribe, caste or community? Where the state has often been complicit or directly involved? Is the Indian state interested in the deliverance of justice, in the punishment of the guilty?

Nearly 30 months after the genocidal violence that rocked the western Indian state of Gujarat, searing questions that the tragedies have raised related to justice and rehabilitation remain completely unanswered. Specifically, issues of state accountability after mass violence, independent policing, adequate reparation and the response of democratic institutions of the judiciary to such crimes hang suspended in mid-air, as the proverbial shortness of public memory betters the best efforts to keep some of these issues alive.

Post-Independence, India has had its shocking share of mass violence driven not just by community but equally, brutally, by caste during which the archaic Code of Criminal Procedure, penned by colonial masters has proved itself inadequate. Often official or other Commissions of Inquiry have sat, examined these lapses and made suggestions. One common feature of these has been is that the political class, whatever its ideological hue, have simply not bothered to publicly debate or implement these suggestions. The Indian judiciary, at all levels has restrained itself to minimal intervention in matters of social justice and violence. The delay by the highest echelons of the Indian judiciary to respond and respond squarely to challenges posed by mass violence itself raises serious questions on the ability of our institutions to punish the guilty.

The cynical delay in the commencement and conclusion of investigations and trials, the huge backlog of cases in all our courts and the resistance in all three wings of the Indian state, the legislature, executive and the judiciary to enact swift and harsh reforms have worsened the state of affairs.

What happened after Gujarat 2002? Something similar. Senior jurists and others, sat in a Concerned Citizens's Tribunal and actually recommended the establishment of a Statutory National Crimes Tribunal that must contain its own evolved jurisprudence drawn from the International Law on Genocide and further urged urgent and quick reforms in the Indian Police Force. Drastic reforms in the Indian police system including guaranteeing its independence and ensuring representation and diversity had been recommended as far back as 1981 by the official National Police Commission itself. The work of the Concerned Citizens Tribunal that lasted several months with no assistance from any official machinery is available in a two-volume report published from Mumbai.

Today, judicial matters related to the genocidal violence in Gujarat have been brought centre-stage through two pivotal cases currently being heard in the Supreme Court. The fact that this has happened at all is due in large measure to the initiatives taken by the statutory National Human Rights Commission (NHRC) since the justice process in the state was systematically derailed backed by a gritty citizens group, Citizens for Justice and Peace, that has mandated itself the responsibility to continue the struggle for justice and reparation for the victim survivors, however tough this may turn out to be.

Efforts are alive through these judicial interventions to move the criminal trials of the worst carnages outside the state of Gujarat. This argument for turning over both the investigation and conduct of the criminal inquiries to an area outside the control of the current chief minister, Narendra Modi and the state and administration under him has been made since the start of the carnage last year, both by the NHRC (April 2003) as also by public interest litigations filed in the Supreme Court in April 2003 itself. If these had been heard judiciously and promptly by the Apex Court when it had been first approached last year, concerns related to the utterly subverted and paralysed local atmosphere in the state of Gujarat would have been met and more promptly answered.

Unfortunately, judicial record in dealing with such mass community-driven carnages remains pathetic. Sikh widow survivors of the 1984 pogrom against their community in the country's capital (that followed the assassination of former prime minister Indira Gandhi by her Sikh bodyguard) battle in vain for justice that nineteen years later cynically and brutally evades them. Similarly Muslim women survivors of 53 young males shot dead in cold blood in Meerut-Hashumpura (a town in western Uttar Pradesh) in 1989 still struggle for justice. The recent conviction of Dara Singh and associates for the burning alive of Christian pastor Graham Staines and his two sons in January 1999 is a rare case of a sessions court punishing those guilty of communally driven crimes. Most pertinently, the examples of these and many more such survivors to see justice done decades after the crime are living testimonies to the fact that human beings need to believe and find justice for unspeakable crimes before peace and reconciliation can be effected. A failure to administer to this cry for justice renders a system vulnerable; torn from within by festering wounds and hurts that do not heal but in fact create their attendant aberrations. This is the unfortunate reality in India today.

Gujarat : Documentation and Legal Action

There was extensive documentation of the genocide in Gujarat by civil liberties organisations and non-governmental agencies. Thirty months later, as the struggle for justice gets intensified due to the efforts made in the Supreme Court of India in the BEST Bakery case and the Godhra victims case, the difference between documentation and legal intervention becomes sharp and clear.

Where Lies the Problem?

Cumbersome Procedure in Indian Courts: Except for a brief spell in the eighties and nineties when a few Judges of the Supreme Court of India, especially Justice VR Krishna Iyer a doyen to the human rights movement in India and Justice PN Bhagwati took suo moto steps to make the Apex Indian Courts intervene in the field of rights' abuse, generally attitude of the authorities towards interventions by civil liberties groups is grudging and resentful.

Law Courts, Institutions and Human Rights Bodies: The establishment of the National Human Rights Commission (NHRC) in the early nineties and the State Human Rights Commissions (SHRCs) in some states -though others like Gujarat have adamantly refused to establish them and some like Maharashtra have tried to cuckold these bodies-has in a sense drawn Indian establishment's attention to both the human rights issue as also International Human Rights Law; but the inadequacy of personnel has also severely limited the functioning of the NHRC. This

combined with the fact that no independent investigation power has been given amounts to a sever lacunae in effective intervention for rights'abuse.

Limitation of the Code of Criminal Procedure, Indian Penal Code and Indian Evidence Act in Dealing with Mass Crimes:

1. Failure of Criminal Justice system
2. Failure of intelligence
3. Preventive Arrests
4. Police participation in the riots
5. Illegal registration of FIRs (Problems with FIRs)

a) their failure to record First Information Reports (FIRs) and in fact file omnibus;

b) police complicity in not naming the accused despite repeated insistence of the victim/survivors that all accused should be named;

c) worst of all, their insistence on recording omnibus FIRs for whole areas, regions and towns instead of separate detailed ones for every crime and offence committed.

Section 154 of the CrPC deals with the First Information Report of cognisable offences and is the first crucial step in prosecution of offenders.

A. Omnibus FIRs

It is a fundamental principle of criminal law that every offence needs to be separately registered, investigated and tried. Filing omnibus FIRs is one of the simplest ways of avoiding detailed investigations and effective trials. In many cases in Gujarat where 80 or 90 shops have been burnt or a large number of people have been killed, instead of filing separate FIRs in respect of each incident, the police has registered collective FIRs thus virtually scuttling the possibility of detailed investigation or conviction. Apart from this, many incidents separated over time (sometimes days) and place and concerning different victims and accused have been clubbed together. Moreover, when individuals came forward to lodge their FIRs, they were told the FIRs have already been recorded, and that no second FIR was possible.

B. FIRs without names of accused

Most of the FIRs which have been filed, especially where police is the informant, do not contain the names of the accused and only say that an unidentified mob attacked. There are significant number of cases where the victims actually named the accused but the Gujarat police have refused to lodge their names in the FIRs. Instead, the police took on the role of a partisan intermediary in evidence recorded from Naroda, Chamanpura, Odh, Sardarpura, Bharuch, Ankleshwar, Varodara, Mehsana, Himmatnagar, Sabarkantha and Banaskantha. In these cases, the police told the complainants that the FIR would be lodged only if the name of the accused is deleted. For example, at village Por, 3 women and 3 children were killed. The victims have identified and named 95 attackers but the police refused to include their names in the FIRs. The detailed area wise list of incidents is covered by the Tribunal in the section on 'Summary of Evidence'.

Points to Be Noted in Deliberate Manipulation on Investigations

- i. Minority community victimised
- ii. Deliberate obfuscation of identity of accused
- iii. Unprofessional investigations
- iv. Real culprits not arrested
- v. No identification parades
- vi. Combing operations
- vii. Rape victims
- viii. No action against media
- ix. No Action against Hate Speech and Hate Writing
- x. No action against VHP/ Bajrang Dal
- xi. Non-implementation of NHRC recommendations
- xii. Status of criminal investigations into major massacres
- xiii. Partisan language in chargesheets filed by the police

Status of Prosecution in Major Carnages

The Criminal Prosecution into major mass carnages has been de-railed by deliberate manipulation and destruction of investigation.

Including the BEST Bakery case where 14 persons were slaughtered and burnt alive, three other major carnages where 87 persons were burnt alive (Limbadiya Chowky, Kidiad) and 70 persons similarly butchered (two incidents in Pandharwada village in Panchmahal district) resulted in acquittals in October 2002. The Gujarat government has compromised its investigations and commitment to the Indian Constitution by not providing adequate legal aid for victims of the carnage and actually appointing persons belonging to rabid outfits like the Vishwa Hindu Parishad and Bajrang Dal as public prosecutors.

Investigations into Godhra Mass Burning

After the Godhra tragedy the Gujarat police arrested 62 persons, including at least seven boys, all said to be under the age of 16. They were booked under the Prevention of Terrorism Act (POTA) by the government railway police (GRP) for the February 27 attack on the Sabarmati Express in Godhra. Following public outrage, the application of POTA to these seven boys was withdrawn. But all the accused, including the seven boys, still face charges of murder, attempt to murder, criminal conspiracy, arson, rioting and damaging public property. All are in the GRP lockup in Godhra since February 27. Family members of the arrested minors were not informed in direct contravention of the orders of the Supreme Court in the Joginder Singh case. The boys are: Haroon Iqbal, Farooq Kharadi, Firozkhan Pathan (residents of Signal Falia); Asif Kader, Altaf Diwan and Naseer Pathan (residents of Vejalpur Road); and Hasankhan Pathan of Dahod. The attitude of the police after arresting minors is telling. The inspector of Godhra town police station, K Trivedi said it was not possible to check their age at the time of arrest. "They were seen near the site of the incident, so we arrested them. The rest will be taken care of by the judiciary," he said. Hasankhan Pathan, who is a Class IX student in Dahod in the Panchmahals district, 150 km. away, had come to Godhra to meet his aunt and uncle on February 26. His date of birth according to school records is October 31, 1986. Evidence recorded by the Tribunal records his relative Hussain Khan Pathan saying: "In the morning, he was playing with some

other local boys, including Firoz and Mustaq, when they heard of something going on near the railway track. They got scared and came inside their houses. After a few hours, the police came and picked up Hasan near Ali Masjid on charges of mass murder." Under the Juvenile Justice Act, minors below 16 have to be sent to a juvenile home, not to a police lock-up. "But they have been kept in police custody along with other accused in this case. We showed the age-proof documents of these minors to police, but they did not listen to us," said Soukat I Samor, a senior advocate, who represents some of the accused. This is one more instance of police misconduct in the context of the Godhra tragedy and the genocide that followed.

The Godhra police failed in their first major case, when Additional Sessions Judge Viram Y Desai acquitted all 73 accused of all charges against them on September 22, 02. The judge accused the police of extracting the names of the accused from those who were arrested first, and the investigating officer (IO) of fabricating evidence. He expressed doubts over whether one of the incidents occurred at all. These findings by the Judge cast a major cloud on the conduct of the police in the Godhra investigations.

Following the Godhra incident these 73 who were arrested, were charged with conspiracy, rioting, arson, inciting communal passions, attacking the police, robbery, etc. All the Hindus got bail, whereas most of the Muslims (accused of burning property belonging to their own community, including a mosque and school), remained in custody till the trial was over. Some of them continue to be in custody on the charge of burning the train. The witnesses for the prosecution were all policemen. The prosecutor argued that since curfew was imposed, it was difficult to find independent witnesses. Hence, the testimony of the policemen should be believed, as also the panchnamas made on the spot by them.

The Judge found that none of the charges were proved because of the conduct of the investigating officer (IO) who first brought in a set of accused persons to the police station, who in turn named others as co-accused, who were later arrested in combing operations. The Judge held that this revealed that "there is no concrete evidence against the 73 accused who were picked up out of 2,000 people. This verdict of the Sessions Judge points out several serious lacunae in police investigations. Yet persons, allegedly innocent continue to be detained ostensibly for the Godhra Mass Burning Case in Gujarat.

Selective Use of Anti-Terrorism Law Against Minorities in Gujarat

The Prevention of Terrorism Act (POTA) was brought into existence as an ordinance just a few months before the Godhra and Gujarat tragedies but enacted within the state of Gujarat only on February 28, 2002. Since, this law which has provisions that militate against basic protection of human rights of the citizen has been used selectively against the Muslim minority in Gujarat.

Medico Legal Issues

During the post-Godhra carnage, government and municipal hospitals that gave post-mortem reports recorded a shocking lapse when detailing causes of injury in the case of police firings. The post-mortem reports in such cases mentions nothing about injury by bullet but states that death was due to injury and shock. This lapse, we hope, is not deliberate, as otherwise it would legitimately invite the criticism that hospitals in Gujarat are not different from other public institutions which have been communalised.

Role of the Judiciary

The ostrich-like attitude of the Indian judiciary when such mass crimes take place as never more evident as in Gujarat. To quote again from Crimes Against Humanity, ". While we are clear that as a rule the courts cannot play the role of government or executive and take charge of the maintenance of public order, there comes a time when the judiciary is looked upon as the last resort. At such times, and such moments of time were evident during the Gujarat carnage and remain important to date, the judiciary is expected to rise to the full capability of its Constitutional Obligations and Duties, take swift and clear suo motu action if necessary to restore the belief of disillusioned, marginalised and alienated sections of our population who have been victims of state sponsored massacres. In not doing so, the courts fail in their primary duty. We state with regret that the casualness with which matters relating to the Gujarat carnage have been handled by the court(s), high and low, is a matter of serious concern for the rule of law and the survival of constitutional principles in any real sense in this country.

"Even open acts of threats against two High Court judges belonging to the minority community, did not stir the high judiciary into any action against the government. This is a sad reflection on the judiciary which in the past had considered the slapping of a magistrate a sufficient enough reason to invoke the contempt jurisdiction of the Apex Court! "

Limitations of the Struggle for Justice

The struggle for justice to the victim survivors of the Gujarat genocide has narrowed itself down today. The weight of the system that we are battling forces us to pick and choose cases even in our struggle for justice. The magnitude of what happened in Gujarat has died in public memory; worse, even our battles are today constrained to attempting to get justice for only those victim survivors of the worst incidents where over a dozen persons were butchered and slaughtered.

What of the innocent victims, many minors who were shot dead by an unaccountable police? What of the girls and women who were killed after brutal sexual violence? What of some of whom survived and have been forced back to live in the same villages where the crimes were committed?

What of the 10,000-odd homes that were destroyed so thoroughly that the pathetic Rs 5,000 -Rs 40,000 paid in compensation to only a few is barely enough to pick up the threads and start living again? What about the reparation for the businesses destroyed and the agricultural lands seized?

No less than 1,16,000 persons were internal refugees thrown out of home and hearth and living in relief camps for over seven months last year. During this period, the state of Gujarat refused to give them food, water and medicines despite their Constitutional Mandate that they bear the cost of this internal displacement. Again, it took legal interventions in the Gujarat High Court - two writ petitions supported by CJP which included flying down a senior lawyer from Mumbai since the atmosphere was so communally surcharged in the state that few wanted to appear in defence of minority community victims! As a result of this legal intervention Rs 10 crores had to be paid out from state government coffers to the relief camp organisers.

International aid that flowed easily into the state just a year before the carnage when a tragic earthquake struck Kutch in Gujarat close to the Indo-Pak border (on January 26, 2001) was

sorely missing as an utterly callous central and state government simply did not allow international aid agencies to come to the aid of the victim survivors of the genocide. This raises serious questions of the ethics of the international aid, issues that have arisen before whether it is during the UN sanctions in Iraq and what this meant for children and women or in Afghanistan.

The violence in Gujarat in 2002 was preceded for some months by the systematic distribution of material, some anonymous, that systematically spewed hatred and venom against the Muslim minority in the state. Even during the outbreaks of violence thousands of these pamphlets could be found -some advocated systematic economic boycott of Muslims and even printed an address of the Vishwa Hindu Parishad's office at the bottom ; others that were even more graphic and vicious advocated mutilation and rape.

The systematic use of hate speech and hate writing has been a crucial part of the politics of communalism within India especially since the mid 1980s when the movement of the construction of a Ram temple at Ayodhya began. This period saw the sharp rise of communal forces from both within the Hindu majority and the Muslim minority. The opening of the locks of the Babri Masjid in 1986 was preceded by Parliament's enactment of a law that excluded rightful maintenance rights to Muslim women, a demand made by the patriarchal and communal Muslim male leadership. The cleverly constructed movement to 'construct' a Ram temple at Ayodhya was in fact (and remains to date as again October 17, 2003 is a deadline set by Hindu fanatic groups to begin construction of the temple with utter disregard for the law) always to destroy a Mosque and thereby teach a much-deserved lesson to the Muslim minority. Brute violence and threat was an integral part of this movement led and inspired by none less than India's deputy prime minister, LK Advani when he began his rath yatra from Somnath, in Gujarat in 1990. His close aide and organiser of the procession was none less than Narendra Modi, today Gujarat's chief minister and 'chief architect of the state sponsored genocide'.

No actions have been initiated on grave violations of Indian law on Hate Speech and Writing that provoke and demonise sections of the Indian people, especially the minority.

Serious questions for the Indian Police Force

The utter collapse of confidence in the police among the citizenry and the dismal deterioration in their collective conduct in the state is more than serious cause for a national debate and concern. It is linked seminally with the wider issue of drastic police autonomy and reform. Senior policemen who have dealt with communally volatile situations have recommended, repeated and at various fora, the urgent need for accountability and reform within the police. Three reports of the National Police Commission, a professional body that studies, reflects and analyses on the state of police functioning in the country have also noted with alarm growing reported evidences of prejudicial conduct and made harsh and specific recommendations. The content of these have unfortunately never become the basis for national debate and concern..

After some in the Los Angeles Police were found through videographic evidence to be kicking suspected criminals or innocents simply because they were black; attempts were made to inject institutional safeguards against racial discrimination within the police in America. Post-WTC, the numerous unrecorded and unaccounted arrests of innocent immigrants has been the focus of a studied campaign by the American Civil Liberties Union. The Stephen Lawrence case in the United Kingdom lead to the Macpherson Commission that has attempted some reform within

the British police, also on the issue of racial bias. The issue then is not whether we will have institutions and set-ups that are entirely bias-free but whether we have the moral and ethical preparedness to accept that the malaise exists and thereafter set about attempts to cure it.

For this to happen, institutions and those individuals that symbolise or man them need to purge themselves of the state of denial. Psychologists say this is the surest form of defensiveness. Defensiveness suggests that the emotion hides a truth. So it is with communal bias in the Indian Police Force. First there needs to be strong and committed effort to get out of the constant state of denial. Simply because, since 1981 there are just too many concrete examples to show that communal bias not only exists but seriously affects, detrimentally, professional and neutral functioning, trampling on therefore the fundamental rights of a section of the citizenry to equal treatment by and protection from the law.

The radical measures then needed include a re-vamping of the structure of the police. As important are prompt and punitive measures against officers and men guilty of crude and gross misdemeanors that include ethnically driven criminal acts including murder, loot and arson. In Hashimpura, Meerut, 1987, the Provincial Armed Constabulary of the UP police shot dead, in cold blood, 40 Muslim youth. Not a single man in uniform has been punished to date. In Bombay 1992-93, the then Joint Commissioner of Police, RD Tyagi shot dead nine innocent men believing them to be Kashmiri terrorists. Though chargesheeted, his trial for conviction is yet to begin. This author tapped police wireless messages during the second round of Bombay riots, in January 1993, the transcribed text of which reveal a deep and abiding anti-Minority hatred operating and affecting actions among a section of the Indian police. (see Annexure Two) In Gujarat, too, in all the scenes of recent massacre significant sections of the police were party to the crimes committed. It is unlikely that the struggle for justice against the criminals in uniform will chart any new path this time, without an outcry following a relentless national debate for drastic and radical police reform.

Law on Mass Crimes

Targeted violence directed at particular sections of society, be it an ethnic tribe, caste or a religious community, has over the past decades posed a serious challenge to traditional criminal jurisprudence. The very nature of these mass/collective crimes contain within them elements of pre-planning and complicity often compounded by the fact that both State and non-State actors are the perpetrators. Hence they require clearly defined and special legal and jurisprudential instruments.

Internationally, democratic societies have responded to this disturbing trend that had hitherto allowed criminals in authority and uniform to go scot-free by enacting special laws pertaining to the prevention of, and punishment for genocide and crimes against humanity, as also adequate reparation for the victims of mass crimes.

The enactment and adoption of the Rome Statute and the establishment of the International Criminal Court collectively by modern nation-states was meant to ensure that the punishment for genocidal acts or crimes against humanity is not prevented by countries protecting home-grown perpetrators and that internationally, their prosecution is possible. Interestingly, neither the USA

nor India are signatories to the Rome Statute.

Within India, the cumulative experience over the past 25 years or so, of both officially appointed judicial commissions of inquiry and people's tribunals set up by rights' groups, points to the crying need for special jurisprudence that addresses the issue of genocidal or mass crimes and incorporates within its ambit the issues of just reparation and victims' rights (victimology). It was after the Gujarat genocide of 2002 that the Concerned Citizens Tribunal (Crime against Humanity - Gujarat 2002) translated this collective experience for the first time into recommendations for appropriate legislation.

Given the fact that the recently elected United Progressive Alliance (UPA) government has declared its intention to enact a special legislation to contain communal violence, we felt that the time was right for a collective Citizens' Consultation for the purpose.

Between August 21-23, 2004, the Minorities Council (Delhi), the Centre for the Study of Indian Muslims (Jamia Hamdard, Delhi), Citizens for Justice and Peace (Mumbai) and Communalism Combat jointly convened a two-day consultation in Delhi to frame a draft bill. Apart from those named at the end of the draft reproduced below, senior serving and retired IPS officials also participated in the consultation. Already, over 250 groups and mass organisations are signatories to this draft. Before the draft's submission to the Union Government, aspects of this Draft law have been circulated and discussed.

The name of the proposed law is called The Prevention and Punishment of Genocide and Crimes against Humanity (Draft) Bill, 2004.

The Statement of Objects and Reasons states that "The Common Minimum Programme of the Government" promises the enactment of a "Comprehensive law on communal violence". At present we have no less than 15 different laws applicable in a riot situation; yet they were all found wanting in situations like the Gujarat carnage, 2002, mainly because the concerned state authorities lacked the political will to effectively enforce them.

However, to draft a comprehensive law on communal violence may take its own time, as that in turn depends on the complex process of building a civil society that is secular, humane and sensitive to human rights; yet it cannot be gainsaid that with a view to prevent any such recurrence of what happened in Gujarat and elsewhere, earlier, (including Delhi 1984 or Bombay 1992-1993), it is necessary to enact a law enabling the Union Government to effectively enforce its constitutional obligations through enforceable legislative measures.

What happened in Gujarat and in similar carnage elsewhere, earlier, were not merely a matter of law and order; each of these were all organised crimes against targeted groups, the State Governments either actively conniving with the majority group, or remaining as bystanders, resulting in a total collapse of the rule of law and the justice system altogether. In Gujarat, after more than two years, a process of making the State Government, the politicians and the police accountable has emerged entirely as a result of the tenacity of civil and human rights groups, NGOs, the National Human Right Commission, and most significantly, the Supreme Court of India. This, however, cannot be the permanent feature of India in all such situations. The State and the Union Government cannot be allowed to abdicate their function.

India has signed, accepted and ratified the Convention on the Prevention and Punishment of the

Crime of Genocide, 1948. It is under obligation to enact the necessary legislation to give effect to the provisions of the Convention. The Convention, apart from defining the crime, makes all persons committing genocide, punishable, whether they are "Constitutionally responsible rulers, public officials or private individuals". The Union Government has a fundamental duty under Article 51(c) of the Indian Constitution to foster respect for international humanitarian law and treaty obligations. Under Article 253, the Parliament has the power to make any law for implementing International Conventions, and decisions made at an international conference, association or other body. Besides, the Union has the constitutional duty under Article 355 to protect every state, which must necessarily include all people within the state, against internal disturbance and to ensure governance in every state in accordance with the Constitution.

Keeping the above obligations and provisions in mind, and at the same time, without requiring to resort to a Proclamation as contemplated under Article 356, this law is being enacted to enable the Union Government to inquire into, investigate, prosecute and punish all those, irrespective of their office or status, who are responsible for the Commission of the crime of Genocide and Crimes against Humanity, and to prevent the commission of all such crimes, and for the aforesaid purpose to declare any area as disturbed so as to effectively deal with such situations. The law also provides for all reliefs by way of compensation, restitution and rehabilitation.

Among the major breakthroughs in this piece of legislation is the definition of 'Genocide', for the purposes of this Statute means any of the following acts committed with intent to destroy, in whole or in part, any group:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group;
- (f) Effecting long-lasting social and economic boycott of the group

(iv) 'Crimes against humanity', means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Attempted Extermination;
- (c) Forcible evictions and enforced migration;
- (d) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (e) Torture;

(f) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, debasing, forcible insertions of objects into the private parts or any other form of sexual violence of comparable gravity;

(g) Persecution of a group as defined under this Act;

(h) Enforced disappearance of persons;

(i) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

(v) For the purpose of sections (iii) and (iv)

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in sections (iii) and (iv) against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Forced evictions and enforced migration means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted in accordance with national and international law;

(d) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused;

(e) "Forced pregnancy" means the unlawful confinement, of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(f) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to national and international law by reason of the identity of the group or collectivity;

(g) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorisation, support or acquiescence of, a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time;

(h) Social and economic boycott means the sustained and systematic attempt to socially disenfranchise and economically cripple a specific group, caste or community.

Apart from basic and important provisions that include the access to a special and independent investigative machinery and special courts that have the power to prosecute as well as grant reparation the most significant aspect of the new proposed law is the section on Responsibility

of State Actors. In section 18 the draft law states there is no immunity under this new law to heads of states or governments from prosecution. "18. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, or as a member of a Government or Parliament, or as an elected representative or a government official shall in no case exempt such a person from criminal responsibility under this Statute, nor shall such capacity, constitute a ground for reduction of sentence.

(ii) Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

(iii) No person shall be entitled to claim any sovereign immunity and privilege for offences committed under this Act;

Responsibility of commanders and other superiors

19. In addition to other grounds of criminal responsibility under this Act for crimes within the jurisdiction of the Court:

(i) A public servant including IAS/IPS officials and civil or public servants effectively following a line of command from state actors (Government or High Officers of the State or Central government) shall be criminally responsible for crimes committed by forces or officers under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control the crimes get committed with impunity; where

(a) That IAS/IPS official and civil or public servants or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(b) That IAS/IPS official and civil or public servants or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(ii) With respect to superior and subordinate relationships not described in paragraph 1, a superior shall be criminally responsible for crimes under this Act, committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(a) The superior either knew, or consciously disregarded information which clearly indicated that the subordinates were committing or about to commit such crimes;

(b) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(c) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Superior orders and prescription of law

20. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

(a) The person was under a legal obligation to obey orders of the Government or the superior in question;

(b) The order was not manifestly unlawful.

Explanation:

For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

21. (a) Whoever knowingly holds property derived or obtained from the commission of genocide, or crimes against humanity, or conspiracy or abetment to these crimes as laid out in section 15, 16 and 17 of the Act shall be punished with imprisonment for a term not less than 10 years and shall also be liable for fine.

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(b) In addition, the proceeds, properties and assets derived directly or indirectly from the commission of genocide, crimes against humanity, or conspiracy or abetment to these crimes be forfeited.

The enactment of such a radical piece of legislation will not by itself remedy the gaping flaws that have emerged in India's criminal justice system. But its enactment if accompanied by radical police reform will radically shake the immunity of class, caste and privilege that have guided our system and re-open the debate for an independent, confident, upright police force more than ever before.

It is about time that we take this bold step forward.

Multiple Legalities and the Debt of Morality for the Pakistani Subject

By Dr. Saeed ur Rahman*, Pakistan

Pakistan inherited the legal structures of the British Empire in 1947 and, therefore, had a legal regime that followed the structures of the Common Law system. Alongside this system existed other systems of justice dissemination such as the jirga System of the Federally Administered Tribal Area. The local traditions of distributing justice were also practised, but without an explicit approval from the state: for example, the system of panchait in the villages of Punjab and the Vadera acting as the judge in Sindh. These different legal systems co-existed within Pakistan at the time of its inception and continue today in different forms.

The British Common Law continues to operate subject to various amendments by different governments. The amendments introduced by Zia ul Haq, the martial law administrator, are discussed below because of their role in severely affecting the status of human rights in Pakistan.

The tribal system of justice operates in areas collectively labelled the 'Federally Administered Tribal Areas'. The State of Pakistan has no legal jurisdiction over these areas, except in the form of the Office of the Political Agent. The Political Agent is a representative of the Federal Government and mediates between the Tribal Areas and the Government. The tribes are constitutionally and jurisprudentially free to conduct their own legal and social practices except when they have to interact with the Political Agent. The Political Agent administers government subsidies to the tribes and the arrival and departure of people to and from the tribal area. The rights of a victim and/or a witness under the tribal legal system are controlled by the jirga (assembly) system. The Chief of a Tribe heads a jirga and the Political Agent is the adjudicating authority. The jirga comprises of prominent people and elders of the tribe who pass judgement on civil and criminal proceedings. The rights, suitability to testify, and the safety of a victim or

witness are determined by the consensus of the jirga: "in a jirga an accused does not even have the right to be heard" (Ali and Arif 1998: 51). This is a parallel legal system and has so far successfully resisted all forms of modernisation. The tribal social formation is essentially resistant to social change; hence the extremely low level of literacy, freedom of opinion and speech, and gender equality.

Another parallel legal system in Pakistan is the Shariah Law. The Islamic legal system was introduced by the Martial Law regime of General Zia ul Haq. In February 1979, Zia ul Haq started the process of his brand of 'Islamisation' of the Legal Regime in Pakistan by introducing the punishment of flogging. At the time when this drive was under way, the Islamic Revolution in Iran acted as a source of ideological inspiration for the Martial Law government in Pakistan. In 1979, Pakistan became a "frontline state" in the region and started promoting the geo-political interests of the United States. The Islamisation of the legal system was part of the ideological armada deployed by the Zia ul Haq government. State-sponsored jihad required a political and legal system that could provide structural and ideological support. This was the background for the promulgation of the Hudood Ordinance in 1979. Under this legal system, a number of human rights were severely curtailed and/or eliminated. For the first time in the history of Pakistan's legal structures, sexual intercourse outside marriage was criminalised (Khan 2001). This Ordinance obliterated the difference between sexual intercourse with consent and rape and converted both into offences (zina and zina-bil-jabr) respectively. According to this legal system, it was possible that a (female) victim of rape could report the rape and, if unable to provide sufficient supportive testimony, be convicted of sex without marriage. The legal requirement of four adult Muslim males of good character as witnesses of the act of rape virtually eliminated the possibility for the victims of rape to seek redress. The distinction between the victim and the criminal was erased: if a rape victim cannot produce four adult male Muslims, she is automatically convicted of the crime of sex without marriage, or adultery and her accusation of rape is converted into a confession of guilt: "the rape complaint itself is a confession of zina" (Khan 2001: 1) and "the onus of providing proof rests with the victim" (Khan 2001: 3). In this legal regime, where the distinction between the victim and the defendant is arbitrarily determined, it becomes difficult to speak of the rights of the victim and witness protection. The Hudood Ordinance, as a parallel legal system, operates in the following domains: sexual intercourse (fornication outside wedlock, adultery and rape), drinking, theft, and apostasy. Of these domains, the crimes of sexual intercourse outside marriage and apostasy have produced considerable risks to the lives and personal safety of the victims of rape and the defendants in blasphemy trials.

The safety of the accused involved in apostasy or blasphemy, though legally guaranteed throughout the trial, is not socially guaranteed. Many accused persons have been extra-judicially killed. In some cases, this has happened outside the court after the release. The law that makes the arrest and trial mandatory of a person accused of blasphemy was added through an amendment to the existing blasphemy law found in British Common Law. Clause 295 (c) of the Pakistani Penal Code is a violation of the basic human rights of freedom of opinion, belief and expression. Many non-Muslims, such as Christian and Ahmediyyas, have been accused of blasphemy even though their religious beliefs are based on the non-acceptance of the Islamic faith. In this legal framework, a basic human right, the right to freedom of belief, can also be converted into a criminal act. For example, if a Christian citizen of Pakistan asserts that he or

she does not believe in the veracity of the sayings of the Prophet (since he/she is of a different faith), he or she can be accused of blasphemy. In short, these laws declare faithful and devout Muslims to be the only valid subjects of the state. Difference in faith, when expressed, can easily become a crime. There is no guarantee of personal safety once a person is involved in this legal imbroglio because even police officials are biased against the accused in this scenario. Thus, the Hudood Ordinance and the Islamisation of this Common Law have significantly curtailed access to justice and human rights in Pakistan.

Another significant trend in the Pakistani legal regime is the militarisation of the social sphere. The army in Pakistan enjoys impunity from legal sanctions and punishment. The army chiefs have often suspended the Constitution of Pakistan itself. Therefore, other than the parallel legal systems of the Federally Administered Tribal Areas and the Hudood Ordinance and Shariah courts, a third parallel system of justice - or injustice- distribution exists. According to the 2005 report of Human Rights Watch, the Pakistani army has acquired even greater impunity in the last five years. With President Musharraf occupying the dual posts of the President and the Chief of Armed Forces, the army has increased its control over all spheres of life in Pakistan. As far as the legal sphere is concerned, a victim of a crime perpetrated by a member of the Armed Forces is not likely to have access to any system of redress. The most brutal example of the unlimited power enjoyed by the Armed Forces in Pakistan can be the series of incidents at Okara Farms. Human Rights Watch has recorded incidents in which military and paramilitary personnel set fire to the houses of farmers because the farmers resisted eviction from the land they have been traditionally cultivating for more than a hundred years. The power of the state when combined with the complete militarisation of the state itself becomes a formidable force against basic freedoms and human rights.

As part of the research for this paper, I interviewed Syed Afzal Haider, a prominent jurist, an advocate of the Supreme Court of Pakistan, and a former member of the Council of Islamic Ideology. According to Haider, there are no legal provisions in the Pakistan legal framework through which a victim or a witness can demand protection from duress, harassment, and threats against life. If, for example, a witness informs a court that he or she does not feel safe or comfortable because of the threats from the defendants, the court can only request the police to provide custody to a witness but it cannot enforce this custody. Therefore, witnesses and victims of crime often choose silence over expression (Haider 2005: personal interview).

Pakistan, with several parallels and mutually conflicting legal systems, remains a poor performer in the arena of human rights. It is not a signatory to many international conventions, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (Human Rights Watch 2005). The state of Pakistan itself has become a perpetrator of violence, whether it be structural or a more naked and physical violence.

The state in Pakistan celebrates its impunity from accountability and legal prosecution and therefore becomes supra judicial. A crucial question from the perspective of a citizen can be: how can an ordinary citizen remain legal in a state which itself suspends its own constitution? According to Friedrich Nietzsche's arguments in his *On the Genealogy of Morals*, the system of morality is based on a contract between a society and an individual (Nietzsche 1996: 45), which

is valid because the society is moral towards the individual and gives him or her the credit of morality. The individual, in Nietzsche's theorisation, returns this credit by remaining moral towards his or her own person and other members of the society. The government of Pakistan does not encourage moral behaviour in its citizens because it often operates without a constitution, with naked power, and by creating many separate domains of legality within a single national constituency. The government of Pakistan reserves a state of exception, as far as legality is concerned, for itself. By operating through exceptions and impunities, the state encourages the citizens to emulate it. As an arbiter of a valid contract, the state of Pakistan fails to act as a moral agent, it promotes immoral and illegal behaviour in the citizens. To survive such a state, the so-called "ordinary" individual often becomes as insensitive to human rights as the state and, hence, the process of brutalisation of an entire population is set in motion.

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Addressing the Need for a regional victim/ witness protection protocol in South Asia

By A.F. Hassan Ariff,* Bangladesh

Several factors like river erosion, poverty, illiteracy and lack of social awareness have contributed to making trafficking of persons a grave social menace in Bangladesh. There are several stakeholders involved in combating trafficking, along with commercial exploitation and sexual abuse of women and children. Women's rights - related NGOs and activists have been working hard at trying to awaken the government and develop social consciousness to respond effectively to combat trafficking.

Laws of Bangladesh deal with kidnapping and abduction of women and children both under general and special provisions, such as the Suppression of Repression against Women and Children Act-1995, Suppression of Repression Against Women and Children Act-2000, the Suppression of Immoral Traffic Act-1933. Though there are laws essentially targeting trafficking in women and children, there are also loopholes and unscrupulous traffickers are taking full advantage of these to traffic women and children to adjoining countries like India and Pakistan.

I have reason to distinguish those who undertake voluntary migration to West Asian countries and end up being exploited, from women and children who are trafficked to India and Pakistan. In the latter situation, the movement is involuntary and/or based on misrepresentation. The object is solely for prostitution or working in near-slavery conditions. Social workers and women rights activists have been working hard to trace, recover and repatriate victims back to Bangladesh from Pakistani and Indian brothels. In order to make the effort of tracing, recovering and repatriating trafficked persons more effective and result-oriented, a major action plan is

necessary. Such action plan calls for regional cooperation, preferably in the SAARC region.

Though there is a SAARC document against trafficking, the same does not address the issue of Victim/Witness protection. Such protection is vital for prosecution as well as for giving support to victims and witnesses to depose and assist prosecution. Though instances of such prosecution is few and far, so far as cross-border trafficking is concerned, the 'South Asian Regional Initiative/Equity Support Program' (SARI/Q) in collaboration with the human rights and women rights activists of the region, are undertaking the endeavor to hammer out a regional victim - witness protection protocol for South Asia. If the protocol is adopted, social workers believe that the inherent weakness in the present prosecution system for traffickers may be reduced to some extent, if not eliminated. The summary of the proposed protocol is stated below for creating public awareness and encouraging discourse.

Regional Victim/Witness Protection Protocol

Even though official data are lacking in the South Asia context, it appears to be widely accepted that incidents of violence against women and children (including trafficking) have considerably increased in the last decade. Few cases are reported to the law enforcement agencies and even fewer reach the trial stage and that 15 to 20% of the accused are convicted - most cases resulting in acquittals. One of the main reasons for the low rates of complaints and convictions appears to be the reluctance of victims to come forward in filing complaints against those who have violated their rights. Or to testify in court for fear of humiliation and threat to their own life and property or that of their families. Strong legal instruments for the protection of victim witnesses are therefore needed. Women and children who are victims of crime are uniquely vulnerable to threats and intimidation, far more so than the average witness.

Their human rights are violated both in the course of the crimes committed against them and in their subsequent persecution by their assailants when they attempt to do their duty as citizens and testify. Violations of human rights are both a cause and a consequence of violence against and commercial sexual exploitation of women and children. Accordingly, it is essential to place the protection of all human rights at the center of any measures taken to prevent and combat these crimes.

The testimony of a victim in a crime of violence is often the best and the only evidence that can be obtained against an accused. It is therefore incumbent upon the State, in fulfillment of its duty of meting out justice, to ensure that victims who would be witnesses are protected against the threats and the intimidation, psychological and physical, of the associates of the accused. The victim-witness special status needs to be recognized. The State is best equipped to provide protection and security to victim-witnesses and thereby protect their human rights.

Currently, neither India, Bangladesh, Nepal or Sri Lanka have a distinct law, policy, guidelines or programs to protect victim -witnesses before, during or after the trial. Though some existing laws (penal codes, criminal procedure codes and constitutions) refer to witness protection, provisions appear to be insufficient to adequately protect women and children victim - witnesses who have been trafficked for sexual exploitation.

There is thus a need for a more rights based regional protocol to combat violence against and commercial sexual exploitation of women and children in South Asia and to protect and promote

certain rights of victims and witnesses of crimes in proceedings where their lives, psychological and physical security and property are endangered due to their contribution to the collection of evidence in order to meet ends of justice.

Having considered the need for a common outlook and for common principles to inspire, guide and protect the victim of and witness to a crime in the protection and enhancement of the human environment, and to meet the end of justice

Objectives of the proposed protocol:

⇒ To protect and safeguard the rights of women/children victims and witnesses of trafficking and commercial exploitation and sexual abuse of children and women against intimidation, retaliation and secondary victimization.

⇒ To amend, review and implement the SAARC Convention on preventing and combating trafficking in women and children for prostitution

⇒ To recommend amendments to national legislations

⇒ To attempt better interpretation and enforcement of laws

⇒ To provide an advocacy tool for organizations and NGOs

⇒ To create an official support system for women and children within the police and court systems

⇒ To facilitate bilateral agreements within the region

⇒ To initiate Public Interest Litigations

Scope and applicability of the protocol

The State parties have to provide that in any criminal proceedings relating to trafficking or commercial sexual exploitation or abuse, any victim /witness of trafficking or commercial exploitation or sexual abuse may be given protection upon an application filed before the court by the said person or any members of her/his family or any other person associated with the case or the Court on its own motion or suo motu or in those cases in which the Court thinks fit to do so and gives appropriate directions. A risk assessment and decision to be made by the Court on the necessary level of protection in each case.

Responsibilities of the witnesses of trafficking or commercial exploitation or sexual abuse

The State parties are to provide that the responsibilities of the witnesses include: to testify before and provide information to all designated law enforcement officials in appropriate proceedings in connection with or arising from the activities involved in the offence charged; to cooperate with respect to all reasonable requests of officers and employees of the Government and be accessible to the law enforcement agencies, who are providing protection under this protocol and to regularly inform the appropriate officials of her/his current activities and address.

Protection to witnesses

The State parties have to agree to provide residence facility, special protection, economic support, travel expense, medical treatment, etc. to witnesses of trafficking and commercial exploitation or sexual abuse.

Termination of the witness protection

State parties must ensure that any witness given protection, who fails or refuses to testify or to continue to testify without just or reasonable cause, when lawfully obliged to do so, may be prosecuted for contempt. If s/he testifies falsely s/he shall be liable to prosecution for perjury.

Protection of victims of trafficking and commercial exploitation and sexual abuse

The State parties are to provide that the special rights and status which should be accorded to trafficking victims must be preserved whether or not they act as witnesses.

Victim Protection during a rescue operation

Crimes of trafficking for commercial exploitation and sexual abuse are to be well documented. A record of the copies of these complaints should be maintained and accessible to the competent authorities. A First Information Report or the first report at the police station, as far as possible and practicable, must be comprehensive and must include the location of crime, description of offence, victim and accused, chronology of crime preferably from the date the victim was trafficked, surveillance report. Relevant sections of the Penal Code and other local and special laws, pertaining to the peculiar circumstances of the crime to be added to the first information report at the police station, if the victims have given concrete statements against the accused, indicating the applicability of the said sections or laws.

Victim protection -- post rescue operations

The State parties shall take necessary steps, such as separating the victims from the accused after the rescue operations, and treating victims and witnesses with respect and dignity by the police and other authorities. The concerned/relevant magistrate or judicial officer or the members of the competent authority, as the case may be, must visit and supervise the rescue home periodically, preferably once in a month, to ensure adherence to court orders and directions.

Victim protection during the stage of trial

All victims willing or necessary to testify should be given a full witness protection program. They must be kept in the safe custody of a well-guarded rehabilitative institution. During a trial the victims should be protected at all times and separated at all times from the accused. The Court may provide for the victim/witness to give evidence by means of a live link or recorded videotape or arrange trial in camera if necessary.

Credibility of Victim/Witness

The State parties must provide that in all criminal cases the fact of the entitlement of the victim/witness to the protection and benefits provided shall not be admissible in evidence to diminish or affect his/her credibility.

Confidentiality of proceedings/actions

The State parties are to provide that: all proceedings involving application for securing protection and the action taken thereon by the persons (Court Officials, Police Officers, Technical Support Providers or any person involved with the protection procedure) shall be under obligation to keep all the information and documents confidential. Violation of the confidentiality of the said proceedings/actions is to be an offence.

Prevention

The State parties are to ensure that the Victim/Witness Protection Protocol covers the following in the area of prevention of trafficking and commercial exploitation or sexual abuse :

In consultation with the various agencies of the state and concerned non-governmental organizations, source locations, areas and transit points will to be identified, to reduce or eradicate the possibilities of trafficking of women and children. State parties to give support and recognition to women's self help groups at the village level or to the local bodies unit level watch-dog system to prevent trafficking and ensuring safe migration. They must take effective measures to battle those social customs, traditional practices that are fostering and feeding directly into the trade of trafficking of persons. In certain circumstances, the children of prostitutes need to be protected from their own family/guardians.

Effective law enforcement

For effective law enforcement the State parties must ensure that compensation by exploiters to the victims must be considered. The assets and funds confiscated during anti-trafficking operations and investigations should be used to fund future anti-trafficking programs and operations.

Repatriation

The State will ensure that repatriation be carried out depending on how safe and nurturing the family environment is for the victim. Repatriation will be done after their stay in a protective home. They will provide adequate financial assistance for meeting the needs of rescued victims during travel while repatriating them to their families or institutions in source areas. Repatriation to be done only with the consent of the victim. The survivor on being repatriated, should be counseled and prepared to return to the country of origin by way of medico-psycho-social care and basic life-skill empowerment so that the survivor is enabled to be reintegrated in mainstream life. The State will also reimburse emergency expenses incurred by the police or other authorized escorts.

Rehabilitation and reintegration

State parties will ensure that the trafficked victims will be equally provided with the access to formal and non-formal educational opportunities, depending on child's need and interest. They also will formulate special schemes like employment guarantee schemes, agricultural subsidies, and medical support to provide assistance to the families of trafficked child victims.

Mutual cooperation and assistance

~~The State Parties shall grant to each other mutual cooperation and assistance in the areas of investigations, inquiries, trial, extradition, legal help and exchanging databases and any other assistance that may be required in consistency with the objectives of the protocol.~~

Monitoring of the protocol

The State parties should establish a monitoring body in each country within the region for the purpose of monitoring the implementation of the protocol.

Conclusion

Given the present, violent practice of intimidation of the person, family and over the property of a victim or witness of a criminal act, by the defendant, his family, supporters or fellow members in crime, the creation of this protocol for the protection of victim witnesses is of extreme urgency. It is hoped that State Parties agree to sign this Protocol without hesitation in order to prevent further abuse of human rights.

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Victim and Witness Protection in Legal Regime of Nepal

By Subodh Raj Pyakurel, Nepal

Criminal Justice System and Crime Victims

Given the whole setting of the criminal justice system, a victim is considered almost an inconsequential component of the whole picture, deserving no commiseration or consideration. Once an individual becomes a victim of a crime he/she is launched on the wave of social injustice and callous post-crime victimization.

Any innocent victim who suffers direct/indirect threats or physical, emotional, financial harm as the result of the commission of a crime should be protected by the criminal justice system. The term "victim" also includes the spouse, legal guardian, parent, child, sibling, or another family member, or any victim who is under 18 years of age, incompetent, incapacitated or deceased. Institutional entities are also considered victims. Any person who is culpable for the crime being investigated is not considered a victim.

A witness is someone who has information or evidence concerning a crime, and provides information regarding this knowledge to a law enforcement agency. Where the witness is a minor, the term includes an appropriate family member. The term "witness" does not include defense witnesses or those individuals involved in the crime as a perpetrator or accomplice.

Victims and witness who are innocent and are not aware of any wrong committed against them deserve to be protected against loss and injustice. There can be no justice for the victims until society acknowledges that a crucial principle of criminal justice is to protect and rehabilitate or compensate the victims properly and adequately. The victims are considered and treated as a burden of society and they are left totally without resources in a complete devastation. Without touching their problems sincerely, the study of constitution as a fundamental law of the land and

the application of other statutes as the essence of rule of law itself in a real sense remain incomplete.

Victims experience physical, financial and psychological/emotional impacts of victimization. At the time of the crime, or upon discovering that a crime has occurred, victims are likely to experience a number of physical reactions to the event. These may include increased heartbeat, hyperventilation, shaking, numbness, dryness of the mouth, etc. Some of these reactions may not take place immediately, they may reoccur at a later stage when the memory of the crime flashes back. Victims may suffer a range of physical effects including insomnia, loss of appetite, lethargy, headaches, muscle tension, nausea etc.

As for the financial impact of crime, the victim may incur costs such as: repairing property or replacing possessions, installing security measures, accessing health services, participating in the criminal justice system for instance attending the trial, obtaining professional counseling to come to terms with the emotional impact, etc. In terms of psychological injuries, some victims suffer acute stress disorder, or develop PTSD (post traumatic stress disorder) or other adjustment disorders from victimization.

The victims are negatively affected persons or groups who have suffered physically and/or financially and even emotionally and psychologically, directly or indirectly from the criminal activities. In fact, the principles of the criminal justice system should consider their welfare, remedy and security. They are simply regarded and considered as informers, approvers or witnesses. Their virtual role as a victim, deserving justice, is not primarily accepted and considered.

Female victims of crime are more vulnerable to sexual and other abuses and to abuses at the hands of government penal agencies. Most of Nepal's police are not trained to deal with crime against women and often do not take women's reports seriously. Rape victims and victims of domestic abuse are often not dealt with sympathetically. Women complainants are intimidated by the bureaucratic procedures and few cases end in convictions. In many ways prostitutes are victims of society and also deserve sympathetic treatment. Training on how to deal with these sort of cases is just beginning for Nepal's police. There are no government shelters for victims of domestic abuse either.

Status of Victim's Rights in Nepal

Victims have the right to be treated with dignity and respect. In Nepal victims only enjoy a limited right of representation in trials and do not enjoy the right to appeal against acquittals or the withdrawal of cases. There is no law to respect the right of victims to information about the status of their case during prosecution or trial.

Victims have the right to be protected from intimidation and harm. In Nepal victims are often not protected from further victimization even where cases have involved personal violence; no law compels the prosecution to inform victims if accused persons are released on bail; victims' fear of retaliation are not considered while conducting bail hearings; no efforts are made to protect victim's interests during trials; during trials victims are required to come out into the public glare and have often to face inconvenient and irritating questioning by defense lawyer; and courts often fail to exercise their powers to protect victims from unnecessary media

attention.

Victims have the right to be present at all public court proceedings. Victims have the right to talk with the government attorney prosecuting the case. Victims have the right to be informed concerning the criminal justice process. Long delay in holding hearings and disposing cases are the norms in Nepal. Nepal's courts are generally reluctant to grant bail even where the accused does not pose any threat to society. While adjudicating the cases, judges often fail to justify their decisions and often refer faulty laws ignoring the level of intent and other important factors. Lack of provisions for the use of judicial discretion in many cases and the lack of guidelines where it can be used also hamper the adjudication process.

Victims have the right to compensation, providing they meet certain criteria. These may include, financial compensation to victims who have sustained significant bodily injury or impairment of physical and mental health as a result of serious crimes. In Nepal only the Torture Compensation Act 1996 and other laws provide for compensation to be paid to victims. Though the state fails to compensate crime victims, under the Torture Compensation Act, for those who suffer torture at the hands of state officials, the provision does not strongly address the issue.

Crime investigation in Nepal is often undermined by the low quality of reporting and the failure to use systematic techniques to gather evidence and interview witness. Mistreatment towards suspects and detainees and forced confessions are commonplace. Suspects are often denied their constitutional rights such as being informed of the grounds for their arrests and access to legal counsel. The whole system shows a lack of concern for a victim's right to restitution, compensation and information.

Protection by Nepalese Constitution and Laws

The proper treatment of victims is a key part of a fair and just legal system. In Nepal victims of crime and their families often suffer not only from the crimes committed against them but also by the state failing to offer them security and assistance to help them recover. They are rarely accorded sympathy or respect and the many shortcomings of the Nepalese criminal justice system deny justice to them.

Nepali laws in regard to the protection of victim and witnesses are very few and generic. They do not deal specifically on the protection of the victim and witness of the crime. We need a concrete and specific law to address the issue. In Nepal there are no such safeguards and The Constitution of Kingdom of Nepal 1990, and provisions in the chapter on court management of the Country Code (muluki ain) have tried to address this issue but it does not speak in detail about victim and witness protection mechanism. Besides, the District Court Rules, Appellate Court Rules and Supreme Court Rules have some provisions in this regard.

On the application of the prosecution, victims and witnesses can give evidence from behind a screen but this principle has not been fully translated into Nepalese laws. There are no such safeguards and so victims and witnesses are often afraid to come forward and report crimes and participate in hearings. Nepalese law does not even make provisions to compensate witness for any costs incurred in reporting a crime or attending hearings.

The promulgation of the 1990 Constitution of the Kingdom of Nepal has been the most

important step taken so far to set the conditions for protection of victims and witness in Nepal. Nepal has committed itself to upholding international human rights standards by modeling its constitution on the rights and principles enshrined in the international instruments. Article 14 spells out a Nepalese Citizen's rights to fair criminal justice.

Though there are certain fundamental rights in the constitution, these constitutional rights do not cover the rights of the victims. The existing criminal justice system in Nepal is under crisis of forced investigation and false prosecution. Yet, the basic mechanisms of prosecution and crime investigation have not been implemented systematically. There are numbers of crime scenes, which have resulted in the victims languishing in unsecured and unsheltered conditions, or even in homeless and starving conditions. Unfortunately, there is no legal provision to provide them proper and needful rehabilitation and compensation. It is wrongly presumed that rehabilitation is to be provided to the victims of natural disasters or calamities only. Ironically, while victims lie in fear and in unprotected conditions, often in mental and physical anguish, the accused and the convicted criminals are staying in lodgings, eating food and getting medical treatment at the state cost.

Role of Judiciary

The judiciary is responsible for applying the principles of international human rights laws at the national level and for the protection and promotion of human rights. However, most of Nepal's judges are reluctant to do this, partly due to unfamiliarity with human rights norms and the Universal Declaration of Human Rights and also due to their conservative outlook. With its still traditional outlook and functioning style, the court seems less concerned with the need for a victim-friendly approach to the social justice system. It still seems to be unfeeling to the sufferings and losses of the victim. To ensure the rule of law through the justice system, the court should always have a positive attitude towards the victim. To this end, it is also imperative first to strengthen the judicial system with the articulation of clear-cut roles and responsibilities of police and government prosecutors and other supporting bodies. Secondly, the evil practices being adopted by various quarters towards polluting the purity of the law should be weeded out.

One of the major factors contributing to the ever-increasing crimes could be attributed to the increasing trend of listening to the cause of releasing the accused and denying justice to the victim. As such, in today's world of complexity, crimes are planned and executed for attainment of desired evil intention. Innocent victim and witness easily fall prey to such plans. Things would not change for any tangible better unless the court stands competent and committed to imparting justice to the sufferer. With the power vested in judiciary, a judge is no less great than a ruler with a scepter in his hand, because in his/her imparting real justice on the basis of the reality of the situation, the victim can cherish a feeling of self-contentment and live in relative peace.

To the end of ensuring social justice, every judge should first be sufficiently knowledgeable. Second, he should not be vulnerable to the tricks and trickery of advocates, who try to move heaven and earth to win case/s in favour of the accused. A considerate judge should be as wise as King Solomon in looking into things in their right perspective and merciless in punishing the culprit with utmost rigors of law so that those prone to criminal activities would fear doing evil things.

Nepal's Human Rights Obligations under International Laws

As a member of the United Nations and other international as well as regional organizations, Nepal is party to large number international instruments concerning human rights, which draw heavily on the principles of the 1948 Universal Declaration of Human Rights (UDHR).

Almost all of the international instruments on civil and political rights deal with the rights of individuals in custody as well as other situations. The Universal Declaration of Human Rights made a comprehensive provision for protection of human rights in criminal proceedings. Article 5 says, "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment" similarly, it provides rights to all individual not to be subjected to arbitrary arrest or detention or exile . It further provides the right to fair trial and public hearing by independent and impartial tribunals, in the determination of his rights and obligations of any criminal charge against him. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all guarantees necessary for his defense.

The International Covenant on Civil Political Rights (ICCPR) further affirms the right guaranteed by the Universal Declaration of Human Rights and further provides the right to life, right against Torture or to cruel, in human and degrading treatment or punishment , right to be informed at the time of arrest, of the reason of arrest and right against arbitrary arrest and detention . The ICCPR more precisely guarantees the right to be treated with humanity and right to be respected for the inherent dignity of human person .

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as a crime under criminal law . Under this Convention, the state parties must make torture as an offence punishable by appropriate penalties, which take into account their grave nature and take effective legislative, administrative, judicial or other measures to prevent acts of torture within the state.

Though the signing of the international conventions is relatively straightforward, their implementation is much more difficult where embedded traditional value systems, lack of recourses and a strong commitment of the government and political and bureaucratic will often fail to follow the domestic legislation. Section 9 of Nepal's Treaty Act, gives precedence to provisions of international treaties ratified by Nepal over domestic laws. However, Nepalese law fails to cover many provisions laid out in the constitution and international instruments ratified by Nepal.

Human Rights Perspective in Relation to Legal Inquiry System

The Constitution of Nepal has emphasised to guarantee the basic human rights to every citizen as the preamble structure of the constitution reads " AND WHEREAS, it is expedient to promulgate and enforce this Constitution, made with the widest possible participation of the Nepalese people, to guarantee basic human rights to every citizen of Nepal". By virtue of this constitutional guarantee, twenty-three numbers of different groups, associations and forums related to human rights are registered. One of their objectives relates to watching whether an accused person or a person suspected for crimes is ill-treated or if they are deprived of exercising the fundamental rights prescribed by the constitutional provisions. They are found standing for the betterment of the accused as well as of the convicted criminals too.

Conclusion

The situation of victims of crime in Nepal seems deplorable and pathetic to an inexplicable extent, despite constitutional guarantees and legal provisions for the protection of human rights of the vulnerable. As such, the country's justice system is in dire need of improvement through necessary changes in legislature. But this would not be possible unless the legislation is amended to help enactment of the "Victim and Witness Protection Act" with incorporation of victim-focused justice components and establishment of the "Camera Court". Our society, though more dynamic than ever before, is not proactive in respect of fighting out social evils. The victim justice system would not improve without a change in social attitude towards the court, the accused and the victim. Since social justice is more perceivable and tangible than legal justice, the legal institutions of today are required to restructure the existing legal system so as to enshrine the principles of rule of law in the country's justice system.

In a democratic system, the question of free and independent judiciary should not be controversial. However, it is also imperative that the judiciary must be knowledgeable and far-sighted, fair and impartial, and objective and independent. As this is not happening to the desired extent, the country is now in dire need of people who dare speak the truth towards enhancing dignity of the court to ensure the qualities it is to be endowed with. Contrary to this, people are afraid of speaking the truth about the ineffectiveness and insincerity of the court. To make good things happen, our society is in dire need of strong and committed political leadership capable of creating a more humane society, rich in moral values and committed to social justice. To this end, non-governmental organizations and civil society have a significant role to play.

Some of the recommendations I would like to make are as follows:

⇒ Need of promulgation of law to address the victim and witness protection. The legislative framework needs improving by introducing new statutes, removing outdated ones and redrafting badly written laws. As far as possible Nepal's laws should follow the standards of the international instruments ratified by Nepal.

⇒ The traditional procedural law needs to be changed in order to make it compatible with the provision of the constitution. Measures must be undertaken for active role of the public prosecutors for implementation of constitutional rights in investigation proceedings.

⇒ The authorities should diligently enquire into all cases of suspected intimidation of witnesses and establish a witness protection program in order to put an end to the climate of fear that plagues the investigation and prosecution of such cases.

⇒ Another important feature that requires consideration is the need for an efficient witness protection scheme that would ensure that witnesses are not intimidated and threatened. The absence of a witness protection scheme seriously affects criminal justice. Victims are frequently and seriously threatened, many fear to pursue their complaints. Meanwhile, despite a lot of talk

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