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See original.

Source: UNHCR Refworld Database.

GLOSSARY

AL
Awami League

Ansars
Lightly armed auxiliary force that assists the police

ASK
Ain O Salish Kendra (Human Rights and Legal Aid Centre)

BDR
Bangladesh Rifles

BHRC
Bangladesh Human Rights Commission

BLAST
Bangladesh Legal Aid and Services Trust

BNP
Bangladesh Nationalist Party (Jatiyatabadi Dal)

BSEHR
Bangladesh Society for the Enforcement of Human Rights

CCHRB
Coordinating Council for Human Rights in Bangladesh

CID
Criminal Investigation Department

CMM
Chief Metropolitan Magistrate

CPC
Code of Criminal Procedure

fatwa
Opinion on a point of law rendered by an Islamic scholar

OC
Officer in charge

Odhikar
Coalition for human rights (founded 1994)

shalish
Traditional informal council of village elders

SPA
Special Powers Act

thana
Administrative division of local government; also, a police station attached to same

VDP
Village Defence Party

1. INTRODUCTION

Observers indicate that the last two years, marked by pervasive political violence and social and economic turmoil, have been among the most politically turbulent in Bangladesh's history (CCHR B Apr. 1998, 14; Asian Survey Feb. 1998, 139, 140; Country Reports 1997 1998, 1615; Dhaka Courier 15 May 1998a, 11). The main opposition party, the Bangladesh Nationalist Party (BNP), boycotted parliament for much of 1997 and early 1998, leading an alliance of seven opposition parties in a sustained program of general strikes and street agitations intended to topple the Awami League (AL) government (ibid. 15 May 1998b, 17-18; Asian Survey Feb. 1998, 135, 137). These actions frequently led to violent clashes between government and opposition party supporters, often resulting in deaths and injuries (Country Reports 1997 1998, 1615). Violent confrontations between the parties' student wings and local-level activists were common as well (ibid.; CCHR B Apr. 1998, 24). The country was also beset with economic problems, including rising prices for food and other essentials, frequent power shortages and the worst-ever collapse of the country's stock markets (Dhaka Courier 15 May 1998a, 11; Asian Survey Feb. 1998, 136). Despite these difficulties the government successfully concluded a peace accord in the Chittagong Hill Tracts (CHT) and made progress on its initiatives to reform the judicial system and establish the National Human Rights Commission (NHRC).[1]

The law and order situation also continued to deteriorate, with a marked increase in reported rapes and other crimes against women and children, and continuing high rates of murder, robbery, smuggling, extortion and kidnapping (Dhaka Courier 20 Mar. 1998a, 20; ibid. 9 May 1997, 16; Bangladesh Observer 21 Mar. 1998, 5; ibid.15 Mar. 1998b, 1, 12). Also evident was the continuing involvement of many politicians and party activists in organized criminal activity (ibid. 11 July 1997, 5; Country Reports 1997 1998, 1615). With the state unable to mount an effective response, lynchings and other vigilante actions became commonplace, and both the prime minister and home minister were forced to appeal to the public not to take the law into their own hands (Dhaka Courier 4 July 1997, 8; Bangladesh Observer 21 Mar. 1998, 5; The Independent 15 Jan. 1998).

This report provides information on state protection, including the structure and functioning of the police and judiciary, in Bangladesh between January 1997 and August 1998. It should be read in conjunction with the May 1998 Research Directorate issue paper Bangladesh: Political Developments December 1996-April 1998. For information on events prior to this period, please consult Research Directorate publications available on the IRB Internet Website and at Regional Documentation Centres.
2. LEGISLATIVE FRAMEWORK

The Bangladesh legal system is a common law-based system that also incorporates a large number of codified laws (ASK/BLAST/Odhikar 1997, 67), many dating from the colonial period (Bangladesh: A Country Study 1989; World Encyclopedia of Police Forces and Penal Systems 1989, 26). Frequent military takeovers have resulted in a large number of military regulations being incorporated into the legal system, and many government agencies have been vested with quasi-judicial powers and functions (ASK/BLAST/Odhikar 1997, 67). As well, many customs and traditions are taken into account and enforced by the courts. Family matters such as marriage, divorce, maintenance, inheritance and custody of children are still governed by customary religious laws, although certain provisions of family law have been modified by legislative amendments and judicial rulings. The legal system, described by some observers as "somewhat eclectic," is further complicated by the "ad-hoc nature of legislative activities" (ibid.). According to the joint report on human rights in Bangladesh for 1996 by the human rights and legal aid group Ain O Salish Kendra (ASK), Bangladesh Legal Aid and Services Trust (BLAST) and Odhikar, a coalition for human rights, such a system provides authorities with much latitude for inconsistent and discriminatory application of the law, and to employ laws that violate fundamental human and civil rights [2] (ibid., 67-68; Dhaka Courier 13 June 1997, 7).

2.1 Constitution

The constitution of Bangladesh guarantees a number of fundamental human and civil rights. Article 27 states that "all citizens are equal before law and are entitled to equal protection of law," while article 22 makes clear the state's obligation to ensure separation of the judiciary from the executive organs of the state (Blaustein Jan. 1993, 37, 41). Article 28(2) guarantees women "equal rights with men in all spheres of the state and of public life," and article 28(4) empowers the state to make "special provision in favour of women or children or for the advancement of any backward section of citizens" (ibid., 41). Article 32 guarantees that "no person shall be deprived of life or personal liberty save in accordance with law," and article 33 stipulates that "no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest," nor be denied the right to "consult and be defended by a legal practitioner of his choice" (ibid., 43). In addition, article 33(2) states that every person arrested or detained in custody must be produced before a magistrate within 24 hours of arrest (ibid., 45). However, the rights guaranteed in articles 33(1) and (2) are denied to enemy aliens and persons under preventive detention (ibid.). Article 33 also states that persons in preventive detention must be informed of the grounds of their detention as soon as possible and be given the "earliest opportunity" to make a representation against the order, but another provision enables the detaining authority to refuse to disclose such facts as it regards to be against the public interest to disclose (ibid.). According to a Dhaka Courier report, this provision effectively renders some detainees unable to discover the grounds for their detention (13 June 1997, 8).

Other provisions guarantee, subject to certain restrictions such as law, public order and morality, the rights to freedom of speech and expression, to freedom of the press and to "profess, practise or propagate" any religion (Blaustein Jan. 1993, 49; see also Country Reports 1997 1998, 1618). Articles 141A, 141B and 141C allow the government to suspend certain of these fundamental rights during emergencies (Blaustein Jan. 1993, 141-43).
2.2 Code of Criminal Procedure (CPC)

The Code of Criminal Procedure (CPC), which dates from 1898 and has never been revised, gives police extensive powers of arrest and investigation without supervision from a magistrate (Blanchet 1996, 187-88; ASK/BLAST/Odhikar 1997, 72; The Independent 10 Aug. 1998a). The sweeping nature of these powers is magnified by the fact that they are discretionary (Blanchet 1996, 187; The Independent 10 Aug. 1998a). CPC section 99A empowers authorities to ban and seize all copies of publications considered to be prejudicial to the security of the state (Dhaka Courier 13 June 1997, 9). Section 107 permits preventive detention when authorities deem there is a strong likelihood of public disorder (Bangladesh: A Country Study 1989; World Encyclopedia of Police Forces and Penal Systems 1989, 26). Section 144, which can be invoked for up to two months, prohibits public assemblies and meetings when violence is imminent (Country Reports 1997 1998, 1620; Bangladesh: A Country Study 1989). Section 54 authorizes any police officer to arrest "without an order from a magistrate or without a warrant ... any person ... concerned in any cognizable offence, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned" (Blanchet 1996, 187). Section 54 lays down certain procedures to be observed once an arrest has been made, including that the accused must be produced before a magistrate within 24 hours, and that a magistrate must give prior permission if police want to hold a prisoner for longer (CHRI 1995a, 49; CHRI 1995b, 23; ASK June 1995, 41). However, sources indicate that despite these safeguards, section 54 effectively allows the police to arrest anyone at any time for almost any reason, and is one of the most easily abused provisions in the Bangladesh legal system (ASK/BLAST/Odhikar 1997, 72; CHRI 1995b, 23; AI July 1997, 4; The Independent 10 Aug. 1998a). Former attorney general Rafique-ul Huq, jurists and other legal experts have stated that section 54 violates fundamental rights guaranteed in the constitution (ibid.; ibid. 11 Aug. 1998a), and former attorney general KS Nabi, while in office, stated publicly that police powers of arrest under section 54 should be curtailed to prevent abuse of the law (Dhaka Courier 7 Nov. 1997, 32). In early August 1998 Law Commission member Justice Naimuddin Ahmed indicated the government was "seriously considering" amending section 54 or introducing new provisions to the CPC to better protect people in police custody (The Daily Star 5 Aug. 1998).

2.3 Penal Code

First promulgated in 1860, the Penal Code lists all major classes of crimes and is Bangladesh's "most important and comprehensive penal statute" (World Encyclopedia of Police Forces and Penal Systems 1989, 26; Bangladesh: A Country Study 1989). Among the most serious crimes listed are offences against the state (ibid.; World Encyclopedia of Police Forces and Penal Systems 1989, 26). Under section 121, anti-national offences are punishable by death or 20 years imprisonment, and the incitement of hatred, contempt or disaffection toward authority is a crime punishable by up to life imprisonment (ibid.; Bangladesh: A Country Study 1989). Under section 505A, which was inserted into the Penal Code in 1991, any person "who by words ... sign or visible representation" threatens national security or public order can be imprisoned for up to seven years (ASK/BLAST/Odhikar 1997, 55; Dhaka Courier 13 June 1997, 9; HRDCYB 1995, 103-04). The Penal Code also in part regulates the custody and correction of persons sentenced to imprisonment (Bangladesh: A Country Study 1989; World Encyclopedia of Police Forces and Penal Systems 1989, 26).

2.4 Other Legislation

The Special Powers Act (SPA) of 1974 gives the government sweeping powers to detain any person for an initial period of up to 30 days, without formal charge or specific complaint, to prevent him or her from performing a "prejudicial act" (Country Reports 1997 1998, 1616-17; ASK June 1995, 24; HRDCYB 1995, 101, CHRI 1995a, 49). A prejudicial act is broadly defined as "any act ... likely to
prejudice ... the sovereignty and defence of the country, national security, public order or the economic or financial interests of the state" (HRDCYB 1995, 101; ASK June 1995, 24). Although the SPA provides detainees with limited safeguards against prolonged detention and arbitrary arrest, in practice the grounds for detention are often very vague, and the government can simply issue a new detention order when the original one expires (HRDCYB 1995, 101; ASK June 1995, 24; Country Reports 1997 1998, 1617). Government ministers acknowledge that police have seriously abused the SPA, that more than 90 per cent of persons arrested under the act are released by higher courts, and that in some instances police have used it even to arrest chicken and cattle thieves (The Independent 3 Oct. 1997; Dhaka Courier 7 Nov. 1997, 32).

The joint report on human rights for 1996 prepared by ASK and others indicates that in recent years governments have passed a number of laws creating and empowering various government agencies and authorities (ASK/BLAST/Odhikar 1997, 74). Many of these laws provide immunity to government employees for actions taken under these laws (ibid.). According to the joint report, criminal proceedings against employees of these various agencies may not be taken without the prior approval of the agency concerned, seriously limiting the ability of citizens to hold government employees accountable for violations of their rights, and "enhanc[ing] the scope for arbitrary use of executive power" (ibid., 74-75). The report states further that this requirement of government permission to undertake criminal proceedings is being incorporated into an "increasingly large number of statutes" (ibid., 75).

NOTES

[2] Please refer to the Notes on Selected Sources for further information on these groups and their annual human rights report. [back]


[5] Nabi resigned on 29 May 1998 amidst speculation that the law ministry was moving to have him removed from office on grounds of poor performance (The Daily Star 30 May 1998; The Independent 30 May 1998). At the time of publication of this Issue Paper, it is not clear whether the government has appointed a successor. [back]


3. JUDICIARY

3.1 Structure

The judicial system in Bangladesh consists of two categories of courts - superior courts and subordinate courts (Bangladesh Observer 13 Nov. 1997, 5; Statistical Pocketbook of Bangladesh 1996 Jan. 1997, 28). Civil and criminal cases can be processed at both levels of the system (HRDCYB 1995, 109; Bangladesh Observer 13 Nov. 1997, 5). There are two superior court divisions - the Appellate division and the High Court division - which together comprise the Supreme Court (ibid.; Statistical Pocketbook of Bangladesh 1996 Jan. 1997, 26). While the High Court reviews decisions of the
The subordinate court system and hears some original cases, the only cases the Appellate division may hear are appeals referred from the High Court division (Statistical Pocketbook of Bangladesh 1996 Jan. 1997, 28; HRDCYB 1995, 110; Bangladesh Observer 13 Nov. 1997, 5). Accordingly, the Appellate division of the Supreme Court is the highest court in Bangladesh and its decisions are binding on all other courts (Statistical Pocketbook of Bangladesh 1996 Jan. 1997, 26; HRDCYB 1995, 110; Bangladesh Observer 13 Nov. 1997, 5). Under article 102 of the constitution, either division of the Supreme Court may declare null and void any laws that are inconsistent with any fundamental rights recognized in the constitution (CCHRB Apr. 1998, 117; Blaustein Jan. 1993, 109; Bangladesh Observer 13 Nov. 1997, 5). In the superior court system, judges hear cases only in the division to which they are appointed (ibid.; Statistical Pocketbook of Bangladesh 1996 Jan. 1997, 28). There are 5 judges, including the Chief Justice, in the Appellate division, and 36 judges in the High Court division (Bangladesh Observer 13 Nov. 1997, 5). Supreme Court judges are appointed by the president and hold office until age 65 (ibid.; Statistical Pocketbook of Bangladesh 1996 Jan. 1997, 28).

The subordinate courts, which function at the district level, are classified according to the types of cases they are authorized to hear (ASK June 1995, 36; Bangladesh Observer 13 Nov. 1997, 5). The District Courts, which consist of four levels - District Judges, Additional District Judges, Subordinate Judges and Assistant Judges - have jurisdiction in civil matters, while the Sessions Courts, which also consist of four levels - Sessions Judges, Additional Sessions Judges, Assistant Sessions Judges and Magistrates - have authority in criminal matters (ibid.; ASK June 1995, 36). The Court of District Judge and the Court of Sessions Judge are the highest courts in each of the country's 64 administrative districts (ibid.; Bangladesh Observer 13 Nov. 1997, 5). District Judges, Additional District Judges and Subordinate Judges may also sit as Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges in criminal cases, but Assistant Judges normally deal only with civil matters unless vested with magisterial power to try criminal cases (ibid.). There are also Chief Metropolitan Magistrates Courts and Metropolitan Magistrates Courts in the cities (ibid.). All judges are formally appointed by the president, although subordinate court judges, in practice, are appointed by the public service commission (subject to approval by the executive branch) and are members of, and regulated by, the judicial service. Magistrates are appointed from the administrative services by the public service commission, and are regulated in matters of posting, transfer and promotion by the executive branch of government (ASK June 1995, 43; ASK/BLAST/Odhikar 1997, 77). While "formally independent in the exercise of their judicial functions" (ASK June 1995, 43), in practical terms magistrates are under direct control of the home affairs ministry and are "dependent upon those with political power for their future careers" (HRDCYB 1995, 110; ASK June 1995, 43). Although magistrates are at the bottom of the subordinate courts structure, they are the ones who, in most instances, determine whether an accused person will be prosecuted or granted bail (ibid.).

Women have been selected through competitive examinations to serve in the subordinate courts as assistant judges and magistrates, however no woman has yet been appointed to either division of the Supreme Court (ASK/BLAST/Odhikar 1997, 34). In the subordinate courts there are approximately 505 male subordinate judges and 56 additional and assistant female judges; in the magistracy there are about 2,000 male and 192 female magistrates (ibid.).

There are also a number of special courts, such as those established under the Women and Children Repression (Special Provisions) Act 1995 (Observer Magazine 28 Nov. 1997, 11), that exercise jurisdiction in particular types of disputes in specified areas of law (ASK June 1995, 36). These courts were established to relieve the burden on the regular court system and to better resolve and more quickly dispose of such cases (ibid.). The need for quick settlements has led to the incorporation of summary procedures into these courts (ibid.). Similarly, the village courts were established under the
Village Courts Ordinance 1976 to handle relatively insignificant criminal and civil matters at the union parishad (local administrative unit) level (ibid.; Bangladesh Observer 12 June 1998, 5). The village court usually consists of the union parishad chairman and two parties nominated by each of the disputants, and its decisions are binding when unanimous or made by a four to one majority (ibid.; ASK June 1995, 37). Village courts are not empowered to order imprisonment or fines, but may order the accused to pay an aggrieved party compensation up to Tk.5,000 (CDN$163) (ibid.). While not encoded in legislation, the shalish, the traditional informal council of village elders, is also used for dispute resolution in rural areas. (See end of section 3.2 below for more on the shalish.)

3.2 Function

In their report on human rights in Bangladesh for 1996, ASK, BLAST and Odhikar state that "an independent and effective judiciary is the most important institution for safeguarding human rights" in Bangladesh (1997, 76). While observers agree that the Supreme Court generally functions independently and free from political interference (RIAS July 1994, 9; HRDCYB 1995, 110; Dhaka Courier 24 Apr. 1998, 35), as indicated earlier the magistrates in the subordinate courts report directly to the executive branch (HRDCYB 1995, 110). Other factors such as resources, the availability of legal aid and public defenders, the competence and professionalism of court employees and counsel, the time, expense and difficulty involved in pursuing a case through the legal system, and the availability of alternate means of redress, all affect the viability of judicial redress in protecting human rights (ASK/BLAST/Odhikar 1997, 52, 76, 77-78; Country Reports 1997 1998, 1618; Holiday 6 Apr. 1998; Bangladesh Observer 13 Nov. 1997, 5). This section examines several of these issues.

The availability of adequate legal representation is an important factor in successfully using the legal system to seek redress of human rights violations (Country Reports 1997 1998, 1618; ASK/BLAST /Odhikar 1997, 78). In Bangladesh, which has a per capita annual income of about US$250, the need for an effective legal aid system is especially marked (ibid.; Country Reports 1997 1998, 1618). While there are some legal aid programs in Bangladesh, the sources generally agree they are scarce, ineffective, underfunded, unable to offer financial assistance, and difficult to access for the majority of people (ASK/BLAST/Odhikar 1997, 52, 78; ASK June 1995, 25, 40; Country Reports 1997 1998, 1618). Although the law provides an accused person with the right to be represented by legal counsel, state-funded defence counsel is rarely provided, and the state is obliged to provide legal aid only when the accused is charged with a capital crime (ibid.; HRDCYB 1995, 110-11; ASK/BLAST/Odhikar 1997, 78). The state does not provide legal aid for litigation in the Supreme Court, even in cases involving violations of fundamental and human rights (ibid.).

In recent years the state has established legal aid committees in various district courts to assist poor litigants, but ASK believes the system is underfunded and generally ineffective (ASK/BLAST /Odhikar 1997, 78; ASK June 1995, 40). Although official figures are not available, the ASK/BLAST /Odhikar report indicates the government allocated only Tk.10 million (CDN$325,000) for legal aid for the entire country in 1996, and of this less than 10 per cent was utilized by litigants, primarily because of, according to the same report, the "obstructive, bureaucratic procedures" set up to access it (ASK/BLAST/Odhikar 1997, 78). The Department of Women's Affairs also provides legal counselling and assistance in cases involving violence against women, but not legal aid for litigation (UN CEDAW 23 July 1997, 3; ASK/BLAST/Odhikar 1997, 78). A number of NGOs have begun offering legal advice, legal aid and mediation services, but generally only in disputes involving land and family matters (ibid. 53; ASK June 1995, 40, 46). Recent figures are not available, but in 1992 there were 48 NGOs in the legal aid field (ibid., 40).

Although private legal representation is available in urban areas, it is expensive and often of poor
quality (Country Reports 1997 1998, 1618; ASK/BLAST/Odhikar 1997, 53). Several sources have commented on declining standards in the legal profession in Bangladesh (TIB Dec. 1997b; Bangladesh Observer 13 Nov. 1997, 5; ASK June 1995, 40-41, 46). Law students are not exposed to legal practices or procedures during their student years, and thus begin their careers with little or no practical experience (ibid., vi, 40-41). The focus of the profession is on the oral presentation of arguments, which sometimes drag on for days (ibid., 46). Most have no training in consultation, negotiation or resolution of disputes through informal means (ibid., 40-41). According to Country Reports and the ASK/BLAST/Odhikar report on human rights, as a result of the lack of an effective legal aid system and adequate legal representation, many people, but particularly those in rural areas, are unable to seek judicial redress or mount an adequate defence (1998, 1618; 1997, 53).

The judiciary services are staffed by these same law graduates, fresh from their academic and theoretical legal educations, although not before completing a 14-month training period (ASK June 1995, vi). While "most young judicial officials have never been lawyers," according to ASK, Supreme Court judges are generally recruited from among the "more reputable" practising lawyers of the court or senior judges of the District Courts (ibid.). Many magistrates come from non-law backgrounds in the administrative services, and are appointed as third class magistrates with the power to imprison for up to two years, after two months' training in basic law (ibid.).

There are also problems with the efficiency and functioning of the court system itself. According to the ASK/BLAST/Odhikar report on human rights for 1996, the "dilatoriness of the judicial machinery is one of the most serious obstacles to justice in Bangladesh" (1997, 52). In addition to the increase in the number of cases, there are also other factors contributing to the slowness of the system. Sources mention the inadequate numbers of judges and support staff, outdated facilities, lack of information technology, irregular attendance of judges and lawyers, inordinate delays, frequent adjournments, excessive holidays and lack of cooperation between lawyers and judges for quick disposal of cases (ASK June 1995, 45; Bangladesh Observer 13 Nov. 1997, 5; ibid. 22 Mar. 1998b, 1; Holiday 6 Apr. 1998). Collectively these have resulted in a huge backlog of cases: in early 1998, President Shahabuddin Ahmed, former chief justice of the Supreme Court, reportedly stated that 700,000 cases were pending in various courts in Bangladesh (Bangladesh Observer 22 Mar. 1998b, 1; ibid. 3 Apr. 1998a, 5; see also Country Reports 1997 1998, 1618), of which at least 70,000 were pending in the Supreme Court (Bangladesh Observer 12 Jan. 1998, 1; ibid. 22 Mar. 1998a, 12). At the end of 1996 the High Court was hearing human rights cases that had been filed in 1992 and 1993 (ASK/BLAST/Odhikar 1997, 77-78).

This backlog of cases is a "serious detriment even for those who can afford to go to the highest court in the country," according to the ASK/BLAST/Odhikar report, and is "seriously constraining enforcement of fundamental/human rights" (1997, 78). In addition, 32,000 people, or 68 per cent of the country's total prison population, were awaiting trial or under trial in July 1997 (ibid., 52; Country Reports 1997 1998, 1618). While government sources indicate that pretrial detentions average six months, the press and human rights organizations have reported many instances of detentions lasting several years (ibid.).

Country Reports 1997 states that "there is corruption within the legal process" and that bribes often must be paid to court officials to obtain services or access the system (1998, 1618; CIS 25 Nov. 1996). According to a 1994 report from the Australian Refugees, Immigration and Asylum Section, while "criminal courts ... have a long-standing reputation of being rife with corruption," the civil courts are "generally considered fair," although overburdened (RIAS July 1994, 9). However, a survey released in late 1997 by the Bangladesh chapter of Transparency International showed that in general the
public perceived the integrity of the judiciary as "extremely poor" (TIB Dec. 1997a). Of households surveyed, 88.5 per cent agreed or completely agreed with the statement that it was "almost impossible to get quick and fair judgment from the court without money or influence." Of those households involved in court cases, 63 per cent reported having to bribe court officials. Of those paying cash bribes, 71 per cent made payment directly to court employees, while 16 per cent paid the opponent's lawyer. Nineteen per cent of households involved in court cases reported that they had paid witnesses. Eighty-five per cent of households involved in court cases still had cases pending, and of those 54 per cent had no idea when a settlement would be reached. Eighty per cent believed their cases had been deliberately delayed by their lawyers, an opponent's manipulations, or the "high-handedness" of the court (TIB Dec. 1997a). Some members of the judiciary services challenged Transparency International's 1997 survey findings, according to the Dhaka Courier, and demanded that action be taken against the organization (12 Dec. 1997, 12), although sources do not indicate that action has been taken.

According to the ASK report on democracy, human rights and the judiciary, another difficulty in the legal system is:

... misuse of the system to file cases against persons on totally baseless grounds in order to harass them. It is commonplace to find concocted cases being filed in connivance with civil and criminal authorities, and such actions are directly responsible both for the clogging of the system and miscarriage of justice. Along with this abuse the refusal to register genuine cases at the instigation of the powerful is another dimension to this problem (June 1995, 46).

Reports also indicate that defendants can sometimes pay to avoid being served with a notice or suit (Country Reports 1997 1998, 1618), and that it is possible to have fraudulent court documents issued by lower-level court employees (CIS 25 Nov. 1996). For example, in March 1998 it was discovered that several "veteran criminals" awaiting trial in Chittagong on arms-related charges and for killing security forces personnel had been released on fake bail bonds several weeks earlier (Bangladesh Observer 14 Mar. 1998a, 12; ibid. 10 Mar. 1998, 10). The documents reportedly were fabricated by employees of the Chittagong magistracy, in league with "some unscrupulous persons" (ibid.; ibid. 14 Mar. 1998a, 12). A district and sessions court judge who later ruled on a legal point related to the fake bail bond cases indicated there were likely "numerous other such [cases]" in Chittagong district (ibid. 5 May 1998, 12). In Dhaka, police and home affairs ministry officials have expressed frustration over the frequent granting of bail to known criminals, many charged with violent crimes such as murder and extortion (ibid. 11 May 1998, 11). According to the Bangladesh Observer, law enforcement personnel have also enabled known criminals to obtain bail by deliberately framing weak cases, allegedly in response to political pressure (ibid. 22 May 1998, 5).

The sources are in general agreement that the expense and difficulties involved in accessing the judicial system, as well as the inefficiencies and corruption encountered once in it, discourage many people from seeking redress through the courts (Bangladesh Observer 3 Apr. 1998a, 5; ibid. 28 May 1997, 5; Country Reports 1997 1998, 1618; Dhaka Courier 7 Nov. 1997, 32). Former attorney general KS Nabi and law minister Abdul Matin Khasru have both stated that about 95 per cent of the population of Bangladesh remains outside the formal judicial system, primarily because of poverty (ibid.; Bangladesh Observer 2 July 1998, 11). "The formal judicial system," reports ASK, "has literally become the last resort for dispute settlement" (June 1995, 47). Many households in rural communities continue to resolve disputes through the shalish (salish), the traditional informal council of village elders (Country Reports 1997 1998, 1618; Bangladesh Observer 28 May 1997, 5; TIB Dec. 1997a).
rights organizations have documented many abuses perpetrated by these councils in recent years, especially instances of fatwa-instigated violence against women (AI Oct. 1993; ASK June 1995, 23, 26; ASK/BLAST/Odhikar 1997, 34-35; WLUM 1996), but for many people in Bangladesh, including women, "access to justice ... begins ... through the ... 'shalish'" (Bangladesh Observer 28 May 1997, 5). The shalish are seen to be accessible, basically fair, and appropriate to the needs of most people (ibid.; ibid. 12 June 1998, 5; TIB Dec. 1997a). Only if a dispute remains unsettled will it go to court, but most disputes are still resolved through these councils (Bangladesh Observer 28 May 1997, 5; ibid. 12 June 1998, 5).

In its report on corruption in Bangladesh, Transparency International found that at one time or another 18 per cent of rural households have resolved a dispute through the shalish (TIB Dec. 1997a). About 60 per cent of households surveyed believe the shalish is basically fair; this figure was slightly higher for households headed by women (63 per cent), than those headed by men (60 per cent) (ibid.). Of the 40 per cent of households expressing a negative view about the shalish, 93.5 per cent thought the shalish "tends to favour the rich and influential," 84 per cent thought it was influenced by money and opportunities, and nearly 67 per cent thought it was influenced by "terrorism" (ibid.). Asked what should be done to improve the effectiveness of the shalish, 89 per cent of households with a negative view thought the impartiality of the shalish needed to be ensured, 70 per cent thought "equal representation of the parties was necessary," and 32 per cent thought the representation of women in disputes involving women was required (ibid.). Other critics complain the shalish can be biased, "ill-informed with respect to the law," as well as discriminatory against women and influenced by power and money, especially in cases involving property (Bangladesh Observer 28 May 1997, 5; Dhaka Courier 3 July 1998, 39).

The Bangladesh Observer reports that in recent years NGOs concerned about the shalish have been training individuals and groups in legal and human rights issues, and as a result "shalish [have] accrued great legitimacy in rural Bangladesh" (Bangladesh Observer 12 June 1998, 5). In response to the increasing popularity of shalish in rural areas, the government has promised to introduce a new grameen (village) courts system (ibid; ibid. 12 Jan. 1998, 1; ibid. 18 May 1998a, 2). In mid-June 1998 the Bangladesh Observer reported that enabling legislation had been drafted but had not yet been introduced in parliament (12 June 1998, 5). According to ASK, however, such courts have been established in the past:

The relevant laws establishing these 'small' courts rarely provide for support mechanisms for these bodies to function properly and sufficient funds are generally not made available. As a result, such bodies are infrequently functional and the lofty goal of 'taking courts to the people' is poorly materialised (June 1995, 44).

In a Bangladesh Observer article, a senior executive of the anti-poverty NGO Grameen Trust agrees, stating that in the past the village courts have proven unpopular, "totally ineffective," and "failed to provide justice ... [to] the rural poor, especially women" (12 June 1998, 5).

Shortly after assuming office in June 1996, the AL government announced a number of initiatives to reform the legal structure and judicial system. Among these are the establishment of a permanent law reform commission, a national human rights commission and better separation of the judiciary from the executive. For further information on these initiatives, please refer to section 3 of the May 1998 Research Directorate issue paper Bangladesh: Political Developments December 1996-April 1998.

NOTES
4. POLICE/SECURITY FORCES

4.1 Structure

The internal security establishment in Bangladesh consists of the police and four auxiliary forces: the paramilitary Bangladesh Rifles (BDR), the Armed Police, the Ansars and the Village Defence Party (VDP) (*Bangladesh: A Country Study* 1989; *World Encyclopedia of Police Forces and Penal Systems* 1989, 25-26; ODR July 1996, ch 12.3). However, it is the police and the two paramilitary forces, the BDR and Ansars, that are primarily responsible for maintaining law and order in Bangladesh (*Country Reports 1997* 1998, 1614; *Bangladesh: A Country Study* 1989).


The police force is divided into gazetted ([12](#)) and subordinate ranks, roughly analogous to commissioned and non-commissioned officers in the military (*World Encyclopedia of Police Forces and Penal Systems* 1989, 25; *Bangladesh: A Country Study* 1989). The IGP, DIG, SP and assistant SP constitute the four gazetted ranks; below these are the upper subordinate ranks, comprising the positions of inspector, subinspector and assistant subinspector, and below these are the vast majority of policemen in the lower subordinate positions of head constable and constable (ibid.; *World Encyclopedia of Police Forces and Penal Systems* 1989, 25). While the gazetted officers are relatively well-trained, well-paid and occupy important positions within the bureaucracy, the lower ranks are often poorly trained, poorly equipped, poorly paid and overworked (ibid., 26; *Bangladesh: A Country Study* 1989). In the past a primary education was considered sufficient to be recruited as a constable, but a secondary education is now required (Blanchet 1996, 189). The government has acknowledged that there are problems with training and service conditions in the lower ranks (*Dhaka Courier* 7 Nov. 1997, 32; *Bangladesh Observer* 20 Apr. 1998, 3).

The number of police personnel reportedly topped 98,000 in 1997, for a population to police officer ratio of 1,274:1 (*Dhaka Courier* 20 Mar. 1998a, 20). While this figure is much improved from the
2,560:1 ratio of the mid-1980s (World Encyclopedia of Police Forces and Penal Systems 1989, 25), it is much higher than that of South Asian countries such as India (725:1) (Dhaka Courier 20 Mar. 1998a, 20). Nearly 65 per cent of police personnel are charged with the maintenance of law and order, 19 per cent with investigation and 0.8 per cent with training (ibid.). The police force is male-dominated and few police stations have female officers (CHRI 1995a, 50-51; CHRI 1995b, 29). About 900 officers are in supervisory-level positions, a figure that Inspector General of Police Mohammed Ismail Husain describes as "disproportionate" in a 98,000 member force (Dhaka Courier 20 Mar. 1998a, 20).

The paramilitary Bangladesh Rifles (BDR) is a key component of the country's internal security establishment (Bangladesh: A Country Study 1989; ODR July 1996, ch 12.3). Although its primary responsibility is to prevent smuggling, investigate transborder crimes and establish government authority in isolated areas, it also provides backup to the army in time of war and can be called on to help the police quell internal disturbances (Bangladesh: A Country Study 1989). It is organized into military-like battalions and most of its officers have been seconded from the army (ibid.). Although the BDR is under the home affairs ministry, the army plays a major role in staffing, training and directing its day-to-day activities (ibid.; HYDCYB 1995, 107). The home minister has promised "fundamental changes" to the BDR to better enable it to carry out its duties, including increasing the number of personnel and border outposts (Bangladesh Observer 17 Sept. 1997, 1). Along with the army, the BDR is responsible for maintaining security in the Chittagong Hill Tracts (Country Reports 1997 1998, 1614).

The Ansars also are under the direction of the home affairs ministry (Bangladesh: A Country Study 1989). A lightly armed auxiliary force that helps the police maintain law and order, they are recruited locally, are very poorly paid and equipped, are ill-treated by officers and have no job security (UPI 4 Dec. 1994; Bangladesh: A Country Study 1989; World Encyclopedia of Police Forces and Penal Systems 1989, 25) The Ansars are especially important to maintaining law and order in rural areas (Bangladesh Observer 20 Dec. 1997, 9). The VDP, which is charged with routine village security duties in addition to its primary function of promoting rural improvement projects, plays a less important role (ODR July 1996, ch 12.3; Bangladesh: A Country Study 1989). The current director general of the Ansars and VDP, Major General AM Mahmuduzzaman, has indicated that there are many problems with the Ansars and VDP, with lack of training being a major one (Bangladesh Observer 20 Dec. 1997, 9).

In early 1998 the government announced a number of measures to enable the police to better deal with the deteriorating law and order situation. On 20 January 1998 Prime Minister Hasina announced in parliament that six new thanas would be created in Dhaka to help police fight crime (Bangladesh Observer 21 Jan. 1998b, 1). In February 1998 the home affairs ministry reshuffled several senior posts within the police administration and transferred 30 SP-level officers to posts in Dhaka and other districts in order to "inject dynamism" into the force (Dhaka Courier 20 Mar. 1998a, 20). Further changes were announced in early August in the aftermath of the custodial killing of university student Shamim Reza Rubel on 23 July 1998 (Bangladesh Observer 10 Aug. 1998a, 1). On 19 April 1998 Home Minister Rafiqul Islam announced that 5,000 new police officers had been recruited, and that this number would be further increased (Bangladesh Observer 20 Apr. 1998, 3). He also reported that the police were being equipped with new vehicles and communications equipment, including 295 jeeps, trucks, boats and other vehicles, a country-wide radio network, and fax and computer systems (Bangladesh Observer 20 Apr. 1998, 3). Dilapidated thana buildings were reportedly being rebuilt and police barracks and residential buildings being constructed (ibid.). Also promised were improvements to police uniforms, rations and weapons, including the introduction of weapons less lethal than the standard-issue rifle (ibid.). The home minister has also announced that a special branch of the police
will be organized to gather “intelligence” on criminals and criminal activities, leaving the Criminal Investigation Department (CID) to perform the investigations (Bangladesh Observer 26 May 1998, 12).

Women’s investigation units, staffed by female officers, have been established in four police stations on a trial basis to investigate complaints by women (UN CEDAW 1 Apr. 1997, 34; ibid 23 July 1997, 8-9; CCHRBR Apr. 1997, 116). If successful, other units may be opened elsewhere in the country (ibid.; UN CEDAW 1 Apr. 1997, 34). The Department of Women’s Affairs has also established a unit that provides legal counselling and advice in cases related to violence against women (ibid.; ibid 23 July 1997, 7-8). On 28 May 1998 Bangladeshi media sources reported that in late April the home affairs ministry approved a proposal to establish a special squad within the CID to investigate crimes against women and children, including trafficking, acid-throwing, child abuse and rape (Bangladesh Observer 28 May 1998, 11; The Daily Star 28 May 1998). The 250-member squad, which will be responsible for all 64 districts and metropolitan areas in the entire country, will be headed by a Special Superintendent of Police (SSP) and an Additional Superintendent of Police (Addl SP) (ibid.; Bangladesh Observer 28 May 1998, 11). The original proposal, which was submitted to the home affairs ministry in January 1998, called for a 780-member squad. Pending approval by the finance ministry, the special squad was expected to be operational by early July 1998 (ibid.; The Daily Star 28 May 1998).

4.2 Function

Transparency International, in its December 1997 report on corruption in Bangladesh, found that public opinion of the police was very low (TIB Dec. 1997b). Almost all households (97 per cent) identified the thana police station as corrupt (TIB Dec. 1997a). In another survey of public attitudes toward various occupational groups conducted earlier in the year, police rated highest on arrogance and lowest on knowledge and dedication as compared to the other occupations (Bangladesh Observer 14 Jan. 1997, 1, 12). Sources indicate that average citizens have long since lost faith in the ability of the police to safeguard their rights and protect them from common crime (ibid. 25 Jan. 1998, 5; The Independent 11 Aug. 1998b) or, according to reports quoting Home Minister Rafiqul Islam, conduct an impartial investigation (Bangladesh Observer 15 Mar. 1998a, 1; Dhaka Courier 20 Mar. 1998a, 20). Most crimes, especially minor ones, go unreported because victims want to avoid further trouble, including interrogation by the police (Bangladesh Observer 21 Jan. 1998a, 3; ibid. 25 Jan. 1998, 5). According to the Bangladesh Observer, "most people avoid contact with the police. The ordinary person is far too disillusioned with the effectiveness of the police ... to waste their time running from pillar to post" (ibid.). As well, ordinary citizens increasingly are arming themselves or taking the law into their own hands; Bangladeshi media sources have reported a rash of mob beatings, lynchings and other vigilante actions in the past year (Dhaka Courier 4 July 1997, 7-8; The Independent 15 Jan. 1998; Bangladesh Observer 21 Mar. 1998, 5; ibid. 25 Jan. 1998, 5).

Several sources point out that corruption is widespread and permeates all aspects of public life in Bangladesh (Blanchet 1996, 193-94; Dhaka Courier 30 Jan. 1998, 15; Bangladesh Observer 11 July 1997, 5), and that it is the rich, powerful and politically connected who most benefit from the current system (Blanchet 1996, 198; Bangladesh Observer 22 May 1998, 5; ibid. 21 Apr. 1998, 5).

Thérèse Blanchet, an anthropologist who has conducted research in Bangladesh since 1978, in her 1996 study of children in Bangladesh entitled Lost Innocence, Stolen Childhoods, offers some insights into how the law and the people charged with upholding it function in practice[15] (Blanchet 1996, 185-94). Focusing on the text of the law rather than how it is implemented, according to Blanchet, "affords the law an authority which it does not have" (ibid., 185). Blanchet's study found that many laws, when vigorously implemented, are actually harmful to the very groups they are meant to protect (ibid., 185-87). The CCHRBR notes that protective legislation is sometimes used to harass
innocent people rather than arrest criminals (Apr. 1997, 36). Dwelling on content rather than implementation also "obscures the actual use and misuse of the law by the law enforcing agencies.... Knowing how to deal with the police ... is far more important than knowing the text of the law," according to Blanchet (1996, 185). For some police officers, as for corrupt government agents charged with protecting human rights, "the law is used merely to extort bribes from those who break the law" (ibid., 193). Given the way the law is implemented, she concludes, "what difference does it make ... to be protected by the law?" (ibid., 194). According to advocate Sigma Huda, the secretary general of the Bangladesh Society for the Enforcement of Human Rights (BSEHR), many of the complaints investigated and verified by the BSEHR involve innocent people who were arrested under CPC section 54 only for the purpose of extortion (The Independent 11 Aug. 1998b).

Blanchet argues that in order to understand how the police work in Bangladesh, "it is essential to grasp the extent to which thanas are money-making enterprises" (ibid., 188). According to Blanchet, who obtained her information from off-duty police officers she met through personal networks, "the money-making enterprise of a thana is master-minded by its officer in charge (OC), who generally has the rank of inspector" (ibid., 189). She found that OCs often buy their positions, generally for one year, from the district superintendent of police, as do many subinspectors (ibid.). Thanas are ranked according to the amount of revenue they generate, with those located in border areas, red light districts or areas with a high incidence of crime or land disputes being especially desirable (ibid.). One thana located in a border area notorious for smuggling activity was reportedly purchased for one year for Tk.800,000 (CDN$26,000) in the early 1990s. Blanchet continues:

The OC appoints a cashier, usually a trusted constable, who collects the various bribes and tolls paid to the thana and keeps the accounts. Every month these are submitted to the OC, who distributes the money. A fixed sum is sent to the SP at district level, while the rest is shared among the thana police officers, the higher the rank, the higher the amount attributed. Police officers who obtain a bribe through their own efforts are allowed to keep a share for themselves (ibid., 190).

According to Blanchet, local criminals and strongmen meet regularly with police to negotiate the police cut and ensure their illegal activities continue uninterrupted (ibid., 189). Prostitution can be especially lucrative for policemen in urban areas; in 1994, constables were reportedly offering Tk.10,000 to Tk.15,000 (CDN$325 to $488) to the OC of one Dhaka thana for one-month appointments to Daulotdia brothel (ibid., 190). These officers used a variety of means to recoup their investments, including registration and taxation of prostitutes, lending police assistance to obtain a licence and extraction of 'shame money' from customers (ibid.). Policemen in border areas may be involved in smuggling activities, including the trafficking of women and children (ibid., 191). The ASK/BLAST/Odhikar report on human rights in Bangladesh for 1996 also indicates that police and local government officers ignore child prostitution and trafficking of children, or "actually profit from it" (1997, 47). Blanchet reports also that police might use torture or intimidation to extract money from family members of someone in police custody, or accept a bribe to not forward a case to court (Blanchet 1996, 192).

Although Blanchet was not able to determine how much the higher echelons of the police administration know about the illegal activities of the men under their command, or how much they share in the proceeds, she indicates they are also not especially concerned, as long as the thana policemen carry out their activities discretely and the reputation of the force is not badly damaged (ibid., 189, 192).
4.2.1 Safe Custody

There is a practice in Bangladesh of placing women, juveniles and children in "safe custody" in jails or prisons under certain circumstances (CCHRB Apr. 1997, 55-56; OMCT 22 July 1997). Rape victims, child prostitutes, children fleeing abusive homes, and witnesses to murder or other serious crimes if their presence is necessary for a criminal investigation, are among those who can be placed in safe custody (ibid.; CCHRB Apr. 1998, 55-56). In 1995 the Commonwealth Human Rights Initiative (CHRI) reported that prison officials estimate that on average 320 girls and women are taken into safe custody each year (1995b, 28). Jail authorities reportedly estimated that about 350 women and children were in safe custody in late 1997 (The Daily Star 11 Nov. 1997).

The CCHRB, in its report on human rights for 1997, states that women and children are sent to safe custody under various acts, including the Vagrancy Act, section 54 of the CPC, sections of the Penal Code and the Metropolitan Police Act 74 (Apr. 1998, 55; CHRI 1995b, 27). The report states that although such people have the right to live in safe custody, "regretful[ly] ... they are sent to prisons, violating their right" (CHRB Apr. 1998, 56). Human rights groups claim that safe custody is, in fact, a form of punishment and that women are in prison "with convicted prisoners and are treated as if they are charged with, or convicted for, an offence" (OMCT 22 July 1997; AI July 1997; CCHRB Apr. 1998, 56). Themselves often victims of crimes, and with nowhere else to go, many women are subjected to further abuse in jail (ibid., 56; CHRI 1995b, 28; ASK/BLAST/Odhikar 1997, 75). According to reports, being placed in jail exposes those in safe custody to criminal influences and often leads them to feelings of "pessimism, depression and cynicism" (CHRI 1995b, 27-28; CCHRB Apr. 1998, 56). Amnesty International reports that some women have been kept in safe custody for up to four years (July 1997).

According to the CCHRB, destitute women and children are sent to safe custody because alternative arrangements, such as shelters, are largely unavailable (Apr. 1998, 55). In 1997 there were only a few government-run vagabond shelters and six women's shelters in Dhaka and various divisional cities (ibid., 57). There are also about a dozen NGO-run shelters (ibid.), but sources indicate they are small and unable to accommodate more than a few women (CHRI 1995b, 28). NGOs such as the Bangladesh National Women's Lawyers Association (BNWLA) that have offered to take charge of safe custody prisoners have reportedly encountered a "good deal of resistance" from government authorities (CHRI 1995b, 28; AI July 1997; OMCT 22 July 1997).

Human rights groups argue that there is no basis in law for safe custody and women are sent solely on the discretionary power of the judge, on application from the police, for their safety (AI July 1997; The Daily Star 11 Nov. 1997; Bangladesh Observer 21 Feb. 1997, 10). For several years, human rights activists have been trying to have the practice abolished (AI July 1997). Following the rape and subsequent death of teenager Shima Chowdhury in safe custody at Chittagong jail in late 1996/early 1997, opposition to the practice increased (see section 5). In February 1997 three human rights groups - ASK, BLAST and the National Legal Aid Network - filed a notice calling upon the home affairs secretary, the law and parliamentary affairs secretary, and the inspector generals of police and prisons to review cases of women and girls in safe custody (Bangladesh Observer 21 Feb. 1997, 10). The organizations asserted that the practice was a violation of fundamental rights to liberty and equality guaranteed in the constitution (ibid.). In October 1997 ASK successfully petitioned the government for the release of three girls from safe custody (AI Apr. 1998, 17). At a press conference in Dhaka in November 1997, ASK representatives issued a written statement again asserting that the concept of safe custody has no legal basis, as "such a provision does not exist either in the Code of Criminal Procedure or in the Jail Code" (The Daily Star 11 Nov. 1997).

NOTES
[10] According to former Dhaka police commissioner AK Al-Mamum, none of these statutes has ever been amended (The Independent 10 Aug. 1998b). [back]


[12] Gazetted positions are those that appear in the official journal listing government appointments. [back]

[13] Information on whether such changes have been implemented is not available in the sources consulted by the Research Directorate at the time of writing. [back]

[14] The Rubel killing is discussed in section 5, Vulnerable Groups. [back]

[15] Much of the detail provided by Blanchet is not available in other sources consulted by the Research Directorate. See Notes on Selected Sources for additional information on Blanchet and her study. [back]

5. VULNERABLE GROUPS

At a 15 March 1997 meeting in Dhaka the governing body of the Institute of Human Rights and Legal Affairs (IHRLA) identified women, children and persons in custody as being especially vulnerable (Bangladesh Observer 17 Mar. 1997, 11). The IHRLA, which is affiliated to the International Commission of Jurists (ICJ) in Geneva, is composed of a number of high-profile Bangladeshis, including Supreme Court advocates, judges, university professors and administrators, and former government ministers (ibid.).

Several sources have reported on the difficulties women encounter when trying to report crimes like rape or domestic abuse to the authorities (CHRI 1995a, 50-51; ASK/BLAST/Odhikar 1997, 34, 36; ASK June 1995, 19; UN CEDAW 23 July 1997, 8). An editorial in the Bangladesh Observer states that "neither police stations nor hospitals are properly equipped to give satisfactory service" to rape victims, nor is the administration "up to the task of ... punishing the criminals"(6 May 1998, 5). According to the editorial, in addition to improving facilities, authorities and hospital staff require training on how to deal with victims with sensitivity (ibid.), The newspaper states that "it is rarely that some semblance of humane treatment is seen, and that ... only when the victim happens to be backed by high status" (ibid.).

A number of sources report that police are frequently dismissive of allegations brought by women, reluctant to investigate and prosecute crimes of violence against them and sometimes openly hostile toward them (ASK/BLAST/Odhikar 1997, 34; ASK June 1995, 19; CHRI 1995a, 50-51). Reports indicate the poor and illiterate are especially poorly served (CHRI 1995a, 50-51; Bangladesh Observer 6 May 1998, 5). For these and other reasons, including the social stigma attached to rape, the number of rapes committed far exceeds the number reported to police (ASK June 1995, 19; ASK/BLAST/Odhikar 1997, 34, 36; IPS 8 Apr. 1998). According to the ASK/BLAST/Odhikar human rights report 156 rapes were reported in 1996, and of these, cases were filed in 86 (1997, 35). Other sources indicate that rape, abduction and other crimes of violence against women and children have increased at a far higher rate than have other crimes in Bangladesh (JEN 13 Dec. 1997; IPS 8 Apr. 1998). Figures presented at a seminar by the inspector general of police in March 1998 showed that the number of registered rape cases had increased from 501 in 1993 to 1336 in 1997 (Dhaka Courier 20 Mar. 1998a, 20; Bangladesh Observer 15 Mar. 1998b, 1, 12).

5.1 Women and Children
Some sources report that police often will not take seriously crimes such as child kidnapping and assault unless a high-profile person intervenes or they are reported in the media, but "such exposures are rare" (Blanchet 1996, 189-190; Dhaka Courier 30 Jan. 1998, 15). Some specific cases that received newspaper coverage are summarized below.

On 18 March 1998 a seven-year-old girl from a very poor family in Naogaon in Sardar thana was tied up and repeatedly raped by two youths while returning home at night from her employer's house. When the girl's family members tried to take her to Sardar hospital, hospital authorities "did not admit her and tried to avoid the matter," according to the Bangladesh Observer (23 Mar. 1998a, 12). The family then reported the attack to the police, who refused to file a complaint against the youths. The following day a shalish composed of "local influential people" was convened to resolve the matter: the rapists were fined Tk.4,000 (CDN$130) and set free. Some villagers demanded that the authorities arrest the rapists and provide better treatment for the girl, who was said to be in critical condition, but it is not clear if any action was taken (ibid.).

On 7 December 1997 the Bangladesh Observer reported an incident in which a 10-year-old girl, employed as a domestic servant by a police subinspector of Montijheel thana in Dhaka, was beaten and burned with hot water by the SI's wife because she had dropped some lentils while cleaning them. When police were asked about the attack the day after it occurred, they reportedly claimed ignorance of it. However, when Home Minister Rafiqul Islam visited the girl at Dhaka Medical College Hospital two days later, police claimed they had filed a case on the day the attack occurred. Allegedly, the Montijheel OC had radioed his men to "prepare all papers" when he discovered the home minister was visiting the girl in hospital. Afterward the home minister visited Montijheel thana, where he found that every second page in the case register was blank, thus allowing police to backdate cases. Asked to explain this practice the OC stated it was done for "various reasons," but promised to discontinue the practice. When asked what measures they had taken to arrest the SI's wife, then in hiding, police officials said they had searched the house but did not find her. The girl had reportedly been abused several times before, but her employers had threatened that her brother would lose his garment factory job if she reported the abuses (Bangladesh Observer 7 Dec. 1997, 12).

On 18 February 1997 a 22-year-old woman in Narasingdi Sadar thana was raped at the Union Textile Mills, allegedly by some senior employees, after which she was abducted by "hired goons" (Bangladesh Observer 8 Mar. 1997, 11). Following her release two days later she went to the thana police station to file a case, but police kept her at the station for seven days, without treatment, ostensibly for purposes of the investigation (ibid.). The woman's husband alleged she was being detained at the insistence of her attackers, and stated the police had told the couple to withdraw the complaint or face arrest (ibid.). On 27 February 1997 the woman was reportedly sent to jail after submitting a memo to the thana deputy commissioner (ibid.).

On 19 March 1998 a 22-year-old resident of Pathanpara slum area under Boalia thana in Rajshahi was gang-raped at knife point. When the woman reported the attack the following morning, Boalia police initially refused to file a case, even though she identified all five attackers by name. Later police did register a case and arrested one of the suspects (Bangladesh Observer 20 Mar. 1998, 12).

The police themselves are often implicated in crimes against women. Amnesty International reports that there were at least 3 rapes by police officers in 1997, CCHRHB reports 6 to 11 and ASK reports 21 (CCHRHB Apr. 1998, 42, 50; AI 1998; IPS 8 Apr. 1998); notwithstanding these differences, sources indicate the actual number of rapes by police officers far exceeds the number reported (CCHRHB Apr. 1998, 50; IPS 8 Apr. 1998; Dhaka Courier 28 Feb. 1998, 19).
On 8 October 1996 Shima Chowdhury, an 18-year-old garment factory worker, was arrested by police while walking with her fiancé toward the village of Majidapura near the city of Chittagong (OMCT 22 July 1997; AI July 1997; Bangladesh Observer 13 Feb. 1997, 1). The following day the couple was transferred to Rauzan thana, where they were held in separate rooms (AI July 1997; Bangladesh Observer 13 Feb. 1997, 1). That evening, after the OC had left, Shima was allegedly drugged and raped by four police officers (AI July 1997; ASK/BLAST/Odhikar 1997, 36). News of Shima's rape soon got out to the community, but police kept her completely isolated from family, friends, legal representation, journalists and human rights organizations (AI July 1997; OMCT 22 July 1997). Police reportedly described her as a prostitute and claimed she had been raped by her boyfriend, not by police personnel (AI July 1997). An investigation into the case was begun 15 October 1996, and two days later four policemen were arrested and sent to Chittagong jail (ibid.; ASK/BLAST/Odhikar 1997, 36). At the request of the police, on 15 October 1996 Shima was sent to safe custody at Chittagong jail, where she remained, completely isolated from family and friends, while her condition deteriorated through the fall and early winter months (AI July 1997; OMCT 22 July 1997). The four policemen were formally charged on 30 January 1997 under the Women and Children Repression (Special Provision) Act 1995. On 7 February 1997 Shima was taken to Chittagong Medical College Hospital, where she was declared dead (ibid.; AI July 1997). A post-mortem examination was carried out, but at police insistence her body was cremated immediately afterward (ibid.; OMCT 22 July 1997). On 14 July 1997 the four policemen accused of raping Shima were acquitted "for lack of evidence" (AI July 1997; OMCT 22 July 1997; Bangladesh Observer 4 Aug. 1997, 1). The next day, following an outcry from human rights and women's organizations, the government announced it would appeal the acquittal to the High Court (AI July 1997; OMCT 22 July 1997; Bangladesh Observer 4 Aug. 1997, 1). Recent reports from human rights organizations and various media sources do not mention the current status of the High Court appeal (AI 1998; CCHRHB Apr. 1998).

On 15 or 16 September 1997 an 18-year-old woman, Rukhsana, who was traveling from Dhaka to her home in Daudkandi thana in Comilla district was allegedly repeatedly raped by an assistant subinspector (ASI) of Kotwali thana in Barisal district (CCHRHB Apr. 1998, 51; Bangladesh Observer 26 Sept. 1998b, 10; The Independent 23 Sept. 1997). Three days earlier she had been taken into custody by Kotwali thana police after becoming separated from her female traveling companion and was reportedly ill-treated while in custody (CCHRHB Apr. 1998, 51; The Independent 23 Sept. 1997). The Kotwali thana OC then arranged to send her home under the care of the above-mentioned ASI, who reportedly attacked her in the cabin of a police launch (CCHRHB Apr. 1998, 51; Bangladesh Observer 26 Sept. 1998b, 10; The Independent 23 Sept. 1997). Rukhsana reported the rape to the Daudkandi thana police and the ASI was suspended and charged (ibid.; Bangladesh Observer 26 Sept. 1998b, 10), but one source reports the Comilla magistrate court rejected her case after examining the medical report (The Independent 23 Sept. 1997).

On 24 September 1997 a housewife of Nabaganga village under Rajpara thana in Rajshahi was reportedly raped by a police constable of Keshabpur police outpost in the same thana (Bangladesh Observer 26 Sept. 1997a, 10; AI 1998). Eyewitnesses, who had reportedly seen the officer enter the woman's residence, responded to her cries for help and caught the policeman in the act (Bangladesh Observer 26 Sept. 1997a, 10; AI 1998). After seriously beating the officer the locals turned him over to the chairman of Haripur union parishad, who then turned him over to Rajpara thana police (Bangladesh Observer 26 Sept. 1997a, 10). Rajpara thana police reportedly refused to file a case in connection with the attack (ibid.).

On 10 March 1998 a five- or six-year-old girl named Tania, the motherless daughter of a poor labourer, was raped in the police control room of the Chief Metropolitan Magistrate (CMM) court building
The attack occurred in the middle of the afternoon, with five on-duty officers on the premises (ibid.; Bangladesh Observer 13 Mar. 1998, 5). Because of the age of the victim and the circumstances in which the attack occurred, the case generated much interest among the media, the public and various human rights groups and NGOs (ibid. 14 Mar. 1998b, 1). However, a week after the investigation began the police still had not made an arrest and reportedly had no solid leads (ibid. 17 Mar. 1998, 12; ibid. 14 Mar. 1998b, 1), and the investigation appeared to be losing momentum despite the home minister's offer of Tk.100,000 (CDN$3,250) for information leading to the capture of the attackers (Dhaka Courier 20 Mar. 1998b, 5; Bangladesh Observer 15 Mar. 1998c, 1). On 18 March 1998, on the basis of a confessional statement and identification by the victim's playmate, police charged a CMM court clerk with the attack (ibid. 19 Mar. 1998, 1; ibid. 24 Mar. 1998b, 1). However, when the accused appeared before a judicial committee several days later he recanted his confession, claiming it had been extracted through torture and a promise that his children would be looked after (ibid.). Media organizations and women's groups believe police personnel are responsible for the attack (Dhaka Courier 20 Mar. 1998b, 5; Bangladesh Observer 3 Apr. 1998b, 10; ibid. 13 Mar. 1998, 5), and have demanded the government remove Tania from police custody to ensure her safety (Dhaka Courier 20 Mar. 1998b, 5; Bangladesh Observer 3 Apr. 1998b, 10).

Another rape attempt occurred on the Dhaka CMM court premises on 16 May 1998 (Bangladesh Observer 17 May 1998, 1; ibid. 18 May 1998b, 12). This time the three attackers, a police constable, a CMM court night guard and an accomplice, were reportedly caught in the act when a police patrol responded to the victim's cries for help (ibid.; ibid. 17 May 1998, 1, 12). The 14-year-old victim, who had been arrested a month earlier by Savar district police for "anti-social activities," had just been released from safe custody (ibid.). When she went to collect her belongings the three men led her to a secluded room on the second floor of the CMM court premises, where the attack occurred (ibid., 12). Senior police officials promised to punish the policemen with an "iron hand," (ibid.) but no further information is available at the time of writing. Following the attack the victim was returned to safe custody (ibid. 17 May 1998, 1; ibid. 18 May 1998b, 12).

5.2 Other Persons in Custody

The ASK/BLAST/Odhikar report on human rights in Bangladesh for 1996 states:

Notwithstanding constitutional guarantees of the right to be free from torture and other cruel, inhuman and degrading punishment, both physical and psychological torture by the police, during interrogations, are widely reported... Those responsible for torture are rarely convicted or punished and a climate of impunity allows police abuses to continue (1997, 53).

An estimated 26 to 38 people died in police or jail custody in 1997 (CHRIB Apr. 1998, 42; Bangladesh Observer 15 Jan. 1998, 3), and 30 to 37 in the first six months of 1998 (Dhaka Courier 31 July 1998b, 5; News from Bangladesh 29 July 1998). Human rights organizations estimate that at least 85 people have died in police custody since the current government took office (Dhaka Courier 31 July 1998d, 13; ibid. 7 Aug. 1998, 19). Several sources indicate that police use of torture is very common in Bangladesh because investigation methods are inefficient and torturing a suspect to extract a confession is often the easiest way to secure a conviction (CHRI 1995b, 24; ASK/BLAST/Odhikar 1997, 53; News from Bangladesh 29 July 1998; Bangladesh Observer 22 June 1997, 5). This practice has been "somewhat abetted" by successive governments, which have done little to prevent such abuses or to bring offenders to account (ibid. 1 Oct. 1997, 5; ASK/BLAST/Odhikar 1997, 53; News from Bangladesh 29 July 1998). Moreover, evidence obtained through such methods "is not altogether
inadmissable" in Bangladeshi courts, according to the Bangladesh Observer (22 June 1997, 5). As well, there is no independent investigation of police abuses: the police investigate, file charge-sheets and produce final reports on crimes committed by the police themselves (Dhaka Courier 7 Nov. 1997, 32; The Independent 10 Aug. 1998a; ibid. 11 Aug. 1998b). The media often report instances of "disciplinary action" being taken against police personnel accused of rape, torture and other human rights violations, but in the overwhelming majority of cases this action consists of suspension, transfer, denial of increment, forced retirement, termination or other light punishments (Dhaka Courier 7 Nov. 1997, 32; Bangladesh Observer 10 Sept. 1997, 11; ibid. 15 Nov. 1997, 12; ibid.16 Feb. 1998, 11). Rarely is legal action taken (ASK/BLAST/Odhikar 1997, 53; HRDCYB 1995, 108).

On 13 June 1997 Nuruzzaman Sharif, a former employee of the state-owned airline Biman, was arrested while attempting to illegally enter Prime Minister Hasina's office in Dhaka (Bangladesh Observer 22 June 1997a, 5; ibid. 17 June 1997, 1). Nuruzzaman was kept in the custody of the Tejgaon thana police until 16 June, at which time he was produced in court and granted bail (ibid. 22 June 1997a, 5; ibid. 21 June 1997, 1). Shortly afterward he fell ill and was rushed to the nearby National Hospital, where staff doctors pronounced him dead of cardiac failure (ibid.; ibid. 22 June 1997a, 5). Nuruzzaman's lawyer and representatives of the BSEHR accused Tejgaon thana police of torturing Nuruzzaman, but police denied the charge, maintaining the 35-year-old had died of cardiac failure (ibid. 17 June 1997, 1; ibid. 22 June 1997b, 12). But an autopsy conducted by Dhaka Medical College Hospital the following day concluded that Nuruzzaman had been tortured; as a result the investigating officer in the case was suspended, a murder case filed and a CID investigation begun (ibid. 20 June 1997, 1; ibid. 21 June 1997, 1; ibid. 22 June 1997b, 1). The CID investigation report, released 16 March 1998, recommended murder charges against two police officers and an informer of Tejgaon thana, and "departmental action" against the Tejgaon thana OC, a doctor at the National Hospital and a magistrate (ibid. 16 Mar. 1998, 12). As of late July 1998 no arrests had been made in connection with the Nuruzzaman case, despite the submission of a charge-sheet more than three months earlier (New Nation 29 July 1998b).

On 9 August 1997 Nurul Absar, a 35-year-old night guard at Fatikchhari thana health complex in Chittagong district, reportedly died after being tortured in the custody of Fatikchhari thana police (CCHRHB Apr. 1998, 44; Bangladesh Observer 13 Aug. 1997, 10). On 4 August Absar was interrogated by police in connection with a robbery at the health complex a day earlier (CCHRHB Apr. 1998, 44). The thana police returned to the hospital on 5 August to arrest Absar, and on 6 August he was presented in court and remanded to police custody for three days (ibid.). Absar died on 9 August; police reportedly hung Absar's corpse in the bathroom of Fatikchhari police station and tried to explain the death as a suicide. According to the CCHRHB, a post-mortem examination showed that he had died following torture by police (ibid.). On 3 October 1997 the Bangladesh Observer reported that six Fatikchhari thana policemen, including two SIs, had been arrested in connection with the murder (3 Oct. 1997, 12).

On 18 September 1997 Abdul Hye died in Mymensingh jail, allegedly after being tortured by police (Bangladesh Observer 20 Sept. 1997, 12). Arrested in Gundi village under Sadar thana of Mymensingh district 10 days earlier, he was kept in custody in connection with an investigation until 17 September 1997, when he was transferred to Mymensingh jail in critical condition. Representatives of the Bangladesh Human Rights Commission (BHRC) demanded the government investigate the incident and announced that the BHRC would be sending its own team to Mymensingh to investigate the death (ibid.).

On 19 October 1997 the BHRC announced that three prisoners had died in police custody in less than one week (Bangladesh Observer 20 Oct. 1997, 10). Nuru Mia, a 25-year-old arrested in Naogaon
in connection with a robbery case, died at Rajshahi jail hospital on 17 October 1997. He had been transferred that day from Naogaon to Rajshahi jail. On 13 October 1997 52-year-old Sirajul Islam, who had been arrested in Bodo thana of Ragpur district the previous day, died after being sent to hospital by jail authorities. On 11 October 1997 a 35-year-old man, Wajed, was arrested in Bhairab thana of Kishoreganj district. Later that day he was sent to hospital in critical condition and was declared dead. The BHRC demanded the government investigate the incidents and lay charges against those responsible (ibid.).

On 23 July 1998 Shamim Reza Rubel, a 24-year-old student at Dhaka's private Independent University, died from injuries sustained during interrogation by members of the detective branch of Dhaka Metropolitan Police (Bangladesh Observer 25 July 1998, 1; Dhaka Courier 31 July 1998a, 9; AFP 30 July 1998; The Daily Star 25 July 1998). Rubel had been picked up earlier that afternoon near his home in the Siddheshwari area of Dhaka, reportedly under CPC section 54, on suspicion of possessing illegal arms (ibid.; Bangladesh Observer 25 July 1998, 1; News from Bangladesh 29 July 1998; Dhaka Courier 31 July 1998a, 9). The policemen brought Rubel back to his house several hours later after he reportedly confessed to having weapons hidden in his house (Dhaka Courier 31 July 1998b, 5; ibid. 31 July 1998a, 9; News from Bangladesh 29 July 1998). Unable to recover any arms, detective branch members reportedly became enraged and kicked and beat Rubel in the presence of family members and other onlookers, at one point smashing his head against a lamp-post, after which he was taken back to the detective branch office for further interrogation (ibid.; Dhaka Courier 31 July 1998b, 5; ibid. 31 July 1998a, 9). When Rubel died of his injuries later that evening, the police team tried to cover up the cause of death, warning Dhaka Medical College Hospital staff not to allow anyone to see the body, and telling journalists that Rubel was connected to a notorious criminal group (ibid.; News from Bangladesh 29 July 1998; Bangladesh Observer 25 July 1998, 12). One detective branch official reportedly termed Rubel's death "merely an accident" and instructed journalists on the necessity of torturing criminals to obtain the truth from them (Dhaka Courier 31 July 1998a, 9). On 24 July 1998 five plainclothes officers were suspended and arrested, and several days later the officer who ordered Rubel's arrest also was implicated in the killing (Dhaka Courier 31 July 1998a, 9; New Nation 29 July 1998a; Bangladesh Observer 25 July 1998, 1).

Sources indicate that Rubel was not a "terrorist" but a hard-working, top student from an established family with no previous record and no known links to any political party (Dhaka Courier 31 July 1998c, 12; ibid. 31 July 1998a, 9-10; AFP 30 July 1998). As a result, his killing has become a lightning rod for public concerns about the performance of the government and misdeeds of the police (Dhaka Courier 31 July 1998b, 5; ibid. 31 July 1998c, 12; News from Bangladesh 29 July 1998). The government has appointed a one-member judicial inquiry headed by Justice Habibur Rahman Khan to investigate the circumstances surrounding Rubel's death and make recommendations to prevent such incidents in the future (AFP 30 July 1998; News from Bangladesh 29 July 1998; Bangladesh Observer 6 Aug. 1998, 1). Originally scheduled to report on 11 August 1998, the commission has been given two extensions and is expected to complete its work in early September (ibid., 12; ibid. 10 Aug. 1998b, 1; News from Bangladesh 26 Aug. 1998). At least one analyst believes it will be almost impossible for the commission to reach sound conclusions about the measures necessary to prevent future incidents in the timeframe allotted by the government (News from Bangladesh 29 July 1998).

NOTES ON SELECTED SOURCES

Ain O Salish Kendra (ASK)/Bangladesh Legal Aid and Services Trust (BLAST)/Odhikar: Human Rights in Bangladesh is a joint publication of all three organizations. Information was obtained
from newspaper reports, fact-finding investigations and eyewitness accounts. A draft of the report was reviewed and improved upon by a four-member editorial board comprising AF Hassan Ariff, Adilur Rahman Khan and Sara Hossain, all practising lawyers of the Supreme Court, and Nurul Kabir, a senior reporter with The Daily Star (ASK/BLAST/Odhikar 1997, 8-9, 11-12).

- ASK is a Dhaka-based legal and human rights resource centre that provides legal aid, counselling and mediation to women, workers and children, and promotes human rights and democratic practices.

- BLAST, established in 1994, provides legal aid and services to the poor and disadvantaged, and, with the help of lawyers and other organizations, creates awareness about legal rights.

- Odhikar, established in 1994, is a Dhaka-based coalition for human rights whose primary activities are research, education, investigation, publication, networking and election observation.

Bangladesh Observer:

Blanchet, Thérèse:
Thérèse Blanchet has conducted research in Bangladesh since 1978. An anthropologist, "her fieldwork [has taken] her from rural villages to urban slums, from haor to highlands, from brothels to madzars." Blanchet currently works for Rädda Barnen, a Swedish NGO working for implementation of the UN Convention on the Rights of the Child. Rädda Barnen has more than 20 years experience working with children in Bangladesh, and has long-standing relationships with a number of Bangladeshi NGOs. Blanchet's Lost Innocence, Stolen Childhoods was researched and written under the auspices of Rädda Barnen. Blanchet had also authored Women, Pollution and Marginality: Meanings and Rituals of Birth in Rural Bangladesh (Dhaka: University Press Ltd., 1984) (Blanchet 1996, xiv, ibc).

Transparency International (TI):
Transparency International is a not-for-profit NGO, headquartered in Berlin, that works to end corruption both in international business transactions, and, through its many national chapters, at the national level (TI 17 June 1998; Transitions Mar. 1998, 58-61). The national chapters are free to follow their own agendas as long as they do not deviate from TI's two fundamental principles: first, that they do not investigate and expose individual cases of corruption; and second, that they remain completely nonpartisan (ibid., 60).

The Transparency International-Bangladesh (TIB) survey was undertaken to "ascertain the nature, extent [and] intensity of corruption, and the places where corruption occurs." The main survey was preceded by a smaller pilot survey that looked at how public services were performed in six different sectors-education, health, the judiciary, the village shalish, police service and land administration-and the "corruption that took place in performing those services from a recipients' point of view. Simultaneously, an institutional survey on performance or delivery of public services in six sectors was conducted to obtain information from a provider's point of view. ... [Thus] the surveys took into account both the 'giver' and 'receiver' points of view." The pilot survey "furnished valuable guidelines on scope,
conceptualization and coverage" for the main study, which surveyed a 2,500-household sample group and examined several sectors in addition to those covered in the pilot survey (TIB Dec. 1997b).

**APPENDIX: DEATHS IN POLICE CUSTODY JUNE 1996-JULY 1998**

See original.


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