

# Right to Life and Right to a Fair Trial



Limon, a 16 year-old student, was shot in the leg by a RAB personnel on 23 March 2011, while he was grazing his cows by a river bank in Saturaia village, Rajapur thana of Jhalakathi district. He was rushed to the hospital and survived but his leg had to be amputated. In response to a question from a journalist on 11 April 2011, the Director General of RAB admitted that Limon had been shot accidentally, but subsequently RAB filed two cases against him - first for possession of arms and the second for obstructing them in their duty. His mother Henoara Begum also filed an FIR with the police accusing RAB of shooting her son.

The Government formed five enquiry committees. Three were formed by the Home Ministry, one by RAB and one by Police. None of their reports were made public. Limon and his family had not been interviewed or questioned by the investigators. After delayed submission of charge sheets, numerous postponements of court hearings, almost a year and a half later, the police investigation report cleared RAB members on grounds of no evidence. Limon's mother, on 13 August 2012, filed a *Naraji* (no confidence) petition against the police report. On 20 August 2012, Limon and his family members were attacked and falsely accused by a local person reportedly a RAB informant.

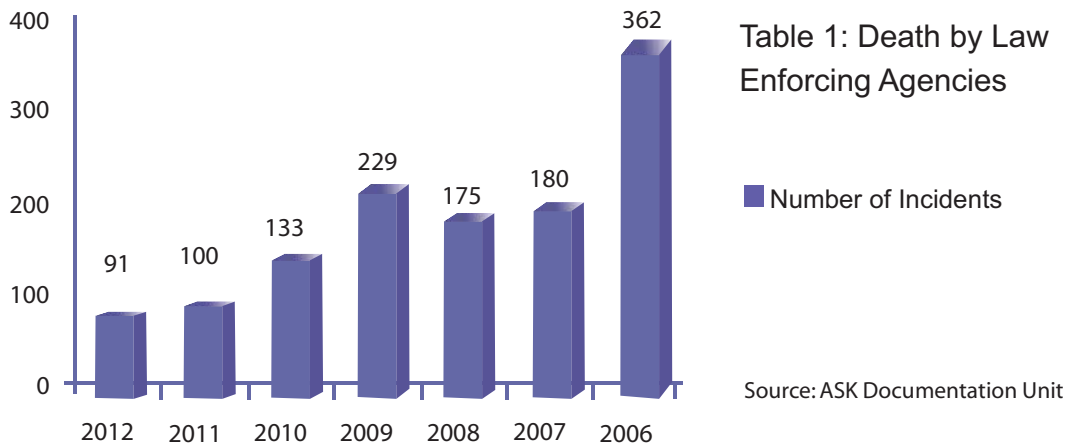
In 2012 ASK along with members of the Human Rights Defenders' Forum in Jhalakathi and other support groups continued to support Limon Hossain in his fight for justice and to challenge RAB's impunity. The Litigation and Investigation Units provided legal aid to Limon and his family. In 2012, through press statements ASK demanded an impartial judicial inquiry

into the shooting. The Media and International Advocacy Unit filed a report on the incident with the Special Rapporteur on Extra Judicial, Summary and Arbitrary Executions on 31 October 2012.

On 30 August, ASK Investigation Unit assisted by the Jhalakathi Human Rights Defenders' Forum (HRDF), organized a public rally in front of the Press Club in protest against his harassment. On the same day, a discussion meeting was organized at the Jhalakathi Press Club with local and national journalists, lawyers, political and social workers. The meeting emphasized the need for an impartial investigation and a fair trial. A 21-member team from Dhaka<sup>1</sup> visited Limon and his family members at their village at Saturaia, Jhalakathi. They attended the public rally and a discussion meeting in Jhalakathi. Various political parties, student and local social organizations including CPB, *Gono Sanghati Samity*, Bangladesh Students Union, etc. supported Limon's cause for justice. Their demands were covered in print and electronic media.

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1. Dr. Hameeda Hossain, Chairperson, ASK, Khushi Kabir, National Coordinator, Nijera Kori, Professor M.M. Akash, CPB Leader, Professor Rahnuna Ahmed, S.M Rezaul Karim, Director and Legal Advisor, BLAST



Limon's case is not the only instance of arbitrary action by law enforcement agencies. Several victims' families alleged that RAB was responsible for such incidents, but they did not file cases for fear of repercussions. As in previous years, the Government failed to take measures to investigate and prosecute members of the security forces responsible for extra judicial killings. A few cases reported in a publication by ASK's Communication Unit entitled *RAB - Santrash Nirmul na Rashter Santrash*<sup>2</sup> (Rab - Anti-Terrorism or State Terrorism) are given below:

*Dainik Sangbad, Ittefaq* and other dailies reported that a farmer was shot dead by the Bangladesh police on 11 June 2012 in Jhenaidah. Local witnesses claimed the police of Betai camp, led by camp-in-charge Sub Inspector Abdur Rahim, with about seven policemen, went to the village Paikpara at about 2 a.m. and arrested two persons including Wahab without a warrant. The villagers protested on the illegality of arrest and persuaded them to release Wahab. When their negotiations failed, the villagers tried to grab Wahab thus triggering a clash. The police assaulted the villagers with rods and a fight broke out between the two groups. During the commotion, gunshots were fired and Wahab died on the spot. Villagers stated that Wahab was a peaceful, influential and respected person and used to be a mediator or *shalishkar* in the village. No case was filed by his family members.

In another incident a physically disabled sub-contractor of a garment factory, 24 year old Abdul Momin Molla, of Brahmanbaria, who had lost his leg as

a child was shot dead by a RAB personnel. An eye witness reported that Momin was on a rickshaw around 1 pm on 1 April 2012, when six or seven people identifying themselves as RAB members surrounded the rickshaw, handcuffed Momin and two of them rode with him. Other RAB members followed them. Sometime after midnight on 2 April, 2012, RAB Battalion Four allegedly tied Momin to a tree in front of a house of the Tin Shed Colony in Mirpur and fired four shots - one on his right thigh, one on his forehead and two on his chest.<sup>3</sup>

Momin's wife Josna Akhter Poly stated that her husband was never involved in any crime. At around 1 pm on 1 April, 2012, Amin, the owner of a cell phone shop in Keranigonj called her and said that six or seven RAB members in civilian dress had arrested Momin. Poly called her husband on his cell phone and when he answered she heard people in the background shouting at him and telling him not to talk. The line was then disconnected. At around 2 a.m. on 2 April, 2012, a RAB Battalion Four informer Rubel told Poly to go to the Dhaka Medical College Hospital morgue to see her husband's dead body. Rubel, who lives in Kafrul, also told her that Momin was killed because he did not obey him. Apparently he had warned Momin several times not to compete against him or cause any conflict with him. Poly came to know from a local resident of the Tin Shed Colony that RAB members tied Momin to a tree and shot him dead. A few days after his death, a stranger called on her cell phone and told her not to file a case against the administration. Due to security concerns, Momin's wife is currently residing at a relative's house.

2. First published in May 2005, the third edition was published in October 2012.

3. Investigation report by ASK's investigation Unit.

## Deaths in “Cross Fire”

Extra judicial punishments or killings are unlawful and negate due process. They infringe upon a citizen's constitutional right to legal protection. Reports of extra judicial killings by law enforcers over the last two decades have posed a serious threat to the citizens' right to life and liberty. Human rights defenders have been deeply concerned because State impunity for perpetrators undermines the rule of law and the system of justice.

ASK's Units have contributed collectively to a multi-pronged campaign to challenge the impunity of law enforcement agencies in the courts, by filing writ petitions, investigating allegations of extra judicial killings or disappearances, researching, documenting and monitoring human rights violations, publishing articles in the media, in its quarterly Bulletin and its annual review of human rights. ASK members and staff have raised a demand for judicial redress on TV talk shows, in website publications, international seminars, conferences, etc. A report on threats to right to life was included in the UPR report which was submitted to the OHCHR in October 2012.

In 2012 ASK's Documentation Unit compiled news reports of 91 deaths by law enforcement agencies, which were attributed to “cross fire” shooting. Table I shows a decline in extra judicial killings by RAB and police from 362 in 2006 to 133 in 2010 and 100 in 2011. However, no investigations appeared to have been carried out and thus there was no accountability of law enforcers.

ASK with other human rights organizations including BLAST, Nijera Kori, Kormojibi Nari, Odhikar has campaigned for an end to impunity. They have demanded that the State enforce its obligation to protect the constitutional and fundamental right of every citizen's right to life. The political impunity of law enforcing agencies is a bar for realizing justice.

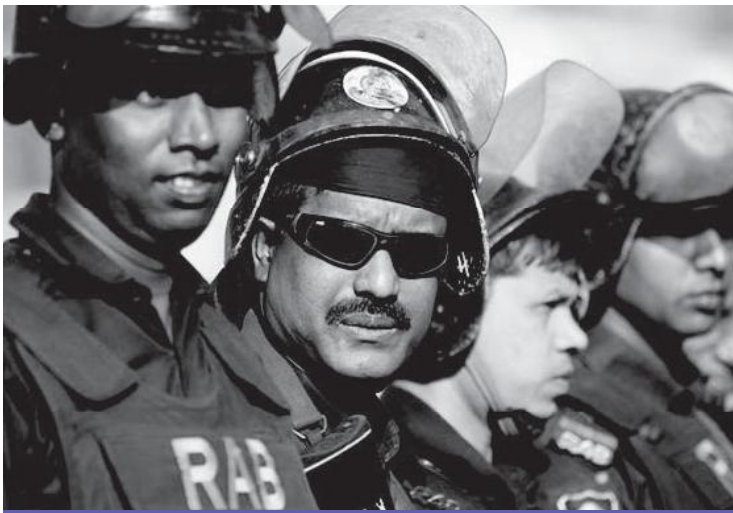
ASK's Investigation Unit has played an active role in protesting unlawful killings by law enforcers. On 16 November 2009 it submitted a urgent appeal to the Home Ministry to provide security to two brothers - local political activists, Lutfor Khalashi and Khairul Khalashi - who allegedly had been abducted by RAB from their rented house in Rupganj village, Narayanganj district two days earlier. Their family was worried since the previous year a third brother had been arrested by RAB and declared dead in “crossfire”. Newspapers on 16 November reported that the previous night the two brothers had died in a “crossfire” in a shoot out with RAB in Madaripur. RAB denied having arrested the brothers from Narayanganj or holding them in custody and claimed the brothers had been present at a meeting with a gang of criminals at night and had died in a gunfight between RAB and the gang.

ASK, BLAST and Kormojibi Nari challenged RAB's reported extra judicial execution of suspected criminals in Writ Petition No. 4152/ 2009. The High Court issued a rule *Nisi* on 17 November, to show cause as to why the Court should not declare the killings illegal. The Additional Attorney General assured the Court that the Government would take steps to stop such killings. However, such incidents have continued. ASK's field investigations confirmed that Lutfor and Khairul had been taken by RAB to Madaripur before they were found dead. They also revealed that the brothers belonged to a family which had long been involved in local politics. The father had once served as Chairman of the Union Parishad and Lutfor had contested in a recent election to the same post but lost by a narrow margin. Furthermore, Lutfor was a highly popular local doctor. ASK's Legal Advocacy and Policy Reform Unit used the Investigation Unit's report to join as intervener in the case (Criminal Miscellaneous Case No. 24727/2009) following the High Court's rule *Nisi*. The Ministry of Home Affairs claimed that RAB was not responsible for the deaths. The petition submitted a copy of newspaper reports compiled by the Documentation Unit with details of 1,057 persons killed since RAB's formation in 2004.

The High Court directed the Ministry of Home Affairs verbally to disprove ASK's report on Lutfor and Khairul Khalashi but it failed to do this. The Bench was reconstituted and the case is pending. Meanwhile, based on the report submitted by the Investigation Unit, the Media and International Advocacy Unit issued several press releases and the Research Unit published a number of articles to mobilize public opinion.

In Savar thana of Dhaka district, on 22 April, 2008, Mohammad Alam (age 27), Badshah Mia alias Bashar (age 29) and Nuruzaman Anis (age 27) were killed in a gun fight with RAB. ASK's investigations confirmed that on 22 April, RAB took the three men from their homes in Manikganj district to Savar near Amin Bazar. According to local persons, four/five gunshots were heard around 4 a.m. from the Shamoli Gas Station, Savar. In the morning passersby found three dead bodies on the road side and a few RAB personnel in a car.

ASK's investigation team confirmed that RAB Battalion Four (Manikganj Camp) had lodged two FIRs at the Savar Police Station, without mentioning any arrest. RAB alleged that the individuals who were killed were planning major crimes and that at approximately 4.15 a.m. they entered the Savar brick field area and started shooting at RAB. In self defence the latter admitted to firing 14/15 shots in the air. The FIR stated that weapons were found in the location where the three were killed. It is to be noted that RAB denied capturing them. Police investigations were not made public.



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## The Rapid Action Battalion (RAB)

The Rapid Action Battalion (RAB), a composite force, was formed in April 2004 under an amendment to the Armed Police Battalion Ordinance 1979 to arrest the rising trend in crimes, terrorist attacks and extremist militancy. Its impunity has, however, led to an alarming spike in extra judicial killings that were attributed to death in “cross fire,” “gunfights,” and “encounters” or “self-defence.” The victims were described by RAB as dangerous criminals who were killed in “crossfire” by their accomplices.

ASK has challenged RAB’s impunity in the courts by filing writ petitions, investigating allegations of extra judicial killings or disappearances, researching and publishing evidence and witness accounts, supporting media campaigns, documenting and monitoring human rights violations, publishing articles in the media, an annual human rights report as well as special publications on these subjects. These reports have also been submitted to UN Special Rapporteur.

## Operation Clean Heart

Earlier between October 2002 and January 2003 the Government launched “Operation Clean Heart” reportedly to arrest the escalation in crimes and deteriorating law and order. Military personnel with the police, Bangladesh Rifles and Ansars were ordered to “restore law and order”, but their arbitrary executions resulted in the death of 52 persons. Notwithstanding public protests, the Parliament adopted the Joint Drive Indemnity Act, 2003, providing impunity to security forces from prosecution for their involvement in “any casualty, damage to life and property, violation of rights, physical or mental damage” during the Operation.

Z. I. Khan Panna, Advocate Supreme Court,<sup>4</sup> filed a case in 2012, a decade after Operation Clean Heart. The High Court issued show cause to the Government as to why the indemnity from prosecution for the military officers and other law enforcing personnel in Operation Clean Heart would not be declared illegal. The High Court also asked authorities to explain why they should not be directed to create a fund of Taka 10,000,000 as compensation for the victims of Operation Clean Heart. Secretaries to the Ministries of Law, Home and Defense, Army Chief and Inspector General of Police were made respondents to the Rule.

## Deaths in Police and Jail Custody

Reports of deaths in police custody, many of them resulting from torture, have either not been investigated or the reports have not been made public. In 2006, a total of 70 inmates were reported to have died in prison. In 2007, this number stood at 106 and again in 2008, 72 prisoners were reported dead.<sup>5</sup> No official information was made available regarding the cause of their death, although the explanation given to the media was death due to health problems or suicide.

Section 54 and 67 of the Criminal Procedure Code have been widely misused to arrest and detain civilians “on suspicion” many of whom have alleged inhuman torture in police custody while a good number succumbed to death as a result. In 1998, following the unwarranted arrest of Shamim Reza Rubel, a University student, and subsequent tragic death in police custody, ASK, BLAST, Shommilito Shamajik Andolon and several individuals filed a Writ Petition No. 3806/1998 against arbitrary arrests under section 54 of the Bangladesh Criminal Procedure Code.

After a Rule *Nisi*, the High Court, on 7 April 2003, issued directions that Section 54 could only be used for nine specific reasons. The High Court also ruled that detainees must be given the choice of a lawyer and interrogation chambers must have glass walls/grills within sight of a relative or lawyer so that there are witnesses to any physical torture or injury. The verdict was upheld by the Appellate Division, yet the directives have not been followed and torture and deaths in custody continue.

Mohammad Fokir Chand (35), a bus driver, was found dead at the Narayanganj Police Station. After his arrest by the police on 13 April 2008, his wife Rahela was informed by the police that he had stolen Tk 1,000,000 from Santu Filling Station in Narayanganj. The police kept Fokir Chand’s wife at the station all day and refused to let her see her husband when she brought food for him. Rahela went to the police station for three more days but was not allowed

4. Currently elected as Secretary General, ASK

5. *Human Rights in Bangladesh*, ASK, 2006, 2007, 2008.

to see her husband. She filed a written application with the Narayanganj Police Headquarters which they accepted, without issuing a receipt. On 17 April, Rahela heard that her husband had been taken into police remand in Siddhirganj Police Station. She could not meet him there either. On 19 April she first learned from television reporters who came to her house, that her husband had died in custody.

ASK made further inquiries and learned that Fokir Chand had died in the district Detective Branch office. The DB office stated that the Siddhirganj police brought four other people along with Fokir Chand on remand. Fokir became sick on 19 April, was hospitalized and died, according to a press briefing by the Narayanganj Police Superintendent. In the briefing, Fokir Chand was described as a terrorist and accused of having fired a gun and explosives in Narayanganj and having stolen a million Taka from the gas station owner. A report was filed at the Siddhirganj police station. The police recovered 140,000 Taka after arresting them. During the enquiry, the accused confessed to have hidden the gun at Jashim's place in Sanarpara. The police retrieved the gun and two rounds of bullets. When he tried to escape with his hands tied, the police arrested him. He fell while trying to run in the dark and was severely injured. While he was being investigated in the DB office about the missing cash, Fokir Chand reportedly complained of chest pains and was admitted to the nearest hospital where the doctor declared him dead.

ASK learned from the medical team that Fokir Chand was already dead when the police brought him to the hospital for admission and that he had noticeable injury marks all over his body. Both his legs bore deep wounds. The magistrate observed in the inquest report that, "He had bruises on his nose, both arms and starting from his knees up to his ankles. His urinary tract was severely wounded as well."

## Constitutional and International Guarantees

Article 31: "To enjoy 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."

Article 32: "No person shall be deprived of life or personal liberty save in accordance with the law."

Article 35(3): "Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law."

Article 35(5): "No person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment."

Bangladesh's ratification of the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention on Torture (CAT) reinforces State obligations to protect the right to life. In particular, Article 6 of the ICCPR affirms "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

Constitutional and legal experts have argued that, "In international human rights law, the right to life is perceived as a 'right not to be killed,' affording protection to human life against arbitrary and intentional deprivation/killing ... and to refrain from interfering with the life of the right-bearer ... The State is therefore

under two countervailing obligations ... to refrain from arbitrarily depriving or taking the life of an individual and, two, to adopt appropriate measures to prevent the taking of life by police or security forces."<sup>6</sup>

## Way Forward

To meet its responsibility the first call on Bangladesh is to enact national legislation in compliance with international treaties; the second to ensure their enforcement and third to deny impunity to state agencies for arbitrary use of force.

The Government needs to respond to High Court questioning of impunity for RAB and other security forces and to ensure the safety and security of persons in custody and of human rights defenders.

All three organs of the State are duty bound to ensure:

- Accountability of security forces and law enforcement agencies.
- Effective access to an independent and neutral legal system.
- Investigations into incidents of extra judicial deaths which are made public.
- Compliance with Court decisions.
- Protection for survivors and victims' families and witnesses.
- Maintenance of international standards in treatment of persons in custody.

6. "Right to Life", *Human Rights in Bangladesh*, Shirin S. Choudhury, ASK 2006. The author was elected as Speaker of Parliament in 2013.