



**HUMAN
RIGHTS
IN
BANGLADESH
2009**

A Summary Report

Ain o Salish Kendra (ASK)

Human Rights in Bangladesh 2009

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Ain o Salish Kendra (ASK)
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Glossary

Adibashi	Indigenous population of Bangladesh
Janakantha	Bangla daily newspaper
Jatiyo Sangsad	National Parliament
Muktangon	Location near centre of Dhaka where political rallies are held
Peelkhana	Location in Dhaka housing BDR headquarters
Pouroshabha	Municipality
Prothom Alo	Bangla daily newspaper
Union Parishad	Lowest elected body

Acronyms

ASK	Ain o Salish Kendra
ACC	Anti-Corruption Commission
BDR	Bangladesh Rifles
BLAST	Bangladesh Legal Aid and Service Trust
CID	Criminal Investigation Department
OC	Officer in Charge
CrPC	Code of Criminal Procedure
MP	Member of Parliament
RAB	Rapid Action Battalion
SMS	Short Message Service
UN	United Nations

Political Parties and their Student Wings

AL	Awami League
BNP	Bangladesh Nationalist Party
JI	Jamaat-i-Islami
JCD	Jatiyotabadi Chattro Dal (BNP's Student Wing)
CL	Chhattro League (AL's Student Wing)
ICS	Islami Chattro Shibir (JI's Student Wing)

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Sultana Kamal
Executive Director

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Introduction

The year began with a newly elected government taking office in Bangladesh after a period of almost two years under a Care-taker Government. An overwhelming electoral majority won by the Awami League had raised expectations of an improvement in the human rights situation because its election manifesto had promised to hold the trial of war criminals, end extra-judicial killings, provide safety of life and property, establish rule of law, and promote a corruption free and neutral administration. Given its mandate the Government was expected to set up mechanisms to redress human rights abuses, and to take steps for legal and infrastructural reforms that would free state institutions from partisan influence and make them more accountable.

Since January 2009 Parliament passed several Acts that set up monitoring and redressal mechanisms, but there was little improvement in the state's protection of the right to life, as was evident in the frequency of extra-judicial deaths, custodial torture and other abuses by law enforcement agencies. The newly elected Government faced serious challenges to the rule of law by a mutiny in the ranks of the Bangladesh Rifles (BDR) and by violence perpetrated on university campuses by members of the Chattro League, an affiliate of the ruling party.

This summary report will analyse these challenges to human rights in Bangladesh. It will also review the legislation enacted during the year to promote human rights, and to set up institutions for the protection of human rights. The situation of workers and women will be reviewed briefly.

Peelkhana Massacre and Mutiny Trial

On 25 February, during an assembly at the BDR headquarters in Peelkhana to celebrate BDR Week which was chaired by Director General Major General Shakeel Ahmed, several BDR *jawans* raised various claims and demands, which led to a serious agitation amongst the rest. This rapidly escalated into shooting, resulting in the assassination of 78 persons, including the Director General and his wife, senior officers and 17 civilians. Even women and children were not spared from this massacre. The Government succeeded at first in curbing the spread of violence in Dhaka by offering an amnesty. It was able to limit the loss of life through political negotiations rather than resort to the use of force. But the mutiny had also spread to other BDR camps across the country, and it took time to restore discipline.

A second challenge was to determine the mode of trial of the members of the BDR accused of killing, torture and looting. A proposal for trial under military law rather than under the BDR laws was raised on grounds that the maximum penalty of only seven years under the latter did not seem adequate for acts that amounted to treason. The Government applied to the Supreme Court for a decision. The Appellate Division appointed ten senior lawyers as *amici curiae*, and after hearing their submissions the Court ruled that the trial be held under civilian law and not under military law. The Government decided to hold the trials under two laws: acts of



mutiny under the BDR law, and the killings, torture, looting, etc. under the Criminal Procedure Code. Six Special Courts were set up all over the country under the provisions of the BDR law. The cases were first started in the Special Court at Rangamati.

The officer in charge (OC) filed a case as complainant in Lalbagh Police Station, but the case was later transferred to the New Market Police Station. The Criminal Investigation Department (CID) was given charge of investigating the case. Although assurances were given that the charge sheet would be submitted within a month of the incident, the incidents were so widespread that it was not possible to submit the charge sheet by the end of the year. According to the information submitted to the Court by the investigating officer, 2,014 BDR members and 27 civilians were arrested. Of these, 447 issued confessional statements allegedly admitting their guilt.

Several human rights organizations were critical of the law enforcement agencies for extracting confessional statements with the use of force and torture in violation of legal norms. Investigations by ASK found that the detainees were taken into remand and subjected to severe physical torture. Around 84 BDR members were reported to have rescinded their confessional statements, on grounds that these were extracted through torture during their interrogation. Many of them stated in their applications that they were threatened with "cross-fire" to make false confessions.

Reports of subsequent deaths of BDR members in military or police custody raised serious concern for the right to life. According to information obtained from BDR headquarters 47 BDR members had died (local newspapers cited the numbers at 53). Of these 26 died in Dhaka and 21 outside Dhaka. Of the 26 who died in Dhaka, ten were reported to have died of heart failure, five committed suicide, four died of liver cirrhosis, three died of kidney failure, two from high blood pressure and two from cancer. The deaths outside Dhaka were also explained as having occurred after illness. However, newspaper reports and evidence from victims' families supplemented ASK's own investigations that in almost all the cases death had resulted from torture. The relatives denied that the deceased suffered from the illnesses that were attributed to the cause of their deaths in the official record. In response to the complaints from human rights organizations, the Government, on 14 May 2009, formed a three-member committee headed by Deputy Secretary (currently Secretary) Md. Zakir Hossain to investigate the cause of these unnatural deaths and to submit its report within 15 days. No report was submitted until the end of the year. According to information obtained from BDR headquarters 47 BDR members had died (local newspapers cited the numbers at 53). Of these 26 died in Dhaka and 21 outside Dhaka. The headquarters

claimed that of the 26 who died in Dhaka, ten died of heart failure, five committed suicide, four died of liver cirrhosis, three died of kidney failure, two from high blood pressure and two from cancer. Those who died outside Dhaka were also listed as having died following illness.

Further irrefutable evidence on the deaths of two BDR personnel has confirmed the use of torture. Police have ascertained that two BDR members, Habildar Mohiuddin and Nayek Mobarak Hossain were tortured to death. On the basis of their post mortem reports, two murder cases have been filed with the New Market Police Station of Dhaka. Nayek Mobarak Hossain who was posted in Cox's Bazar died on 22 March, and Habildar Mohiuddin who was posted with the 28 Rifles Battalion of Chittagong died on 6 May. Although no accused has been mentioned in the two cases, investigations are ongoing.

To prevent a recurrence and to ensure security, the Government must identify the underlying causes of the incident and ensure punishment of the accused, while at the same time the right to life and freedom from torture of the detainees must be secured.

Student Violence

An important challenge to the rule of law was posed by the Government's inability to control violence and other lawless acts by members of the Chhattro League, the student wing of the ruling party. The party's student cadres disrupted the educational environment by taking control of residential halls in the public universities with the use of arms, manipulating contracts to their own advantage and perpetrating violence. Their actions became a serious threat to students and teachers on the campus.



Student's clash in Dhaka University

The Awami League in its election manifesto had promised to rid the academic arena of terrorism and ensure a proper environment for education, and notwithstanding warnings issued to the students by the Prime Minister and the Minister of Home the police took no action to arrest students who were openly violating the law.

Violence by Political Party Cadres

After the national elections, held on 29 December 2009, incidents of attacks on leaders, workers and supporters of different political groups by their rivals were reported from different places around the country. According to ASK's compilation of newspaper reports, between January to December there were a total of 360 incidents of political violence, in which over 4,000 persons were injured and 41 died. In 20 other incidents of clashes between political workers and law enforcement agencies, around 371 persons were injured and one was

killed. These incidents undermined the law and order situation and contributed to a deterioration in the human rights situation.

Table 1: Clashes between Political Rivals in 2009¹

Political Parties	Incidents	Numbers Injured	Number of Deaths
AL-BNP	155	1725	20
AL-Jamaat	2	7	-
AL-Shibir	6	30	-
AL-JAPA	2	10	-
AL-BNP-Shibir	1	6	-
AL-BNP-Jamaat	2	55	-
BNP-Jamaat	1	2	-
BNP-JAPA	1	15	-
Internal Clash			
AL-AL	164	1919	20
BNP-BNP	26	489	1
Total	360	4258	41

Table 2: Violence between Police and political party cadres in 2009²

Political Parties	Incidents	Numbers Injured	Number of Deaths
AL-BJP-Police	3	36	-
AL-Police	5	67	-
AL-BNP-Police	7	205	-
AL-Jatiyo Party-Police	1	6	-
BNP-Police	4	57	1
Total	20	371	1

Trial for War Crimes

Since the War of Independence demands have persisted from families of victims as well as the general public to hold trials for genocide, crimes against peace and crimes against human-

1 ASK Documentation Unit

2 ASK Documentation Unit

ity committed in Bangladesh in 1971. Although 37,471 trials were reported to have started in 1972, many of these were suspended after the military take over in 1975, while amnesty was granted in some convictions. In 1991-1992, under the leadership of Jahanara Imam, the mother of a martyred freedom fighter, there was a massive popular movement that led to the holding of a People's Tribunal, at which charges were read out against some of the leading members of the Jamaat-i-Islami, accusing them of genocide, war crimes and crimes against humanity. This was to pressure the Government to hold trials. Instead of holding trials the Government of the day issued warrants of arrest against 24 persons who had led the movement for trial of war criminals. In 2007, the demand for war trials was again raised during the tenure of the Caretaker Government, with the Sector Commanders' Forum taking the lead. During this period a number of cases were filed against war criminals by individuals although under the International Crimes Act 1973 only the State may file cases for offences of war crimes, genocide, crimes against humanity, etc. Although the Caretaker Government concurred with the demand for bringing the war criminals to justice, it did not file any cases at the time.

The present Government had included the trial of war criminals in its election mandate in response to public demand. In the first session of the Ninth Parliament the International Crimes (Tribunals) (Amendment) Act 2009 was enacted on 14 July 2009 to amend the International Crimes (Tribunal) Act 1973.

As a first step in the trial of war criminals, the Government announced its plan to set up an office for the Tribunal in the old High Court Building, and appoint a panel of lawyers. In order to make the trial process internationally acceptable, the Government requested technical assistance from the UN. How-

However, the process of appointing members of the tribunal, investigation and prosecution teams has taken too long.

Implementation of the CHT Peace Accord

The twelfth anniversary of the Peace Accord signed between the Government of Bangladesh and the PCJSS (*Parbattya Chattagram Jana Sanghati Samiti*) fell on 2 December, 2009. Its implementation has not kept pace with the original intention of restoring peace, and disputes over land ownership and local governance remain unresolved. Military cantonments and camps have remained in the Chittagong Hill Tracts, and violence has often erupted between members of the Chakma community and the Bangali settlers.

The Government took a noteworthy initiative in 2009 to announce the withdrawal of the Army camps and to commence a land survey preliminary to resolving land disputes.



Article 17(ka) of the Fourth Chapter of the Peace Accord, stated that after the signing of the Treaty between the Government and the *Jana Sanghati Samiti*, and after the surrender of arms by the *Samiti* members all temporary camps were to be gradually withdrawn with the exception of the BDR camps and the permanent cantonment (three camps in three districts of Ali Kodom, Ruma and Dighinala).

On 29 July 2009, the Government announced that one Brigade and 35 temporary army camps would be withdrawn by September. Various groups, including the *Jana Sanghati Samiti*, welcomed the announcement of the withdrawal of the Army, but the BNP, Jamaat and their political allies filed a writ petition in the High Court Division opposing the withdrawal of the Army camps, in response to which the High Court Division issued an injunction against the Army withdrawal. Subsequently, on an application by the Government, the Appellate Division issued a stay order on the operation of the injunction, clearing any legal bar against the withdrawal of the camps. Local Bangali settlers protested the decision and blocked roads arguing that the move was a threat to the independence and sovereignty of Bangladesh.

Claims over ownership of land between Chakmas and Bangali settlers have been a major source of dispute between the two communities in the Hill Tracts. The disputes have been exacerbated because under the customary practice of the Chakmas, land is owned by the community and not individuals, whereas under the national laws and rules enacted in 1980 land allocated to the settlers was registered in individual names. Apart from this, at different times land has been leased to individuals and companies for commercial use such as rubber plantation and horticulture. Commercial forestry has been promoted by the World Bank and Asian Development

Bank. This has led to complaints against organizations reported to forcibly take possession of land in the region belonging to indigenous people, for commercial farming. Apart from this, the task of allocating land to refugees returned from India has yet to commence.

On 19 July 2009, the Government appointed retired Justice Khademul Islam Chowdhury as Chairman of the Chittagong Hill Tracts Land Commission. The Chairman's announcement that the land survey would commence from 15 October 2009 elicited a strong reaction from the indigenous population. In the face of objections from various organizations of indigenous people, leaders and human rights activists, the commencement of the survey was postponed to 15 November, 2009. It was reported that if the survey was carried out before the existing disputes were resolved, the situation would become more complex. They demanded that the survey should commence only after arrangements have been made for the return of refugees and resolution of existing disputes. At the same time, many questions were raised regarding the jurisdiction of the Commission to carry out this survey. According to Section 6 of the Land Commission Act the Commission could only resolve disputes, demolish constructions which do not meet regulations and reinstate dispossessed property to the rightful owners. It was not authorized to carry out a survey. Another problem faced by the Land Commission was that Article 4 of the Fourth Chapter of the Peace Treaty did not allow for appeal against the decisions of the Commission. In case of any grievance or negligence by an order of the Commission, the aggrieved party would have no means of redress.

The year saw little improvement in the human rights situation in the Chittagong Hill Tracts. Even though indigenous people were dispossessed of their land and homes, the ad-

ministration remained indifferent. On 31 July 2009, when a physically disabled, 24 year old *Adibashi* woman was raped by a Grameen Bank employee, he was not arrested. On 4 September 2009, 24 persons including the Chairman of the Hill Tracts Student Committee, Riko Chakma, were arrested on allegations of holding an illegal assembly. They were arrested at the meeting held in preparation for the 10 September Council. Before the tribal leader Rang Lai Mro was granted bail this year he was transferred in a critically ill condition to the hospital's prison cell, where he was kept in shackles. Protests against this violation of the Prison Code by human rights organizations helped to secure his release.

Extra-judicial killings

Notwithstanding a commitment made by the majority party in its election manifesto to stop the practice of extra-judicial killings by law enforcement agencies, and subsequent reassurances by the Prime Minister and several ministers, which were reiterated to the United Nations³ the Government took no steps to end impunity for RAB and other law enforcement agencies in cases of extra-judicial deaths. According to newspaper sources, the number of extra-judicial deaths had risen from 175 in 2008 to 229 in 2009.

In Madaripur, two brothers Lothfur Khalashi and Khairul Khalashi were reported to have been killed by RAB allegedly in a "cross fire". According to ASK's investigation the two brothers were arrested on 13 November 2009 from Rupganj in Narayanganj and on 15 November their dead bodies were found at Shirnara of Madaripur. On seeing the report pub-

³ Universal Periodic Review (UPR) Bangladesh: Compilation of Reports, Human Rights Forum on Universal Periodic Review (UPR) Bangladesh, January 2009.

lished in newspapers on 17 November, 2009, a High Court Bench⁴ issued a *suo motu* Rule⁵ to show cause as to why extra-judicial killings (“cross fire”) by law enforcement forces should not be declared illegal.⁶ Earlier in 2007, Obaidul Khalashi, the brother of Luthfor Khalashi and Khairul Kalashi, was reported to have been killed by RAB in “cross fire”.

Table 3: Death by Law Enforcing Agencies 2009⁷

Force/Agency Nature of Death	Force/Agency					Total
	RAB	Police	RAB & Police	Joint Force/Army	BDR	
"Crossfire" (not arrested)	33	55	22	2	-	112
"Crossfire" (in custody)	9	3	1	-	-	13
Physical Torture (not arrested)	-	1	-	-	1	2
Physical Torture (in Custody)	1	7	-	-	-	8
Shot (Before arrest)	-	10	-	1	78	89
Suicide (in Custody)	1	1	-	-	-	2
Sick (in Custody)	1	2	-	-	-	3
Total	45	79	23	3	79	229

In a writ petition⁸ filed on 29 June 2009, the High Court Division Bench⁹ issued a Rule to show cause within four weeks as to why extra-judicial deaths at the hands of law enforcement forces should not be declared to be illegal and why an order should not be made to take departmental and criminal action against individuals involved in such activities. There has been no response from the Government, and the case is currently awaiting hearing.

4 Comprising of Justice A. F. M. Abdur Rahman and Justice Md. Emdadul Haq.

5 *Suo Motu* Rule no. 24727 of 2009

6 ASK and BLAST became intervenors in the case.

7 ASK Documentation Unit

8 Writ Petition no 24152 of 2009 filed by ASK and BLAST.

9 Comprising Justice Syed Mahmud Hossain and Justice Quamrul Islam Siddiqui.

Even after the issuance of these two Rules against the Government by the High Court, extra-judicial killings have not abated. Although news reports have referred to deaths in “cross fire”, “shoot outs” and “encounters” Government sources have attributed these extra-judicial killings to “self defense” by law enforcement agencies.

Freedom of Expression

On 5 April 2009, the Right to Information Act, passed by Parliament, received Presidential approval. In this Act, ‘right to information’ is described as the right to receive information from any authority, and makes it obligatory for each authority to make readily available to the public all information relating to its decisions, workings or its completed or proposed work and with regard to publication and dissemination of information, no authority may conceal information or restrict easy access to the same. Reports issued by the authorities must be easily accessible, and free of charge to the general public. An Information Commission has been set up under the Act, to ensure compliance with the Act. A weakness of this law is that national security and intelligence agencies have been kept outside its purview.

Violence against Journalists

Violence on reporters and attacks on news media persisted during the year. According to statistics compiled by ASK’s Documentation Unit from national newspapers, in 2009 a total of 270 reporters were subjected to torture, harassment, attacks and threats, etc., and at least three reporters died as a result.

Table 4: Violence against Journalists in 2009¹⁰

Perpetrators of torture/harassment/ intimidation	No. of Incidents
Law Enforcement Agencies	11
BDR personnel	5
Terrorists/militants	81
Defamation cases filed for publication of news	84
AL & its affiliated organisations	41
BNP & its affiliated Organizations	3
Torture by students of Dhaka University	10
Murder by Terrorists	4
Others	11

For example, on 22 October 2009, a RAB-10 Unit arrested F. M. Masud, a *New Age* correspondent, without a warrant, and subjected him to physical torture. He was admitted to Dhaka Medical College Hospital in a critical condition. Masud was later released on instructions of the Minister and Secretary of Home Affairs. The former gave assurances that investigations into this incident would be carried out and the perpetrators punished, but there were no reports of steps taken up to the end of the year.

In another incident, a Gafargaon correspondent of the *Daily Shamakal*, Abdullah Al Amin Biplob, became the victim of a terrorist attack because he published a news item against an elected Member of Parliament after he was threatened: "I am the MP of Gafargaon. Nothing may be written against me in the newspapers for the next five years. And if anything is written I will not let it go."¹¹

¹⁰ ASK Documentation Unit

¹¹ *Samakal, Jugantor*, 12 April 2009; *Repression on Journalists 2009*, Bangladesh Federal Union of Journalists (BFUJ) Jatiya Press Club 18, Topkhana Road Dhaka-1000.

Freedom of Association and Assembly

To protest against the lease of a gas block in the Bay of Bengal for exploration, the National Committee for Preservation of Oil, Gas and Mineral Resources, held a public meeting in Dhaka on 2 September 2009. At the conclusion of the meeting when a procession started towards the Petrobangla offices, it was subjected to a baton charge by the police. Dr Anu Muhammad, Professor of Economics at Jahangirnagar University and almost 50 other members were injured. The Home Ministry expressed regret at this incident of violating the fundamental right to freedom of assembly and expression, but no action was taken to discipline those who had used violence on the processionists. Similar incidents also occurred during a protest rally by garment workers.

The Government invoked their powers under Section 144 of the CrPC, to prevent public meetings, protests, demonstrations, etc. in a number of instances. In 2009 Section 144 was imposed in 82 incidents to prevent public assembly of more than four persons.

Table 5: Imposition of Section144 (Division wise) in 2009¹²

Dhaka	Chittagong	Rajshahi	Khulna	Barisal	Sylhet	Total
21	10	24	15	5	7	82

Women's Rights

Participation of women as electoral candidates increased considerably in the 2008 elections to the Parliament. Around 155 women from different parties contested for general seats, out of which 19 were elected. For the first time, women were allocated important Cabinet portfolios of Home, Foreign Affairs, Agricul-

¹² ASK Documentation Unit

ture, Labour. In addition a woman was made deputy leader of the House and another deputy whip of the majority party. Fifty seven women were appointed members of parliamentary standing committees, but only one woman became a chair of the Standing Committee on Women and Children Affairs.

An important step towards the exercise of equal rights was the adoption by Parliament of the Citizenship (Amendment) Act 2009 on 5 May 2009.¹³

In the absence of a methodology for maintaining systematic data on violence against women, the sources usually relied upon are the violence against women cell in the police department, which maintains a record of cases filed and news reports. A compilation from fifteen national newspapers by ASK found 446 reports of incidents of rape, in which 158 women were victims of gang rape and 62 were murdered after rape. Cases were filed in 244 of these incidents. Thirty five incidents of fatwa were reported, and 281 women were reported to have been subjected to domestic violence, 285 women to torture for dowry, out of which 194 died. The media reported on 63 incidents of acid burns on women. These numbers reflect an increase in incidents compared to prior years.

Table 6: Comparative Data on Violence Against Women, 2003 - 2009¹⁴

Category of Violence	2003	2004	2005	2006	2007	2008	2009
Acid Attacks	249	228	130	142	95	80	63
Domestic Violence (Dowry Related Violence)	705 (374)	616 (352)	689 (356)	635 (334)	577 (294)	608 (296)	566 (285)
Rape	948	618	585	515	436	486	446
Gang Rape	433	359	250	226	198	127	158
Fatwa	46	35	46	39	35	20	35

¹³ Bangladesh Gazette 2009

¹⁴ ASK Documentation Unit.

Rights of Workers

The Bangladesh Labour Act 2009 was passed by Parliament. It amended the 2006 Act which had consolidated protective laws for workers' rights in the formal sector. Since it did not apply to the informal sectors of agriculture, or domestic service, the workers were denied their rights.

Unrest in the garments industry led to demos and closures over wages and overtime payments. Workers in the jute factories, which had been shut last year, had yet to receive their dues. Government had announced a draft jute policy in 2008 and agreed to reopen the jute mills which had been closed earlier. Bangladesh Occupational Safety, Health and Environment Foundation (BOSHEF)¹⁵ compiled information from 16 daily national newspapers, according to which, in the first half of 2009 (January to June) 29 workers died and 1,041 were injured in their workplace due to accidents. The highest number of injuries occurred in the garment factories (552 persons) and Transport sector (486 persons).¹⁶ Workers in the ship breaking industry were most vulnerable to accidents, and the industry was the source of pollution of the environment. In 2009, reportedly, at least 30 workers died due to accident and in the last decade the number of total deaths was at least 1300.¹⁷ The return of migrant workers from different countries owing to the economic recession was a major upset for the family economy and the national economy. According to newspaper reports, during the first five months around 1,000 dead bodies were sent back to Bangladesh. Although last year

15 Bangladesh Occupational Safety, Health and Environment Foundation (BOSHEF)

16 For more information see Workers' Right chapter of Human Rights in Bangladesh 2009 (Bangla Verson).

17 *New Age*, 4 January 2010.

the High Court had given the Government clear directions to take necessary steps to stop the exploitation and harassment of migrant workers, no measures had been taken to regulate violations by recruitment agencies.

A few positive developments took place this year. A tripartite meeting between garment workers, owners and Government representatives discussed the need to allow trade union activities in the garment sector. For the first time the Government and owners of tea garden announced a minimum wage of taka 45-48 taka per day instead of the previous wage of Tk 32.50 taka for tea workers. Their festival bonus was also increased from Taka 500.0 to Taka 2,500.00.¹⁸

Judicial Developments

Several landmark judgments by the High Court have set a framework to advance women's rights, protect them from violence, provide safety of workers in the ship breaking industry, and promote a fair trial. Some of these judgments are referred to briefly below:

The superior courts gave a landmark judgment to prevent sexual harassment and illegal penalties imposed on women during mediation councils or *shalish*.

Judgments on Sexual Harassment

The High Court Division of the Bangladesh Supreme Court, on 15 May 2009, directed that until legislation against sexual harassment is enacted by Parliament, in accordance with Article 111 of the Constitution of Bangladesh, the High Court Division's directions will remain in effect to set up a Complaints

¹⁸ For more information see Workers' Right chapter of Human Rights in Bangladesh 2009 (Bangla Version).

Centre in all educational institutions and workplaces, to maintain confidentiality of the identity of the accused person and the victim until the allegations have been proved, to institute a committee comprising of at least five persons, with a majority of women and headed by a woman, to administer this centre. On completion of enquiries into a complaint of sexual harassment, the committee will send the accused to the police, to file a case to be tried by the judiciary under the laws in force in the country based on the manner of the offence and its severity.

The High Court defined sexual harassment as any form of harassment, either physical or psychological, amounting to sexual harassment through E-mail, SMS, pornography, telephone, any gestures or indecent comments. And since sexual harassment does not only occur in the workplace or in educational institutions, any type of indecent or harsh comment, or looking at someone in an indecent manner, etc., while they are in public would be treated as sexual harassment.

Further the Court defined sexual harassment as intimidation of a woman, using pressure or making false promises to



establish a relationship, pornographic and obscene writing and images on walls, etc. The Court emphasized the importance of enacting legislation in compliance with its judgment, and dispensing appropriate punishment.

On 17 May 2009, in another case of sexual harassment in Jahangirnagar University, a High Court Division Bench comprising Justice Syed Mahmud Hossain and Justice Kamrul Islam Siddiqui declared illegal the decision of the University's Syndicate to acquit a professor, accused of sexual harassment, ignoring the recommendations of three separate investigation committees.

In May 2008, four female students of the Drama and Dramatic Theory Department of Jahangirnagar University had brought complaints of sexual harassment against Sanowar Hossain Sunny, a professor of the department. The university authorities set up a preliminary fact finding committee and followed this with another fact-finding committee. Both committees concluded that the complaints brought against the accused professor were valid. A third investigation committee was appointed under Section 44 of the University Act. In spite of these reports, however, the university authorities failed to take any steps in the complaint. Without publishing the report of the investigation committees the Syndicate, on 13 September 2008, acquitted the accused Professor Sanowar Hossain Sunny, on grounds that the allegations "had not been proved beyond reasonable doubt". The Syndicate's decision resulted in eight month long protests by the general students demanding the publication of the report and for Professor Sunny's dismissal. The latter made several threats to the complainants, who were supported by general students and teachers to stop further protests. Professor Sunny's reinstatement in October 2008 led to unrest amongst the students, and on

his return to campus he was physically attacked by students. Sunny lodged complaints to the university authorities against six students (two of whom were complainants and two were witnesses). The Syndicate took a decision to temporarily suspend the six students.

In a public interest writ petition challenging the order of acquittal of Professor Sanowar Hossain Sunny without publication of the investigation report, the High Court, on 27 October 2008, issued a *Rule Nisi* staying the temporary suspension of the students and directing the university authorities to show cause as to why the decision to acquit Sunny from the allegations should not be declared illegal and a new investigation committee not be set up.

Illegal Penalties imposed on Women

The High Court¹⁹ issued a directive on 22 August 2009 to the Ministry of Local Government and Rural Development, law enforcement agencies, Pouroshabha and Union Parishads to take expeditious and effective steps to stop the imposition of penalties (such as striking, beating, whipping, lashing with canes) in the course of mediating disputes. The Court also issued a Rule against the Government as to why such activities should not be declared illegal.

Family Courts in the CHTA High Court Bench constituted by Justice Syed Mahmud Hossain and Justice Quamrul Islam Siddiqui issued a Rule on the Government, on 3 May 2009, directing it to set up family courts in the three districts of Chittagong Hill Tracts. It directed the Government to show cause

¹⁹ The Bench was constituted with Justice Syed Mahmud Hossain and Justice Quamrul Islam Siddiqui.

within three weeks as to why section 1(2) of the Family Courts Ordinance 1985, by disallowing family courts in the CHT had deprived people access to justice in family disputes, should not be declared to be ultra vires of the Constitution.

Ship Breaking Industry

The High Court²⁰ issued a show cause notice on the Secretary, Ministries of Industry, and of Labour and Employment, the Chief Industrial Inspector, Chittagong District Commissioner and the Chairman of the Ship Breaking Industries Owners' Committee to show cause as to why they should not be held liable for the failure to apply the Labour Act 2006 to the breach of right to life and right to a safe workplace for workers in the ship breaking industry in Shitakunda, Chittagong, and why the Court should not direct that the Labour Act 2006 be applicable to the ship breaking industry.

Conviction in the Bangabandhu Murder Trial

The Appellate Division delivered a judgment 34 years, two months and 27 days after Bangabandhu Sheikh Mujibur Rahman, the President of Bangladesh and his family members were assassinated. It had taken 21 years for the trial procedure to begin. The case was filed at the Dhanmondi Police Station for the first time on 2 October 1996. The trial commenced in the district criminal court, went up to the High Court and was finally disposed of after the Appellate Division of the Supreme Court rejected the Appeal Petition and upheld the judgment of the High Court Division.

²⁰ Justice Syed Mahmud Hossain and Justice Kamrul Islam Siddiqui issued this order in a writ petition no 7528 of 2009 filed by Ain o Salish Kendra (ASK).

The case could not be filed earlier because of the Indemnity Ordinance, 1975 promulgated by Khondokar Moshtaq Ahmed who had assumed office of the President after the military coup of 15 August 1975. After the Ordinance was repealed in 1996, the Dhaka District and Sessions Judge in 151 working days, heard the evidence of 61 witnesses, and on 8 November 1998 sentenced 15 of the 19 accused to death in public by firing squads. To confirm the death sentence the appeal was heard in the High Court Division as a Death Reference. Five of the accused sentenced to death had appealed in the meantime. After hearing the appeals and death references together, on 28 June 2000 a High Court Division Bench comprising Justice Md. Ruhul Amin and Justice A.B.M. Khairul Haque delivered a split judgment, with the latter upholding the capital sentence for fifteen accused passed by the lower court and the former agreeing to the death sentence for ten accused, and acquittal of five accused. The matter was referred to a third judge, Justice Fazlul Karim, and on 30 April 2001, the High Court upheld the death sentences for twelve accused and acquitted three.

Four of the accused who had received death sentences filed Applications for Leave to Appeal against the High Court judgment in the Appellate Division. Later when Mohiuddin was extradited to Bangladesh from the United States in 16 June 2007, he too appealed against the High Court judgment through the jail authorities. The Appellate Division rejected the appeals of the accused on five grounds on which leave to appeal was granted. While announcing the verdict the Appellate Division stated that "...our opinion on the above points is as under:

- a. "Sections 378 and 429 of the Code of Criminal Procedure contemplate that it is for the third learned Judge to decide on what points he shall hear arguments, if any, and, that

postulates that he is completely free in resolving the difference as he thinks fit, and therefore, the third learned Judge was competent to decide the case of six convicts of whom the learned judges were equally divided in their opinion and thus the third learned Judge was in agreement with the decision of the learned Judges of the Division Bench in respect of 9 (nine) convicts of whom there was no difference of opinion."

- b. "The learned Sessions Judge as well as the learned Judges of the High Court Division have believed the explanation given by the prosecution regarding the delay in lodging the First Information Report on assessment of the evidence on record; this finding being a concurrent finding of fact, in our view, does not call for any interference."
- c. "An offence of murder has been included in section 59(2) of the Army Act, 1952 triable under the Army Act subject to the condition that if the offender commits the said offence while in 'active service, but as the appellants were not in 'active service' within the meaning of section 8(1) of the Army Act, their trial by an ordinary criminal Court is not barred by the provisions of the Army Act, and secondly, even if it is assumed that it is a 'civil offence' within the meaning of section 8(2) of the Army Act, there is no legal bar for trial of such offence in view of section 94 of the said Act."
- d. "There is no legal evidence on record to conclude that the murder of Bangabandhu Sheikh Mujibur Rahman and other members of his family, including the three security personnel, was committed as a consequence of mutiny, we are of the view that it is not a case of criminal conspiracy to commit mutiny, rather it is a criminal conspiracy to commit

the murder of Bangabandhu Sheikh Mujibur Rahman and other members of his family.”

- e. “The learned Judges of the High Court Division having believed that the prosecution has been able to prove beyond reasonable doubt the charge of murder against the appellants and other convicts by adducing reliable evidence, and the appellants having failed to make out a case that the High Court Division has caused a grave substantial injustice or a miscarriage of justice in accepting the death reference so far as it relates to the appellants without proper evaluation and sifting of evidence, we find no cogent ground to interfere with the impugned judgment and order of the High Court Division.”
- f. “The appellants having failed to make this a case of extenuating circumstance to commute their sentence of death, we are not inclined to interfere with the sentence of death awarded to the appellants by the learned Sessions Judge and maintained by the High Court Division.”

In the premises, Criminal Appeal Nos. 55-59 of 2007 with Jail Appeal No. 2 of 2007 with Criminal Misc. Petition No. 8 of 2001 with Criminal Review Petition No. 3 of 2000 are hereby dismissed.”

While the verdict was commented upon as being long over due, and capital punishment is not barred under the law, the death sentence executed rapidly after the judgment was itself a derogation from the right to life.

Legislative and Institutional Developments

The Parliament in 2009 played a positive role in enacting laws that advanced rights of women as well as setting up institutions for the protection of human rights.

Citizenship Act

Section 5 of the Citizenship Act 1951 was amended to replace the word 'father' with 'father and mother' so as to allow a Bangladesh woman married to a foreign spouse to transfer her citizenship to her children. This has come in response to a long standing demand from women and to implement a recommendation made by the UNCEDAW Committee to eliminate discrimination in the exercise of rights to citizenship. A woman's right to pass on her nationality to her foreign spouse is determined by Citizenship Rules 1978, and is discriminatory in so far as her spouse is required to show a residency in Bangladesh for a period of five years whereas a foreign woman married to a Bangladeshi spouse can apply for citizenship after two years.

National Human Rights Commission Act 2009

Plans for setting up a National Human Rights Commission had commenced in 1996, when the government had undertaken a project in cooperation with the UNDP. Since then two draft bills had been prepared under two different governments but these had not been tabled in Parliament. The Caretaker Government on 23 December 2007 enacted the National Human Rights Commission Ordinance 2007, which authorized the constitution of an Human Rights Commission constituted with a chairman and two other members. The institution started functioning officially from 1 December 2008.

The Parliament passed the National Human Rights Act on 9 July 2009, with amendments to the 2007 Ordinance, which expanded the Commission to seven members, and allowed it independent powers of investigation into human rights violations by security agencies.

Under this Act a Selection Committee was formed with seven members including the Speaker of Parliament as Convenor, the Minister for Law, Justice and Parliamentary Affairs, the Home Minister, the Chairman of the Law Commission, the Cabinet Secretary and two Members of Parliament nominated by the Speaker, one from the ruling party and the other from the opposition party. Although the inclusion of Members of Parliament in the Selection Committee appeared to be a positive sign, a quorum requirement of four persons made the presence of the opposition MP superfluous, putting into question the neutrality of the Selection Committee.

Anti-Corruption Commission

The Chairman of the Commission Hasan Mashud Chowdhury who resigned soon after the assumption of power by the newly elected Government, was replaced by Golam Rahman. A Parliamentary Committee established to oversee the work of the ACC, made a number of recommendations to restrict the independence of the ACC. An important limitation pertains to the requirement that the ACC obtain prior approval of the Government before starting investigations or making any charges against any member of the Government. Withdrawal of corruption cases against members of the ruling party, after it assumed office found many critics, who were concerned with the plan of the elected government to limit the autonomy of the Anti Corruption Commission.

Election Commission Secretariat Act 2009

A precondition to fair and free elections is an independent and neutral Election Commission. Until now the Election Commission has had to face various problems in holding a fair

election due to the lack of a separate Election Commission Secretariat. On 24 February, 2009, the Election Commission Act 2009 received Presidential assent to establish an autonomous secretariat for the Election Commission.

Code of Criminal Procedure (Amendment) Act 2009

The Parliament enacted the Code of Criminal Procedure (Amendment) Act, 2009, as a step towards the separation of the judiciary, to implement directions of the Supreme Court (in the Masdar Hossain case), in compliance with the Constitution. Earlier the Code of Criminal Procedure (Amendment) Ordinance 2007 was promulgated under the tenure of the Caretaker Government on 1 November 2007. Many of the provisions of the Code of Criminal Procedure 1898 have been amended. Amendment of Section 6 has separated the lower judiciary into executive magistrates and judicial magistrates. Executive powers have been given to executive magistrates while judicial powers have been given to judicial magistrates. The powers and functions of judicial and executive magistrates have been further defined through amendment of some other sections.

Recommendations

The massive success of the majority owes itself to public participation in the electoral process and its expectations of change in institutions and governance processes as promised by the Awami League. Citizens have voiced strong demands for a responsible and accountable government, which will:

- ensure a just trial of war criminals and violators of human rights,
- act against corruption and manipulation of the justice system,

- promote gender equality and social justice,
- eliminate gender discrimination and prevent violence against women,
- address social inequality of marginalized populations and ensure effective political participation,
- protect the right to life, to freedom from torture by withdrawing impunity of law enforcement agencies,
- protect social and economic rights to food, shelter, education and health.

Those who have been elected to Parliament must act for the public good, and not in the interest of the powerful few. The citizens have voted for change and expect their elected representatives to work towards social and political change, by enacting legislation, implementing judicial decisions, setting up institutions for the promotion and protection of human rights.