

# £BANGLADESH

## @Thirteen-year old boy raped by police in custody - other children illegally detained, held in shackles or tortured.

Mohammad Shawkat, a 13-year old boy, was raped by two police constables in July 1993 in Dhaka. He subsequently disappeared from the hospital where he was being treated, possibly because he feared retaliation or was threatened by police.

### Background

Mohammad is one of thousands of street children in Bangladesh who have come to the capital Dhaka to earn a living far from their home villages. Mohammad lives on his own, without a relative or guardian. He earns his living by doing odd jobs, mostly working as a porter in the Azimpur New Market. At night he sleeps on the pavement or on the floor in corridors, verandas or roofs of buildings in Azimpur area of Dhaka. His home village is Kalarhat near Purba Dhala, district Netrakona in North Bangladesh.

On 28 July 1993, Mohammad was woken up around midnight; he had been sleeping on the veranda of a big residential building. Two police constables on patrol asked him to follow them. In a nearby open field one of the constables ordered him to strip and then sexually assaulted him. Mohammad reported: "I shouted loudly when the dark constable forcibly pushed his penis in my rectum. After half an hour, I was brought to Azimapur police sub-station outpost where the nice-looking constable began to sexually assault me a second time and I fainted when the constable passed his penis completely into my rectum and afterwards I became senseless." He said that he regained consciousness in the morning and was released. His rectum was bleeding and his abdomen hurt. Mohammad was at no time given any reason for his detention, nor was he questioned.

On 29 July Mohammad was admitted to Dhaka Medical College Hospital where he received treatment. The Assistant Registrar of the hospital confirmed that Mohammad had been sexually assaulted and that his rectum was injured and infected as a result of the assault.

Two Bengali-language newspapers, the dailies "Janata" and "Banglar Bani" on 30 July reported the incident and a local human rights organization investigated the case. With the help of Mohammad's description of the rapists, two constables of Lalbagh police station in Dhaka were later identified by name by a human rights activist. The Officer in Charge of Lalbagh police station confirmed that the two constables had been on duty that night and reportedly said that an official report on the incident had been submitted to the Additional Commissioner of Police, Dhaka South. He further said that both constables had been suspended but that no charges had been brought against them.

When a representative of the human rights organization visited the hospital again on 1 August, Mohammad had disappeared from the hospital. He could not be traced in Azimpur market area where he used to work either, giving rise to the fear that the child may either have gone into hiding for fear of retribution or may have been threatened by police to leave Dhaka to prevent any follow-up.

### **Amnesty International's concerns and recommendations**

Bangladesh has a large and expanding population of street children, children who live alone on the pavements of the cities, particularly in Dhaka, without a parent or guardian. Some authorities estimate that there are 50,000 street children in Dhaka alone. These children eke out a precarious living by working in odd jobs, in carpet and other textile industries, as domestic servants or prostitutes; hundreds of children pick over rubbish dumps for scraps of paper or plastic which can then be sold. All are underpaid, without any regulated working hours or humane working conditions and health protection, without contractual assurances and without a minimum of social security.

Street children are regularly picked up by the police who extract bribes, beat, humiliate and harass them. The legal aid group, Ain o Salish Kendra, in Dhaka reported for instance: "On 4 September 1991, as some children stood outside the ... Hotel selling flower garlands, ... a van full of policemen picked up 18 of them between the ages of 7 and 13 years. In spite of their protest that they were trying to earn some money for their families, they were taken to a vagrants' home at least 20 miles away. The action of the police was arbitrary. They refused to provide the guardians with the names of the children who had been picked up by them. ... Not infrequently in cases of such police action, working children are not only harassed but physically assaulted." Torture by police of adult criminal and political suspects and ordinary civilians detained in order to extract bribes, continues to be reported from Bangladesh (see: Amnesty International's report Bangladesh: A summary of human rights

concerns, AI Index: 13/01/93), and children are reportedly subjected to the same treatment as adults. Amnesty International has received numerous reports alleging that children, both male and female, are sexually abused in custody. Scores of children are held for various lengths of time in detention. Most children are not charged at all; if they are charged with petty or even serious offences, they do not have the wherewithal to engage legal counsel. Some children are sentenced to prison terms; again they do not have the wherewithal to file an appeal. Convicted child prisoners are usually held in prison in the same wards with adult prisoners. There are only two remand homes for juvenile delinquents in Dhaka but these are not sufficient to cope with the large number of child detainees and prisoners. Many children live in prison because their mothers were convicted and there is nowhere else for them to go.

In prison children are known to have been raped by fellow prisoners and by wardens. Some convicted children appear to be subjected to the same cruel treatment as adult prisoners, for instance shackling. In late 1992 the case of Nazrul Islam came to light, who for 12 years had been held in unlawful detention: for 11 of these years he was held in shackles (see: Bangladesh: A summary of human rights concerns, AI Index: 13/01/93). Nazrul Islam was arrested in November 1980 as a 12-year old boy, convicted on a robbery charge and sentenced to seven years' imprisonment. He continued to be held in Satkhira jail after his sentence expired. When in October 1992 the daily newspaper "Ittefaq" carried the story, the High Court examined Nazrul Islam's case. It found that his entire 12-year detention had been illegal and ordered his release. For 11 of these 12 years Nazrul Islam had been held in leg irons; he was also brought to the High Court hearing in chains. During his long imprisonment, the leg irons were removed only when he was transferred to hospital for medical treatment. It is not known if any compensation was awarded to Nazrul Islam for his long-term illegal detention and ill-treatment.

Some laws in Bangladesh do not appear to sufficiently take into account the alleged offenders' age. For instance in October 1992 a law was passed by parliament under which school children as young as 14 caught cheating in final school examinations can be sentenced for up to 10 years' imprisonment.

Amnesty International believes that some children have been sentenced to death and executed in Bangladesh. Mohammad Selim, who was sentenced to death by a martial law court and executed in 1986, was only 17-years old at the time of committing the alleged offence, but Bangladesh authorities claimed that he was older. International human rights instruments forbid the sentencing to death of persons under the age of 18. For example Article 6(5) of the International Covenant on Civil and Political Rights (ICCPR) states that: "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age."

Bangladesh in August 1990 ratified the United Nations Convention on the Rights of the Child but several of the provisions of the Convention are not strictly adhered to. The relevant articles are listed below.

Article 37: "State parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."

Article 39: "State parties shall take all appropriate measures to promote physical and psychological recovery and social integration of a child victim of: any form of neglect, exploitation or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflict. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

Article 40 lays down specific legal rights of child defendants and obligations of state parties to the Convention to safeguard the rights of child defendants. Also relevant in this connection are the UN Rules for the Protection of Juveniles Deprived of Their Liberty; Articles 1 and 2 clearly state that detention of juveniles should only be a last resort, used only in exceptional cases and for the minimum period necessary.

Amnesty International is concerned that many children in Bangladesh are illegally detained and tortured in custody in contravention of the provisions of the Convention on the Rights of the Child, which Bangladesh has ratified, and of several other human rights instruments which Bangladesh has not yet ratified or acceded to. Amnesty International therefore urges the Government of Bangladesh to take urgent measures to bring its law and

practice into conformity with the provisions of the Convention which are legally binding on Bangladesh, and to consider ratification of other relevant human rights standards. It particularly calls upon the government to ensure that all possible precautions are taken to avoid abuse of children during interrogation. Procedures should stipulate that the questioning of juveniles only take place in the presence of a parent or guardian. In the case of street children other responsible adults should be involved to provide a minimum safeguard for these most vulnerable children.

Amnesty International further urges the Government of Bangladesh to prohibit in law the sentencing to death and the execution of those aged under 18 years at the time the offence was committed.

In particular Amnesty International calls upon the Government of Bangladesh to promptly investigate the torture of Mohammad Shawkat by police officers in Dhaka, to make the report of such an investigation public and to bring the alleged rapists to justice. All efforts should be made to trace the victim, to protect him from any retaliation by the alleged offenders, and to provide him with necessary support and compensation. The government should further take all possible steps to prevent a recurrence of torture, including rape of children in custody, by publicly declaring that no such act will be tolerated. Police training should also clearly convey to police personnel that torture, including rape, is a crime and will always be criminally prosecuted.

Amnesty International welcomes the fact that in 1992 the High Court division of the Supreme Court of Bangladesh took *suo moto* notice of the case of Nazrul Islam who had been unlawfully detained and shackled. Under Article 102 of the Constitution of Bangladesh, the High Court may take up any matter relating to and "appropriate for the enforcement of any of the fundamental rights conferred by Part III of this Constitution". Amnesty International hopes that the High Court will continue to act on public reports of human rights violations, particularly when they relate to children as they are the most vulnerable members of society and are most helpless when exposed to human rights violations. At the same time Amnesty International reiterates its recommendation to the Government of Bangladesh to set up independent and impartial institutions and mechanisms throughout the country to which victims of torture and ill-treatment can report their cases. These institutions should inform victims of their legal rights to life and security of the person and assist them in filing cases against perpetrators of human rights violations. If the victims of torture and other forms of cruel, inhuman or degrading treatment or punishment are children, particularly street children living without parent or guardian, such organizations should further seek to provide a safe shelter for these children where they are protected from threat and retaliation.

In the longer term, the Government of Bangladesh may also wish to consider the setting up of a national human rights commission as an additional safeguard for strengthening human rights protection in Bangladesh.