

BANGLADESH

Institutional failures protect alleged rapists

“Shima is no more. Her only crime was that she chose to love a man and dared to dream of a life which promised a silver lining. She dared to dream because in her own way she had empowered herself, and learnt to think for herself as a self-respecting woman working hard for a living in a garment factory”¹

Four policemen accused of raping a young woman and garment factory worker, Shima Chowdhury, in their custody in October 1996, were acquitted by a trial court on 14 July 1997. The judge reportedly deplored that government lawyers had presented weak evidence and witnesses. This effectively allowed the police to get away with rape.

No one in the jail administration has been held to account for alleged negligence after Shima died in “safe-custody” in mysterious circumstances on 7 February 1997. Two inquiries into her death instituted by the government and by the parliament have been disappointing. Over five months after their establishment, they are yet to produce any reports and recommendations.

The practice of so-called “safe-custody”, a form of imprisonment ordered by the judge on application from the police, continues to be allowed even though victims and human rights activists have urged its abolition on the grounds that it violated the women’s fundamental right to liberty, and facilitates ill-treatment. Some women have been kept in “safe-custody” for up to four years.

A series of failures by different organs and institutions of the state have led to the custodial rape and death of Shima Chowdhury and the acquittal of her alleged rapists. The Home Ministry, the police, the court, the jail administration and hospital authorities should all acknowledge their responsibility for failure to protect Shima’s human rights. Amnesty International is urging the Government of Bangladesh to investigate these failures seriously and without delay with a view to bringing to justice not only those who raped her, but also those whose alleged negligence has caused her death.

1. Shima Chowdhury’s rape and death

¹ Dr Naila Khan, *The Daily Star*, Dhaka, 19 February 1997.

Shima Chowdhury, an 18-year-old garment factory worker was walking with her boyfriend, Abdul Hafiz, in the afternoon of 8 October 1996 towards the village of Majidapura near the city of Chittagong. Police personnel passing by arrested both on the grounds that a woman may not walk with a man to whom she is not married. There is no basis in Bangladesh law for arrest on such grounds. They were both taken to the nearby Moghdi police camp, were held there until the afternoon of 9 October and were not produced before a court even though Bangladesh's Constitution requires any detainees to be seen by the court within 24 hours of their arrest². The couple were then transferred to Rauzan *thana* (police station) where they were held in separate rooms. Abdul Hafiz was sent to a cell and Shima was 'detained' in the office of the Officer-in-Charge (OC) of the police station. The OC claims that he had left at midnight, leaving his key with the duty officer Uttam Kumar Majumdar and that three other policemen entered the room after he left.

Shima later recalled how the policemen on the night of 9 October forced her to drink a glass of what she thought was "muddy water". She became dizzy, and in that state, the four policemen raped her. Gradually, she lost consciousness. In the morning, the OC who claims to have been away during the ordeal, and informed the doctor at the police station that he had entered his office in the morning and seen Shima lying there unconscious.

Shima was then transferred to the emergency ward of the Chittagong Medical College Hospital. Doctors on duty saw marks of injury on her body. A medical board was set up after Shima disclosed that she had been raped. The board carried out tests at the Forensic Department of the Chittagong Medical College and concluded on 15 October that on the basis of the evidence they had examined, Shima Chowdhury had been raped.

News of Shima's rape reached journalists and human rights activists who rushed to the hospital to visit her - only to find that the authorities did not allow anyone to see her. She was kept completely isolated from her family, her friends and human rights organizations. Meanwhile, the police told reporters that she was a prostitute and had been raped by her own boyfriend and not by police personnel.

At this stage, after the evidence of rape was verified by the hospital doctors, police began to investigate the case on 15 October. The four policemen (Uttam Kumar Majumdar, Gouro Karmakar, Sadek Ali and Abu Bashar) were named as the accused. They were arrested and sent to Chittagong Jail and the case was allocated to the Criminal Investigation Department (CID) on 17 October. To the astonishment of human rights activists, police implicated her boyfriend also as an accused in the same rape case.

² Article 33, Constitution of Bangladesh.

On 15 October, a new chapter was added to the suffering of Shima when the court, on plea from the police, sent her to so-called “safe-custody” at the Chittagong Jail. This form of custody is used for women victims of rape, sexual assault, trafficking in women, and kidnapping. It purports to provide safety for those in danger of further assault, but in reality it is a form of punishment. There is reportedly no budget allocated to keeping women in “safe-custody”. So, they are kept with other prisoners and are treated as if they are charged with, or convicted for, an offence. They usually have to do other prisoners’ laundry to win a share of their ration. There is no legal basis in Bangladesh law for such custody to which women may be sent solely on the discretionary power of the judge.

The judge who ordered the “safe-custody” clearly had other options. Several women’s rights groups and human rights organizations appealed to the court for custody of Shima, but the court persistently rejected their appeal and insisted on Shima’s remaining in jail. It is not clear if she received further medical treatment for her injuries from rape.

Shima remained in detention without access to a lawyer or visits by her friends and her mother. She had to sleep on the floor and was reportedly given no blanket in the cold months of winter to cover herself. Her mother was persistently barred from visiting her in jail.

Completely isolated from the world outside, kept in a jail where her rapists were also held pending trial, with no family or friends to give her support to cope with her trauma, she became very ill. As early as late October, her conditions were so serious that the jail officials sent her to the Chittagong Medical College Hospital. She was diagnosed as having gastric ulcer and lung infection. But jail officials forced her to go back to the jail even in that condition of poor health. According to local human rights groups, a prescription was given to her for medication but the jail did not provide her with any medicine.

In January 1997, Shima’s condition deteriorated further, but this time the jail doctor, Dr Salahuddin, who had been informed of her illness, did not visit her for three weeks. Eventually, he visited her but did not authorize her transfer to hospital. On 5 February, after Shima’s conditions had deteriorated even further, the doctor reportedly said he could not carry out a diagnosis because there were no “modern diagnostic facilities” in jail. He gave Shima malaria tablets. On 7 February, Dr Salahuddin visited Shima again. She was suffering from severe stomach pain and was in a critical condition. The doctor suggested that she be sent to the hospital but no ambulances were called and Shima was taken to the hospital in a pedal rickshaw several hours later. She was not even taken to the nearest hospital, the Chittagong General Hospital.

On arrival at the Chittagong Medical College Hospital, Shima was declared dead. A postmortem was carried out, but the police insisted that Shima's body should be cremated.³ The cremation was carried out immediately. On 1 March 1997, about three weeks after Shima's death, the autopsy report was completed stating that Shima had died of typhoid, and that no traces of poison had been found in her stomach or blood.

Shima should never have been in custody and, at the very least, she should have been released as soon as her medical condition deteriorated, as was being urged by women's groups and human rights organizations. Instead, she was left to cope with her own traumatic experience, and with a serious illness without medication or necessary treatment.

On 2 February 1997, five days before Shima's mysterious deaths, the police, having completed their investigation, brought charges against the accused police officers. As if to justify the criminal acts of the policemen, however, police continued to refer to Shima as a "floating prostitute" in the chargesheet. Shima's boyfriend, Abdul Hafiz, had reportedly been released several months earlier.

On 14 July, the trial judge set free "for lack of evidence" all four policemen accused of raping Shima. The judge reportedly deplored that government lawyers had presented weak evidence and witnesses. In contrast, lawyers for the accused policemen presented a stronger case which the judge said might be due to the fact that colleagues of the accused had carried out the investigation and drawn up the chargesheet.

Women's rights groups protested to the government about this acquittal. *Sammilito Nari Samaj* (United Women Community) said "the court order proved that there was negligence on the government's part in framing the charges", and that they were concerned about the lack of justice for working women abused by police because in most such cases investigators and prosecutors are pursuing charges against their colleagues. On 15 July, the government announced that it would appeal the acquittal of the four policemen. A fresh investigation was reportedly ordered into proceedings leading to the court verdict. Home Minister Rafiqul Islam warned that any one including police found tampering with the evidence that led to the acquittal would be punished, while the main opposition party, the Bangladesh Nationalist Party (BNP) demanded retrial of the four policemen.

2. Inquiry by the local administration

³ In Bangladesh, dead bodies of Muslims are buried, not cremated, and Shima was reportedly known as a Muslim at the time of her death.

The only official inquiry into the death of Shima which has so far presented a report was ordered by the Chief Metropolitan Magistrate of Chittagong immediately after her death. It completed its investigation on 14 February 1997 and presented its report to the government. The report has not been made public but according to official comments, the inquiry noted that Shima had not been accompanied by a doctor or a nurse on the way to the hospital on 7 February 1997, that her nose was bleeding and some of her teeth were loose. It held the two jail doctors, Shah Alam Mollah, and Salauddin responsible for negligence in the treatment of Shima. It also noted that jail authorities had shown negligence in allowing Shima's body to be cremated soon after her death.

3. Inquiry by Bangladesh women's rights groups

The Bangladesh Women Lawyer's Association (BNWLA) issued the result of their own investigation into Shima's death on 16 February. It raised strong suspicion about the circumstances of her death - which happened only five days after the announcement of charges against the four policemen - as she was the only witness to the rape. It said that there were ample grounds to conclude that Shima may have died possibly of deliberate food poisoning. It raised serious concern that Shima and her accused rapists had been kept in the same jail, allowing the accused to torment her through corrupt jail staff and seeing to it that she did not receive adequate medical treatment or support from outside the jail.

4. The one-person official inquiry

On 14 February, Prime Minister Sheikh Hasina Wajed said she had ordered an inquiry into the death of Shima. She said action would be taken against those identified by this investigation as responsible for Shima's death. She also said that legal action would be taken against those who raped Shima at Rauzan police station. On 15 February, the government reportedly announced that it had instituted a one-person inquiry as directed by the Prime Minister, and had appointed Dalil Uddin Ahmed, a retired judge of the High Court, to conduct the inquiry and submit his report and recommendations within three weeks (ie, by 10 March 1997). But there were soon signs that the inquiry would not meet this deadline. For instance, it took Mr Dalil Uddin Ahmed over a week to undertake his first visit (on 24 February) to the police station where Shima had been gang-raped. On 25 April 1997, Bangladesh newspapers reported that the inquiry had sought and received an extension of four weeks to submit its report. This would have given the inquiry until 25 May for its report, but by mid-July there was no news about the completion of this report.

5. The parliamentary inquiry

On 17 February, the Prime Minister, responding to concern by members of the parliament about the death of Shima in “safe-custody”, proposed the formation of a parliamentary inquiry, in addition to the one-person judicial inquiry, to probe into the death of Shima. On 19 February 1997, an 11-member parliamentary committee was formed. It was headed by Foreign Minister Abdus Samad Azad with five other members from the ruling Awami League, three members from the BNP, one from Jatyia Party, and one from Jamaat-i-Islami. Only one member of the inquiry was a woman. The conduct of this committee, too, has been disappointing. As of mid-July 1997, this committee had not produced a report.

6. Other instances of rape in police custody

Bangladeshi police frequently take young girls into custody on concocted grounds of “suspicious behaviour” which is allowed under section 54 of the Code of Criminal Procedure. They then subject the victims to gang rape. Many victims, however, keep quiet after they are released for fear of their lives. In August 1995, a 14-year-old girl, Yasmin Akhter, died after three police officers in Dinajpur had reportedly raped and injured her. They had reportedly given her a lift in a police van and later dropped her dead body by the roadside. Police claimed she had died when she jumped from the van. Following public protests about attempted cover-up, three police officers were suspended and charged. A judicial inquiry submitted its report to the government in October but it was not made public. In October 1996, the trial of three police officers charged with her rape and murder began but had not been concluded at the time of writing. In 1996 alone, at least 11 instances of such rape in custody were reported in the country.

Amnesty International’s conclusions and recommendations

- According to reports, police claim that they arrested Shima and her boyfriend under section 54 of the Code of Criminal Procedure which allows the police to arrest nine categories of criminal suspects without an order from a magistrate and without a warrant of arrest. The police say they have received complaints from residents of the village that Shima was eloping with a young man. They pursued the matter and found the couple walking hand in hand, and the couple’s arrest has been on that account. According to Bangladesh legal experts, it is not a criminal offence for a woman to walk with a man to whom she is not married so no basis for suspicion of an offence on that ground under Section 54 exists. Shima’s arrest is therefore believed to have been unlawful.

Amnesty International urges the government of Bangladesh to:

- **establish the reason for this apparent misuse of power by the police and bring the perpetrators to justice.**

- review section 54 of the Code of Criminal Procedure with a view to preventing its misuse for the purposes of arbitrary detention.

● Human rights investigators have been told by police at Rauzan Police Station that there exist no records of Shima's arrest and detention before her transfer to "safe-custody" in Chittagong Jail. As Shima's situation proves, keeping prisoners without record leaves them vulnerable to police abuse.

Amnesty International is urging the government of Bangladesh to establish the reason why such records were not kept, and why was she not produced before a court within 24 hours of her arrest as required by international human rights law and Article 33 of the Constitution of Bangladesh. It urges the government to take concrete steps to reinforce such safeguards in law and practice.

● Shima's continued detention and rape took place while she was in the custody of the Officer-in-Charge (OC) in Rauzan police stations.

An inquiry should review the case against the police involved and if culpability is established recommend appropriate action be taken against them.

● Shima's transfer to "safe-custody" was ordered by the court on application by the police. An inquiry should establish:

- the grounds on which the judge ordered her transfer to "safe-custody";

- the reason why the judge continued to refuse access to lawyers, family members and friends of Shima during the critical stages after her rape and while she was in "safe-custody";

- the reason why Shima was held in the same jail as her rapists and the judge's continued refusal, as reported to Amnesty International, to accept that she should be transferred to a woman's home run by human rights organizations;

Amnesty International urges that if the inquiry establishes that the judge had acted in connivance with the police, the judge himself should be brought to justice;

● The official inquiry by the local administration of Chittagong has reportedly concluded that Shima's death was due to negligence of the jail administration and of the jail doctors.

An inquiry should establish the reason for this negligence and hold to account anyone found to be responsible. The government should make provisions for visits to police stations by independent bodies and allow the results of such visits to be made public.

● Prime Minister Sheikh Hasina Wajed and other government authorities have, on occasions, publicly stated that custodial rape and sexual abuse would not be tolerated by the government and perpetrators would be brought to justice. Amnesty International welcomes these assurances but notes that they do not appear to have been fully implemented.

Amnesty International recommends a series of steps that could provide protection to women at risk of human rights abuses by law enforcement agencies. It is urging the government to:

- provide gender-sensitive human rights training to police;**
- make sure that female staff are present during investigation of women detainees; make sure that female staff are present during the interrogation of women detainees;**
- ensure that there is no contact between male guards and female detainees or prisoners unless a female guard is present.**

Under no circumstances should women be detained overnight without female staff being present.

● The practice of “safe-custody” in its current form gives the police a free hand to keep victims of rape outside the reach of lawyers, their family members and human rights activists. It prevents the victim from seeking justice for the abuse they have suffered. According to information received by Amnesty International, even after the death of Shima, some judges in Bangladesh continue to accept police application for “safe custody”. The government must first of all ensure that no woman is sent to jail under the pretext of “safe-custody”. Instead, the government must ensure that adequate remedies are available to women whose human rights have been violated by the police. They must receive compensation and rehabilitation. All allegations must be promptly and thoroughly investigated. Perpetrators must be brought to justice. These measures are absolutely required by international standards, including the UN Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions - which are relevant to cases of suspicious deaths in custody.

● Serious violations of the Convention on the Elimination of all forms of Discrimination against Women which Bangladesh has ratified may be involved in Shima's case. The Committee on the Elimination of All Forms of Discrimination against Women has noted in its General Recommendation No.19 (11th Session, 1992) that:

“Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under several international law or under human rights conventions, is discrimination within the meaning of Article 1 of the Convention. These rights and freedoms include: a) the right to life; b) the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment ...; d) the right to liberty and security of person; e) the right to legal protection under the law ...”

The UN Declaration on the Elimination of Violence against Women, adopted by the General Assembly on 20 December 1993 states in it Article 4(b): that “States should ... refrain from engaging in violence against women ...”, (and) (c): that states should “Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons”.

What you can do:

- * Bring the case to the attention of government authorities in Bangladesh.
- * Urge them to implement Amnesty International's recommendations.