

BANGLADESH

Taking the law in their own hands: the village salish

Amnesty International has received reports over the last two years that local village councils or salish in Bangladesh, have without legal authority sentenced people to flogging and to death and that these sentences have been carried out. Amnesty International is gravely concerned that the Government of Bangladesh has apparently failed to take adequate measures to prevent such bodies from taking the law in their own hands. It believes that if the Government had acted swiftly and decisively after the first incidents were reported, the extralegal punishments and killings of several people could have been prevented.

Background

The village arbitration council or salish is an institution which goes back to traditional forms of conflict resolution through mediation; it is not part of the judicial system which was given its present form during the colonial period. It has no legal standing but persists as a body that passes informal judgements like a council of elders seeking compromise solutions in local disputes, for instance over property, family or inheritance matters. There are no uniform terms of reference for the salish, and there is no legislation governing it. A village salish is apparently established as and when the need for arbitration arises. It usually consists of local elders, including the

village clergy, and its verdict is reportedly accepted by all the disputants.

The institution of the salish has been controversial in Bangladesh. Many observers in Bangladesh consider it an effective indigenous non-formal body using methods of conflict resolution which permits the rural population to seek justice outside an expensive, slow and sometimes corrupt lower judiciary. Others, particularly women activists and human rights groups, point out that salish are usually constituted by conservative members of rural society who seek to reinforce existing social structures and tend to censor those who do not fully conform with societally accepted behaviour patterns. Amnesty International does not take any position on the desirability or otherwise of the village salish, but it is concerned about reports that they have illegally tried and sentenced people to inhuman punishments.

There are two types of local courts which resemble the salish. Under the Village Courts Ordinance of 1976 and the Conciliation of Disputes (Municipal Areas) Ordinance of 1979 village courts and conciliation boards in the towns and cities were established; their procedures, composition and jurisdiction are clearly defined in the ordinances. Their jurisdiction is strictly limited to small civil matters and petty criminal offences; in criminal cases they may not pass any sentence of fine or imprisonment but may order the accused to pay the aggrieved person compensation of an amount not exceeding 5,000 Taka (approximately £ 70).

The establishment and jurisdiction of all other courts are governed by the provisions of the Constitution of Bangladesh and

statutes like the Code of Criminal Procedure of Bangladesh but acts of parliament may establish further special courts. All criminal proceedings are regulated by the provisions of the Code of Criminal Procedure of 1898 or specific acts passed by parliament.

salish clearly have no legal authority to try criminal cases. To take part in a criminal trial by a salish violates national law. The Government of Bangladesh has a duty to supervise such bodies and to ensure that they do not take the law into their own hands. Article 109 of the Constitution of Bangladesh entrusts the High Court division of the Supreme Court with the superintendence and control of the subordinate courts; this duty would appear to encompass the obligation to call the government's attention to instances of local bodies abrogating judiciary powers which they do not possess.

In several cases over the last two years, village salish in Bangladesh have without any legal authority tried, convicted and sentenced people, mostly women, for alleged criminal offences, and these sentences have been carried out. Moreover the law under which they have illegally tried, convicted and sentenced people is a form of Islamic law in contravention of the civil law enshrined in the Bangladesh Penal Code which is in force in Bangladesh. The incidence of salishes arbitrarily extending their authority is reportedly on the increase all over Bangladesh, with such occurrences not only reported from remote areas, but also from Dhaka, the capital city, itself.

Public lashing in Dohar Thana in April 1992, in Dhaka in early 1993, in Pabna in May 1993 and in Kalikapur in September 1993 after salish verdicts

In April 1992 a village arbitration council in Dohar Thana sentenced a young woman and her mother to 100 lashes each. Earlier, the young woman, Shefali, aged 14, had been raped by an influential village elder. When she became pregnant, the local people convened a salish, composed of village elders and local clergy, to decide her case. The participating clergy decided that since there had been no witness to the intercourse, the elder could not be held responsible, as under Islamic law four adult male Muslim witnesses of good repute need to have witnessed illicit intercourse to permit conviction for rape or adultery. But as Shefali had admitted to the intercourse when she complained about having been raped and her pregnancy was obvious evidence for intercourse having taken place, she was sentenced to 100 lashes to be administered in public. Shefali's mother was sentenced to the same punishment as she had accused the village elder of rape. Shefali's punishment was deferred pending delivery, while her mother's punishment was apparently carried out. A human rights organization in Bangladesh has challenged in court the authority of the salish to convict Shefali and her mother and to impose the punishment of public lashings. To Amnesty International's knowledge the case is still pending.

In early 1993, a young domestic maid servant in Dhaka was reportedly accused of maintaining a sexual relationship with her employer. They were found guilty by a salish, consisting of neighbours and the local clergyman, and given 25 lashes each. They were then forced to marry, irrespective of the fact that the man already had a wife and family.

In a similar incident reported from Pabna in late May 1993, a Koran teacher of a mosque was reportedly caught having sexual intercourse with a female student. A salish reportedly sentenced them to 60 lashes each and a fine. They were also forced to immediately get married.

On 1 September 1993, a salish in Kalikapur village in Satkhira district found Feroza, a 16-year old girl, guilty of fornication with a Hindu boy of a neighbouring village and sentenced her to public flogging. She was tied to a bamboo pole and given 101 lashes with a broom. She died shortly afterwards; village elders and a human rights group investigating the death said she had committed suicide. On 9 or 10 September, police filed a case against the participants of the salish charging them with abetment to suicide. It is not known if any of them were arrested. The result of the post mortem, carried out in Satkhira Modern Hospital, has not been made publicly available.

Salish sentence of public stoning to death in Chatakchara in January 1993

On 10 January 1993, a young woman, Noorjahan Begum, was sentenced to public stoning to death in Chatakchara village in Sylhet district. Noorjahan, aged about 21, had married a second time in December 1992, after her first marriage had broken down. A salish, presided over by Maulana Mannan, the local Islamic clergyman, on 10 January found her second marriage to be illegal under Islamic law and sentenced her and her second husband, Motaleb, to death by public stoning. The salish reportedly did not inform the couple of the grounds for considering the marriage illegal; according to reports, the first marriage had been duly declared dissolved. During the hearing Motaleb was reportedly slapped by members of the council when he questioned the ruling. He was told that the court's word was law. Noorjahan's parents were held partly responsible for Noorjahan's "un-Islamic" second marriage and sentenced to 50 lashes each.

Immediately after the verdict, Noorjahan was buried in the ground up to her chest, then villagers began throwing stones at her. She reportedly died a few hours later. Her parents, according to some reports, later said that Noorjahan had not died as a result of the injuries sustained during the stoning, but had survived and committed suicide later. Some observers believe that Noorjahan's parents may have been put under pressure to make this statement so that the criminal charges that might be brought against those responsible for her death would be abetment to suicide and not murder. Abetment carries a lesser sentence than murder.

Apparently Noorjahan's husband Motaleb was subjected to stoning, too, but survived. According to reports, Noorjahan's father publicly administered the flogging sentence to his wife as he apparently would not let other villagers touch his wife on religious grounds.

The village headman and six members of the salish were reportedly arrested and charged under sections 306 (abetment to suicide), 504 (intentional insult) and 109 (abetment) of the Bangladesh Penal Code. It is not known if the police have concluded their investigation, if the seven men were formally charged to be tried or whether charges were brought against the villagers who took part in the stoning of Noorjahan.

Public burning to death in Dokhin Sripur in May 1993 after salish verdict

On 5 May 1993 another young woman, also named Noorjahan, was tried by a village salish in Dokhin Sripur village in Faridpur district, some 80 km west of Dhaka; she was found guilty of adultery by a salish, which included her husband, and sentenced to death by fire. Noorjahan was then tied to a stake; kerosene was poured over her and she was burned to death. After a local newspaper, the Bengali language daily Sangbad, carried the story on 20 May, seven alleged members of the salish were arrested on 24 May, but it is not known if

the police investigation is proceeding apace and if those responsible have been formally charged to be tried yet.

Amnesty International's concerns and recommendations

Amnesty International is concerned that over the last two years the incidents of salish taking the law into their own hands have increased. Amnesty International understands that these local arbitration councils appear to be tolerated by the government as traditional arbitration bodies and to this extent are accountable to the government. They are not part of the judicial system, yet in every case cited the salish has acted entirely outside its authority in trying and sentencing the defendants and encouraging villagers to carry out illegal acts like public flogging, stoning or burning to death. Further the defendants in all the cases cited were apparently tried, convicted and sentenced under a form of Islamic law in contravention of the civil law enshrined in the Bangladesh Penal Code which is in force in Bangladesh.

To try people by a village salish violates the defendants' fundamental rights guaranteed by the constitution: Article 32 of the Constitution of Bangladesh says: "No person shall be deprived of life or personal liberty save in accordance with law." Again Article 31 lays down: "To enjoy the protection of law, and to be treated in accordance with law, and only in accordance with law, is the

unalienable right of every person for the time being in 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." Articles 33 and 35 lay down safeguards regarding arrest, detention and fair trial, all of which are violated by illegal trials of salish. Trial, conviction and punishment by an illegally constituted court like the salish also violate a number of human rights enshrined in international human rights standards, including the International Covenant on Civil and Political Rights (ICCPR).

Amnesty International believes that the Government of Bangladesh has the duty to ensure that local bodies do not assume functions for which they have no legal authority. After the first incident the Government of Bangladesh should have taken decisive and public action to ensure that village councils strictly conform to their specific tasks and do not abrogate functions which are clearly vested in the judiciary alone and which the arbitration bodies are not entitled or equipped to fulfil. If the government had brought those responsible for the incident in Dohar in April 1992 to justice and had been seen to do so and had further clearly informed all local administrators that abrogation of judicial functions will not be tolerated, the later incidents, in which one woman was stoned and another burned to death, may not have occurred.

Amnesty International wrote to the Government of Bangladesh in March 1993 urging it to promptly investigate the incidents in Duhar and Chatakchara and to bring those responsible to justice. It

has not received a reply from the Government to this letter. Amnesty International now urges the Government of Bangladesh to ensure that all the incidents mentioned in this report and any that may be highlighted in the media of Bangladesh are promptly and thoroughly investigated by an impartial and independent inquiry commission. The findings of such an inquiry should be made public promptly. Further village administrators must be clearly instructed that a transgression of their functions will not be permitted under any circumstances.