



READERqueries



Your Advocate



This week your advocate is **M. Moazzam Husain of the Supreme Court of Bangladesh**. His professional interests include civil law, criminal law and constitutional law. Send your queries to the Law Desk, The Daily Star. A panel of lawyers will address your problems.

Q: I am planning of purchasing a flat from a real estate company. I would be really grateful if you kindly advice me what legal procedure I should observe before the purchase to avoid legal complexities which may arise after the purchase.

Anwarul Kabir,
Banani, Dhaka.

Your Advocate: In these days of growing dearth of land in the cities we are gradually turning to the alternative in the area of our common concern that is a fixed abode for our families. The real estate companies and other concerns are offering us the opportunity relieving us from the hazards of building houses. Though our cities are now replete with beautiful flats suited to people of almost all walks of life there is no corresponding development of uniform laws in keeping with the changing need of the time. Usually the transactions are found to be made in two ways. The developers purchase the land from its owner by a out and out sale deed or take power of attorney from the owner in various terms and conditions. The buildings are constructed. Title is transferred by a deed of sale (registered) executed in the name of the individual purchaser showing proportionately the share of the undivided land transferred with the specifications of the flat purchased. In some cases the owner of the land in his/her individual capacity makes flats for sale. In such cases title-transfer is direct and clear. A third practice is sometimes noticed; the owners-developers go into joint venture, construct buildings and transfer the flats to the purchasers by registered deeds. In any case, title-transfer-mechanism is complicated. Moreover, not all the companies/concerns are being advised by well experienced lawyers. Anomalies and legal gaps often found to persist in the documentation in particular. It is always advisable for a prospective purchaser to consult an experienced lawyer and take his help in matters of documentation and transfer of title.

Q: I am a student of North South University. My name was not enlisted in the voter's list during the last Mayor elections as I was under the age of 18 at that time. Now I crossed that age barrier and want to be enlisted as a voter. Would you please suggests me how and where I have to go to be enlisted as a voter?

Dilshad Farhana,
Segunbagicha, Dhaka.

Your Advocate: Congratulations for your attaining the age of majority and being qualified to be enrolled on the electoral roll. To turn into a voter you have to go through a prescribed procedure. An application has to be made to the Registration Officer (appointed by the Election Commission for your electoral area) in Form-7 as per Rule 20 of the Electoral Rolls Rules, 1982. The statements made should be supported by attesting papers. Subject to notice given and inquiry made if the Registration Officer is satisfied that you are entitled to be so enrolled he will ask you to fill in Form-2 and shall after receiving such filled in Form amend the roll by making necessary entries therein. It is advisable to watch through the process up to final publication of the electoral roll. You are entitled, amongst other things, to inspect and obtain certified copies of the electoral roll and register of voters on payment of fees. Finally published Electoral roll gives you the legal status of a voter.

LAW letter



Lawyers learn English

In all fairness I should confess I am not much proficient in English, though I am a lawyer that too of the Supreme Court. I wish I were. But I like and envy every lawyer who can well deliver his case in English before the court and can draft well in English. I do not still believe lawyering in higher court in particular is truly possible regardless of some proficiency in English language precisely. Because, the genesis of our legal practice is rooted in English and still there is no Bengali translation of the huge body of law enough to render English redundant. So there is no and in fact no body will dispute this aspect of things. I am in full agreement with Mr. Shamsul Haque when he touts the cause of English in the legal arena. Thank Mr. Haque for his honest ideas expressed in lucid words. As I know he is not a lawyer. I, as a practising lawyer, want to say something from my own experience. I have come across a number of lawyers having good academic background lamenting for their knowledge as redundant and of no use. Things have deteriorated so much because number of people who can understand and has the mind to appreciate a good thing have reduced to a minimum. In other words they are sadly outnumbered by the people emerging through troubled waters basically not committed to this profession and the institution nor having the proper background of a lawyer.

Junior lawyers of high social background having foreign degrees/certificates are privileged. They are the welcome folk favoured by fortune. But what about the bulk of young lawyers having good academic learning unfortunately coming from humble socio-economic background having none to be referred to as a matter of identity? Who is there to appetite them, their knowledge of English, their integrity and potentials as lawyers? I have seen their sufferings and still their sufferings and humiliation go unabated. Every man wants appreciation at least. One can not conceive of building his career at the Bar without a bit of accommodation, appreciation and sympathy from the seniors. Let us take a pause and ponder for a moment is there any body anywhere found to be really concerned about building up a stronger Bar for that matter a stronger Bench for the future. Does it at all bother us that it is our foremost responsibility that we should nurse, nourish and raise a set of young lawyers of commitment and integrity so as to meet the challenges? Nature does not permit any vacuum for too long. Things will settle some day. But we will be failing in our duty if we remain unconcerned about what we are going to hand down for our posterity. Let not the history say that we have failed.

M. Shamsul Haque,
Advocate, Supreme Court.

Star LAW report

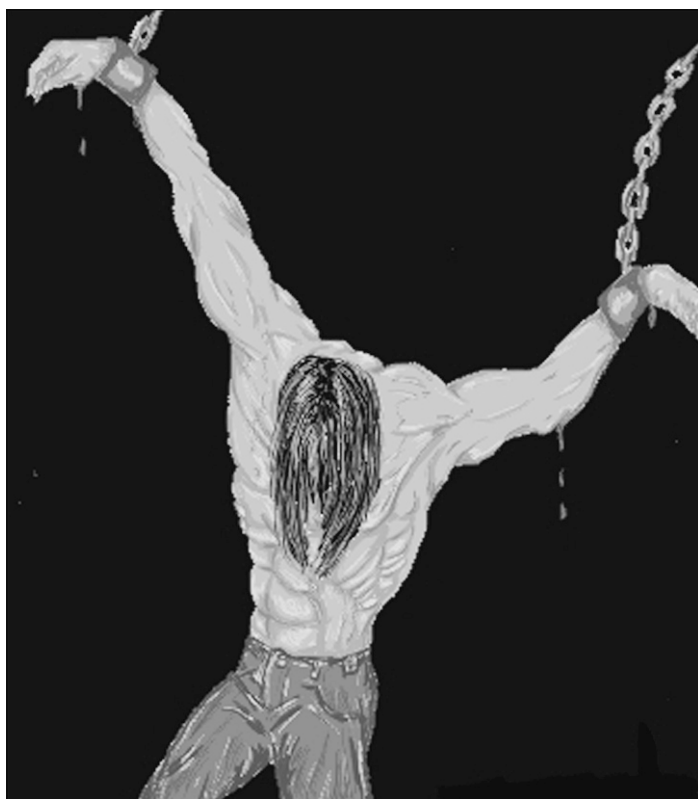
Judgement on Sections 54 & 167 of CrPC

Compensation can be obtained for torture or death in the police custody

High Court Division (Special Original Jurisdiction),
The Supreme Court of Bangladesh,
Writ Petition No 3806 of 1998,
Bangladesh Legal Aid and Services Trust (BLAST)
and others
Vs
Bangladesh and others,
Before Mr. Justice Md Hamidul Haque and Justice Salma
Masud Chowdhury.
Date of Judgement: April 7, 2003.
Result: Rule is disposed with directions.

(Continue from the previous issue)

Md Hamidul Haque, J. Now, we like to discuss what safeguards may be suggested for ensuring the liberty of the citizen and enforcement of the fundamental rights as guaranteed in the Constitution. In section 54 of the Code we have found from the language used, the police can exercise the power abusively. There is nothing in this section which provides that the accused be furnished with the grounds for his arrest. It is the basic human right that whenever a person is arrested he must know the reasons for his arrest. As the section 54 now stands, a police officer is not required to disclose the reasons for the arrest to the person whom he has arrested. Clause (1) of Article 33 of the Constitution provides that the person who is arrested shall be informed of the grounds for such arrest. It is true that no time limit has been mentioned in this Article but the expression "as soon as may be" is used. This expression "as soon as may be" does not mean that furnishing of grounds may be delayed for an indefinite period. According to us, "as soon as may be" implies that the grounds shall be furnished after the person arrested is brought to the police station after his arrest and entries are made in the diary about his arrest. Unfortunately, this provision of the Constitution is not followed by the police officers. It is strange that they are very much over jealous in exercising the powers given under section 54 but they are reluctant to act in accordance with the provisions of the Constitution itself. Constitution is the supreme law of the country and shall prevail over any other law. It is the duty of every one in the country to adhere to the provisions



of the Constitution. It is unfortunate that instead of adhering to the provisions of the Constitution, the police officers are interested in exercising the powers given to them under the Code without any hindrance.

The constitution not only provides that the person arrested shall be informed of the grounds for his arrest, it also provides that the person arrested shall not be denied that right to consult and to defend himself by a legal practitioner of his choice. We are of the view that immediately after furnishing the grounds for arrest to the person, the police shall be bound to provide the facility to the person to consult his lawyer if he desires so. Here, again we like to mention that the persons arrested by the police under section 54 are not allowed to enjoy this constitutional right. Not only this right is denied, even the police refuses to inform the nearest or close relation of the person arrested. We are of the view that the person arrested shall be allowed to enjoy these rights immediately after he is brought to the police station from the place of arrest and before he is produced to the nearest Magistrate. We like to give emphasise on this point that the accused should be allowed to enjoy these rights before he is produced to the Magistrate as this will help him to defend himself before the Magistrate properly. He will be aware of the grounds for his arrest and he will also get the help of his lawyer by consulting him. If these two rights are denied, this will amount to confining him in custody beyond the authority of the Constitution. So, we like to suggest some amendments in section 54 so that the provisions of this section are made consistent with the provisions of part-III of the Constitution. Similarly, we have also noticed that some provisions of section 167 are inconsistent to some extent with the provisions of the Constitution such as clause (4) and (5) of Article 35 and in general provision of Article 27, 31 and 32. So, we shall also suggest some amendments in section 167 of the Code. To give full effect to the proposed amendments, we are also of the view that some other related sections are also to be amended - for example, section 176 of the Code, section 44 of the Police Act, section 220, 330 and 348 of the Penal Code. Before, we like to set out our recommendations for the amendment of those sections, we like to give our consideration about the other points raised by the learned Advocates.

Mr. Amir-ul Islam has pointed that now a days in most of the cases different persons are arrested under section 54 of the Code on political grounds in order to detain him under the provisions of section 3 of the Special Powers Act, 1974. According to him, this is a concrete example of colourable and abusive exercise of power by the police. We accept the argument of Mr Amir-ul Islam. Mr Abdur Razzaque Khan, the learned Additional Attorney General conceded that arrest of a person under section 54 of the Code for the purpose of detaining him under section 3 of the Special Powers Act is not proper. As we have quoted the section 54 earlier, we have found that a police officer may arrest a person under that section, under certain conditions. Main condition is that the person arrested is to be concerned in a cognisable offence. So, first requirement to arrest a person under section 54 is that the same person is concerned in any cognisable offence. The purpose of detention is totally different. A person is detained under the preventive detention law not for his involvement in any offence but for the purpose of preventing him from doing any prejudicial act. So, there is no doubt in our mind that a police officer cannot arrest a person under section 54 of the Code with a view to detain him under section 3 of the Special Powers Act, 1974. Such arrest is neither lawful nor permissible under section 54. If the authority has any reason to detain a person under section 3 of the Special Powers Act, the detention can be made by making an order under the provision of that section. And when such order is made and handed over to the police for detaining the person, the order shall be treated as warrant of arrest and on the basis of that order, the police may arrest a person for the purpose of detention. But a person cannot be arrested under section 54 of the Code for detaining him under section 3 of the Special Powers Act.

Now, as regards the custodial death and torture we have already men-

tioned about the clause (4) and (5) of Article 35 of the Constitution. Torture or cruel, inhuman or degrading treatment in police custody or jail custody is not permissible under the Constitution. So, any such act is unconstitutional and unlawful. Now, a question is raised whether this court is competent to award compensation to a victim of torture or to the relation of a person whose death is caused in police custody or jail custody. We have considered the principle laid down in the case reported in AIR 1977 (SC) 610. According to us, this Court, in exercise of its power of judicial review when finds that fundamental rights of an individual has been infringed by colourable exercise of power by the police under section 54 of the Code or under section 167 of the Code, the Court is competent to award compensation for the wrong done to the person concerned. Indian Supreme Court held the view in the above case that compensatory relief under the public law jurisdiction may be given for the wrong done due to breach of public duty by the state of not protecting the fundamental right to the life of a citizen. So, we accept the argument of the learned Advocate for the petitioner that compensation may be given by this Court when it is found that confinement is not legal and death resulted due to failure of the state to protect the life. But at the same time we like to emphasize that it will depend upon the facts and circumstances of each case. If the question of custodial death becomes a disputed question of fact, in that case, under the writ jurisdiction it will not be possible to give compensation. But where it is found that the arrest was unlawful and that the person was

Directions

- 1) No police officer shall arrest a person under section 54 of the Code for the purpose of detaining him under section 3 of the Special Powers Act, 1974.
- 2) A police officer shall disclose his identity and if demanded, shall show his identity card to the person arrested and to the persons present at the time of arrest.
- 3) He shall record the reasons for the arrest and other particulars as mentioned in recommendation A(3) (b) in a separate register till a special diary is prescribed.
- 4) If he finds, any marks of injury on the person arrested, he shall record the reasons for such injury and shall take the person to the nearest hospital or Government doctor for treatment and shall obtain a certificate from the attending doctor.
- 5) He shall furnish the reasons for arrest to the person arrested within three hours of bringing him in the police station.
- 6) If the person is not arrested from his residence or place of business, he shall inform the nearest relation of the person over phone, if any, or through a messenger within one hour of bringing him in the police station.
- 7) He shall allow the person arrested to consult a lawyer of his choice if he so desires or to meet any of his nearest relation.
- 8) When such person is produced before the nearest Magistrate under section 61, the police officer shall state in his forwarding letter under section 167 (1) of the Code as to why the investigation could not be completed within twenty four hours, why he considers that the accusation or the information against that person is well-founded. He shall also transmit copy of the relevant entries in the case diary B.P. Form 38 to the same Magistrate.
- 9) If the Magistrate is satisfied on consideration of the reasons stated in the forwarding letter as to whether the accusation or the information is well-founded and that there are materials in the case diary for detaining the person in custody, the Magistrate shall pass an order for further detention in jail. Otherwise, he shall release the person forthwith.
- 10) If the Magistrate release a person on the ground that the accusation or the information against the person produced before him is not well-founded and there are no materials in the case diary against that person, he shall proceed under section 190 (1) (c) of the Code against that police officer who arrested the person without warrant for committing offence under section 220 of the Penal Code.
- 11) If the Magistrate passes an order for further detention in jail, the Investigating officer shall interrogate the accused if necessary for the purpose of investigation in a room in the jail till the room as mentioned in recommendation B (2) (b) is constructed.
- 12) In the application for taking the accused in police custody for interrogation, the Investigating officer shall state reasons as mentioned in recommendation B (2) (c).
- 13) If the Magistrate authorises detention in police custody, he shall follow the recommendations contained in recommendation B(2)(c)(d) and B(3) (b) (c)(d).
- 14) The police officer of the police station who arrests a person under section 54 or the Investigating officer who takes a person in police custody or the jailor of the jail, as the case may be, shall at once inform the nearest Magistrate as recommended in recommendation B (3)(e) of the death of any person who dies in custody.
- 15) A Magistrate shall inquire into the death of a person in police custody or in jail as recommended in recommendation C (1) immediately after receiving information of such death.

subjected to torture while he was in police custody or in jail, in that case, there is scope of awarding compensation to the victim and in case of death of a person to his nearest relation. As regards the occurrence of death which are mentioned in this writ petition, it appears that specific cases were filed and trial of those cases were completed in accordance with law and appeals are now pending. In those cases, the Writ Court has not given any decision as to whether the arrest or detention was unlawful. In view of this position, we do not think it proper to award any compensation in this writ petition.

In view of our discussion above, the Rule is disposed of with a direction upon the respondent Nos. 1 and 2 to implement the recommendations made above within six months. All the respondents are also directed to implement the directions made above immediately.

(Recommendation portion of the judgement will be published in the next issue).

Dr. Kamal Hossain with Mr. M. Amir-ul Islam, Mr. Md. Idrisul Rahman, Mr. M. A. Mannan Khan, Mr. Tanzibul Alam, Mr. Abu Obaidur Rahman and Mr. Kowsan Ahmed, for the petitioner.

Mr. A. F. Hassain Arif, Attorney General with Mr. Abdur Razaque Khan, Additional Attorney General, Mr. Zaman Akter, AAG and Ms. Kumrunnessa, AAG for the respondents.

Corresponding Law Desk

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LAWweek



Detention order by DM, ADM in 4 metropolitan cities illegal

The High Court declared illegal all the orders of detention issued by the District Magistrate (DM) or Additional District Magistrate (ADM) in four metropolitan cities namely Dhaka, Chittagong, Rajshahi and Khulna. A division bench of High Court comprising Justice SK. Sinha and Justice Md. Sharifuddin Chaklader passed the judgement. The High Courts decision was passed following 10 writ petitions challenging detention under Special Powers Act. As per Special Powers Act 1974, only the District Magistrate or Additional District Magistrate if empowered, is authorised to issue order of detention. But as per section 10 of the Code of Criminal Procedure, the District Magistrate is to be appointed for outside the Metropolitan areas. The High Court held that the District Magistrate's order of detention in the metropolitan areas were illegal. -Observer, 29 May.

Verdict of Habibur Rahman Mondol murder case

Two persons have been sentenced to death and 13 to life term imprisonment in the sensational Advocate Habibur Rahman Mondol murder case. Three others have been acquitted of the charges. Those to die are Shahidur Rahman Shahid, ward commissioner of Dhaka City Corporation, and 'Kala' Jahangir, a listed criminal. Shahid is in jail custody while Jahangir is absconding. Shahed Noor Uddin, Judge of Speedy Trial Tribunal, Dhaka Division, delivered the judgement. The tribunal completed hearing of the case in 135 working days. It may be mentioned that Habibur Rahman Mondol was gunned down in old Dhaka on 20 August, 2000. On 6 June, IO of the case submitted final report stating that allegations against the accused were not proved. Upon a 'haraji' petition, CMM court ordered further investigation of the case by CID. The CID submitted chargesheet on 4 November 2002. Trial of the case began on 17 January and 27 prosecution witness were cross-examined. -Law Desk.

Punishment for false case

A complainant and two witnesses have been convicted for seven years rigorous imprisonment by a tribunal on charge of filing false and concocted case of acid throwing. The tribunal also acquitted accused of the case. Mr. Shafaruddin 14 September 2002 filed a case with Badda thana alleging that accused Rubel and her sister Salma threw acid on the complainants on 10 September. After investigation the IO submitted chargesheet of the case on 20 December. After examining 10 witnesses, Judge of the Prevention of Acid Crime found the case false, fabricated and concocted. The court thereafter, acquitted the accused and convicted the complainant, his wife and daughter. The court also ordered the Inspector General of Police to take departmental action against IO of the case. -Ittefaq, 31 May

41 Children killed in May

One hundred and forty two people including forty one children has been killed through the violation of human rights across the country in May 2003. Odhikar, a human rights organisation revealed this information in its monthly report. The report added that during this period, three journalists were injured, five arrested and one assaulted. Seven journalists received threat, and cases were filed against nine others. According to the report one hundred and forty nine women and children were raped and of them 14 were killed thereafter. Besides, 32 became victims of acid throwing. One hundred and eighty three children were tortured. Of them, 57 were violated, 25 injured and 12 committed suicide. Besides, five children were trafficked, 37 kidnapped, three missing and three received acid burn. The report also said that 31 women were killed over dowry during this period. Four women committed suicide while 10 including three men were tortured in dowry related incidents. -Ittefaq, 01 June.

Anti-tobacco bill in the making

The government is likely to place an anti-tobacco bill in the upcoming session of parliament to discourage smoking at public places. With this end in view, the cabinet has already decided on principal to promulgate the law. LGRD Minister Mr. Mannan Bhuiyan said by while he was speaking at a discussion meeting organised by Manas on the occasion of 'World No Tobacco Day'. Mr. Bhuiyan underscored the need for massive campaign against smoking to make the people aware of the adverse effect of tobacco. The minister assured that the government would extend all supports including financial and legal help to carry forward the anti-tobacco movement. -News Today, 01 June.

20,000 trafficked annually

About 20,000 Bangladeshi women and children are trafficked to major cities in India and Pakistan and in the Middle East every year. In the last 30 years over one million women and children were smuggled abroad and many of them ended up becoming prostitutes, domestic helps, camel jockeys and beggars. The figures were presented at a press conference jointly organised by The American Centre and Action Against Trafficking and Sexual Exploitation of Children (ATSEC). Director of American Centre Karl Fritz, Project Director of ATSEC Khadija Bilkis spoke at the press conference. They said Dhaka and Jessore are the most traffic-prone routes in Bangladesh followed by Rajshahi, Laxmipur and Sathkhira. -Janakantha, 02 June.

Amendment to flag rule soon

The cabinet has decided to exempt foreign container operators from waiver certificate before loading and unloading goods. A bill in this regard will be placed in the next session of the Jatiya Sangsad for amendment to the Bangladesh Flag Vessel (Protection) Ordinance, 1982, to facilitate foreign trade by using foreign vessels along with the national flag carriers. It may be mentioned that to protect the interest of the Bangladeshi shippers the government enacted the Bangladesh Flag Vessel (Protection) Ordinance, 1982, imposing some restrictions on loading of export cargo in foreign vessels. -Law Desk.

74 killed in 12 years over char violence

A total of 74 people were killed and 2,818 people injured in different violent clashes in the char areas of the country from 1991 to 2003. Besides some 48 people remained missing while 50 others were abducted from the char areas. In addition 219 crimes were committed during the same period in the char areas. These figures were revealed by Samata, a non-governmental organisation. The report identified five districts- Lakshipur, Noakhali, Barishal, Patuakhali and Bhola as most violence prone areas. The report also said that the highest 40 percent incidents took place in Chittagong division while 36 percent in Barishal, 14 percent in Dhaka, seven percent in Rajshahi and three percent in Khulna. According to the report, the major causes of the violence incidents are secret nexus between the officials of the local administration and the leaders of political parties, existing alluvial and diluvial law, survey of land, lack of interim survey etc. -Ittefaq, 03 June.

Draft law on RAB finalised

The cabinet committee on law and order has finalised a draft law for creating a new elite security force called Rapid Action Force (RAB) to deal with the country wide deteriorating law and order situation. The new force would be formed under the Armed Police Battalion Ordinance recruiting the in-service members from all the disciplined forces including Army, Navy, BDR, Air Force and Police. Law Justice and Parliamentary Affairs Minister Moudud Ahmed said the draft law for the RAB would be placed before the cabinet soon. And if the cabinet approves the law, it would be tabled in the ensuing session of the parliament. -Jugantor, 03 June.

Law and order deteriorates in Shariatpur

The overall law and order situation in and around Shariatpur town is deteriorating day by day. The district town now has turned into a town of terrorists. A total lawlessness is prevailing in all parts of the town. Rioting, kidnapping, toll collection has become a common affair. Victims do not even complain to police fearing further reprisal. So the number of crime in police record are quite less while the town dwellers alleges that the number is much higher. -Bangladesh Observer, 21, May.