



HUMAN RIGHTS advocacy



The plight of family members of the outlaws..

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If you see into the newspapers recent days you will certainly find out some pieces of news stating police have arrested some family members of some outlaws or extremists. In fact, it has become a regular phenomenon after the increase of outrageous activities of different terrorist groups. The bloody actions of these groups have pushed the nation to a state of unprecedented panic and anxiety. Consequently, the whole nation, except a few fanatic diehards, now want these extremists to be given exemplary punishment. The authority also seems desperate than ever before to nab those terrorists and everyday they are arresting some accused and suspicious members of those groups. But with a great concern it is being noticed that some innocent family members of those extremists are also being arrested and harassed. Hence, the write-up highlights the issue, observes the laws relating to police power to arrest the family members of an accused, its abuses, if any, and prevention.

'Arrest' simply means the taking or detaining of a person in custody by authority of law. The purpose of arrest, in criminal proceedings, is to hold the person for answering to a criminal charge or to prevent him from committing an offence. By arrest the arrestee is deprived of his personal liberty, which is probably the most valuable human right after the right to life. This is why arrest should be made with proper caution, taking into consideration all prevailing circumstances and obviously in accordance with law.

What usually happens in most of the cases is that after arresting the family members of the accused police show that the same has been made under section 54 of CrPC. The section vests the police with vast power to arrest any person without order of Magistrate or without any warrant, if there is a reasonable suspicion about his involvement in a crime. As the expression 'reasonable suspicion' is not defined in the Code, police could arrest anyone on this suspicion, implicating him in a

crime, and thus could harass innocent people. But after the historic judgement in Bangladesh Legal Aid & Services Trust and others Vs Bangladesh 55 DLR 363 the way of abusing the terms 'reasonable suspicion' has been blocked forever. The judgement clearly lays down that if a person is arrested, '... the police officer shall record the reasons for the arrest including the knowledge which he has about the involvement of the person in a cognisable offence, particulars of the offence, circumstances under which arrest was made, the source of information and the reasons for believing the information...'

This judgement not only closes the ways for vague and ungrounded 'suspicion' but also puts guidelines to deal with such persons. Accordingly, now not only that the arrested person has to be produced before magistrate within 24 hours but also that: (a) the arrested person has to be informed of the reasons for his arrest; (b) the police will have to inform a friend or relative of the person arrested, unless he is arrested from his home or workplace; and (c) the arrested person must be allowed to consult a lawyer, if he so chooses.

But, regrettably, it has become commonplace that police go to accused person's residence to apprehend him, they find him absent and become very angry, then without any reasonable ground they begin suspecting the family members that they know the whereabouts of the accused, and following this baseless suspicion they pressurise all the family members to provide information about it; in this way when they fail to extract any information from them, they arrest them claiming that it has been made under section 54 of the CrPC. Such type of arrest is in any sense absolutely illegal.

Another widespread abuse of section 54 was that police arrested a person on suspicion and then detained him under the Special Powers Act, 1974. The abovementioned judgement clearly addresses the issue as 'A person is detained under

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

members of the accused without reasonable grounds or complaints. Rather, Rule 317 counsels police to avoid unnecessary arrest; it also advises the police to be cautious during investigation and not to arrest anyone relying upon their own justification.

Of course, there are some other

offence of harbouring the accused just because he or she is a member of the accused person's family. Moreover, section 212 of the Penal Code provides an exception that if a husband commits an offence, the wife is allowed to harbour him and vice versa. Neither can be prosecuted for the offence of

We must think logically. When a poor family sends its son to a madrasa or other educational institution, it does not want to see him as a terrorist, but the circumstances make him terrorist where the family does not play any role. Again when such a son studies in a residential madrasa, school

this failure of the state, the innocent family members of an outlaw cannot be made liable. But the irony is that we are to see the police arrest and take into custody the elderly father or younger unmarried sister or brother or children or wife of the accused or any other person.

Undoubtedly, such type of arrest is not only illegal but also a gross violation of fundamental rights under the Constitution. Article 31 of the Constitution declares that '... no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. Again article 32 clearly expresses that no person shall be deprived of life or personal liberty save in accordance with law. Authority cannot deny these rights as no proclamation of emergency has been issued so far.

Once more, if you see the matter beyond the purview of the Constitution, the arrest of family members of an accused without just cause is similar to the false imprisonment or wrongful confinement, which is a criminal offence punishable under penal law. Sections 340 to 348 of the Penal Code relate to such offences. In Paoting Tangkhul V State of Nagaland, 1993 CrLJ 2514, a detention without lawful authority was held to be wrongful confinement. In the case of Shamlal, 4 Bom LR, 79, too, where a police constable detained some persons as suspects, it was held that offence of wrongful confinement was committed by the police. Again, in Dhamru 1978, CrLJ 864 (Orissa), we see, a police officer arrested and detained a person in the thana lock-up despite production of a bail order from the court; it was held that the officer was clearly guilty of offence of wrongful confinement.

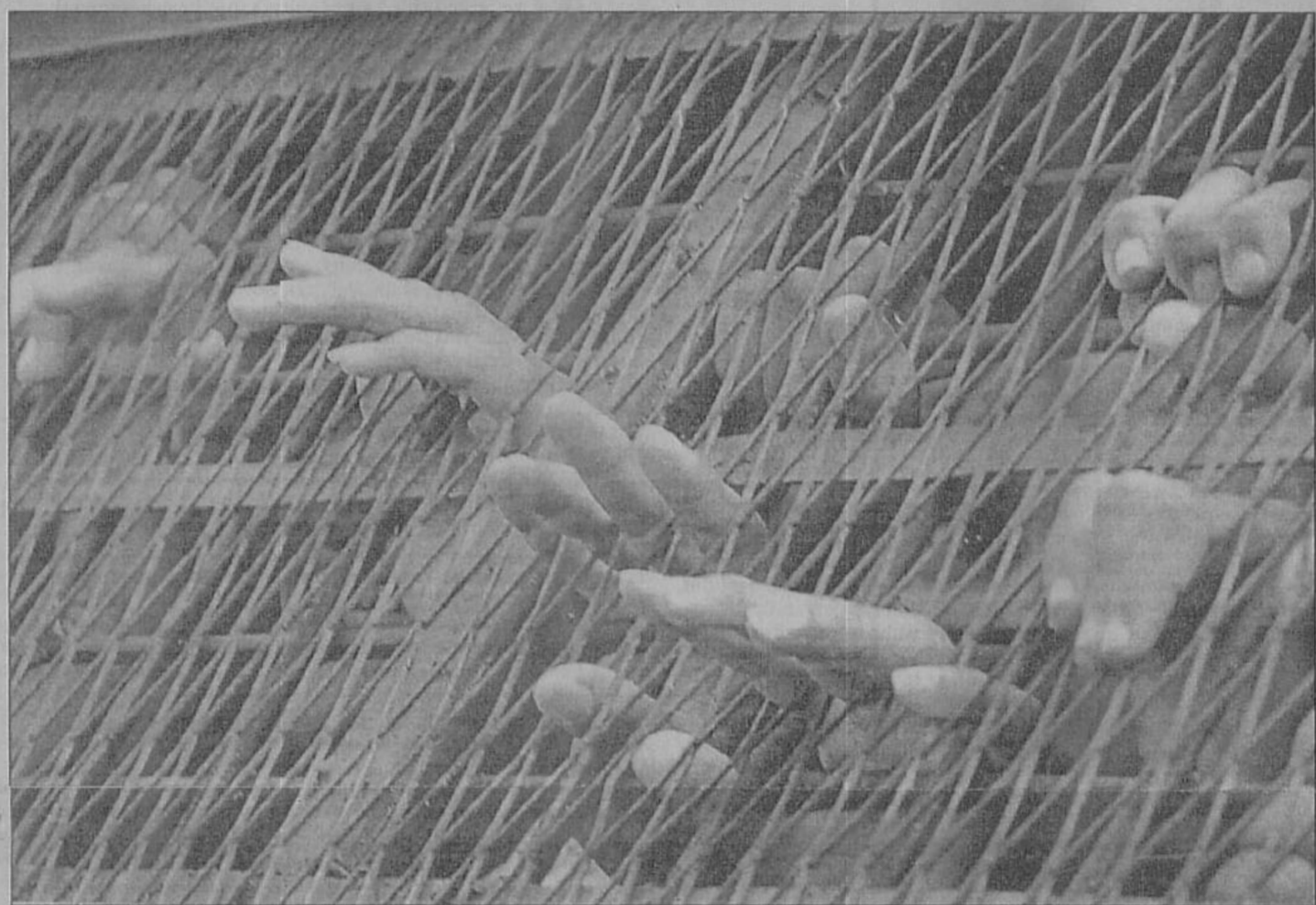
Now come safeguards against such arbitrary arrest or imprisonment. The most famous safeguard against arbitrary imprisonment is the writ of habeas corpus. It is addressed to one who detains or imprisons another, and commands him to 'have the body' of the person before the court directing on a

certain day, together with the cause of his detention. If the court decides that the cause shown does not justify the detention or arrest, it orders his release. A citizen can invoke the writ of habeas corpus under article 44 & 102 of the Constitution. A very important as well as interesting matter is that an application for habeas corpus can be made by any person irrespective of his being aggrieved or not. However, this is not the people friendly way of getting remedy; poor citizens cannot afford invocation of the writ. Moreover, it is not easily accessible to the citizens countrywide as only the Supreme Court exercises the jurisdiction.

Next comes 'Suo motu rule' meaning 'rule upon own initiative'. In this regard no petition is filed; the court upon its own initiative proceeds against the person or authority illegally treating a citizen. The basis of such initiative may be a piece of news or information, no matter how it reaches the court. The High Court Division has power to issue suo motu rule under section 491 of the CrPC, and it has a good record of using this power. Through issuance more of the same the honourable Supreme Court can dispirit the abuse of laws relating to arrest and detention.

Finally, it must be reminded that social obligations include not only uniting against terror to bring peace in the society but also ensuring that no member of the society is deprived of his rights. In fact, only the citizens who are aware of these rights and obligations can prevent the lawlessness in the society. Here is a reminder that an application for habeas corpus can be made by any person, who need not be a 'person aggrieved'. We can hope that the conscious and high-spirited citizen will avail this noble action and must inform the High Court Division about any illegal arrest or detention so that it can take initiative. We cannot in any way avoid our moral and social responsibility to ensure that no one suffers for the wrong of others.

The author is a legal researcher and a human rights activist.



Powers Act, 1974. Such arrest is neither lawful nor permissible under section 54. So if any person is to be detained under the Special Powers Act, a detention order under the provisions of that Act must be made at first.

There is another provision for arrest without warrant by police under Rule 316 of the PRB. But this provision too does not provide sufficient opportunity to arrest and take into custody the family

scopes of arrest of family members of an accused under the Penal Code for the offence of harbouring of the accused offender. According to section 52A of the Code the word 'harbour' includes acts of providing a person with shelter, food, drink, money, cloths, arms, ammunition, or means of conveyance, or assisting a person in any way to evade apprehension. However, a family member of an accused cannot be arrested for the

harbouring offender. Therefore, before apprehension of any family member, there must be present a legal ground or any convincing accusation or reliable proof of such offence in the hands of the police.

Rationally, we may be hating a member of a family who has joined a militant group, but we cannot be rude to the other members of his family who don't have control over that misguided member. There is no scope for being emotional here.

or college his family loses almost all control over him. So in such cases the family cannot be held responsible. Rather, we should understand the fact that it is the failure of the state authority to oversee what type of activities are being conducted in these institutions; that it is the failure of our administration and intelligence agency who could not detect the linkage of these institutions to militant groups. For

Star LAW analysis

Internet exposes a new international space

An analogical study of cyberspace in light of sovereignless character

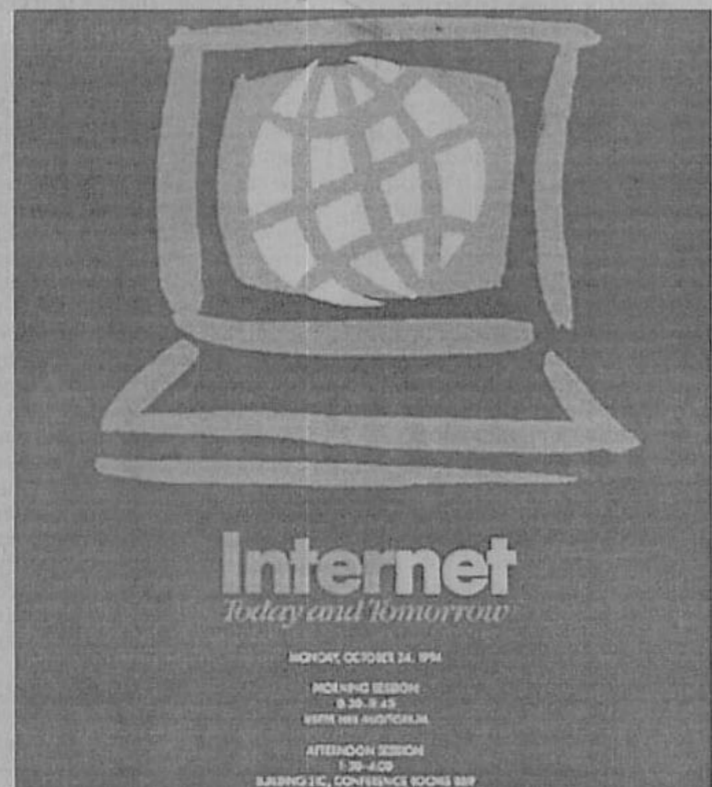
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SOVEREIGNTY is based primarily on geographical borders. The entrance of a political power into the territory of another sovereign without permission could be considered as violation of territorial sovereignty. But now Internet containing Cyberspace crosses the border. So it is difficult for the state to apply territorial authority in it. The state cannot achieve the physical control of cyber activities. Because, these activities are not confined within the territory. These go outside the territory and very often enter into the territory of sovereign state without any physical restrictions. This is really a problem for the state habituated to the territorial-based sovereignty. The underlying causes of the problem are (1) the peculiar structure of the internet; (2) non-physical character of the cyber activities; and (3) everywhere and nowhere location of cyberspace. External aspects of sovereignty indicate a state's freedom from outside influence upon its basic prerogatives. But the omnipresence character of Internet made it accessible from anywhere in the world that deriding international principles--territorial integrity, political independence and domestic affairs. However, still now, national border is the basis for creation and administration of laws. The current system of legal governance is based on the geography of national

borders. The states make laws governing citizens, institutions and conducts taking place and having effect, within the defined territory. Although the people who use the Internet are at all times governed by their real-space sovereigns, the sovereignty, or control, of the Internet itself and actions taking place within it remains up in the air that exposes a significant problem for the states familiar with territorial implications, to go on with internet and cyber activities occurred in Internet.

Cyber space: Non-physical architecture placed it outside the sovereign control

Internet is a very much new phenomenon bearing a long heritage of gradual development that took it outside the control of state entailing territorial monopoly. Internet is an interconnected system of networks that connects computers around the world via the TCP/IP protocol and provides a non-physical working place for the users. This place is known as cyberspace. The term 'cyberspace' is sometimes treated as a synonym for the Internet, but is really a broader concept. The term cyberspace emphasizes that it can be treated as a place. The United States Supreme Court visualizes cyberspace as a place outside national boundaries. The court indicates that it is a unique medium consisting of certain tools located in no particular geographical location but available to anyone, anywhere in the world; and the users' access



to it come out as 'cyberspace' to themselves.

Virtual world of the net: Pouring a citizenship outside the state purview

The world wide web has brought multi-media graphics, animations, sound, and hyperlinking--to the internet. The virtual world wide web (www), with virtual environments, is a further development where

users can interact graphically with each other. Typical www environments are spread across sites on the net and on a CD-ROM. The basic program run from the CD, but interactions between the users occur at www sites. When a user logs on to a virtual world, he or she chooses a graphical identity; this is how they will appear on the other users' screens around the world. These virtual people called as Netizen

stroll around and meet in the virtual streets--although the real users might be thousands of miles apart.

World wide web: A universal document devoid of physical location

Since 1993, the World Wide Web has become one of the fastest growing communication systems in history. Consisting of an expanding pool of pages created by computers, associations, and individuals, it is accessible to any one connected to the Internet. Two features of the web make it appealing. The first is the non-linear method of presenting information known as hypertext. This enables users to jump between documents to subject-related material at the click of mouse. The second is the multimedia format of web pages, which can be designed using sophisticated graphics, sound, and animation, and displayed on-screen by program called a graphical browser. Since the development of the browser, the web has become more sophisticated and easier to use and interest in the www has exploded.

Universal accessibility of virtual tools crosses the border

Access to the Internet is available to users through a wide variety of communication and information retrieval methods. Popular virtual tools like E-mail, mail explorers, newsgroups, chatrooms and the World Wide Web easily transcend national border inconsistent with territorial control of sovereign states. The mechanism, process

and technique as used in Internet cause the extra-territorial effects.

Universal access paths to cyber space undermines territorial confines

Access to the Internet is available to users through a wide variety of communication and information retrieval methods. Popular access methods like E-mail, mail explorers, newsgroups, chatrooms and the World Wide Web. A person can enter into the world of net just clicking on the PC having Internet connection bearing some specified software. Internet users can enter into the visual world from anywhere in the world. A Bangladeshi user can enjoy the charms of being in the land of America or other countries. It is definitely sneering at the territoriality of the state. Now the activities of human personalities in the capacity of their citizenship or nationality are not grasped by the territorial monopoly. A significant portion of his time are passed in net world causing some effects of civil, political, economic, social and cultural nature bearing the monetary value not less than the value claimed by the territorial activities of human being...Contd.

This story will be published on three parts.

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LAW news

FIRST DECISION OF ICC Determination of victims' rights

On 17 January 2006, the Pre-Trial Chamber (I) of the International Criminal Court (ICC) issued a decision recognising the right of six victims to participate in proceedings before the ICC, including at the stage of the investigation currently being conducted in the Democratic Republic of Congo.

FIDH, which assisted the victims in their applications to the ICC, welcomes this determination of the scope of victims' rights. The decision affirms the new role of the victims in international criminal justice. "The decision of the International Criminal Court is an international legal first. The six victims have achieved a landmark victory. For the first time the violation of the fundamental rights of victims, the harm they have suffered and their rights to defend their interests have been recognised by a court, the ICC," Sidiki Kaba, President of FIDH, stated.

The Pre-Trial Chamber, which also ensures that the rights of the defence are respected and guarantees the necessary protection for the effectiveness of the investigation, concluded that "the right [of victims] to express, in a general way, their views and concerns regarding the

investigation of a situation and to present evidence before the Pre-Trial Chamber cannot have negative consequences for the investigation" (paragraph 59). The Chamber further recognised that

"the Statute [of the ICC] grants victims an independent voice and role in proceedings before the Court" (paragraph 51). The decision thus contributes to the evolving recognition of the role of victims in international law. "The Chamber considers that article 68-3 of the Statute [which defines the right of victims to participation] also grants victims the right to participate in the fight against impunity" (paragraph 53).

The Chamber considers that "the personal interests of the victims are affected in a general manner at the investigation stage, since the participation of victims at this stage enables facts to be clarified, those responsible for crimes committed to be sanctioned and reparations for harm suffered to be requested" (paragraph 63). Furthermore, the Chamber recognises the complementary role of non-governmental organisations in facilitating victims' access to the International Criminal Court, by assisting them to transmit their applications for participation. Victims may otherwise remain far removed from the Court's seat in The Hague.

FIDH transmitted these first applications for participation to the Court in May 2005.

For obvious security reasons, no factual details will be given by FIDH.

Source: FIDH.