

FOCUS

Law and Our Rights

Law Enforcing Agencies & Human Rights: Bangladesh Context

by Dr Mizanur Rahman

THE history of law enforcing agencies is inextricably related with the history of law and state. Today it is well confessed that when Primitive egalitarian society due to the production of "surplus value" in consequence of the division of labour became divided into classes, when the distinction between the poor and the rich was created, when the poor became prey to extortion and deceit and when private property was created through extortion, state, a political institution, came into being. Thus state was created when the primitive egalitarian society was transformed into an unequal society of classes. Differently it can be said that when in the course of its evolution society was divided into classes that division was reflected in the formation of state. State ensured the perpetuity of the society in the face of the continual struggle of different adverse classes for their own existence. In reality this abstract concept of state is nothing but a political means to safeguard the economic interests of the class in power. Even though different attempts have been made to define "state" and all definitions reflected the Political Philosophy of their authors, popularly by "state" we understand a huge "force". This "force" can be seen in state laws, in institutions like police, army, BDR, armed forces, prisons etc. This huge force is inevitable in a state. Because all states establish the authority of one class over all other classes in the society. So it would not be improper to consider the concept of state as equivalent to oppression and suppression.

But with the development and progress of knowledge the concept of state underwent radical changes in the course of social evolution. State has been seen to project itself in welfare activities by concealing its traditional and preeminent role in order to keep the "social dialectics" in restraint. In the middle of the 20th century the concept of welfare state came into prominence. Prior to that the concept of socialist state as envisaged in Marxist ideology was realised with the hope and belief that this socialist state will enhance its wreckage through its own evolution from which a communist state will be created. But within seventy three years socialism as a political philosophy became ineffective. Nevertheless it is undeniable that socialist thinking greatly influenced all political philosophies before its downfall as a system. It even acted as the main catalyst in the radical transformation of the old concept of state. Can it be denied that the concept of welfare state is the direct result of socialist thinking?

Law enforcing agencies must be judged in the perspective of the newly acquired characteristics of state and its related institutions in such a changed situation. Before entering into human rights the distinction between different social norms and law must be made clear. When primitive man started living united or group life he began to be regulated and protected by social norms. We all know this allegiance to social norms was very natural. Because everyone for his own needs and welfare considered these norms as emanating from his own self. But with the origin of state the characteristics of social norms became different, all norms were no more equally beneficial for all, rather to ensure the well-being of a few the large majority of the society was burdened with duties and obligations, and for obvious causes allegiance to norms which were the reflections of state will i.e. law, was not spontaneous and voluntary. Thus to ensure the allegiance of all, law enforcing agencies and penal systems were needed and in this way which previously was natural in the case of laws that became artificial, the state of punishment became essential for that which was observed voluntarily, law enforcing agencies were necessitated for the realisation of that which did not call for any control. For this reason in any modern society we see fear, doubt and suspicion in common people towards the law enforcing agencies. This suspicion reached a stage where the role of law enforcing agencies even in respect of protecting human rights makes us anxious and worried.

Men talked about natural rights at the beginning of the civilisation. The dimension of natural rights also changed with the ages. In ancient Greek and Roman civilisations slaves were not treated as human beings. In spite of being the subjects of law they were the objects of law and consequently always remained outside the purview of natural rights. Long after the dawn of human civilisation during the Renaissance, particularly owing to the influence of French Philosophers, the concept of "Human Rights" was formulated. At the beginning human rights was a diluted version of natural rights and was linked with the concept of nation state. Resorted to for safeguarding the position of the common people against the absolute power of the Monarch or Emperor "Human Rights" soon became a weapon for the realisation of the right to self-determination not only against the internal tyranny (as in France) but also against the colonial forces (as evidenced by US liberation war). Later the guiding principles of the French Revolution — Liberty, Equality and Fraternity were proclaimed and adopted as the fundamental principles of human rights.

Consistently, after the realisation of the right to self-determination the centre of the struggle for the realisation of the human rights acquired a new dimension. Before savour-

the law enforcing agencies described. Section 44 (1) of the Code of Criminal Procedure applicable in Bangladesh says: "Every person, aware of the commission of, or of the intention of any other person to commit any offence punishable under any of the following sections of the Penal Code namely, 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or Police Officer of such commissioner or intention."

Have our government and state been able to establish the mutual trust and confidence which is essential for the cooperation between police — the principal law enforcing agency and common people as envisaged here?

Let us have a look into some aspects of the aims, objectives and functions of our principal law enforcing agency — the Police. According to the police Act of 1861 maintaining law and order is the principal function of the Police. Section 23 of the said Act provides: "Duties of Police-Officers: It shall be the duty of every Police Officer promptly to obey and execute

in his possession without lawful excuse, the burden of proving which shall lie on such person, any implement of house-breaking; thirdly, any person who has been proclaimed as an offender either under this code or by order of the Government; fourthly, any person in whose possession anything is found which may be reasonably suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; fifthly, any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape from lawful custody; sixthly, any person reasonably suspected of being a deserter from the armed forces of Bangladesh; seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in Bangladesh; eighthly, any released con-

vict committing a breach of any rule made under section 565, sub-clause (3); ninthly, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specified the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition. "The Police of almost every state has the power of arresting suspected persons/criminals. But this power given to the Police of Bangladesh often raises agitation and protest due to the abuse of the power. But is the Police solely responsible for the abuse of power?

In this regard a comparative discussion may be made. For example, in the United States any statement made to the Police may afterwards be used against the person making the statement. But according to our law any statement recorded under section 161 of the Code of Criminal Procedure, 1898 may afterwards be withdrawn by the person making the statement. Thus in reality the extent of using the evidence given under section 161 against the person giving the same is very limited. There are instances where the US Police resorted to torture in order to extract confession from the accused. Nevertheless as much allegations are not heard against the US Police as we hear against our Police. But why?

It should be remembered that law enforcing agencies never play an impartial role. Even if seemingly impartial they protect the interest of the class in power under the false veil of impartiality. But in developed countries like the United States separation of powers reached a stage where the politicians who are mainly associated with the administration and the legislature can not interfere with the routine activities of the police. The class in power resorts to such limitation of its own power in order to maintain the "seemingly impartial character" of the state. Whereas in Bangladesh the main impediment in attaining the seemingly impartial character of the police, the principal

law enforcing agency, is the politicians of the ruling party. The police is often subject to illegitimate pressure. About a year ago the whole of Bangladesh witnessed an artistry of fotowabaz (persons who issue decrees purportedly in conformity with Islamic laws). Some self-seeking quarters tried to bring mediaeval darkness in the society by taking the law in their own hands in the name of religion in different regions of Bangladesh. In the name of establishing religious order human dignity was trampled by resorting to mediaeval barbarity. Farce of trial has been made by throwing stones, burying up to the neck or by amputating the hands. But we have not seen the police in the expected manner and role. Were not there orders of the then rulers and policy makers behind this role of the Police as silent spectators? Were not there tacit supports of the ruling politicians behind such negative role of the Police? Thus making the Police the scapegoat the politicians and the rulers realised their own interests.

Police remained the scapegoat even in the changed scenario. Recently it has been observed that ignoring Government orders local politicians released identified and accused terrorists from Police custody. When protests arose punitive actions were taken against the concerned police-officer. But

presence of the authorities for entrance into the Students' Residence Hall was made with a view to overcome the deadlock situation in the University, some teachers engaged in the Hall administration, sometimes by compulsion and sometimes to safeguard own interests, allowed identified terrorists and non-students to enter and stay in the Halls. In the changed scenario of the state and the University many teachers are allegedly using terrorists, non-students and cadres to maintain their former image prestige and influence. Not the immense treasure of knowledge and the respect aroused by the same but the role of the cadres and student powers is being given priority for image and prestige. Teachers, in many cases in spite of being teachers became politicians. The holy place for the pursuit of knowledge has become the place of party politics. All that is unfortunate and disgraceful in the politics of our country and should be renounced have found their way into the universities. Has not the role of the law enforcing agency been curtailed proportionately in ensuring the peaceful atmosphere of education?

In this perspective it seems that the proposal of President Shahabuddin Ahmed to suspend the so-called student politicians temporarily requires special consideration.

In the wider dimension of the state it should be remembered that no matter how impartially the laws are enforced in a society divided into classes it tends to perpetuate the inherent inequality. We, specially those who are students of law, often say that rule of law is the precondition for the realisation of human rights. But have we ever questioned rule of which law we are talking about? Is it the rule of law which is established on the basis of "unequal laws" and which perpetuate extortion and inequality or the rule of law which aims at establishing the rule of the majority and in the process "withering away" of the discriminatory laws?

Once again experience of harsh reality, recently the left side of the road in the Dhaka city has been marked in white lines for rickshaws. The intention was to avoid inconvenience for the motor vehicles by uncontrolled movement of rickshaws so that traffic jam can be mitigated. Not to mention, necessary step. But let us see the empirical aspect of this rule. The other day I was going through the Elephant road by rickshaw. Old rickshawpuller said at one night when he crossed the whitteline and entered the area of motor vehicles a police sergeant slapped and abused him. According to the rickshawpuller the road was vacant at that time and he created no obstruction for others. On the way I saw that the area reserved for rickshaws in the Elephant Road was full of private cars and motor cycles and it was impossible for rickshaws to proceed without encroaching on the area of motor vehicles. Unable to hide his anger the rickshawpuller said, "Where is the sergeant now? Why no action is taken against motor drivers?"

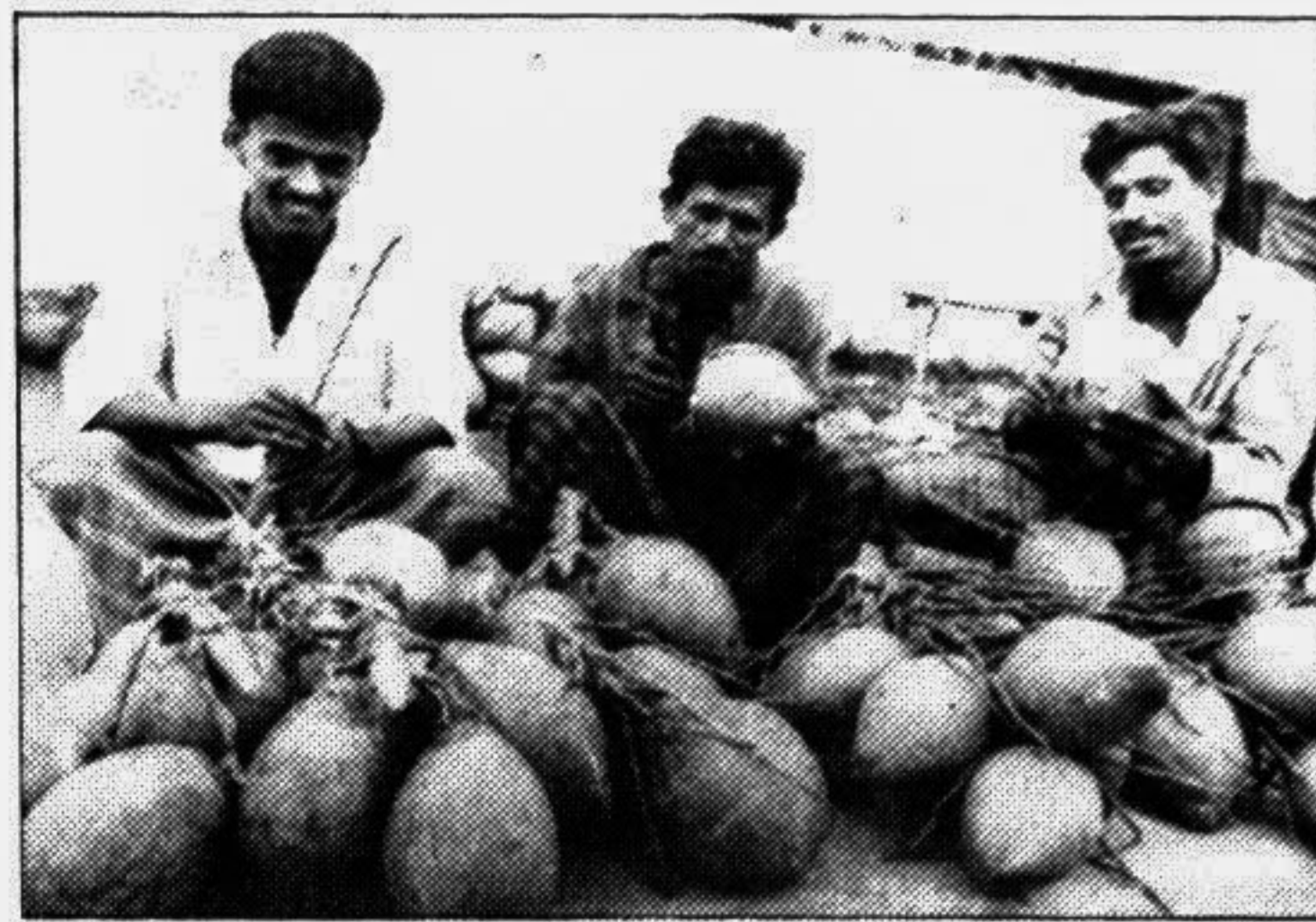
This question is eternal. Although the bias inherent in its subtlety in the laws of a society divided into classes may not be discernible in common eyes the bias of the law enforcing agencies can be easily pointed out. Who is primarily responsible? The agency or the biased law?

The precondition for apparently neutral law enforcing agencies is an apparently neutral state. Since at present the worldwide struggle for the establishment of human rights is directed against the state power, the complete realisation and establishment of human rights is possible only through the establishment of "people's state". The essential material and ideological ingredients for the same are absent in the present Bangladesh. Nevertheless it is hopeful that the present Government for the first time acknowledged that the primary responsibility for the establishment of human rights is that of the Government and being inspired by this ideology the Government has established Bangladesh Human Rights

Dhaka Day by Day

A New Trend in Roadside Drink

by A S M Nurunnabi



Every city road has its own specific feature. The Satmajsid Road in Dharamandi is no exception in this respect. The road running from the main gate of the BDR headquarters towards the north has, as its specific features, a number of re-conditioned car shops, departmental stores and several fast food shops with a sprinkling of English-medium K G schools. There are also a noted sports club, a couple of private universities and a private medical college on or near the road. As a result, in conformity with the traffic pattern in most areas of the city, this road also witnesses a heavy traffic congestion in rush hours.

In this part of the city one can't miss another notable spectacle: the sale of fresh green coconuts neatly arranged at short distances from one selling point to another along the whole stretch of the footpath. This is quite intriguing, because it has been a recent development. The concentration of selling points for green coconuts along the route gives rise to the question whether people are showing their preference for this natural drink over the bottled ones.

This presents a contrasting picture. On one side of the road,

we find soft drinks of various brands being sold from the new-looking well-decorated shops particularly to students of the educational institutions located nearby; on the other side of the road, one discerns a growing popularity of this natural drink among people at large. There is no indication of competition between this natural drink and the soft drinks but who knows! At times people turn to indigenous things with a patronising attitude.

Price-wise, this natural drink seems to have an edge over the soft drinks and the so-called mineral water. The roadside vendors have also adopted the use of straws for the benefit of their customers.

The preference for coconut drink is not confined to a particular locality alone. As always, this natural drink enjoys universal appeal which may somewhat diminish in winter. But as summer approaches, the roadside business in green coconuts picks up.

The problem however is to supply many of the fresh ones. In that regard, the coconuts in that regard, the coconuts of Road are really fresh, giving the impression that they have been picked from trees only hours before.

Law Scape

HC Stays Uttara Lake Fill-up

A Division Bench of the High Court Division of the Supreme Court comprising Mr. Justice Mainur Reza Chowdhury and Mr. Justice Iftekhar Rasool, on 5 February '97 issued a rule nisi upon the Secretary, Ministry of Housing and Public Works, the Chairman, Rajdhanee Karpikabha (RAJK), the Director General of the Department of Environment asking them to show cause why the revised layout plan proposing land-filling and allocation of plots on the bank of the Uttara Lake at Sector 3 which is causing threat to the natural environment of the area and the lake should not be declared to be unlawful and against public interest. The Court further asked the Department of Environment to show cause why it should not be directed to perform its statutory duties to protect the environment of the water body and its surrounding in the Uttara Model Town endangered by the implementation of the said plan by RAJK in accordance with the Environment Conservation Act, 1995.

The Writ Petition was filed by Dr. Mohiuddin Farooque, Advocate, supreme Court, representing Bangladesh Environmental Lawyers Association (BELA) as its Secretary General and was also moved by Dr. Farooque. The Court also issued an injunction restraining RAJK to suspend all its activities in connection with the implementation of the said revised layout plan.

It was strongly submitted that the revised layout plan was adopted in violation of the Town Improvement Act, 1953. More over, the RAJK defied the instruction of its own Ministry and was violating the Environment Conservation Act. The DOE also failed to implement the law. The attempt to turn the area reserved for greenery and for walking can not be turned into plots for allocation in violation of the Master Plan.

Dr. Farooque was assisted by Advocates Ms. Rizwana Hasan, Ms. Bahreen Khan and Mr. Iqbal Kabir

Commission. This step of the Government created new hopes. The positive role of the commission will help the state and the Government to take a comradely approach instead of their present hostile attitude to the struggle for human rights. A pro-people state can ensure pro-people law enforcing agencies and only pro-people law enforcing agencies can ensure "Policing by consent". Recently a system of "partnership approach to Policing" has been established experimentally in the Myrmensingh town. For the safety of the life, property and honour of the people Town Defence Party has been formed there by the assistance of the Municipality and through the direct participation of people from all classes and walks of life. All expenses for the same are met locally. Crimes in the town have reduced due to such step. Social control has increased

and people's assistance is being available in the investigation of crimes. The relationship between people and the Police has become cordial and trustworthy. Thus the detachment of the Police from people has reduced to some extent.

To strengthen the relationship between law enforcing agencies and common citizens and to reduce the gap between them law enforcing agencies need to be dedicated to human rights. This will be possible when they will consider themselves as placed not above the people rather as part of the people and as servants of the people. This can be achieved through radical change of the state character. Are we at all prepared to face this difficult task?

The writer is an Associate Professor Department of Law University of Dhaka.

The Daily Star Entertainment Guide

Sunday 23rd February
(All programmes are in local time. There may be changes in the programmes).

BTV

3:00 Opening Announcement
Al-Quran Programme Summary
3:10 News in Bangla 3:15 Patriotic Songs 3:20 Recitation from the Bible 3:25 Reticelation from the Bible 3:30 Marami 3:35 News in Bangla 3:40 Sports Programme 3:45pm Gethalia 3:55 Mayered Janyiro 6:50 Open University 7:00 The News 7:25 Documentary on Freedom Fighting 8:00 News in Bangla 8:25 Women in Freedom Fighting 9:00 Film Series: Akbar The Great 10:00 News in English 10:25 Those Days of Freedom Fighting 10:30 Shono Anabani 11:30 News in Bangla 11:35 Monday's programme 11:40 Close down

BBC

6:00am BBC World News 6:30 India Business Report 9:00 BBC World News 9:25 This Week 10:00 BBC World News 10:05 World Focus: Horizon 11:00 BBC World News 11:25 India Business Report 12:00 BBC World News 12:20 Britain in View 1:00 BBC World News 1:20 This Week 2:00 BBC World News 2:05 World Focus: Correspondent

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