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The Dilemma of Section 54

by Abul Hasnat Monjurul Kabir

What is a reasonable complaint or suspicion must depend on the circumstances of each particular case, but it must be at least founded on some definite fact tending to throw suspicion on the person arrested and not a mere vague surmise or information.

"A law enforcement officer my fundamental duty is to serve mankind, to safeguard lives and property, to protect the innocent against deception, the constitutional rights of all men & women to liberty, equality and justice" — Excerpts from 'International Code of Enforcement Ethics'.

Like many other countries, police is the principal law enforcing agency of Bangladesh. It is one of the disciplined forces of our country. 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: "It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the public peace to prevent the commission of offences and public nuisances, to detect and bring offenders to justice and to apprehend all persons whom he legally authorized to apprehend and for whose apprehension sufficient ground exists; and he shall be lawful for every police officer for any of the purposes mentioned in this section, without a warrant to enter and inspect any drinking shop, gaining house or other place of resort of loose and disorderly characters." Maintaining law and order in all kinds of public places is another crucial duty of police as per sec. 31 of the same Act. For all these practical purposes police has been equipped with wide power of action. The Code of Criminal Procedure 1898 deals with some of the major important procedural elements of the power and function of police. Chapter V of the Code particularly deals with procedure and mode of arrest of which section 54 is of utmost importance. It gives police almost unlimited power to arrest any person without warrant.

Generally the police can not arrest a person accused of a non-cognizable offence, without warrant (a precept or notice under the seal and signature of a court directed to a person to arrest a criminal and being him before the court for being dealt with according to law) from a magistrate though under certain circumstances the police can arrest for non cognizable offence (offence for which the police officer may not arrest a person without warrant) also. But when a person is concerned in a cognizable offence, the police can arrest him without warrant under section 54 of the code. Section 60 provides that a police officer making an arrest without any warrant shall without unnecessary delay and subject to the provisions of the bail, take or send the person arrested before a magistrate having jurisdiction in the case or before the officer in charge of a police station. Under section 61 it is provided that no police officer shall detain in custody person arrested without warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not, in the absence of a special order of a Magistrate under sec 167 exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to a Magistrate's court. Therefore unless a police officer considers that he can not complete the investigation within a period of 24 hours it is incumbent upon him to forthwith produce the accused before a magistrate.

The Text of Section 54

Before any further analysis the text of the section 54 of the Code Criminal Procedure should be considered. The section says: Any police officer may, without an order from magistrate and without a warrant, arrest—

First, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned;

Secondly, any person having in his possession without lawful excuse, the burden of proving which excuse 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 reasonably be 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 executed of his duty, or who has escaped or attempts to escape, from lawful custody;

Sixth, 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 or detained in custody in Bangladesh.

Eighthly, any released convict committing a breach of any rule under section 565, sub-section (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 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."

Power of Arrest

The words "may arrest" show that the power of arrest is discretionary. A police officer is not always bound to arrest for cognizable offences (offences for which a police officer may arrest without warrant). If an information of such an offence is brought to him he ought, if there be circumstances in the case which lead him to suspect the information, to refrain from arresting persons of respectable position and to leave the complaint to go to a Magistrate and convince him that the information justifies the serious step of the issue of a warrant of arrest.

The powers under this section must be cautiously used. This section gives wide powers to a police officer to make an arrest without an order from



Arrest on Suspicion: Section 54 in Action

the Magistrate and without warrant only in certain circumstances limited by the provisions contained in this section, and it is necessary to be exercising such large powers to be cautious and circumspect.

Not Unqualified!

The section does not give an unqualified power in all cases to any police officer to arrest, without, an authorization in writing, a person concerned in a cognizable offence. The provisions of this section are limited

by those of section 56 (procedure when police officer deputed subordinate to arrest without warrant). But where a subordinate police officer is not acting independently, but is merely deputed by a superior officer to arrest some one concerned in a cognizable offence, a further formality is prescribed in sec 56, presumably, to prevent abuse of the powers of the police or to allow the person arrested to know the reason for his arrest and the office of the person arresting him. (Md Ismail, AIR 1936)

The Test of Reasonableness

The first clause of the section 54 which empowers a police officer to arrest any one on the basis of reasonable suspicion exists in his mind or credible information received by him does not apply to a case of non-cognizable offence and the accused is consequently not entitled his legal right in insisting upon the release of the arrested persons.

What is a reasonable complaint or suspicion must depend on the circumstances of each particular case, but it must be at least founded on some definite fact tending to throw suspicion on the person arrested and not a mere vague surmise or information. Still less have the police any power to arrest persons as they sometimes appear to do on the chance of something being there after proved against them.

A general definition of what constitutes reasonableness in a complaint or suspicion and credibility of information can not be given. Both must depend upon the existence of tangible legal evidence within the cognizance of police officer, and he must judge whether the evidence is sufficient to establish the reasonableness and credibility of the charge, information or suspicion. A police officer may without a warrant arrest on reasonable suspicion, "reasonable" being understood to mean a bonafide belief that an offence had been committed or is about to be committed ne-

cessitating the arrest of the person concerned (K.V. Muhammad Vs C. Kannan, AIR 1943).

A Necessary Evil?

The police of almost every state has the power of arresting suspected person. But this power conferred on police often raises serious questions, agitation and protest due to the wide spread abuse of the power. In a recent 'The Daily Star Open Discussion on Death and Rape in Police Custody' the participants termed the law as 'black law' for its continual gross abuse and demanded its necessary amendment to create a check and balance between the letter of the law and its application. Laws on arrest provide ample scope for the misuse of police power and lack of adequate remedies to protect the right to personal liberty. Sometimes arrest and detention though made in accordance with the law can violate one's personal when the law itself provides scope for unjustified or arbitrary use of power by the authorities.

Law Reform Commission can definitely think over it regarding its amendment. Besides random and arbitrary application of this section must be immediately stopped. Departmental actions should be taken at a regular basis for such misuse. A police officer arresting a person unjustifiably or otherwise than on a reasonable ground is guilty of an offence under sec. 220 of the Penal Code.

Under sec 23 Police Act 1861 (which too requires modification) legal action can be taken against any member of the law enforcing agency for such misuse. As Dr Taslima Monsoor, Assistant Professor of Law, University of Dhaka aptly puts it in the 'Daily Star Open Discussion, Necessary changes should also be brought down in the training curriculum of the law enforcers to make them gender sensitized.'

The gulf between laws in theory and practice in Bangladesh must be rapidly narrowed. Minimum standards must be set for decency to be observed when arresting and searching anyone specially women and adolescent girls. Following an arrest, the police should inform the nearest Legal Aid Community or any other recognized services, without delay.

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Dhaka Day by Day

No Room for Bachelors

By Ekram Kabir



Living in decent rented houses has become horrendously difficult for single people, both female and male, in the city. Though small in number, these young men and women don't have a place of their own in this capital city of Dhaka. Leaving their families

parents, of course — in other districts, they are engaged in blue-collar jobs, mostly in the multi-national companies, foreign NGOs and banks, and local business establishments, earning fairly handsome salaries.

Although there are a couple of "Karmajibi Mahila Hostels" for women, those earning a good salary packet are averse to living in those dormitories. Avoiding those hostels, single women somehow manage to put up with their relatives. On the other hand, for single men, getting a house to rent is a hope. Every "To-Let" board for them is a signal of a restricted territory. Meanwhile, the youngish couples are also, to a large extent, the victims of this hard-to-rent problem. No house-owner wants to believe that they are married. Se was the experience of a couple who, after many tribulations, is now housed in a flat at Maghbazar. "When we were looking for a place to live in, it was usually I who used to go searching for 'To-Lets', says the husband. This man, who works in a foreign shipping company, was turned down three times (it is mostly the landladies who are prompt to deliver the no-entry verdict). The next time he went to meet a house-owner, the wife accompanied; and to their sheer surprise, they were still declared

unqualified until the owner saw their marriage certificate. "Though furious, we agreed to show everything which would convince the suspicious head of the house, because we were tired of being refused by quite a couple of them," says the wife, an executive in a Motijheel company.

The experience of a physician, who works in an American NGO and requested anonymity, was pretty interesting; and he seemed to have enjoyed the hassle he went through while getting a house rented at Kalabagan. Says he, "I knew beforehand what the landlord could have said, and for that reason, I took my mother and sister along who live in Khulna. I told them that my sister was going to live with me, and asked my mother to inform the owner that her son was going to be married very soon. Interestingly, his mother's version of the story was highly convincing and acceptable to them; and I have been living here for more than two years in peace."

Now, what could be the possible reasons, on house-owners' part, for resenting to rent out their houses to single people? Well, firstly they consider whether these people would be able to pay the rent regularly. And then, the landlords/ladies fear that bachelors usually are prone to lead a cavalier lifestyle which could make the owners unpopular in the neighbourhood.

It's not yet clear since when the working bachelors earned this bad name. At least, the bachelors of the '90s — unlike those of '60s and '70s — are more straightforward and want to live a decent life in this city.

Towards a Broadcasting Policy

by M S Ahmed and Shuva Mandal

principle of 'Maximum good for the largest number'. At the same time airwaves in the form of frequencies are limited and any interference caused by misuse, will render them useless. It is this factor which has necessitated the establishment, maintenance and control of broadcasting services, within the purview of governmental regulation.

Monopoly in broadcasting is also claimed by the government so as to prevent concentration of frequencies in the hands of few who can then monopolise

the dissemination of views and consequently manipulate public opinion. It was precisely in this context that the US Supreme Court in *Red Lion Broadcasting Co v Federal Communication Commission* (1969) 395 US 367 evolved the Fairness Doctrine in which it was laid down that it is the right of the viewers and listeners, not the right of the broadcasters which is paramount.

Broadcasting is a means of communication and therefore a medium of speech and expression. It must be remembered

that the fundamental right to speech and expression includes the right to acquire and disseminate information, which involves the use of any media-print, audiovisual and electronic.

The right like Freedom of Press, has two facets, the right to inform and the right to be informed. The former is the broadcaster's right while the latter is the viewers right. Viewers rights can be enumerated as (i) right to imposition of programme codes (ii) right to multiplicity of opinion and right to

balanced broadcast which includes two affirmative responsibilities as laid down by the 'fairness doctrine'. (a) coverage of issues of public importance (b) presentation of the opposing view. The broadcaster's rights are essentially dual — (i) right to frame own programme schedules (ii) right to inform and educate.

Constitutionally the position of media freedom is varying. In Britain, there is no specific written constitution or law setting out fundamental freedoms, nor are there any specific press laws. Even so, freedom of press is widely respected in Britain. Media freedoms and restrictions are based on conventions as well as general leg-

islation relating to contempt of court, official secrets, protection of sources and libel. In Italy, it is the duty of public broadcasting company to prove comprehensive and objective news and information which was safeguarded by Parliamentary Committee rather than by recognition of individual viewer rights. Broadcasters' programming freedom when exercised within constraints imposed by the regulatory authority has priority over rights claimed by the viewers to see a particular programme. Article 5 of the German Basic Law is one of its kind guaranteeing reporting by means of broadcast in specific free from censorship. (To be continued)

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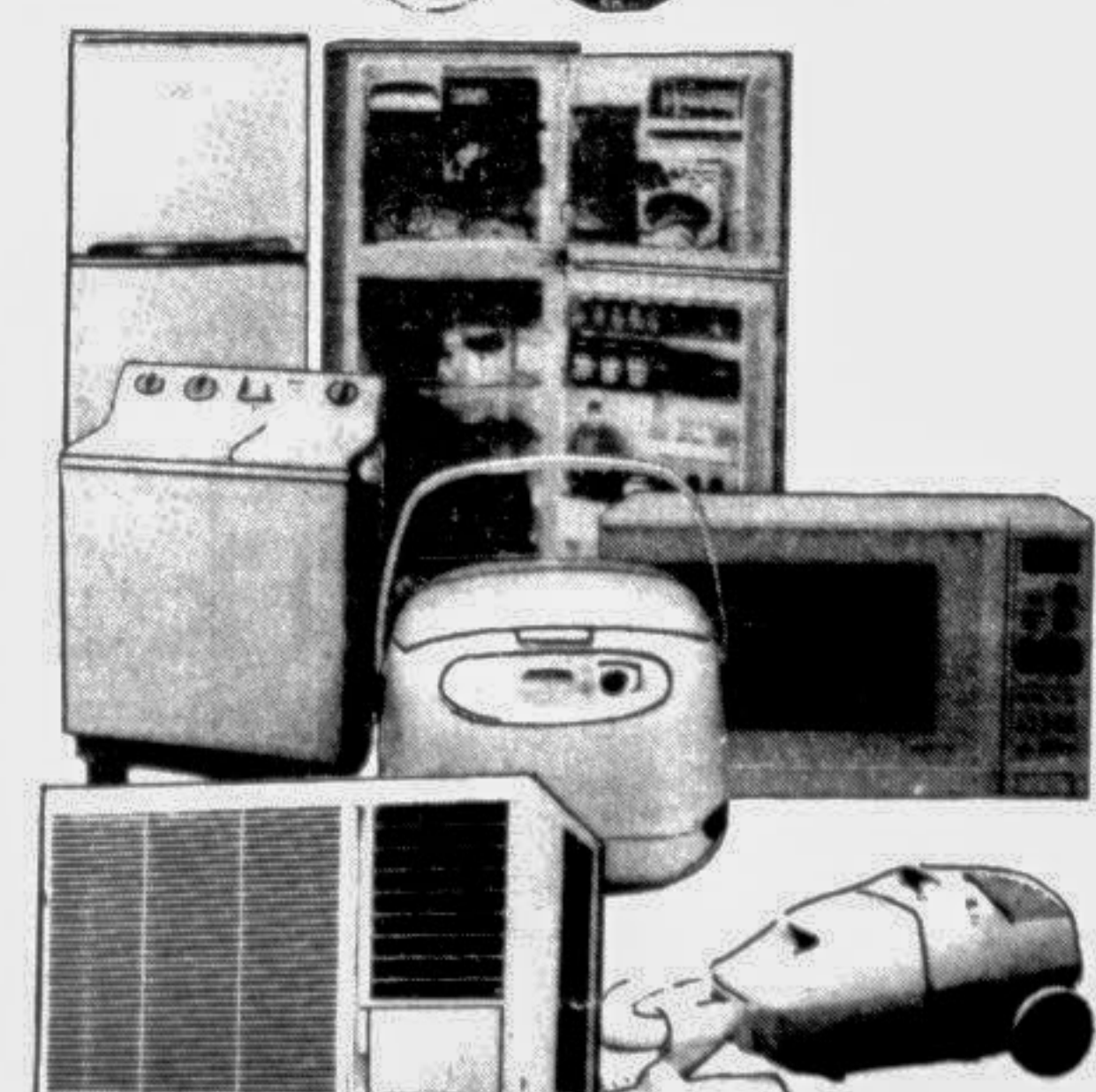
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