

Law and Our Rights

The Police and the Rule of Law

by M S Ahmed and Shuva Mandal

The need to recognize human rights abuses in the criminal justice system is an established principle of criminal jurisprudence. In fact numerous procedural safeguards have been incorporated within the constitutional framework. Torture or killing of a person in police custody is, to put it mildly, per se illegal. The real question is: when gold rusts what can iron do? Who can police the police?

THE police represent themselves as executive and administrative agents of the criminal justice system. A policeman is the axis on which the rule of law rests and rotates. It is he who enforces the law, maintains public order, keeps the lawless elements in check, brings the offender to book by his constant vigil and preserves the coherence and solidarity of the social structure. The police represents the law and order of the organized society and hence must be accountable to the people. Increasing crime, rising population, growing terrorism and religious fanaticism have added new dimensions to the role of the police.

The basic and fundamental problem regarding the police today is how to make it function as an efficient and impartial law enforcement agency. It should be fully motivated and guided by the objective of service to the public at large, upholding the rights and liberties of the people. With this end in view, the question of the accountability of the police assumes great significance as it is directly related to its performance in a democratic society. The principles for the police to follow in a free, permissive and participatory democracy may be summarised as: (1) To contribute towards liberty, equality and fraternity in human affairs. (2) To help and reconcile freedom with security and to uphold the rule of law. (3) To uphold and protect human rights. (4) To contribute towards winning faith of the people. (5) To strengthen the security of persons and property. (6) To investigate, detect and activate the prosecution of offences. (7) To facilitate movement and curb public disorder. (8) To deal with major and minor crises and help those who are in distress.

Unfortunately the police have been viewed with a philosophy of paramilitarism associated with the mechanism of awe, threat and coercion. In a democracy, the police while being a visible symbol of the authority of the government are expected to safeguard the interests of the society and individual citizens with regard to their basic rights. To that extent, every policeman is an agent of the government who is required to maintain a proper equilibrium between the people and the government and protect one against the other.

HUMAN RIGHTS AND THE POLICE: These rights are of universal concern and they cut across major ideological, political and cultural boundaries. Human rights are inviolable for preserving the dignity of the people. Arbitrary violations of the law by the police are sought to be circumscribed by two Articles in the UN Charter of Human Rights: Article 3: "Everyone has the right to life, liberty and security of person. Article 9: "No one shall be subjected to arbitrary arrest, detention or exile."

However, human rights violations by the police are on the upswing. This can be mainly attributed to the stress, strain and frustration of law enforcement profession and the surrounding circumstances which provide ideal breeding ground for dissent. Another contributing factor is the ruthlessness required to meet terrorist violations. It is important to remember the abuses of authority in such situations can flourish not only because of official negligence or acquiescence but because broad sections of the people consider that in spite of their excesses the police are carrying out a necessary and unpleasant task if both the state and society are to be preserved.

In this connection it is worth mentioning that the UN General Assembly in November 1979 adopted a resolution prescribing a code of conduct for the law enforcement officers. Article 2 lays down that in the performance of their duties the law enforcement officers shall protect and respect human dignity and uphold human rights of all persons. The UN General Assembly on December 1975 adopted the Declaration on Protection of all persons from being subjected to torture or other cruel, inhuman or degrading treatment or punishment. Article 1 defines torture as an offence against dignity. This declaration was followed by an International Convention on 10 December, 1984, laying down elaborate provisions against torture.

WHY DO THE POLICE TORTURE SUSPECTS? Police investigation starts with the arrest of a person on the suspicion of his having committed a crime. Police resort to third degree

methods to extort information regarding a crime or to force the suspect to make a false confession. The basic object of police investigation is mistakenly believed by them to be the securing of a conviction. It is this misapprehension which causes the police to adopt third degree methods.

The law (Criminal Procedure Code) demarcates the function of detection of crime and its punishment. The function of crime detection was assigned to the police and crime punishment to courts and the judiciary. But the police believe that the courts are ineffective in punishing the guilty and hence take law into their own hands during investigations. The police often decide what is the appropriate punishment to be given to the accused or suspect and mete it out by way of torture in police lock-ups.

The police are under the misconception that without torture they cannot get evidence, even though a confession is inadmissible in the eyes of the law. Torture is considered by the police as a short cut to detection of crimes. The quick results, sheer pressure of work, political pressure and above all the sub-culture of violence are the main reasons for the use of torture by the police. The collection of evidence being an arduous and time consuming task, the police prefer to get quick results by coercion of the accused, beating the suspect to obtain a confession. When this force is excessive, death may occur. Any such violation of human rights norms results in the loss of faith in the police.

The police is permitted to use force under certain circumstances, mainly in cases of arrest and search. If a person resists arrest or attempts to evade it, the police officer may use all means necessary to effect the arrest except that those means should not cause the death of the person unless that person is accused of an offence punishable with death or imprisonment for life. The police are also permitted to use force for the dispersion of unlawful assemblies and, if necessary, by arresting and confining the person.

The use of force by the police is legally sanctioned in certain circumstances. The real question is whether the force used was the minimum necessary in the situation or not? The police have a monopoly over the use of force to maintain law and order. The question of police violence therefore resolves itself in the question of whether they use force unnecessarily. However, it must be remembered that under no circumstances will the police be allowed to handle the supposedly lawless by lawless methods and by arrogating the role of the avenger their loyalty to the law is suspect.

The need of the hour is an organizational culture that condemns abuse of power and misuse of force. The solution is an emancipatory training and scrupulous supervision of the work of the subordinate officers and men. Sociological studies by writers like Michael Banton, Wilson have revealed that because of low visibility of everyday police work, the police department has the special property that within it discretion increases as one moves down the hierarchy. Hence supervising officer must create an organizational climate where the police behave more professionally and act as protectors of people's rights.

In an inquisitorial system of criminal justice administration, it is the judiciary, who does the necessary investigations, saving the undertrial from numerous procedural irregularities. However, in an adversarial system of criminal justice administration followed in Common Law countries the police functions vest with the executive. Perhaps the answer to this dilemma of policing the police lies in giving the courts supervisory powers over police operations. This is not to forget that this is a matter of legislative will which is in the ultimate analysis a puppet of executive tyranny.

The need to recognize human rights abuses in the criminal justice system is an established principle of criminal jurisprudence. In fact numerous procedural safeguards have been incorporated within the constitutional framework. Torture or killing of a person in police custody is, to put it mildly, per se illegal. The real question is: when gold rusts what can iron do? Who can police the police?

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War of Words Rocks a Fragile Freedom

by Akwete Sande and Bill Saidi Blantyre

When dictatorship gave way to democracy in Malawi, new journals sprang up to taste the fruits of free speech. Now, reports Gemini News Service, a more sober assessment of the situation is being made.

AFTER 30 years of censorship, Malawian journalists are facing a new problem — press freedom.

The politicians are also finding it difficult to adapt to the new era.

Newspapers burst into life in 1992 as "President for Life" Dr Hastings Kamuzu Banda's one-party system came to an end, a process that culminated in Bakili Muluzi's election victory two years later.

During the dictatorship, there were only two newspapers with any substantial circulation. The Daily Times, owned by the Government, and The Malawi News, a weekly published by the ruling party. Neither made any pretence at being anything other than the mouthpiece of Banda, his party and his regime.

By mid-1994 about 20 newspapers were clamouring for attention, but solid research and accuracy often took second place to dramatic headlines and unsubstantiated allegations.

The result was a loss of credibility. When journalists Mike Hall and Melinda Ham made a small survey of public opinion, they found that half the respondents in Lilongwe did not believe what they read and that the newspapers were sensationalist, amateurish, biased, full of propaganda and even lies.

Most of these journals have since ceased publication, and the field is now dominated by two dailies, The Nation and The Daily Times, and a weekly, The Independent.

Nevertheless, ownership and control remain a political issue. The father of the Independent's editor-in-chief, Janet Karim is a luminary in Banda's Malawi Congress Party and the paper takes potshots at the Government at every opportunity.

On the other side of the political divide, Finance Minister Aleke Banda is the father of the managing director of The Nation.

Newspaper partisanship is not as blatant as in the heady days of 1994 and the excitable tone has quietened down — particularly because the targets of attack have found that suing for libel can be a profitable business. Most newspapers are fact-based, and the focus newspaper was forced to shut recently after losing two lawsuits.

President Muluzi has lawsuits for defamation pending against two newspapers and, stung by a flow of stories alleging corruption among his ministers, he recently invited the executive committee of the Journalists Association of Malawi for talks.

This message was simple: Be

careful what you print, or you could face more legal action.

"If you have any proof on the allegations you make, I have no problem," said Muluzi. "But to accuse people out of malice is wrong, and I will not hesitate to let the law take its course."

The Government's unhappiness with its treatment in the press was also shown by its decision to launch its own publication, The Weekly News.

More disturbingly, Muluzi and others have shown signs of discomfort with the workings of an independent media.

Shortly after his government took office, radio producer Albert Ndalamu was fired for broadcasting tape of an opposition party's press conference.

Last year, the publisher and editor of a weekly paper, The Tribune, was jailed for a day for refusing to reveal his sources on a story about an assassination plot against the President.

And recently, radio journalist Francis Chikankhuzani was suspended for a month for authorising a story about a by-election meeting addressed by an opposition candidate in Ndirande township, Blantyre. Hastings Maloya, the reporter who covered the meeting, was dismissed.

As in Banda's days, Malawi Broadcasting Corporation news bulletins are a monotonous diet

of the President's every move. He is routinely referred to in programmes as "His Excellency".

The situation is far better, however, than during Banda's intolerant rule, when a journalist could face life in prison for publishing anything deemed seditious or false news considered likely to cause public alarm.

In addition, press freedom is enshrined in the new constitution — "The press shall have the right to report and publish freely, within Malawi and abroad, and to be accorded the fullest possible facilities for access to public information" — although many old statutes which impinge on the gathering and publication of information are still on the books.

Most journalists agree that they themselves need better training. The Nation's editor-in-chief, Alfred Ntonga, told a southern African editors' conference in Blantyre in August that the Malawian press was at a crossroads, but that its future could be safeguarded "if journalists can strengthen [media] associations that represent their interests and embark on training."

Editors must also learn effective ways to counter the politicians' penchant for Banda's tradition of aversion to criticism. — Gemini News

Lawscape

Police Mutineers Lay Down the Law

by Bethuel Thai

A mutiny by police in Lesotho has shaken the country's stability and led to growing fears of a bloody showdown. They army has refused to take sides in the dispute that has divided junior officers from police chiefs and the Government in the mountainous kingdom.

Nervousness was increased by reports that forces from neighbouring South Africa were ready to intervene if requested. The junior officers staged a national two-day strike in early February in honour of a colleague shot dead in the dispute. Then they "sacked" the Police Commissioner and replaced him with the head of the police training college in Maseru, where the mutineers are based.

The trouble has its roots in what has become commonly known in Lesotho as the "Police shooting drama", when officers exchanged fire at Maseru main police station in October 1995.

A group of junior members of the riot squad clashed with a number of high-ranking officers. Two senior policemen and nine junior officers were killed. Three other senior men were wounded. Nine junior officers, led by Second Lieutenant Phisoa Molise, were subsequently charged with murder, attempted murder and kidnapping. They reportedly armed themselves and vowed never to be taken to court.

The charges are based on the recommendations of the report of a one-man commission of inquiry that was launched by Prime Minister Ntsu Mokhehle to investigate the shoot-out.

The report describes the shooting as politically motivated, and said the junior officers favoured the opposition Basotho National Party, while senior officers supported the ruling Basutoland Congress Party (BCP). The report put responsibility on nine juniors and recommended that legal action should be taken against them.

Their leader, Molise, hit out at the report, saying the investigations had been insufficient.

All the report contains is a potential to ignite instability within the police and thwart all hopes of peace," he said.

Although the commission had failed to establish who fired the first shot, said Molise, it had blamed the junior officers on the grounds that senior officers might have shot in self-defence. The nine suspects maintain that they were wrongly identified by the commission, which, they say, was protecting senior officers.

Molise came to a head after the Director of Public Prosecutions, Sipho Mkhuli, called for the arrest of the nine, and senior officers attempted to execute the order in January. Other juniors tipped off the accused, who have since resisted all peaceful attempts to detain them.

They say they will not get a fair trial. "There is no justice in

Lesotho," said one. "The judiciary has been hijacked by the politicians and no fair justice can be delivered."

With the Cabinet pressing him for action, Police Commissioner Bolutu Makoaaba said he was waiting for the right moment in order to order a bloodbath.

The situation escalated on 31 January with the killing of a policeman who supported the nine — reportedly shot by supporters of the ruling BCP.

The incident angered junior officers all over the country, who staged a two-day stoppage. Eleven former members of the defunct Lesotho Liberation Army — the BCP's old armed wing — were subsequently arrested in connection with the killing.

On 6 February, the nine accused, joined by supporters, swooped on four assistant commissioners at police headquarters, removed their badges, seized their uniforms, guns and vehicles and sent them home.

When the *Lesotho Sun* reported that the nine had taken the action, traditional chiefs — were going nowhere, it said.

Junior officers then announced the dismissal of Makoaaba as police chief and called a meeting at the training college, at which the college commandant, Colonel Makalo Mokhehlane, was "appointed" a successor, with another colonel, Tlali Monyeke, his deputy.

The Government condemned the move as an unlawful plot and delaying tactic "to defeat the course of justice."

On 9 February, Makoaaba announced he was still in command and was working with commanders of the armed forces to find a solution. But he stressed that the suspects would have to appear in court.

The army commander, Major-General Makhula Mosakeng, also released a statement, saying that while the army was responsible for state security, it would not take sides in the police dispute. He asked the police to solve the problem peacefully. But he surprised the nation when he said he had sought to give advice to the government and officers, but that his advice was not heeded.

Amid growing tension, the police high command pledged full support for Makoaaba on 10 February. The action by junior officers of seeking to dismiss their superiors is not unprecedented during Mokhehle's four years in power. One two previous occasions, a total of eight senior officers have been ordered out by lower ranks. Both times the Premier initially resisted but later bowed to the sackings. — Gemini News

The writer is a journalist working for Mopheme — The Survivour newspaper in Lesotho

Metropolitan

HERE and THERE

Bangladesh Short Film Forum

Bangladesh Short Film Forum has formed a 21 member committee with Morshedul Islam as its president and Pulak Dutta as general secretary, reports UNB.

The committee was constituted in a meeting with Tanvir Mokammel in the chair in the city on Friday, said a press release.

Bangladesh Sangbadik Samity

By Staff Correspondent
Bangladesh Sangbadik Samity (Journalist Association of Bangladesh) elected new office bearers for 1997 recently, said a press release.

The new 19 member executive committee includes president Abdul Motaleb (The Bangladesh Observer), general secretary Kalayan Saha (The Daily Sangbadik) and treasurer Md Hafizul Islam Khan.

Willes Little Flower School

By Staff Correspondent
Former students of Willes Little Flower School held their reunion in the school premises yesterday.

Nearly 1,500 former students, from batches 1956 to 1997, attended the reunion.

said a press release.

Chairman of the school, Syed Md Hedayatul Islam, inaugurated the programme, while Saidur Rahman Sayed, member of the school management committee and Begum Nurunnahar, a teacher, spoke. One former student from each batch also addressed the inaugural, which was followed by a cultural programme.

SASC

Students Anti-smoking Committee (SASC), the first anti-smoking organisation in the country, Friday celebrated the completion of a decade of its establishment, reports UNB.

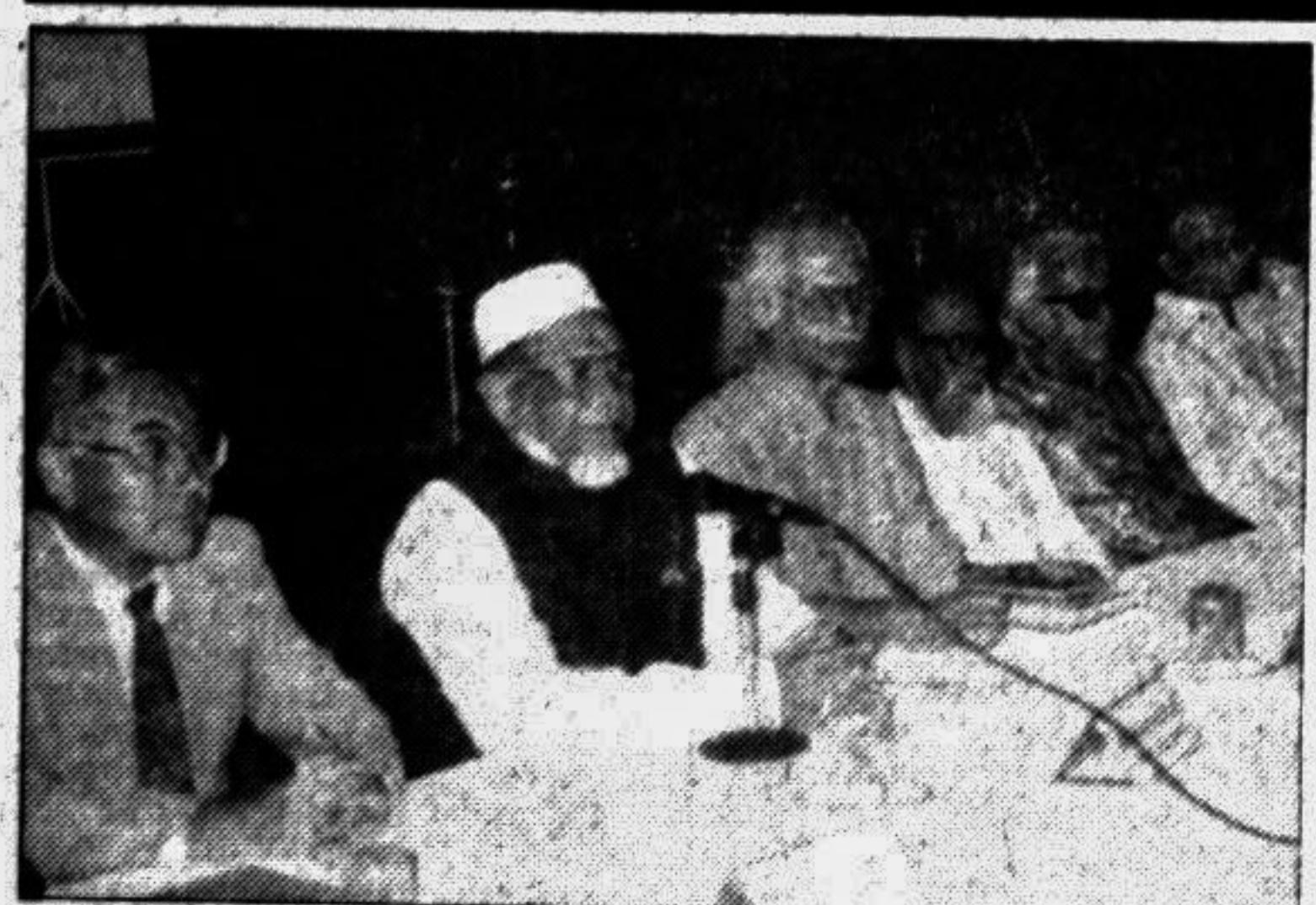
To mark the occasion, a meeting was held at the SASC central office at Shyamoli in the city with its advisor and UNB chairman Amanullah Khan in the chair.

The meeting also announced the names of an 11-member SASC organising committee for 1997-99.

Newly elected committee members are: Ali Nayamat—president, M Shafiqur Rahman—secretary general, Haana Hena—joint secretary general, and members—Aslam Shibir, Fazul Haq Rony, M Obaidur Rahman, Bishwajit Kumar Sarkar, Prof M Nurun Nabi, Gulshan Akhter, Nilufa Akhter Jahan and Ismail Hossain.



The winners of a music competition of Bangladesh International School (BIS), DOHS; Mohakhali, along with their teachers, judge and principal, at the school premises recently.



Foreign Minister Abdus Samad Azad addressing the publication ceremony of the book 'Kyoto Haiku' by Hasnat Abdul Hye, held in the city on Friday.

Abdul Hye's book of Japanese short poems out

Bangladesh Haiku Society arranged a publication ceremony of a book of Japanese short poems, "Kyoto Haiku" by Hasnat Abdul Hye, at the LGED auditorium in the city on Friday, says a press release.

The chief guest on the occasion, Foreign Minister Abdus Samad Azad said that "Kyoto Haiku" was an important addition to the mutual appreciation of arts and literature of the two friendly countries of Bangladesh and Japan. Samad Azad expressed the hope that the "practice of writing Haiku will grow in Bangladesh and it will become more popular."

Speaking on the occasion as special guest, poet Shamsur Rahman said that it was a difficult task to express inner feelings in a few lines. But Hasnat Abdul Hye has managed to do so most artistically and presented a wonderful piece of literature — hitherto unknown in Bangladesh.

Discussing "Kyoto Haiku" Syed Shamsul Haque observed that Hasnat is the first poet in Bengali language to have published a book based on so many Haikus.

Shawkat Osman, another special guest, said that global village would be possible only when people would be organized culturally and Hasnat has taken a lead towards this direction. JICA chief in Bangladesh Kanamuru also spoke.

Prof Kabir Chowdhury in his presidential speech highly appreciated the innovative style of Hasnat's book and termed it as a marriage of different forms.

City Dental College honours 8 with gold medals

The City Dental College on Friday honoured eight renowned citizens with gold medals at a local hotel in the city, reports BSS.

The recipients of the medals are Prof Fazle Rabbi (posthumous) for his contributions in the War of Liberation, Prof Mohammad Ibrahim (posthumous) for social work, Dr Mohammad Yunus of Grameen Bank for rural development, Dr Abu Ahmed Chowdhury, Prof A H M Rahman and Prof Syed Monjurul Huq for healthcare, Prof Shah Mohammad Keramat Ali for research and journalist Musa Sadique for writings on liberation war.

Menoka wants to become computer engineer

By Staff Correspondent

Sabira Arefin Menoka, who secured 3rd position in the merit list for girls and 8th in the combined science group merit list from Dhaka Board wishes to be a computer and electronics engineer.

Daughter of Khondker Serajul Arefin and Shawkat Jahan, Menoka, a student of Vignaruna Noun School, passes her leisure time writing articles for dailies and weeklies.

