

## 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?**

**T**HE 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 circumvented 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 definition 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 subculture 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 Barton, Wilson have revealed that because of low visibility of everyday police work, the police department has the special property that within its 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?

The writers are the graduate students of National Law School of India.

## Metropolitan

## HERE and THERE

## Bangladesh Short Film Forum

Bangladesh Short Film Forum has formed a 21 member committee with Moshedul Islam as its president and Pukar Dutta as general secretary, reports UBN.

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 Sangbad) 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.

**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 Khondaker Serajul Arefin and Shawkat Jahan, Menoka, a student of Viganagar Noon School, passes her leisure time writing articles for dailies and weeklies.

**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.**

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