

Policing the Police A Reform Agenda

by A H Monjurul Kabir

Considering various limitations faced by the police in discharging their day to day job, our expectation is not too high or imaginary. At the fug end of the 20th century we, at least hope that police will not kill any more Rubel, will not rape any more Yasmin, Sheema or Tania and will not torture any more citizen of this country. Probably these are not high expectations from our police force. At least we can not afford to pay taxes to maintain a force which will maim our fundamental rights guaranteed by the constitution.

"One day the cry and despair of large number of people would shake the very foundation of our society and imperil the entire democratic structure. When that happens, we shall have only ourselves to blame." — Justice V R Krishna Iyer in Veena Sheth's case.

THERE is no denying the fact that the police is the principal law enforcing agency of our country. In fact they are one of the most important factors in the rule of law. They play an important role in shaping an orderly society. The Police Act 1831 clearly demonstrates that role. A number of gruesome and barbaric deaths in police custody though substantially questions the role of police and poses serious doubt regarding their accountability with any notion of human rights. It does not nullify their desired role and very existence.

After a series of heinous events of custodial death, rape etc. which sparks of public condemnation of the police and undermines their image, we need to look afresh on the whole situation. The purpose is, *inter alia*:

(i) to assess the existing situation considering real strains and strengths and other limitations.

(ii) to formulate a national agenda for action to make an effective police system truly worthy of the 21st century.

No doubt, the government must take some realistic and visionary steps on a long-term basis for policing the police. But at the same time some immediate steps must be taken for greater interest of the citizenry. In fact the need of the hour is an organisational culture that condemns abuse of power and misuse of force and encourage pro-people policing. The following steps should be considered on an urgent basis by the concerned authorities:

*1. To propose for abolishing the provision of Section 54 of the Code of Civil Procedure would be a utopian step. It is recognised that the power conferred under Section 54 is necessary for prevention of crimes and arrest of certain persons. What we need to do is to ensure its proper application maintaining all relevant legal safeguards. In this respect, recommendations of the Supreme Court of India in the case of D K Basu Vs State of West Bengal (1997) SCC 416 should be considered.

*2. Therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre

or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrested person.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the legal aid organisation in the district and the police station of the area concerned telegraphically within a period of 8 to 12 hours of the arrest.

(5) The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "inspection memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by the Director, Health Services of the State or Union Territory concerned. Director Health Services should prepare such a panel for all Tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaga Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not through out the interrogation.

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

*2. To many, the term 'police remand' is synonymous with the term 'torture'. It is so due to police atrocities. In fact police remand is recognised in civilized criminal justice administration as an effective means of investigation. Like Section 54, in this case also, maintenance of existing procedural safeguards should be ensured. Repealing Section 167 of the CrPC would not be a realistic solution specially in the wake of deteriorating law and order situation. The safeguards as suggested in the case of D K Basu Vs State of West Bengal (1997) are also applicable here. In the famous case of Miranda Vs Arizona (1966) 384 US 86 SC, Chief Justice Warren aptly remarks:

"To summarize, we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardised. Procedural safeguards must be employed to protect the privilege and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honoured, the following measures are required. He must be warned prior to questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to

answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him. In announcing these principles, we are not unmindful of the burdens which law enforcement officials must bear, often under trying circumstances. We also fully recognize the obligation of all citizens to aid in enforcing the criminal laws. This Court while protecting individual rights, has always given ample latitude to law enforcement agencies in the legitimate exercise of their duties. The limits we have placed on the interrogation process should not constitute an undue interference with a proper system of law enforcement."

*3. A separate Department of Investigation must be created within the existing police administration. The personnel of this department will not do any 'HARIAL' or 'PROTOCOL' duty except investigating cases and complaints. The proposed department will be functional at each and every 'thana' and strategic important places like airport, bus terminal, rail station, hospital etc. Similarly a Separate Department of Prosecution in lieu of existing adhoc basis service is a must.

*4. The Ministry of Home Affairs should supervise and coordinate the activities of the DB (Detective Branch), SB (Special Branch) and the CID (Criminal Investigation Department) regularly through an effective administrative cell or unit. The cell sits with them regularly preferably on a weekly basis. Each and every agency should be made accountable for its any gross omission and commission before the unit or cell.

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Powers Act 1974 is 72,000. In fact most of the applications of section 54 could be justified due to its very existence. It should be repealed without any further delay.

*6. The proposed 'National Human Rights Commission' should be equipped with adequate power and jurisdiction to tackle any such police atrocity. In fact one of the prime agenda of the proposed body should be to monitor and supervise the activities of police regularly and to take direct and stern disciplinary action. Specially when the accused is a police, investigation should be done by the proposed commission.

*7. Protecting the rights of individuals in their contacts with authorities is fundamental to the process of governance in all civilized countries. The ombudsman system is definitely a unique guarantee against oppressive measures and mismanagement in the public administration. The creation of the office of Ombudsman on the basis of already existing the Ombudsman Act 1980 with necessary modification providing specific provision for investigating police savagery and severe malpractices has become an urgent imperative for the government.

*8. All alleged homicides and rapes committed by the police in or out of their custody should be investigated and the culprits should be tried to check the future occurrence of such gross miscarriage of justice. All unpublished reports of various investigations commissions should be made public without any more bureaucratic hesitation on the part of an elected government.

*9. The existing training manuals and curricula based on colonial dimensions of subjugation and oppression of citizens should be changed and reformed to accommodate the latest global changes and democratic values to make the law enforcers sensitized.

*10. The police should be made responsible to the civil administration at each and every administrative unit of the country changing the present improper warrant of precedence and administrative setup.

*11. Politicization of the police force must stop without any further flourishment. The government should realize that such heinous attempt does not attribute any benefit to it. Let the police grow in a professional manner free from all sorts of interferences by the ruling party. Placing loyalists at the top will not pay any more. Policing the police in a neutral manner should be one of the prime agenda of the days to come.

*12. Provisions relating to burden of proof in the century old Evidence Act 1872 should be amended to cope with the present situation. Specially in case of injury, death etc. committed by police, the court should presume that the injury of fatal blow was caused by the police personnel having custody of the person during that period.

Considering various limitations faced by the police in discharging their day to day job, our expectation is not too high or imaginary. At the fug end of the 20th century we, at least hope that police will not kill any more Rubel, will not rape any more Yasmin, Sheema or Tania and will not torture any more citizen of this country. Probably these are not high expectations from our police force. At least we can not afford to pay taxes to maintain a force which will maim our fundamental rights guaranteed by the constitution.

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Towards Legal Aid Legislation

by Abdullah-Al-Faruque

In recent years, the concept of legal aid has emerged as a paradigm within democratic set up to provide justice to substantial segments of the people. Indeed, the concept is inextricably linked with equality before law which, inevitably, pre-supposes equal opportunity of the people to approach the court on equal footing. This cardinal principle of "equality before law" which every modern welfare state seeks to achieve, perhaps, provides compelling argument behind the rationale that state should take all the steps to ensure equal justice to all. It is axiomatic that injustice or inequality occurs when the legal system fails to provide its benefit to large segment of people due to their poverty and ignorance. In this context, the importance of legal aid has assumed greater significance to bring social equilibrium in the prevailing inequalities and injustices. To dispense with this responsibility, many developed and developing countries adopted legislative measures, like other welfare legislation, but we have not yet such piece of legislation of this kind to furnish concrete legal basis of legal aid.

The reasons for a comprehensive legal aid legislation may be articulated in the following way:

1. The constitutional provision of social justice must be underlying assumptions in the administration of justice. To combat poverty, injustice, inequality and social disabilities by pursuing just and proper policies backed by welfare and positive legislation and thus to realise social justice becomes the most important weapon in democratic society. A legal aid legislation becomes imperative to enable the poor to enjoy the benefits of the constitutional and other legal rights conferred on them. This will facilitate easy access to courts, governmental agencies and institutions on the basis of equality and ensure fair treatment in judicial proceedings.

2. Some measure of legal aid and assistance are given to the poor by lawyers and NGOs on purely voluntary basis. But these are available with limited measures and suffer from an air of charity. But in a democracy equal representation before the law must be claimed as a matter of right. It is not charity or favour or generosity from the side of the government. This may be argued at least by virtue of Art. 27 of the Bangladesh Constitution states that "All citizens are equal before the law and are entitled to equal protection of law". A supporting and suitable legislation can give its true meaning.

3. The existing provision on legal aid can only be found in the procedural laws which makes legal aid only a procedural matter, not substantive one. Moreover, analysis of these provision will make it clear that these arrangements are inadequate in the context of growing demand of legal aid. The code of civil procedure of 1908 allows a person to institute a civil suit without court fee as a "pauper". A person to be considered as a pauper has to overcome complicated procedural hurdles. The code provides fol-

lowing criteria to determine test of pauperism:

a. Regarding the payment of prescribed court fee, a person is pauper when he is not possessed of sufficient means to pay such fee. The expression "sufficient means" is difficult to be comprehended by any single criteria, the application for permission to sue as a pauper may be rejected by the court merely on the technical grounds i.e. where it is not framed and presented in the manner prescribed rules. Thus procedure to determine who is or is not a pauper under the order is too rigid and formal; in fact it gives rise to a proceeding resulting in technicalities and delay.

b. Where no court fee is prescribed, a person is pauper when he is not entitled to property worth one hundred taka other than his necessary wearing-apparel and the subject matter of the suit. To consider one hundred taka as a yardstick to measure poverty becomes obsolete in the present context. Moreover, the expression "pauper" is not harmony with the present modern attitude and indeed is negative one to provide relief to the poor.

c. The plaintiff has to pay the court fees if he succeeds in the suit.

d. Except court fee, the plaintiff has to pay the lawyer's fees, process fees and other incidental costs of litigation.

Considering this insufficient measure of legal aid, the government has already suggested amendments to increase the amount of Tk 100 to Tk 10,000 to test pauperism. But in view of the above facts, this proposed amendment can hardly bring any substantial change in the existing arrangements of legal aid to suit the present needs of the society.

Similarly, in criminal cases, under section 340 (1) of Code of Criminal Procedure, the accused should be at liberty to be defended by a pleader at his choice. But the section does not confer a right on the accused to be provided with a lawyer by the court or court. The only duty cast on the magistrate is to afford him the necessary opportunity. In cases involving murder charges, the courts sometimes provide legal counsel but this cannot be claimed by the accused as a right, and any way this practice does not apply to a large number of cases not involving capital punishment.

4. In the absence of adequate legal services, principles of natural justice can not be exercised meaningfully. The principle that no one shall be condemned unheard depends upon adequate and proper legal representation and hearing. The opportunity of being heard is not available to a large section of society in our country on account of poverty and ignorance. Adequate legal services can remedy this situation.

5. The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

Concerned segments of civil society, the government, the law makers and the law enforcing agencies are required to follow the directions made by the some leading cases of Indian Supreme Court by which we may have redress from such a suffering and lackings of moralities and values.

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narrow sense of rendering legal assistance to a person of limited means in courts in criminal and civil matters. Today the concept of legal services has been given a broader interpretation to include exemption of court fees, lawyers