



READER'S queries



Your Advocate



This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law. Send your queries to the Law Desk, The Daily Star. A panel of lawyers will address your problems.

Q: I am working as a Flight Steward in Bangladesh Biman. When we were selected minimum educational qualification required for the post was graduation. Now the authority is about to recruit some Flight Steward. But this time minimum educational qualification is HSC. The newly recruited people will enjoy almost same benefits as we get, with lesser educational qualification. Besides, this will undermine our educational qualifications. I want to sue the Biman authority for their decision. Is it possible? If so, how and where?

S. Alam, Dhammendi, Dhaka.

Your Advocate: New recruitment against any post and the qualification to be required for the purpose are largely matter of policy decision of the recruiting authority having hardly anything to do with the earlier recruits of the same post. So merely on this point it would be difficult to make out a good case. Reason being, with the change of time govt. or other authority may change its policy to suit the changing need of the time. Court is usually slow in interfering into the internal administrative affairs of any authority. But change must not be arbitrary or mala fide. It must conform the purpose of law. 'Fair play in action' is the sole of things. If it is found that the decision of the authority does not conform the purpose of law or the purpose of recruitment suffers in quality to the detriment of the interest of Bangladesh Biman, as in our case, it cannot be said that there was fair play in action. In that case an action lies against Bangladesh Biman in the form of writ in the High Court Division of the Supreme Court under Article 102 of the Constitution. The wording of your question does not permit formation of any clear cut legal opinion. For specific advice please consult a lawyer with all your papers.

Q: I appeared in the 22nd BCS under freedom fighters quota as my elder brother was a freedom fighter and he had a certificate. But coming to power BNP government prepared a new list of freedom fighters. In the new list my brother's name was excluded. As such I could not take part in the viva test of the BCS. Is it possible for to challenge the new list of freedom fighter, which is politically motivated?

Mahmud Hasan, Rajabazar, Dhaka.

Your Advocate: Yours is more or less a clear case in the eye of law. In the particular facts of your case, you can challenge the action of the government in writ jurisdiction of the High Court Division. Any illegal, arbitrary or malafide action taken by the government or of any local authority is open to challenge under our constitution.

LAW letter

Bad precedent of UN history



I fully agreed with Dr. Chandra Muzaffar's article 'Aggression' published in Law and Our Rights page on 23 March. There is no other word than aggression to define the US attack on Iraq. This is occupation of a sovereign country in the name of liberating her citizens. In fact after the fall of USSR US became the sole super power. Every thing is happening in the way the US want. UN has nothing to do where US interest is concerned. US and its allies invade Iraq without the mandate of the security council of UN and ignoring world wide anti war movement. UN did not play any role in this war. This is not war, rather attack by the US and its allies. The UN in fact helped US to make Iraq weaker so that it cannot fight. UN arms inspector's worked for a long time to find out Iraq's WMD, but did not find any. But US was hell bent to attack Iraq, no matter there is any ground or not. US president Mr. Bush saying that Saddam is a threat to its people and US. But he did not explain why and how Saddam is so. Saddam did not threat any of neighbours after 1st Gulf war. So how he threatened the US. Bush also claimed that Saddam has connection with Bin Laden, which is also not true. He is also saying that he wants to free Iraqi people from the dictatorship of Saddam. Did Iraqi people urge to do that? By attacking Iraq without the UN approval US set a very bad precedent. I wonder this short of aggression will continue in future by the powerful countries. Who will protect the weaker nations!

Mizanur Rahman,
Dhaka Cantonment.

People's voice must be respected

Definitely war is not a blessing for mankind and civilisation. It is really a curse. In the old days war was a simple affair. Kings fought with one another and it was confined in a battlefield. The battle did not touch the people at large. But a modern war is total war. It goes to swallow up a nation, affect the whole world. The modern war is too horrible to think of. Hydrogen bomb, Atom bomb, missiles are enough to burn a city to ashes. War killed, wounded, maims or disabled millions of human beings. During the war famines and epidemics break out. They carry away thou-

LAW watch



Justifying the arrest of family members

ZAHID BISWAS

'Arrest' simply means the taking or detaining of a person in custody by law enforcement agency. The purpose of arrest, in civil proceedings, is to hold the person to meet a demand made against him, which in course of criminal proceedings, is to hold the person for answer to a criminal charge or to prevent him from committing an offence. By arrest the arrestee is deprived of his personal liberty, which is probably one of the most valuable human rights after right to life. This is why arrest should be made with proper caution, taking into consideration all prevailing circumstances and obviously in accordance with law. But, unfortunately, for various reasons arrest does not always conform to the law, hence, becomes illegal. Sometime arrest of the family members of accused raising questions about the procedure of arrest and power of concerned police officer.

Abuse of power of arrest under different laws

Under Criminal Procedure Code, 1898

In most of the cases police arrests the family members of the accused under section 54 of CrPC. The section vests the police with vast power to arrest any person without order of Magistrate or without any warrant. He may arrest any person, against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists of his being concerned in any cognisable offence. But, regrettably, it has become a common that police go to accused person's residence to apprehend him, they find him absent and arrest the family members being suspecting that they know whereabouts of the accused.

Under Police Regulations of Bengal (PRB)

There is another provision for arrest without warrant by police under Rule 316 of the PRB. But this provision too does not provide sufficient room to arrest and take into custody the family members of the accused without reasonable grounds or complaints. Rather, Rule 317 counsels police to avoid unnecessary arrest; it also advises the police to be cautious during investigation and not to arrest anyone relying upon their own justification.

Under the Penal Code, 1860

There are scopes of arrest of family members of an accused under the Penal Code for the offence of harbouring of the accused offender. According to section 52A of the Code the word 'harbour' includes supplying a person with shelter, food, drink, money, cloths, arms, ammunition, or means of conveyance, or assisting a person in any way to escape apprehension. However, a family member of the accused may not be arrested for the offence of harbouring the accused just because he or she is a member of the accused person's family. Before apprehension, there must have convincing accusation or reliable proof of such offence in the hands of police. Even if they are proved accused of harbouring the accused, police cannot arrest them whimsically. Offences of harbouring offender under sections 212, 216 & 216A of the Penal Code that have been shown in column 3 of Schedule II of Cr.P.C as cognisable ones for which police officer may arrest without warrant. Here, the word 'may' connotes that it is not mandatory.

Illegal arrest and its consequences

According to Article 31 of our Constitution no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. Again article 32 clearly expresses that no person shall be deprived of life or personal liberty save in accordance with law. Hence, the arrest of the family members of an accused violates the fundamental rights. It is also opposed to the fundamental principles of state policy as Article 11 of the constitution points it out that the Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed. Again, the arrest of family members of an accused on mere suspicion is similar to the false imprisonment or wrongful confinement, which is a criminal offence punishable under penal law (Tangkhul V State of Nagaland, 1993 CrLJ 2514).

Reasons behind the malpractice

Ignorance of law

In our country, the police are not properly attentive as to their purview of jurisdiction. This sometimes leads them to do unlawful act. For instance, section 212 of the Penal Code provides an exception that if a husband commits an offence, the wife is allowed to harbour him and vice versa. Neither can be prosecuted for the offence of harbouring offender.

Legacy of colonisation

Under British rule, the police dealt with the natives ruthlessly to satisfy the govt's order and will. We became independent from the British rule almost fifty-five years ago, but unfortunately the mentality of our police has not changed at all. Still today they do not think themselves as friends of public; rather, it seems, they consider public as their opponent. Even today successive govt has used the police force like their party workers. Harassment and illegal arrest of the opposition's workers, leaders as well as their family members is rampant in the country. In such cases, the govt has always raised its helping hands to the police.

Potential ways to prevent the anarchy

To start legal proceedings

One of the ways to prevent such type of misused of power of the police is to go to court. Our criminal law provides for opportunity to take lawful action against the police forces. In this regard, the court should be more cautious. In the cases against illegal arrest of the police, the burden of proof that there are reasonable grounds should be on the police. The most useful safeguard against arbitrary imprisonment is the writ of habeas corpus. It is addressed to one who detains or imprisons another, and commands him to 'have the body' of the person before the court together with the cause of his detention. If cause shown in favour of arrest or detention does not justify the court it may order his release. A citizen can invoke the writ of habeas corpus under article 44 & 102 of the Constitution. However, it is not easily accessible to the citizens countrywide as only the Supreme Court exercises the jurisdiction. To make it more people accessible the writ jurisdiction may be conferred to lower courts. Consciousness of the people is also needed to invoke the writ of habeas corpus.

Issuance of suo motu rule

'Suo motu' means 'upon own initiative'. In this regard no petition is filed; the court upon its own initiative proceeds against the person or authority illegally



treating a citizen. The basis of such initiative may be a piece of news or information, no matter how it reaches the court. For example, in State v. D.C. Satkhira, 45 DLR 643, High Court Division took action on the basis of news published in a newspaper. It may be the most effective measure to prevent the arbitrary arrest of police though it is quite hard for the court to monitor the incidence of illegal arrest.

Concluding remarks

It is very frustrating that public do no longer believe in the police. Through their anarchy, police have lost not only public faith but also their dignity altogether. However, section 23 of the Police Act, 1861 states that one of the duties of police officer is to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient ground exists. And recently the High Court Division has given some directions to arrest under section 54 of CrPC. The police should bide by these directions.

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LAW week



Writ on non-confirmation of judges

Three former additional judges filed a writ petition with a High Court Division Bench challenging the non-confirmation of their service despite the Chief Justice's recommendation. A lawyer also filed a similar writ with the same bench comprising Justice Abdur Rashid and Justice Siddique Rahman Miah. The division bench sent both petitions to the Chief Justice earlier to form a larger bench for hearing. And a larger bench comprised of Justice Hamidul Haque, Justice Syed Amirul Islam and Justice M.M. Ruhul Amin has been constituted for hearing the matter. Three former additional judges Mohammad Faruk, Hasan Fayaz Siddiqui Shamsul Huda jointly filed the petition. In the petition they said that government's non-confirmation of the additional judges overlooking the Chief Justice's recommendation had trampled the constitutional convention. They added that such an act was also against the independence of judiciary. The government on 20 February of this year declined confirmation of six additional judges. These six additional judges were appointed in 2001 during the Awami League government. -Law Desk.

Progress in disposal of sensational cases

Out of 185 cases listed with the Home Ministry's monitoring cell for quick disposal of sensational murder cases, judgement in 15 cases has already been delivered. Of them, the much talked about cases are Trisha murder case, Shihab murder case, Rubel murder case, principal Gopal Krishna Muhuri murder case, Shipu murder case. After formation in April 2002, the eleven member monitoring cell headed by State Minister for Home Affairs Lutfuzzaman Babar reviewed a total of 117 highly sensational cases of different natures like rape, acid throwing, murder, which were listed for quick disposal. The main objective of the monitoring cell is to discuss different procedural matters for quick disposal of the cases and identify obstacles to quick investigation, ensure presence of witnesses and timely reporting of the investigation officer at the court. The government has already formed separate monitoring cells at district level headed by respective deputy commissioners to decentralise the activities of the monitoring cell. *The Independent*, 17 April.

Advocacy for separate juvenile trial system

Experts at a workshop on juvenile trial system emphasised the need for coordinated efforts by the government, media and civil society to ensure a separate trial system for juvenile in the country. They also expressed their concern over the existing trial procedures of the juvenile's cases with adult co-accused, which is violation of the Children Act 1974. They said that sending the juveniles into jail with the adults habituating them for more criminal activities rather than correction. They suggested that pushing a juvenile into prison should be considered as the last stage of punishment. *Bangladesh Today*, 17 April.

Call to check small arms

Speakers at a discussion meeting urged the government to crack down on trafficking and illegal use of small arms. They said indiscriminate use of small arms poses a big threat to public security. Availability and proliferation of these arms have created a serious security crisis for the people of South Asia. South Asia Partnership (SAP) Bangladesh organised the discussion on 'Small Arms and Right to Safe Environment-Bangladesh perspective'. The speakers said proliferation and illicit use of small arms not only endanger personal security but also undermine good governance and greatly contribute to violation of human rights. -*The Daily Star*, 19 April.

Independent Anti-Corruption Commission

At last the much-talked independent Anti-Corruption Commission is going to be set up. A bill would be introduced in this regard in the coming session of the parliament. The government promised to the donors in the Paris consortium meeting last year for setting up of an independent anti-corruption commission to ensure good governance and reforms in nationalised commercial banks. A high level meeting chaired by Finance Minister M. Saifur Rahman reviewed the progress in establishing the commission. The meeting assessed the structure of such commissions in different developing nations, but could not come to any conclusive decision. The commission would include a chairman and three members who will work free from government's influence, according to finance minister. He said the commission would have independent budget and run within a legal framework. -Law Desk.

AC of RAT arrested on extortion charge

Iqbal Shafiq, an Assistant Commissioner (AC) of the Rapid Action Team (RAT) has been arrested by the Rapid Action Team on charge of extortion. Police said that the AC demanded Tk.50000 from a businessman of Sayedabad in the capital city on 12 April. He had earlier arrested the brother-in-law of the businessman. Later, the businessman complained against him to police. On 13 April Iqbal went to Mauchak to realise the money and the RAT member tried to arrest him but failed. Though he managed to leave the place, police officials investigated the complaints lodged against him. Later RAT officials arrested Iqbal and handed him over to DB. DBP officials said that there were many complaints against the AC and he was arrested on the basis of the complaints lodged against him. It is the first time that RAT members arrested any police officer since they began operation in the capital from 23 January. Earlier, they arrested police constable, Ansar personnel and traffic sergeants while they were found taking bribe in different parts of the city. -Law Desk.

Amendment of Alluvian-Dellivian law urged

Participants of an orientation program remarked that the Alluvian-Dellivian law of 1994 must be reviewed for the betterment of landless people of Bangladesh. They said poverty couldn't be alleviated without proper distribution of land among the landless people. National Policy Advocacy Cell of SAMATA organised the orientation program titled 'Necessity of Changing the Existing Alluvian and Dellivian Laws for establishing the right of poor landless people'. Lawyers from Dhaka Bar and Supreme Court Bar participated the program. -Law Desk.

Call to repeal Official Secrecy Act

Speakers at a seminar demanded repeal of the Official Secrecy Act in the interest of free flow of information in society. Terming the law as 'an anachronism' they said it was originally promulgated in 1923 to check leakage of state information by government officials and rein in espionage. They observed that though the law is not meant for journalists, it hampers their access to information. The seminar titled 'Official Secrecy Act: Journalists and Access to Information' was jointly organised by Mass Line Media Center and Bangladesh Crime Reporter's Association. Presenting the keynote paper, Robeet Ferdous, Assistant Professor of Mass Communication and Journalism department of Dhaka University, said suppression of information by government officials and even some NGO's and private organisations were commonplace in Bangladesh. Former law, Justice and parliamentary affairs minister Abdul Matin Khasru said if there was accountability and transparency in administration, the law would not be a hurdle to journalists' access to information. Law, justice and parliamentary affairs minister Moudud Ahmed said that the law was not a bar to journalists' access to information as it is applied to government servants. *The Daily Star*, 22 April.

Corresponding Law Desk

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