



LAW education



Rights based training for Police

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POLICE are part and parcel of the criminal justice system. Criminal justice dispensation largely depends on the police, i.e. to arrest the accused and produce him before the court, to investigate the matter, to give charge sheet/final report. The criminal justice system is followed by the natural justice, which means the accused is presumed to be innocent until his guilt is proved undoubtedly. The accused deserves constitutional protection until his guilt is proved. There is a spate of allegations of violation of fundamental rights of the accused (sometimes general people) in the hand of police. This is happening at least for two reasons, political interference and lack of knowledge of human rights as well as other laws. The police must have the knowledge of the following issues while dealing with an accused.

Human rights

For a layman, human rights are those rights that a man possesses with his birth. These inalienable rights include right to equal protection of law, freedom of religion and thought (it is to be noted that our constitution does not recognise freedom of thought), freedom of movement and association, freedom of speech etc. These are by no means an exhaustive list that the people of a democracy enjoy. No government in a democracy grants the human rights of the people but it is to protect those inviolable rights. The thought of the protection of human rights is not a thought of a day. It developed through the signing of Magna Carta, Bill of Rights 1689, American Declaration of Independence etc. The concept of protection of human rights got momentum after establishment of the United Nations. Human rights got international shape by the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948. After the declaration came into being protection of human rights becomes an international concern and all signatory states are obliged by the declaration. These rights could not be legislated away nor they are the subject of the momentary whim of an electoral majority.

Constitutional rights/fundamental rights

Of the human rights those are guaranteed by the constitution are called constitutional rights or fundamental rights. For example our constitution recognises equality before law as a fundamental right (Article 27), which is also recognised as one of the human rights of a man. Constitutional recognition means that the state is under constitutional obligation to protect those rights. The fundamental rights are also

enforceable by the court. For example, right to security is not incorporated in our constitution as fundamental right. Therefore, no one could establish his right to security as fundamental rights through the court of law. The Constitution of People's Republic of Bangladesh has recognised a number of human rights as fundamental rights (Article 26-44). Among them equality before law, freedom of speech, right to association, right to movement, right to religion, right to treatment according to law are mentionable. It is a unique feature of our constitution that it has recognised 'enforcement of fundamental rights' as one of the fundamental rights (article 44). That means when one's fundamental rights are at stake he could take recourse to the court to protect it (Article 102). The state by no means could deprive him to get justice. It is noteworthy that our constitution guarantees only the political rights as fundamental rights. Civil rights are not recognised by our constitution. For example education is not recognised as the fundamental rights by our constitution though it is the most important civil rights.

While performing the duty police should take special measures that in no way one's fundamental rights is being violated. 'Right to protection of law' (Article 31) and 'safeguards as to arrest and detention' (Article 33) are mostly related to policing. When police arrest a person they must not be oblivious of the fundamental rights of the arrestee i.e. right to be informed his guilt, right to be produced before the court within 24 hours, right to defend himself through consultation with lawyer. On the other hand, when police take the arrested person under their custody they must not treat the arrestee otherwise than law, i.e. they must not torture him; treat him indecently, which undermines his dignity as a human being.

Precaution against arrest without warrant

Section 54 of the Criminal Procedure Code gives a wide authority to the police to arrest any person who the police reasonably believe to be involved in criminal activities. In such a case, the police have to disclose the source, nature of his reasonable belief based on the criminal record. The credible information of the police must not be a vague one rather they must record why they believe so to justify the arrest. The general statement that the arrestee is involved in criminal activities is not acceptable at all (Bangladesh Legal Aid and Services Trust (BLAST) Vs Bangladesh, 23(2003) BLD, HC). The belief of a layman without any scrutiny is no more pleasing as reasonable belief. The judgement of this case is certainly a landmark decision in the history of Bangladesh (Dr. Shahdeen Malik termed it as 'Charter of Freedom' in a write up soon after the decision came into



being). In this case it was directed that the arrest and investigation must be conducted within the limitation and safeguards of Article 27, 31, 32, 33 and 35 of the constitution. Police must abide by the guidelines of this case.

Statement to the police has little evidentiary value

It is a common feature that after arresting a person police produces him before the court with a prayer for remand. It is also seen that our magistrates are very impatient to allow their petition. Police always ask a remand to extract information from the arrestee. But they should understand that this extorted information has no evidentiary value. According to Article 35 (4) no person accused of an offence shall be compelled to be witness against himself. Therefore it is so clear that the information extorted by police through interrogation or torture from the accused could not be used against him in trial. So, what is the necessity to take an accused

under police remand? On the other hand police could not take a confessional statement of the accused under threat or offering something under section 161 of the Cr.P.C. Statement to the police is not considered, without some exceptions in trial also because they are the interested party of a criminal proceeding. Police have to consider these facts when dealing with an accused person.

Juvenile justice system

Rapid industrialisation and other social factors compel juvenile to come into conflict with laws frequently. But they hardly get any special treatment from the police. The Children Act 1974 provides for juvenile justice system (treatment of children), which is different from traditional criminal justice system. The Act provides for three things, a) Empowerment of the children which means the issue of the children rights must be taken into consideration and by no means it is allowed to be violated, b) Special protection and

treatment of the children that is when a child comes into conflict with law or commits an offence he will get special treatment (he must not be treated like adult criminals), finally c) State obligation towards children that means the state shall take all necessary measures to protect the children's right.

The meaning of the word 'Trial' in juvenile justice system is different from that of the criminal justice system. In the former the word means to find out whether the child is guilty only. On the other hand in the case of latter system the word indicates the procedural criminal justice system, i.e. to investigate the matter, to arrest the perpetrator, bring a formal charge against him and finally to convict him upon punishment. The core objective of the former system is not the trial of a child following punishment.

In regard to the children the reformative philosophy of punishment instead of deterrent must be followed. Children are that portion of the human being with lack of understanding and knowledge, which makes them separate from adult. Because of these lacks they are deprived of some basic rights, i.e. enter into contract. That's why they are immune from criminal responsibility. It is mentionable that the concentration of the juvenile justice system centres on the 'juvenile' instead of the 'crime'. This is a separate model of the criminal justice system where the judge has to look into the behavioural pattern of the offender in order to understand him. This system deals with separate custody, treatment of the child.

The heart of the juvenile justice system is an understanding that the juvenile are not the smaller entity of the adult. They are the distinct entity of human being that deserves some different treatments and protections. In this system the state played a role to bring the derailed children in the right track. It is rightly said that the intent of the juvenile justice system is to 'deprivation of the children instead of depravation'.

Concluding remarks

The police must take the issues aforementioned into consideration while performing their duties. Also the concerned authority should take necessary initiative to provide them human rights training. The authority obviously should consider the other necessary matters relating to police, i.e. salary, accommodation, duty hours and other benefits. We wish the police would be friend of the people. However, the onus is on the police in that case.

The author is a legal analyst as well as a lawyer.

LAW opinion

Neither RAB nor any other force can serve the purpose, unless...

MD. ZAHIDUL ISLAM

A terrorist does not have any sense of justice. He does not understand anything except what he does for his self-satisfaction or self-interest. Anybody, irrespective of his character, race or opinion, may fall into his pray and suffer hazards that might lead to death. The way to remain secure and protected from his violence is to nab him and hand over to the law enforcing agencies or taking legal proceedings against him. Unlike the shooting a mad dog away, we cannot shoot a terrorist, however dangerous or harmful he be for the society. A terrorist also, as a human being, possesses the right to life. Moreover, he is a citizen of the country. And as a citizen it is his fundamental right i.e. constitutional right, given under Article 31 of the Constitution, to enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law. Hence, we see no other alternative than taking the resort of the judiciary, which is expected to render justice and thus keep healthy atmosphere in the society.

But it seems that government is trying to improve law and order situation overnight and venturing to ensure justice, bypassing the judiciary. Earlier the so called clean heart campaign and recently by Rapid Action Battalion (RAB), Cheetah and Cobra, government is making efforts to eliminate terrorism from society. But all these efforts are resulting in some extrajudicial killings, which are opposed to rule of law and cannot be supported.

It is argued that what govt did by Operation Clean Heart or what is now doing by RAB, Cheetah and Cobra are within the purview of law; and it is neither a bypass of law nor something new in the history of governance. Today's economic giants like the Chinese and the South Korean leaderships did not hesitate to take drastic actions against petty thieves, muggers, robbers as well as even against the greedy businessmen to get to where they are today. Besides, if the concept of democracy means 'the greatest good for the greatest numbers', these some accidental killings should be well justified.

There seems that the above-mentioned arguments have been accepted by a portion of common public. The reason is obvious. People hardly get satisfactory justice from the judiciary. As a result, people are now very disappointed; day by day they are losing their faith over judiciary and are being less interested in harbouring to the same. Conversely, as a result of operations of joint drive forces, RAB, Cheetah or Cobra, they find some immediate improvement of law and order situation.

During the Operation Clean Heart more than forty people were reportedly killed (though those were explained as deaths from heart attack) and in the ongoing operations by RAB a good number of persons have succumbed to death in so-called crossfire. But the common public do have little time to think about the fundamental rights of those persons yielded to death in those operations. What makes them happy is that in those operations some criminals have been killed. These criminals killed many innocent people, were involved in drug and other unlawful business and extorted money from business houses and individuals, causing damage to national economic growth and development. They should have been actually ruined in long before. But our regular police administrations as well as courts seem failing to capture them. Thank to RAB that it has destroyed them. So this is excellent.

Okay, this public attitude can be respected but should not be appreciated.



We know, the deaths (allegedly form heart attack) of those people during the 'Operation Clean Heart' were not properly investigated; kith and kin of those victims were harassed and terrified when they went to file cases in the police stations; and ultimately those joint drive forces were indemnified. At present, the killings during RAB's operations are being reported as killings in crossfire. But so good number of killings in crossfire normally arouses the question: have all those persons got killed in crossfire? Or is this 'crossfire' a synonym of 'heart attack' during Operation Clean Heart?

This is such a question, which will never be answered. But rule of law says there must be no rooms of vagueness and ambiguity in the activities of the govt.

Another thing, which we have experienced, is that the passed 'Operation Clean Heart', however, improved the law and order situation to a good extent. But, as soon as the joint drive forces had gone back to the barracks, the law and order situation recovered its old position as it was before the commencement of the said operation. As per media reports, a good number of top terrors managed successfully to escape the operation's net, and they were threatening residing off the purview of the operation. After the operation was over, they came back in the scene, and restarted their destruction, brutality and heinousness with new vigour, and, thus, made the law and order situation worse than ever before. This time also every prudent citizen can foresee that after RAB, Cheetah and Cobra are withdrawn from scenes, the law and order situation will relapse its old shape. This is because what is being done in the name of operations is 'not the right way' to curb criminality.

Indeed, keeping thousands of arrested lawbreakers and accused under the police custody without trial, which is done at times and was done during the Operation Clean Heart, is like the caging of the mad dogs without treatment. Like ways, killing of terrorists or criminals by RAB or forces alike can never provide successful outcome. It is necessary, at first, to find out who or which makes a man terrorist or criminal, and then to try or treat him. Otherwise, no trial or treatment will furnish desirable result. It should not be forgot that everyone is born innocently; some people or some circumstances make him criminal; therefore, those some people should be punished, or those some circumstances should be removed at first. Here comes the question that who will do this job? Shall we never get rid of these mad dog-like terrorists and criminals?

The answer of this question depends wholly on the politicians. (Though the lower judiciary and the police administration are reported to be two most corrupt institutions, these corrupt ones can be easily purged if the politicians do wish.). It becomes very natural and obvious that, those terrorists are brought up by the politicians. And for this an earnest commitment by the parties in power and the opposition to eliminate crimes from their respective folds is enough. But do our leaderships bother public interest? As a matter of fact, we have experienced that our leaderships are made of the same mould. No leaderships actually have done anything for the public. Our transition from autocratic govt to a democratic one has not in fact changed anything. What all our politicians are doing is just giving us lip services. All the political parties are preaching for terror-free society, and blaming others for patronising terrorism.

But the fact that almost all the top terrors recently killed in so called crossfire did maintain link with any of these political parties confirms a message that all these political parties are harbouring terrorism. Then it appears that we, the voters and the mass people, do not have alternative leadership to choose and improve thereby the law and order situation of the land.

What, therefore, we can do is to pray to the Almighty so that he might gift our leaderships the benevolence, the true will to actually do something for the oppressed countrymen!

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RIGHTS corner



DARFUR SITUATION

Role of ICC and justice for victims



Amnesty International is concerned at the proposal by President Obasanjo, Chairman of the African Union, to have an "African panel for Criminal Justice and Reconciliation" for Darfur, instead of the International Criminal Court (ICC).

"This proposition undermines the confidence many countries, including Nigeria, have put in the ICC as the institution to judge the worst crimes committed in the world. Many Darfuri victims have told that reconciliation can only happen once truth and responsibility for the crimes committed are acknowledged, perpetrators of serious crimes are brought to justice and victims receive full reparations, including compensation," Amnesty International said.

The International Criminal Court, established with the strong and crucial support of many African countries, is a permanent court which is already actively investigating two situations in Africa, in the Democratic Republic of Congo and Uganda. It has demonstrated that it will be able to respond more quickly, more effectively and in a less costly manner than any ad hoc tribunal which would require considerable time and funding to establish.

Although Sudan has not ratified the Rome Statute creating the ICC, crimes committed in Sudan can be referred to the ICC by the UN Security Council, according to Article 13(b) of the Rome Statute. "The UN Security Council is still discussing a resolution on Sudan, six weeks after the UN's own International Commission of Inquiry on Darfur recommended the ICC as the most effective way to bring justice to hundreds of thousands of victims in Darfur. The opposition of the United States, China and Algeria to the jurisdiction of the ICC over Sudan only helps to protect the impunity of those responsible for crimes against humanity and to delay any resolution of the conflict in Darfur," Amnesty International said.

Source: Amnesty International.