



LAW vision



Police power of arrest and remand

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BOTH the methods of policing in this country and the police power have been questioned over times. The work of the police is often characterised by brutality. Abuse of power by the police under section 54 of the CrPC and the Special Powers Act 1974 have been identified by different human rights

card to the person arrested and to the persons present at the time of arrest. Immediately after bringing the person arrested to the police station, the police officer shall record the reasons for the arrest including the knowledge which he has about the involvement of the person in a cognisable offence, particulars of the offence, circumstances under which

police officer shall state in his forwarding letter under section 167(1) if the Code as to why the investigation could not be completed within 24 hours, why he considers that the accusation or the information against that person is well-founded. He shall also transmit copy of the relevant entries in the case diary BP form 38 to the same Magistrate.

necessity that if some force is not used, no clue can be found out from hard-nut criminals. On the other side of the spectra there is a widely held view that to send the arrested person to the police remand prima facie upholds the idea that the accused person did not give the confession voluntarily. When the entire state machinery acts against him, he cannot confess voluntarily and as such the provision for granting police remand several times (although not exceeding 15 days in the whole) totally destroys the purpose behind it. This is because a person coming before the Magistrate has no guarantee that he will not be sent again to the police remand unless he has already completed 15 days. It is therefore imperative on the Magistrate to give reasons for granting a remand. Again, article 35(4) of the Constitution states that no person shall be compelled to be a witness against himself. So the provisions of the CrPC under section 167 are in direct contrast with the provisions of the Constitution. This CrPC was passed by the British Government back in 1898 when there was no fundamental rights as we have now in our Constitution. In view of the present provision in article 26 this provision of police remand seems to be void and this is largely the decision of the HC in the BLAST case which is outlined next. However, given that fact that there is provision of police remand in most democratic countries including the UK, we need to wait until the apex seat of the Supreme Court, i.e. the Appellate Division gives its judgement on the matter



watchdog agencies as the main sources of human rights violation in the country. This is because the provisions of both the laws allow the arrest of any person by the law enforcers without recourse to court order. Legal loopholes provide the police with the excuse for arresting someone with impunity. The arrest is not everything. The method of extracting information from the arrested persons by the police is barbarous and this is the reason behind so many custodial deaths. The most of the custodial deaths are pure ransom killing by criminals in uniform are a fact of life in Bangladesh. Abuse of power under sections 54 and 167 by the police and Magistrates have been elaborately discussed by the High Court Division of the Supreme Court in BLAST v Bangladesh (55 DLR 363). In this case the HCD has given 15 directives to the Government to follow along with recommendations to implement by way of amending the CrPC. Of these 15 directions first 8 relates to the police power of arrest under section 54 of the CrPC which are as follows:

- No police officer shall arrest a person under section 54 of the Code for the purpose of detaining him under section 3 of the Special Powers Act, 1974.
- A police officer shall disclose his identity and, if demanded, shall show his identity

- arrest was made, the source of information and the reasons for believing the information, description of the place, note the date and time of arrest, name and address of the persons, if any, present at the time of arrest in a diary kept in the police station for that purpose.
- If at the time of arrest, the police officer finds any marks of injury on the person arrested, he shall record the reasons for such injury and shall take the person to the nearest hospital or Government doctor for treatment and shall obtain a certificate from the attending doctor about the injuries.
- He shall furnish the reasons for arrest to the person arrested within three hours of bringing him to the police station.
- If the person is not arrested from his residence or place of business, he shall inform the nearest relation of the person over phone, if any, or through a messenger within one hour of bringing him to the police station.
- He shall allow the person arrested to consult the lawyer of his choice if he so desires or to meet any of his nearest relations.
- When such person is produced before the nearest Magistrate under section 61, the

Police Remand, Use of Force and Extorting Information from the Accused (Section 167)

Section 167 of the Code implies two situations: (1) when an investigation can be completed within 24 hours; and (2) when investigation cannot be completed within 24 hours. The provision of section 167 also implies that while producing a person arrested without warrant before the Magistrate, the police officer must state the reasons as to why the investigation could not be completed within 24 hours and what are the grounds for believing that the accusation or information received against the person is well-founded. Second, the police officer also shall transmit to the Magistrate the copy of the entries in the case diary (B. P. Form No. 38) (B. Police Regulation No. 236). After examining information in the case diary and the reasons shown by the police officer, the Magistrate will decide whether the person shall be released at once or detained further. This is the mandatory law which the Magistrates have to follow. However, in absence of any proper guideline unfortunately the Magistrates have been accustomed to follow a 'parrot like' order on the forwarding letter of the police officer authorising detention either in the police custody or in jail. And this non-application of proper judicial mind in view of sub-sections (1), (2) and (3) of section 167 of the Code by the Magistrates has ultimately resulted in so many custodial death and incidents of torture in police custody.

Application for Remand and the Abuse of Power

A police officer makes a prayer for 'remand' stating that the accused is involved in a cognisable offence and for the purpose of interrogation 'remand' is necessary. In sub-section (2) of section 167 though it is not mentioned that 'remand' can be allowed for the purpose of interrogation, at present, the practice is that an accused is taken on 'remand' only for the purpose of interrogation or for extorting information from the accused through interrogation. There is no proper guideline as to when such prayer should be accepted and when rejected by the Magistrate and this legal lacuna give both the police officer and Magistrates power to abuse the same. Police officers being motivated or dictated by the executive organ or out of their personal conflict seek unreasonable remand under section 167 of the Code. And the Magistrates in absence of any proper guideline, either being dictated by the executive organ or otherwise have been accustomed to follow a 'parrot like' order on the forwarding letter of the police officer authorising detention either in the police custody or in jail. The views expressed in favour of police remand is that it is a civil

High Court Division's Decision on Police Remand

Recently the HCD has ruled in the BLAST v Bangladesh 55 DLR 363 that this view is contrary to the express Constitutional provisions in articles 27, 30, 31, 32, 33 and 35. The court also held that if the purpose of interrogation of an accused is to extort information, in view of the provisions of article 35(4), information which is extorted from him cannot be used against him. Clause (4) of Article 35 clearly provides that no person accused of an offence shall be compelled to be a witness against himself. Second, the court also held that Clause (4) of Article 35 is so clear that information obtained from the accused carries no evidentiary value against the accused person and cannot be used against him at the time of trial. Third, in view of Article 35 of the Constitution which provides that no person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment, the court held that even if the accused is taken in police custody, no law in the country gives any authority to the police to torture that person or to subject him to cruel, inhuman and degrading treatment. Fourth, the court suggested that interrogation may be made while the accused is in jail custody if interrogation is at all necessary but not in police custody and no torture or inhuman treatment is allowed by the Constitution. Apart from the recommendations about interrogation into jail custody as mentioned above, the court has also given 15 recommendations regarding interrogation into police custody which are beyond the scope of this article.

The author is an advocate of Supreme Court of Bangladesh.

LAW news



Argentine high court voids 'Dirty War' amnesties



THE high court declared the laws unconstitutional in a 7-1 vote with one abstention, scrapping the amnesties that ended trials for atrocities against leftists carried out under Argentina's 1976-83 military dictatorship.

A government report says 11,000 people either died or disappeared during a systematic crackdown by the military to snuff out dissent during the dictatorship. Human rights groups say the number is closer to 30,000.

The ruling marked a victory for human rights groups hoping for a renewed examination of the military's seven-year rule and highlighted a new political will under President Nestor Kirchner - who was held briefly by the military when he was a student - for investigating Dirty War-era abuses.

Dozens of human rights activists, including some gray-haired mothers who have led a decades-long search for many of "the disappeared" victims, cheered the decision outside the main Buenos Aires courthouse after it was announced.

"This is truly historic," said Tati Almeida, a founding member of the human rights group Mothers of the Plaza de Mayo, which has led weekly marches to remember the missing. "I am absolutely overcome with emotion."

Other family members of the disappeared hugged each other and held aloft tattered black-and-white photos of their missing relatives. The decision came in the case of Julio Simon, a former police officer charged in connection with the disappearance of two Argentines and the adoption of their daughter.

Under Argentine law, the ruling was expected to serve as a precedent for other cases in the lower courts. Lawyers for human rights groups said the

decision could also lead to new charges being brought against 300 to 400 military officers - many of them now retired - for military excesses.

Jose Miguel Vivanco, executive director of the Washington-based Human Rights Watch Americas, said he hoped the ruling could give impetus to other South American countries like Uruguay, Chile and Colombia, where amnesty laws now exist or are under debate.

"The Supreme Court's ruling shows that no matter how many years go by, laws that block justice for gross human rights abuses remain a thorn in the side of democratic governments," he said in a statement. After Argentina's return to democracy in 1983, many ranking military officers were tried on charges of rights violations against suspected leftist opponents and ordered imprisoned two years later. But after a series of military uprisings, former President Raul Alfonsin sought a pair of amnesties from Congress known as the "Full Stop" and "Due Obedience" laws in a bid to temper anger in the barracks.

The laws brought an end to the investigations of the military junta's top officials and protected lower-ranking officers from prosecution on the grounds they were legally forced to carry out orders from their superiors.

In 1990, then-President Carlos Menem issued a pardon for all military officials in an attempt at what he called "national reconciliation." Many of the junta's top leaders, including former Gen. Jorge Videla and Adm. Emilio Massera, are under house arrest on charges of kidnapping babies born to mothers held in captivity during military rule.

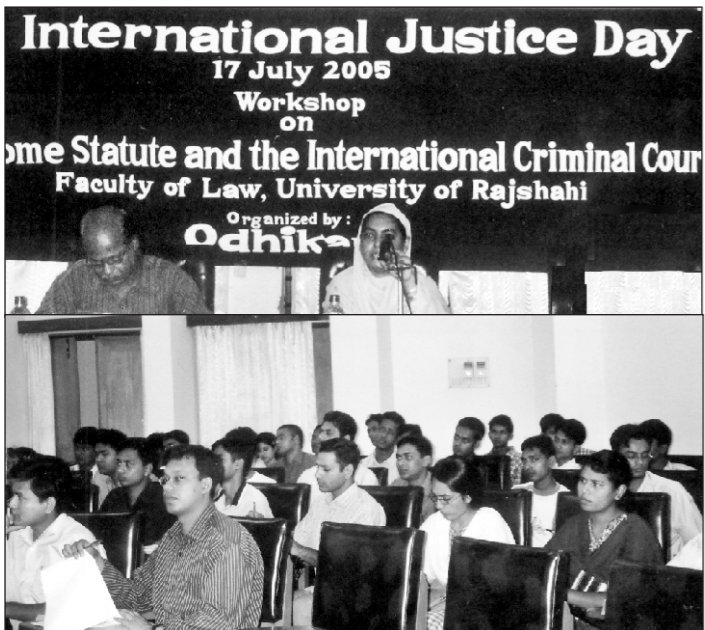
Source: Buenos Aires, Argentina (Reuters)

LAW event

International justice day observed

NAZMA BEGUM

July 17 has been observed as International Justice Day, commemorating the day on which the international community adopted the Rome Statute of the International Criminal Court in 1998. Each year, human rights activists around the world use this day to host events and activities to promote international justice and specifically support for the ICC.



The International Criminal Court is, in today's world order, a much-needed institution for the protection of human rights and promotion of justice. A total of 139 countries have, to date signed the Rome Statute for the International Criminal Court and 99 have ratified it. ICC is a permanent independent judicial body created by the international community of states, through the Rome Statute to prosecute the gravest crimes under international law including genocide, other crimes against humanity, war crimes and the crime of aggression. To observe this day Odhikar has organised an orientation workshop on ICC for the law students and faculties of the Rajshahi University, Rajshahi.

The opening session was presided over by Dr. Asma Siddiqua, Dean and Chairman, Department of Law and Justice, University of Rajshahi. She thanked Odhikar to organise this workshop and informed her students that as part of Odhikar's ICC awareness campaign, this workshop has been organised in Rajshahi. Technical Advisor of Odhikar, J Hasan made a brief presentation on Rome Statute. He briefed about the statute and simplified the jurisdiction of the Court. ICC has jurisdiction over individuals who commit most serious crimes of universal concern; namely, genocide, crimes against humanity, war crimes, and aggression. Elaborating the mechanism

he expressed his views on International Criminal Justice system and the role of the ICC.

Professor Rabiul Hossain, senior teacher of department of Law, University of Rajshahi stressed on the formation of international institutions and the role of United Nations. He read out some important provisions of Rome Statute and explained some clause of the statute to the participants. In the question/answer session Mr. Hasan simplified a lot of queries of the participants.

Some eminent teachers of the Law Department expressed their views and opinion about ICC which is the last resort of humanity. One of them shared his experience on the trial chamber of ICC, as he recently joined in a program at the headquarter of International Criminal Court in Hague.

Sultana Razia, from Law Desk, The Daily Star, briefed the participants about the victim and witness protection under ICC.

Dr. Asma Siddiqua, thanked the participants for being present in the workshop and thanked Odhikar to observe the International Justice Day with the University of Rajshahi.

The author is working as a documentation officer, Odhikar.

LAW lexicon

Solicitor

A lawyer that restricts his or her practice to the giving of legal advice and does not normally litigate, that court room. In England and some other Commonwealth jurisdictions, a legal distinction is made between solicitors and barristers, the former with exclusive privileges of giving oral or written legal advice, and the latter with exclusive privileges of preparing and conducting litigation in the courts. In other words, solicitors don't appear in court on a client's behalf and barristers don't give legal advice to clients. In England, barristers and solicitors work as a team: the solicitor would typically make the first contact with a client and if the issue cannot be resolved and proceeds to trial, the solicitor would transfer the case to a barrister for the duration of the litigation. Lawyers in some states, such as Canada, sometimes use the title "barrister and solicitor" even though, contrary to England, there is no legal distinction between the advising and litigating roles. Canadian lawyers can litigate or give legal advice (as is the case in the USA, where lawyers are referred to as "attorneys").

Sovereign

Has two meanings. The first one is a technical word for the monarch (king or queen) of a particular country as in "the Sovereign of England is Queen Elizabeth." The other meaning of the word is to describe the supreme legislative powers of a state: that they are totally independent and free from any outside political control or authority over their decisions. The people of Quebec, for example, has, at times, supported governments which have proposed that Quebec become a "sovereign" state; that all legislative authority of the government of Canada over their territory cease and that the government of Quebec be enabled to regulate in any matter at all; and that the government of Quebec represent itself internationally.

LAW week

Proposed contempt law not approved

The cabinet at a regular meeting discussed a draft new law to replace the outmoded Contempt of Court Act, but did not approve it. Law Minister Moudud Ahmed told the news agency the draft needs "further scrutiny" by his ministry. He did not say whether the draft law will be placed at the next cabinet meeting. The existing contempt of court law was formulated way back in 1926, and lost much of its relevance in the changed situation. - July 19, UNB, Dhaka.

HC rule upon EC to collect info on candidates' income source

The High Court (HC) issued a rule upon the Election Commission (EC) to show cause why it (EC) should not be directed to compel the candidates of Sunamganj-3 by-election to furnish information about their sources of income. The HC also ordered the EC to explain why it should not be directed to properly implement the eight-point directives the court had given earlier.

The rule issued by a bench comprising Justice MA Matin and Justice Mamnoon Rahman is returnable within two weeks. The HC directives came upon a writ petition filed as a public interest litigation by five citizens including Badiul Alam Majumder and Syed Abul Maksud of Sushasaner Jonno Nagorik (SUJAN). The Election Commission (EC), chief election commissioner (CEC), returning officer (RO) and nine candidates contesting the Sunamganj-3 by-election scheduled for tomorrow have been made respondents. - July 19, BD News Dhaka.

Court warns ex-DIG's wife for filing false case

A Dhaka court has warned wife of a former deputy inspector general (DIG) of police, who filed a case accusing a doctor couple of torturing a domestic help, not to harass any other citizens by filing cases. Judge Monowara Begum of the Second Special Tribunal for Prevention of Women and Children Repression issued the order on Monday, clearing Dr Mahbubur Rahman and his wife Dr Begum Ferdousi of the charge and warning the complainant, Anwara Rahman, wife of DIG Anisur Rahman. The court's warning came after the charge against the couple was found false. Anwara Rahman filed the case against Dr Rahman and his wife Ferdousi on April 18 for torturing 11-year-old Nasrin Akhter.

Uttara police arrested the two the same day immediately after Anwara, landlord of the couple, filed the case under the Women and Children Repression Prevention Act. After an investigation, the investigation officer (IO) found the charge to be grounded in falsehood and submitted final report to the court, praying for acquittal of the doctors. - July 20, The Daily Star.

SC clears way for election Prayer against HC order rejected

The Supreme Court (SC) rejected a prayer for appeal against a High Court order that upheld the 14th amendment to the constitution providing for 45 reserved seats for women in parliament and the law for their indirect election.

Corresponding with the Law Desk

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