

Changes in AL leadership

Now it is time for the party to deliver

WITH the exit of some old guards from the party's top policymaking body, the Presidium, and the induction of some new faces, it can be said that a wind of change has now taken effect within the Awami League. Though some political observers are wont to term the change as something predictable, one cannot also deny the fact that the party rank and file had long been pressing for a change in its leadership. Their longing for a change in the leadership got more passionate in the wake of the party's massive victory in the last parliamentary elections. For the success is attributed by many to the slogan for a 'change.' So, the entry of some six new faces, many of whom are relatively younger, certainly marks a significant and welcome change in the party.

Apart from the expectations of the party rank and file, time also demands a change in the old order of things. Why should a political party like Awami League be otherwise, particularly when a generational shift has taken place among the electorate, the impact of which has been eminently manifested in the results of the last general election? So, it can be said that this is a sign of evolution going on in the party. Such trend should also be welcome.

How have many of the stalwarts, who would steal the show of the party in the past and had to bow out of the new presidium, taken it all? What is reassuring is that some of them have taken it with good grace, a development that only speaks well of their level of maturity in politics. It is hoped that that all senior leaders who served the party through thick and thin and had now to make way for the new blood, would show similar attitudes towards any change for the better.

The electorate must be happy that the Awami League has got a new leadership after smooth holding of the party council. But what are their expectations from this new leadership? It is worthwhile to note that the party leadership had taken some bold steps immediately after assuming power. But in spite of that, its image has been tainted to some extent due to reports of alleged corruption, rent-seeking and involvement in tender business. Such practice has to be contained at the party grassroots, before it is too late. And the leadership's firmness in this respect will only enhance its image.

So far, the people have only extended their goodwill and best support to the party. Since all is now set for the party after the council and formation of the new committee, it will have no time to waste to fulfil the promises it had made to the people. So, it has now two most important tasks before it. The first is to deliver the development it had promised them and the second is to control corruption. These two tasks have put the party through its paces. It is hoped that the new Awami League leadership would be up to it.

A heart-wrenching tale

Timely community intervention can prevent recurrence

WE are deeply touched by the reported and photographically depicted ordeal of physical and mental torture having been suffered by a woman in Ramu upazila and her eventual escape from the tyrannical stranglehold of her husband. Taslima Akhter, a 20-year old mother of one child, remained shackled for 12 days from her legs up to the neck and tied to a tree by daytime and a pole at night in an exhibition of barbaric cruelty.

But for a fortuitous turn, she might still have remained enchained: one fine morning her husband forgot to tie her up with the tree and that is how, with the help of her neighbours, she could find her way to an advocate in Cox's Bazar court. The rest followed; the culprit was ordered to be arrested and she landed under the wings of an NGO.

And what was her fault? She basically objected to the ignominy and illegality of her husband having married her by deceit concealing his earlier two marriages, something she had only come to learn seven months after her marriage. Not only that, it was too much for Taslima to bear up with as her husband, on the death of his first wife, brought in his second wife home to live with. This brings to the fore the imperiled plight of women having to live with husbands with a track record of previous marriages they did everything to conceal from their spouse or her family.

It is worthwhile to note that the neighbours, the lawyer and the NGO and, above all, the local administration all acted -- and we appreciate what they did -- but only after her plight was revealed. Not at any time during the 12 days that she quietly suffered the agonies of being shackled. In a civilised society, where even neglect to a domestic animal is regarded as an offence, here we are into the new millennium treating human beings virtually as animals! We must put this affront to humanity well behind us and soon enough.

How do we do it? There can be a two-tier defence mechanism against such acts of inhumanity. The first is: neighbourhood or community intervention; and secondly, at the union parishad and ward levels, we should have outlets for family counselling services to prevent such tyrannical excesses. The arbitrarily held salish needs to be replaced by more formal, government-authorised dispute resolution outlets.

Rights of the accused must be upheld

It is the duty of every public official to adhere to the provisions of the Constitution. In that context, all efforts need to be made to inform a person of the grounds for his arrest at the earliest and to provide him with the right to consult a legal practitioner of his choice.

MUHAMMAD ZAMIR

SENSITIVE issues like taking an alleged offender on 'remand,' 'extra-judicial killings' through cross-fire or 'death in custody' have become a source of concern for those who are interested in the upholding of human rights and due process of law. Controversy has also been generated because of less than clear answers from those in charge of maintenance of law and order in the ministry of home affairs.

I have tried to understand good governance and human rights within the context of the various principles laid out in the different Sections of the Code of Criminal Procedure, 1898 and the Articles of our Constitution. Ambiguity with regard to certain phrases within certain Sections of this Code has made the matter more complex.

This effort on my part has recently led me to an important judgment of our High Court Division issued on April 7, 2003 as reported in 23 BLD (HCD) 2003. It has raised some crucial points which I want to share today with my readers. Referring to Section 54, the Judges in this case have drawn attention to aspects pertaining to the role to be played by police officers to avoid prisoners suffering abuse of process.

Para 11 of this judgment observes that if a person is arrested on the basis of 'credible information,' nature of the information and source of information must be disclosed by the police officer and also the reason why the officer believed the information. After that a fundamental distinction is made -- 'Credible means believable. Belief does not mean make-belief.' The judgment then goes on to distinguish between an ordinary layman and a police officer. It is stated that a layman may believe any information without any scrutiny but a police officer is supposed to possess knowledge about criminal activities in the society, nature and character of the criminals etc.

It is also stressed that police officers must refrain from believing any 'vague information' received from any person. In this context it is reiterated that if the police officer receives any information from a person who works as a 'source' of the police, even in that case, the police officer

before arresting the person named by the 'source' should try to verify the information by perusal of the diary kept in the police station about the criminals. This will have to be done to ascertain whether there is any record of any past criminal activities against the person named by the 'source.'

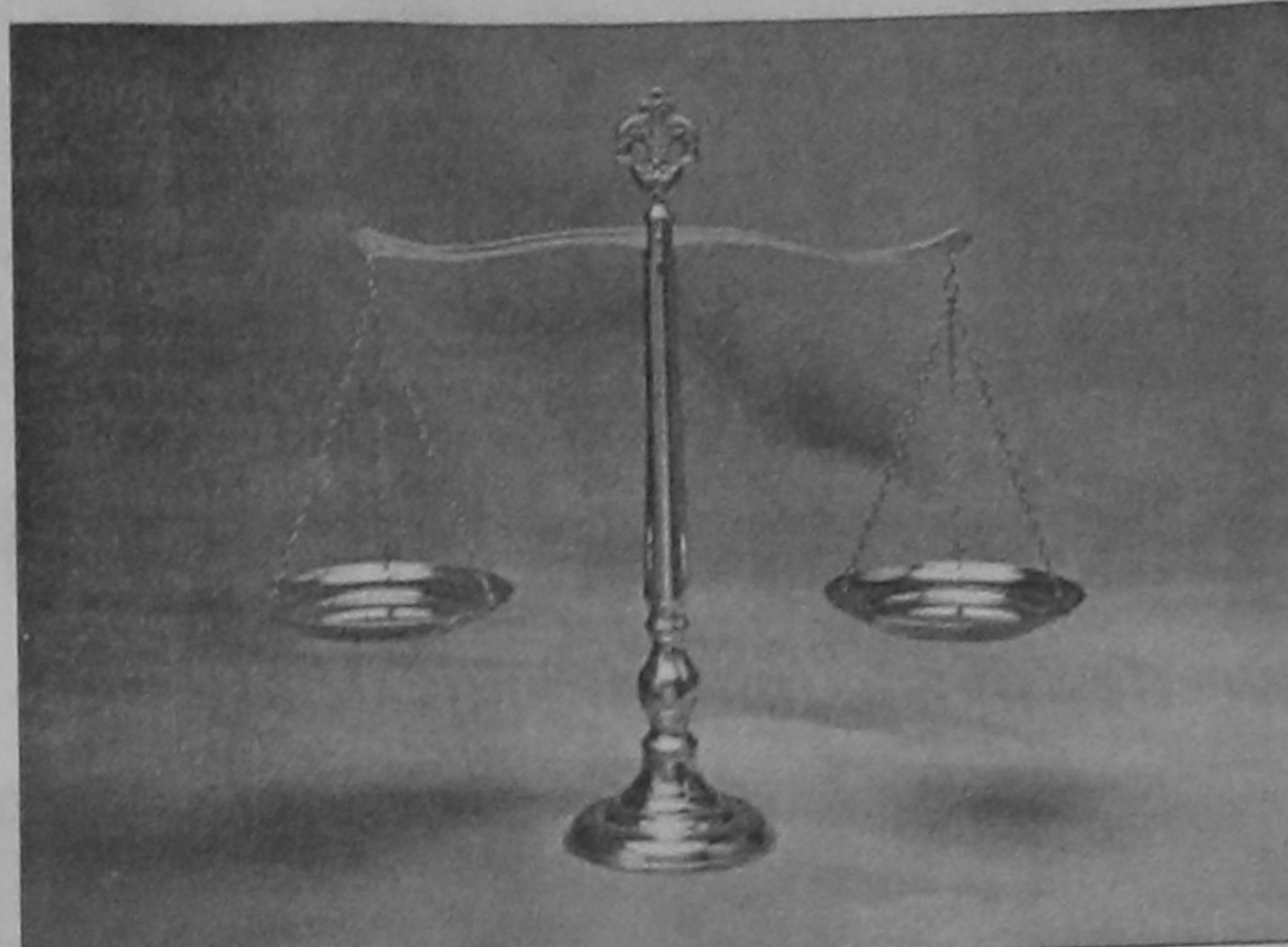
This is a crucial issue that needs to be followed carefully. Sometimes our law enforcement authorities tend to overlook or forget its implications.

It is also suggested in the landmark judgment that if a person is arrested on 'reasonable suspicion,' the police officer must record reasons on which his suspicion is based. In this regard the Judges have taken one further step. They have pointed out that if the police officer justifies the arrest only by saying that the person is suspected of being involved in a cognizable offence, such a 'general statement' cannot justify the arrest. Such a view about governance within the police structure would greatly reduce arbitrary detention and misuse of power.

Another nuance in this important judgment clarifies that 'suspicion' on the part of the law enforcement authorities 'must be based on reasons' that in turn will be based 'on existence of some facts which is within the knowledge of that person.' Consequently, it is underlined that when the police officer arrests a person without warrant 'he must have some knowledge of some definite facts on the basis of which he can have reasonable suspicion.'

The judgment given in a writ petition filed by Bangladesh Legal Aid and Services (BLAST) also refers to the question of deaths taking place in police custody and accused persons being remanded in police custody. Public anxiety in this regard has been re-affirmed once again with the High Court recently issuing Rule once again on the government asking it to show cause as to why extra-judicial killings should not be declared as illegal and without lawful authority.

It is no use having an ostrich syndrome and denying that torture and inhuman treatment are sometimes meted out to a person in custody and that at times there are cases of deaths while in custody. Some of these tragic deaths are due to 'sweeping and unhindered power' given to a police officer under Section 54 of the



Everyone has the right to justice.

Code of Criminal Procedure.

We however know that such exercise of power is more often than not inconsistent with the provisions of Part III of our Constitution. Accordingly, it is required that our authorities concerned and our Parliamentary Committee for Law take necessary action to bring in greater consistency and uniformity between the stipulations in Section 54 of the Code and Articles 27, 31, 32, 33 and 35 of our Constitution. This can be achieved through amendment of the provisions of the requisite Sections of the Code.

The next aspect that needs to be examined is the question of granting 'remand' to the police custody. It is generally believed that once remand is granted, the police try to extort information or confession from the accused person through physical or mental torture. This sometimes leads to death from 'unknown causes'.

Such granting of remand is generally allowed under subsection (2) of Section 167 of the Code of Criminal Procedure. The word remand does not exist in the subsection, but it is used in the Order passed by a Magistrate 'in the sense' of authorizing detention and for the accused to being sent back to police custody.

Section 61 of the Code implies that if there is a special Order of a Magistrate under Section 167, the police may keep a person in its custody for more than 24 hours. Mandatory provisions of law also stipulate that the police officer concerned must state reasons why the required investigation could not be completed within 24 hours in the first

place. Unfortunately, such provisions are rarely followed in spirit and meaning.

In this context it would however be useful to note that provisions of Article 35(4) of the Constitution mentions that information which is extorted from a person (through torture or force) cannot be used against him. This clause provides that no person accused of an offence shall be compelled to be a witness against himself.

Our law enforcement officials need to avoid the temptation of abusive action by restraining themselves from arresting a person under Section 54 of the Code for the purpose of detaining him under Section 3 of the Special Powers Act, 1974. The impugned judgment referred to by me has correctly identified this aspect.

It is the duty of every public official to adhere to the provisions of the Constitution. In that context, all efforts need to be made to inform a person of the grounds for his arrest at the earliest and to provide him with the right to consult a legal practitioner of his choice. Sometimes this is not followed, particularly if there is a political shadow associated with the detention of the person concerned. We have to be very careful, because arbitrary lapses can easily lead to the next unfortunate step of torture or cruel inhuman or degrading treatment in police custody and serious debate and disagreement.

Human dignity and human rights have to be upheld at all times.

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The crisis of values

If a democratic heritage is to be left for future generations, we should want the truth again to be enshrined in its legitimate place in the social, economic and political scheme of things in our country. There is nothing unattainable or profound in this. It is a simple human message.

KULDIP NAYAR

I don't think that India is an exception. Like other South Asian countries it is also lessening in fundamental values. In an unequal society, the urge to survive has come to prevail. The result is that the people have stopped differentiating between right and wrong. Politics or sheer greed may have accelerated the slide down the hill. But it is there for all to see and feel.

India's case is worrisome because it has had an uninterrupted democratic and secular rule for the last six decades, except for a brief period of emergency (1975-77). What deepens my anxiety is that public protest against social crimes, official excesses or human rights violations is becoming rare. It looks as if the society has lost the sensitivity and convinced itself that there is no dividing line between moral or immoral. Truth has come to be a relative term. Even the intellectuals seem to believe that, to quote American thinker Robert Frost, "most of the change we think we see in life is due to truth being in or out of favour."

A few happenings in the last few days indicate that the democratic India, claiming its heritage from saints and Sufis of times immemorial, is weakening in moral fiber. An open society does not mean a valueless society. But we are reaching that stage.

Haryana is a next-door state to Delhi. Singhwala village is not too distant. A girl and a boy marry from the same gotra (lineage). However, the khap biradari (caste) to which the couple belongs pronounces death sentence for having married in the same gotra and tells the family to leave the village. When the husband reaches his bride's village to take her -- the Punjab and Haryana High Court gives him police protection -- he is thrashed to death. The 20 policemen, his protectors, run away. The biradari is not repentant but wants to administer the same punishment to the girl.

What torments me is that there is no

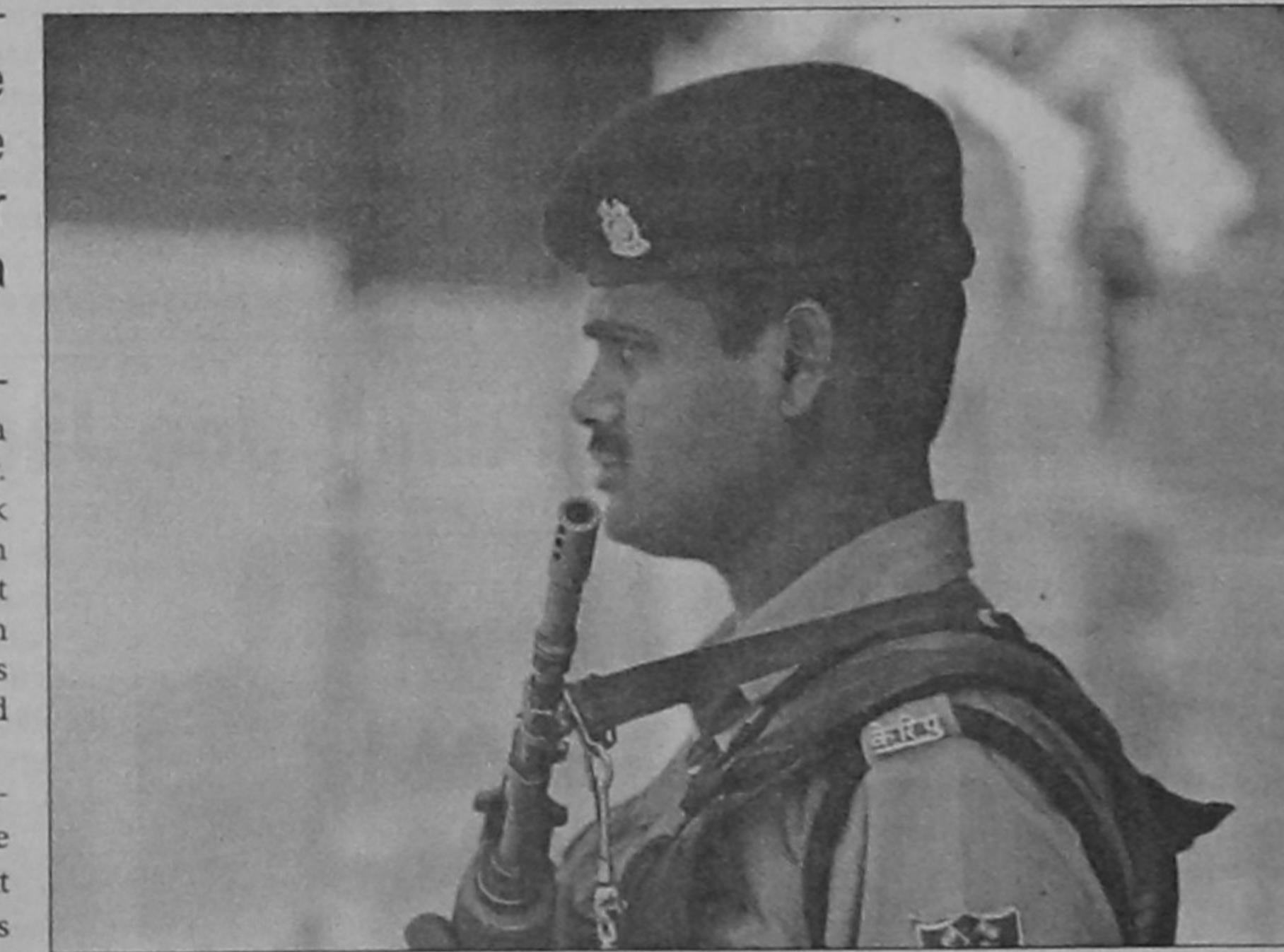
protest either in Haryana or in Delhi. Not a word of regret by the state chief minister. His son, Deepinder Singh Hooda, a Lok Sabha member who has studied in America, sheepishly tells a TV network that the death is because of certain customs in the area. Parliament, which wastes times on trifles, is silent on the cold-blooded murder.

Believe it or not, political parties, including the Left, raise no objection because the state assembly elections are due in the next few months and, therefore, no party wants to offend the electorate, which is influenced by one biradari or the other.

Whether the murder in Haryana was an honour or dishonour killing is for the nation to decide. But why is there a death-like silence? Why has the intelligentsia not spoken even a word against the incident? The All India Democratic Women Association's estimate is that 100 boys and girls are murdered or forced to commit suicide every year in Haryana due to love affairs. The elite in Delhi discuss such tragedies at the over-loaded dining tables and merely shrug their shoulders if asked to comment.

Take another happening this week at Patna. A woman is stripped publicly in the heart of the city. Scores of people watch it as a tamasha but do not interfere to stop it. Bihar is a gone case. Chief Minister Nitish Kumar remains silent for three days and then takes action by suspending some police officials. Yet, the people who stripped the woman, reportedly a sex worker, go scot-free. It is only when a TV channel shows the incident live, and displays pictures of four boys, that the administration moves. Again, the matter has evoked little protest either in Bihar or elsewhere in the country.

At Delhi, a student, an aide of Prof. H.S. Sabharwal, is killed outside his college. His fault is that he was pasting posters for a candlelight vigil to bring Prof. Sabharwal's killing to the public focus. Sabharwal was murdered in the BJP-ruled Madhya Pradesh three years ago for having pro-



Will they ever take actions envisaged?

tested against the Students' Union election. Six activists of Akhil Bhartiya Vidhyarathi Parishad, the youth wing of the BJP, were tried but the court had to release them because all witnesses turned hostile. The judge said in his verdict that the accused might be guilty but he could not convict them because lack of evidence. He accused the police of "hiding something." Obviously, the intelligence under the state could not probe beyond a point.

The police are yet to act. The accused may have gone scot-free because of legal technicalities. Yet, the fact remains that Sabharwal was murdered. Who did it is not known. Here, not even moral policemen of the BJP said a word to condemn the murder of, first, Prof. Sabharwal and then his aide. Once again, there is no public protest. Even students remain silent.

India's topmost painter M.F. Hussain's work cannot be exhibited at the country's apex art exhibition. It goes without saying that the organisers are afraid of the Sangh Parivar, which says that nude pictures of Hindu gods and goddesses are not acceptable. These paintings are decades old. Why have the paintings become objectionable only in the last few years? What is shocking is that even artists and intellectuals do not protest; much less demand the exhibition of Hussain's paintings at the apex art function.

On the other hand, the Lok Sabha is

resounded by the voice of protests by former ministers that their security has been reduced. All of them get a contingent of 21 National Security Guards each. The public resent the expense because it can have that sum of money spent on better law and order than on VIP security men, who have become a status symbol. The government ultimately gives in and announces that there will be no cut in their security.

What it boils down to is that MPs have a different standard of morality. For that matter, members of the elite have come to accept symbols of authority as part of life. If the government machinery in our country is to be rendered safe for our children, MPs, MLAs and panchayat members, along with bureaucrats, must give a better account of themselves by standing up for the basic values of an honest and efficient administration. That alone can resurrect the people's lost faith in our services and politicians.

If a democratic heritage is to be left for future generations, we should want the truth again to be enshrined in its legitimate place in the social, economic and political scheme of things in our country. There is nothing unattainable or profound in this. It is a simple human message.

Kuldip Nayar is an eminent Indian columnist.