

LAW ANALYSIS

Crippled commons and regulating 'covert human intelligence sources'

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As law as much as necessary to redress any kind of human rights violation all the time? Definitely, we will find diverse comments and bunches of argument from the different strata of intellectuals. Laws that exist in a state are not sometime fine enough to redress all or the specific problem- an often-quoted verse of critics. But if the question is all about "no existence of law" on a recent burning concern, it would really face a huge span of criticisms incessantly. The reason behind talking all these is to plot out the dimensional predicament of "covert human intelligence sources" of disciplined forces such as Police, Rapid Action Battalion (RAB) and so on in Bangladesh. Before putting forward the details of this write up, at the very outset, it is needed to mention that in our country, no single law, even not the Police Act 1861, provides for the regulation of the organization and jurisdictional conducts of the covert human intelligence sources, as they are known officially in the United Kingdom (UK).

In all disciplined forces, covert sources are recognized as valuable, but their use carries a high voltage risks since they have no legal status in our country and it is needed to be managed justifiably. In the context of Bangladesh, we have different sets of covert sources those lack adequate training and proper supervision of superior officials. But in the UK, the Association of Chief Police Officers and HM Customs' manual of standards for covert human intelligence, created in 2004, is held by a police force's director of intelligence, and provides the standards to be adhered to and guidance for all police and customs staff.

Now and then, based on information provided by the covert sources the disciplined forces carry out search vis-à-vis arrest operation against an alleged person(s) and in some cases arrest without proper verification of the allegation another person only because of similarity of name. Even they shoot out and kill without the least evidence and proper care reporting it 'cross-fire'. Then a question whispers in our mind that who has given the authority to disciplined forces to shoot a man even if he is a criminal, because it is totally violation of the human rights and dignity enumerated in the Universal Declaration of Human Rights and the Constitution of

Bangladesh. In the recent past, the awful story of Limon Hossain, a college student, is the glaring incident of modern day's atrocity done by disciplined force. The media reports that RAB shot Limon in the left leg at his village when he was taking his cows to the field. Afterwards, his injury was life threatening and irreversible resulting amputation of his left leg from the thigh as his leg tissues were totally damaged due to excessive bleeding. The latest nasty update, what we know, is that Limon along with his

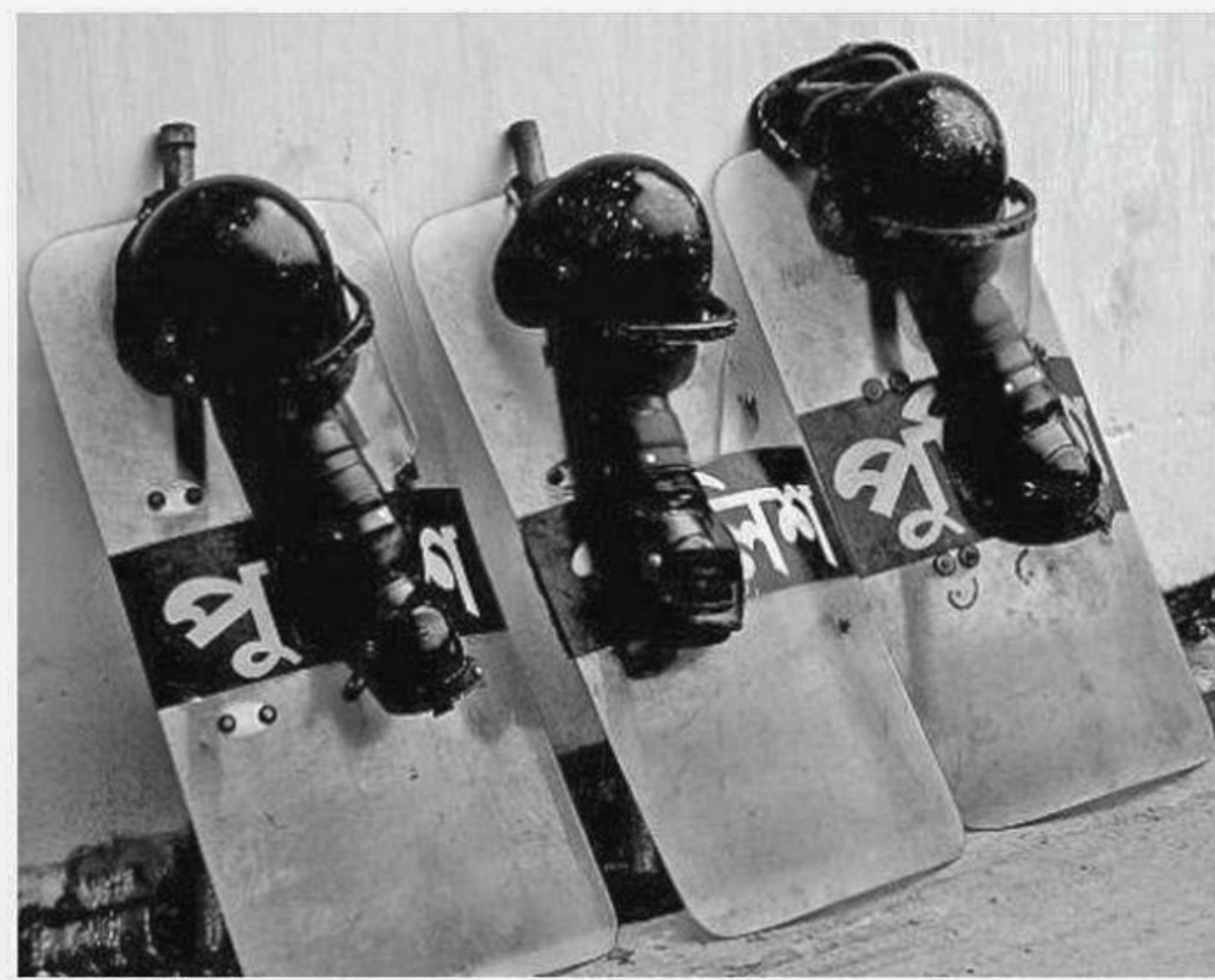
rollers, supervisors and other assigned officials. The system must also be subject to analysis, security checking and constant review. In the UK, the use of informants or the sources is monitored by the Regulation of Investigatory Powers Act 2000 (RIPA), specifically Part II, since its inception into UK law on the 2nd October 2000. The provisions of this Act extend to cases where even a public authority authorises the use of a covert source. The legal definition of a covert human source is taken from s.28 (8) of RIPA as: 'A person who establishes or

of movement (Article 36), right to protection of home and correspondence (Article 43) and right to protection in respect of trial (Article 35). These constitutional fundamental rights are the core values of this constitution and are related to the issue of covert human sources' activities. These are the standards by which the legality of other statutes is justified. The ongoing debated activities of covert sources and those of disciplined forces based on the information of sources can never be mandated by the Constitution.

An argument could be put forward that the undercover officers acted as agent provocateurs. That is, to incite an act which would not have been committed otherwise. This argument, if relevant could be in breach of conception of fair trial provided in Article 35 of the Constitution. Instead, reference must be made to the previous character of the offenders in question. For example: with five previous offences of supplying forged documents by A, it is clear that A have a history of returning to commit similar offences on a number of occasions, and so it may well be the judge's decision that it is the nature of these defendants, to re-offend, regardless to whether any undercover sources are used. However, it is essentially the duty of an undercover source passively to observe but not to investigate criminal activity, and yet it could be deemed that instigation of the offence was too far for the undercover sources to go, and in turn, it could not be concluded that if they had not been present, an offence would have been committed.

To conclude, covert human source are now by practice have become an infusion part of the disciplined force in our country and there are many successful stories of arresting and prosecuting powerful gang/terrorist by the joint initiative of source and force. Today what we need to have is the legislation for the organization and conduct of the undercover human intelligence sources. Giving them legal status and slotting out their responsibility are more important. For the time being, the notion of human dignity and rights should be built up in their thinking and vision, so that there must be a reflection of idealistic human rights protection approach in their day-to-day secret agency.

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mother and brother were injured in an attack on the Eid day by a local source of RAB and his aides. This is not the end of story because a Jhalakathi court has already directed police to record a murder case against 10 persons including four family members of Limon, who was maimed by RAB on March 23 last year. Considering these, it is easy to canvass the tragedy of commons but difficult to tolerate it by ourselves in practice!

In the UK, a source can never have a licence to commit crime. They may, in an authorised operation, infiltrate a criminal conspiracy or be a party to the committing of criminal offences, within the limits recognised by case law and with the approval of the authorising officer. Acting beyond these limits could lead to prosecution. The system of covert human source must be within the continual oversight of designated con-

maintains a relationship with another person for the covert purpose of obtaining information or providing access to information to another person, or covertly disclosing information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.'

The RIPA's realisation coincided with the Human Rights Act 1998 (HRA) of the UK, due to its nature as an enabling piece of legislation. RIPA's purpose is not an obligation to carry out the operations detailed; it merely provides a framework with which public authorities may carry out such operations in a way, which does not intrude on human rights issues, namely a right to a fair trial, and a right to privacy. In the Constitution of Bangladesh, we also have the provisions of right to equality before law (Article 27), right to freedom

LAW EVENT

Advanced arbitration training for the professionals

BAHANGLADESH International Arbitration Centre (BIAC) and International Law Institute (ILI), Washington DC, USA launched the country's first-ever Advanced Arbitration training today at a local hotel. The program was inaugurated by Barrister Shafique Ahmed, Minister for Law. In his speech, the Minister lauded commencement of the advanced training on Arbitration organized by BIAC and ILI with the support of IFC. Minister Ahmed said our courts are burdened with huge backlog of cases causing delay in disposal. To address the problem, the Government has undertaken a number of measures to expedite disposal of cases. A number of significant amendments have been enacted making ADR as a method of settlement of disputes mandatory. But to get results of these changes in our laws we require trained ADR professionals in the country.

This training programme will help create a pool of ADR professionals which is critical to implement the amendments already passed. The Minister praised the important role played by BIAC in institutionalizing arbitration in the country. He hoped that BIAC's effort to impart training in arbitration will bring good results. A day may not be very far when BIAC's name will be mentioned as seat of arbitration in commercial contracts side by side with Singapore and Paris. He also



praised the trainers from ILI and advised them to make their instructions relevant to the participants.

In his welcome statement, BIAC Chief Executive Dr. Toufiq Ali narrated the activities of BIAC. He said that recent amendments in our laws have made ADR mandatory in many areas. This training programme will fill the dearth of ADR professionals in the country. Dr. Ali referred to the on-going movement going on at Shahbagh Square, which is peaceful and disci-

plined. Although there has been some disruption to city traffic, business and industry is continuing normally. He observed that the whole nation is shocked at the gruesome murder of Blogger Rajiv and hoped that the killers will be identified and apprehended soon.

The Chairman of BIAC Council Mr. Mahbubur Rahman presided over the Meeting. He emphasized that trained manpower is essential to make ADR successful in the country. The three

business chambers: ICC-B, DCCI and MCCI have established BIAC with the view to facilitate the resolution of commercial disputes through ADR. He said that, with the help of the IFC, the private sector arm of the World Bank, BIAC is conducting awareness building events and arranging training on ADR regularly. This training, conducted with the assistance of the International Law Institute, is a step in the right direction. He pleaded for Governmental support to BIAC.

Mr. Latifur Rahman, Member of BIAC Council & Chair of the Transcom Group, stated that the 2.7 million cases pending in our courts means that there will be a big delay in disposal of cases. For businesses, ADR is vital. He referred to the youth organizing the Shahbag movement as making a true contribution to society, and stated that he hoped that those guilty of war crimes and atrocities in 1971 are tried and get the punishment they deserve. He also hoped that the Shahbag movement would not disturb the pace of economic growth. Mr. Sabur Khan, President DCCI in his statement spoke of the need to pay greater attention to small and medium enterprises. Carlos Davila of ILI also spoke at the function.

The training programme will be in two segments, covering two weeks. About 22 participants are expected to participate in each segment.

Press release by BIAC.

LAW WEEK

Bachchu Razakar lost opportunity to appeal

Convicted war criminal Abul Kalam Azad alias Bachchu has apparently lost his opportunity to appeal with the Appellate Division of Supreme Court as the deadline for appeal passed on February 20. The International Crimes Tribunal-2 sentenced the 65-year-old fugitive to death on January 21 convicting him on seven charges of crimes against humanity and genocide. The expelled Jamaat-e-Islami member, popularly known as Bachchu Razakar, was found guilty of killing 14 Hindus, raping two women, torturing two other persons and setting homes ablaze in Faridpur during the Liberation War. Azad went into hiding hours before the tribunal issued an arrest warrant against him on April 3, 2012. The tribunal held his trial in absentia. - *The Daily Star February 21 2013.*

Christian Youth Murder

HC upholds death penalty of JMB man
The High Court on February 20 upheld the death sentence of Jama'atul Mujahideen Bangladesh (JMB) leader Salahuddin alias Salehin, who was convicted of killing a Christian youth in Jamalpur 10 years back. Salahuddin, a Majlish-e-Shura member of the banned Islamist outfit, is now in Dhaka Central Jail's condemned cell. Led by Salahuddin, a group of JMB men killed Hridoy Roy of Sonarchar in Jamalpur's Sarishabari upazila on April 23, 2003. On August 20, 2007, the Speedy Trial Tribunal-4 of Dhaka passed a death sentence on Salahuddin after the investigation revealed that JMB men were behind the killing. The HC bench of Justice Syed Muhammad Dastagir Husain and Justice Md Emdadul Haque Azad upheld that verdict as the charges against Salahuddin were proved beyond doubt. - *The Daily Star February 21 2013.*

Medical Technologists

HC stays recruitment process
The High Court on February 20 stayed the process for appointment to 2,077 posts of medical technologists for the next three months. In response to a writ petition, the court also issued a rule upon the government to explain in three weeks why its advertisement for appointment to the posts should not be declared illegal. Six candidates holding medical diploma under Bangladesh Technical Education Board filed the writ petition with the High Court on February 19 challenging the legality of the conditions of the ad published by the Directorate General of Health Services. The HC bench of Justice Naima Haider and Justice Zafar Ahmed stayed the effectiveness of the advertisement and issued the rule. Deputy Attorney General Mokhesur Rahman represented the government. - *The Daily Star February 21 2013.*

HC seeks Hall-Mark's wealth info

The High Court on February 20 asked the authorities concerned of controversial Hall-Mark Group to submit its wealth statement before the court by April 20. The HC bench of Justice AHM Shamsuddin Choudhury Manik and Justice Mahmudul Hoque passed the order while hearing a rule over the legality of granting bail to Hall-Mark Group chairman Jasmine Islam by a lower court in 11 corruption cases. The Anti-Corruption Commission filed the 11 cases against 27 top officials of Sonali Bank and the Hall-Mark Group on October 4 last year in connection with a loan scam. The HC also fixed April 20 for further hearing on the rule. - *The Daily Star online edition February 20, 2013.*

Bail for 5 cancelled in Parag

Abduction Case
A Dhaka court on February 17 cancelled the bail to the five accused charged with abducting six-year-old Parag Mondol at Keraniganj in November last year. Awami Jubo League leader Aminul Haque alias Jewel Mollah was among the accused. Judge Md Abdul Majid of the Dhaka District and Sessions Judge's Court passed the order after public prosecutor (PP) Khandaker Abdul Mannan submitted five separate petitions seeking cancellation of the bail granted this month and last month. The four other accused include Mamun Miah, Abul Kashem, Alfaz Hossain and Rizvi Ahmed Anik. The High Court on February 13 issued a rule asking the government to explain why the bail of the five accused should not be cancelled. - *The Daily Star February 18 2013.*

Hall-Mark chairman's bail cancelled

Eleven days into granting bail to Hall-Mark Group chairman Jasmine Islam, a Dhaka court on February 17 withdrew its own order and cancelled her bail in 11 corruption cases filed in connection with a loan scam. Following cancellation of bail order, the High Court on February 17 withdrew its earlier order that asked a senior special judge of Dhaka to appear before it today for his explanation about granting bail to Jasmine. Judge Mohammad Zahirul Haque of the Senior Special Judges' Court passed the order after special public prosecutor Mir Ahmed Abdus Salam of the Anti-Corruption Commission submitted 11 separate petitions seeking cancellation of her bail. - *The Daily Star February 18 2013.*

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