

HUMAN RIGHTS
HUMAN RIGHTS ADVOCACY

Policing the police

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INJUSTICE anywhere is perilous threat to justice everywhere unless the former is dexterously redressed and adroitly curbed down. Recently the people of Bangladesh have observed with concern the awful spiraling of aggravating street brawl and intermittent killings of innocent masses by both turbulent agitators and trigger-happy police personnel. The grisly barbarity and marauding butchery have appalled the conscientious people ardently craving for a lull from this kingless turmoil. The world press is crying out obstreperously that we are on the border of fratricidal civil war. The agony of present time is that we have drifted away from the sacred humanity poetically articulated by a poet "the men of our days are not human". The latest episodes of violence in which more than one hundred people have allegedly been killed have called the state endeavor to protect the human rights and to ensure the viable existence of dissension in question. These unprecedented killings by trigger-happy law enforcers have demonstrated that though there are many bright sides of police but their discredits are overshadowing their feats; become quasi back and call of ruling elites. The apex court of Bangladesh has rightly observed that the Police force is largely manned by untrained, ill-equipped and inadequately motivated personnel and thereby becomes an easy prey to exploitation by ruling elites [BLAST v. Bangladesh 4 BLC 600].

The chronic belief that a decisive use of force to suppress dissension is imperative to perpetuate the clinging to power is colonial in nature. Due to this outlook the police have emerged as ruling party's chief instrument in subduing the vibrant opposition. The excessive exploitation of police is accelerated due to the archaic law (the police Act-1861) and outdated regulations (the Bengal police regulations 1943) by which the police is administered. The Indian Supreme Court has directed the government to enact a new police Act reflecting the democratic aspiration of people [PrakashSingh v. union

of India, W.P (civil) 310 of 1996]. The court was of the opinion that we cannot allow a dead hand of the past to rule over the living thoughts of the present.

To many policemen political independence means the resurrection of police Raj like the colonial legacy. To speak the truth with utter dejection that instead of being the benign friends of people they have emerged as abominable persecutor of the frail masses and sleazy sycophant of the powerful lobby. The lesson of history is



that power corrupts the holders and absolute power corrupts them absolutely. This dictum comes true in the case of police who the Supreme Court stipulates is arraigned with every short of vice though some of them may be fabricated but if one of the incriminations is found to be true it is a shame for the nation [BSEHR v. Bangladesh 53 DLR1].

Recent statistics shows that 65 percent of police-work is kept busy with street-job that is defending dissension force and protecting VIPs where the rest is used for the service of general people. Every power held by police is a trust for the sake of public. The police are endowed with the powers not to thwart the administration of justice but to ameliorate the sense of justice. Every power implies discretion accompanied by obligation.

The exercise of discretion shall be guided not by fickle caprice but by cogent sense of justice [Safiuzzman v. Bangladesh 56 DLR 324]. The heroic move to subdue the arbitrary powers of the police was brilliantly heralded by the Indian judiciary [D K Basu v. State of West Bengal- 1997 (1) SCC]. The apex court of Bangladesh has also come forward to repel the opaqueness and to ensure transparency in the police action [BLAST v. Bangladesh 55 DLR 363]. The court has echoed the long desired aspiration of people that the police is expected to be the utmost friend of all citizens not only in his dealings but also in his behavior and demeanor [Shahudul Haque v. State 58 DLR (AD) 150].

The innovation of life is the most sacred one guaranteed under Art.32 of our constitution. All other fundamental rights are standing on this precious cornerstone. The recent crackdown of law enforcers by the application of firearms has posed a massive blow to this first and foremost right. The application of fire arms is regulated by Bengal police regulations of 1943 permitting the application of lethal weapons only in three cases e.g. private defense, dispersal of unlawful assemblies and to effect arrest in certain situations (Regulation no -153). There is no gainsaying that right of private defense is available to the police but the police shall not inflict more harm than necessary [Regulation no-153(b)]. The Police is empowered to apply fire arms to disperse an unlawful assembly but this firing shall not be unleashed on mercurial sweet will but as a last resort [Regulation no-153(c)]. Police is required to give warning to the agitators of his intention of firing before pressing the trigger (Regulation no - 154). The law interdicts the firing at random and demands firing to be directed to specified targets and to cease as soon as the goal is actualized (Regulation no- 155). In a nutshell police need to remember that the right to life of the worst turbulent rioters may be devalued but not demonetized.

The writers are Students of Law, University of Dhaka.

LAW WEEK

WAR TRIAL

Kamaruzzaman to hang

A Dhaka tribunal on May 9 handed death penalty to Jamaat-e-Islami leader Muhammad Kamaruzzaman for two wartime offences committed during the country's 1971 Liberation War. The International Crimes Tribunal-2 found him guilty of five out of seven charges leveled against him. The prosecution failed to prove rest two charges, it said while reading out an excerpt of the verdict. Besides death penalty for two charges, the assistant secretary general of Jamaat, which was instrumental to foil Bangladesh's struggle for independence, was awarded life-term imprisonment in two cases and 10-year jail for the other offence. Kamaruzzaman was known to have been a key organiser of the Al-Badr, an auxiliary force of then Pakistani army which planned and executed the killing of Bangalee intellectuals at the fog end of the Liberation War, according to historical records. - The Daily Star online edition May 9, 2013.

Yusuf involved in genocide

AKM Yusuf, infamous as the founder of the Razakar force, was "involved" in at least seven instances of genocide in Khulna during the Liberation War in 1971. The prosecution on May 8 submitted formal charges against war crimes suspect Yousuf to International Crimes Tribunal-1 through the registrar's office. One of the seven genocide charges brought against him says around 600-700 unarmed Hindus of Dakra village in Bagerhat were killed at a temple by Razakars as ordered by the suspect on May 21, 1971.

The 15 war crimes charges pressed by the prosecution include genocide, killing, looting, arson, religious conversion and deportation of people. The prosecution also filed a petition with the registrar's office seeking issuance of a warrant against Yousuf and sending him to jail. According to the International Crimes Tribunal Act, 1973, tribunal-1 will pass an order whether the charges are taken into cognisance. - The Daily Star May 9, 2013.

Sayedee's War Crimes Trial SC asks for concise report on death sentence

The Supreme Court on May 7 asked the defence to submit by May 16 a concise statement on the death penalty handed down to Jamaat-e-Islami leader Delawar Hossain Sayedee for his crimes against humanity in 1971. The Appellate Division of SC passed the order after Sayedee's counsel Abdur Razzaq prayed for time for submitting the concise statement. Sayedee on March 28 appealed to the SC against his sentence, while the government filed a separate appeal to the apex court, seeking the capital punishment for him on all the eight charges he was found guilty to. Earlier, On February 28, the International Crimes Tribunal-1 sentenced Sayedee to death on two charges but found him guilty to eight of the 20 charges. - The Daily Star May 8, 2013.

Torching Holy Quran HC order on Ahmad Shafi May 13

The High Court will pass an order on May 13 on a writ petition seeking legal action against Hefajat-e-Islam Ameer Shah Ahmad Shafi in connection with setting fire to the Holy Quran during his group's Dhaka blockade on May 5. Aminur Rashid Raju, a Supreme Court lawyer, on May 6 filed the writ petition with the HC saying that Hefajat activists had kept the capital inactive on Sunday at Shafi's direction. They also attacked different structures and set fires to the books, including the Holy Quran which hurt all the Muslims' religious sentiment across the world, the petitioner said. He prayed to the court to summon Ahmad Shafi before it for giving explanation over the incident. Home secretary, inspector general of police, and Ahmad Shafi have been made respondents to the petition. On May 7, the HC bench of Justice Naima Haider and Justice Zafar Ahmed fixed May 13 for passing an order on the petition after concluding hearing on the matter. - The Daily Star May 8, 2013.

HC summons two Sylhet doctors for explanation

The High Court on May 7 summoned two doctors of Sylhet MAG Osmani Medical College before it on May 20 for making "contradictory" post mortem reports about death of a man in Sylhet. The college's Forensic Department Head Md Abul Mansur, and its lecturer Shamsul Islam have to appear before the HC by 10:30am on that day to give their explanations about the reports on the death of one Hazi Shawkat Ali. On May 1 last year, Shawkat was murdered by some miscreants in Chhatak upazila of Sylhet, and his bother Shafiqul Haque filed a case accusing seven people with Chhatak police station on May 3. Assistant Attorney General Gazi Mamun Rashid said the forensic department gave two post mortem reports - the first one on July 12 last year and another on September 20 -- about the death. The first report said the death of Shawkat was accidental in nature and the second one said the death was homicidal in nature, he said. - The Daily Star May 8, 2013.

LAW NEWS

Eliminating human trafficking from the global business

BUSINESSES may unknowingly be associated with the crime of human trafficking when their suppliers, subcontractors, or partners supply materials or products that have been produced by trafficked persons. "In today's globalised world, the risks of human trafficking in supply chains are significant throughout economic sectors and affect all States," says Joy Ngozi Ezeilo, UN Special Rapporteur on trafficking in persons, in her report to the 67th session of the UN General Assembly. Globalization has made supply chains considerably complex, involving multiple suppliers in various locations around the world. In this environment, monitoring of the supply chain has inevitably become challenging.

The use of trafficked persons can be seen across the supply chain in various sectors. The economic sectors mostly connected to human trafficking include agriculture and horticulture, construction, garments and textiles, hospitality and catering, mining, logging and forestry, food processing and packaging, transportation, and domestic services. For example, global clothing companies have been accused of exploiting migrant workers in Asia, while chocolate and confectionary companies have been reported employing children who have been trafficked for forced labour under deplorable conditions in cocoa farms in West Africa.

On one occasion, an international tobacco company was linked to trafficking and forced labour through the tobacco farm owners who supply tobacco to the company's subsidiary in Central Asia. Ezeilo observed that "while the international company had no direct contractual relationship with the tobacco farm owners, it has nevertheless found it difficult to disassociate itself from the allegations in the light of the significant economic benefits that it ultimately derives from such conduct".

Ezeilo says that States have an obligation under international human rights law to protect everyone within their jurisdiction against human rights abuses. While states have in fact taken anti-trafficking measures, these are often not enforced. Ezeilo stresses the importance of effectively enforcing such measures, as well as other related national laws, such as labour and immigration laws, which are equally crucial in eliminating the risks of trafficking in persons in supply chains.

In her report, she notes the value of creative laws and mechanisms directed at businesses to better monitor their conduct, such as national certification or labelling systems, public listing of corporations known to have used slave labour, and laws requiring disclosure of information on corporate efforts to prevent human trafficking. Businesses also have responsibilities to respect human rights and they are uniquely positioned to prevent or mitigate any risks of trafficking in their supply chains. "Businesses cannot, and should not, shy away from the issue of human trafficking, not only because it amounts to human rights violations and is a criminal offence in most States, but also because it creates reputational and financial risks to their operations," says Ezeilo.

Ezeilo recommends that all global businesses commit themselves to the UN Guiding Principles on Business and Human Rights and become signatories to the UN Global Compact. Ezeilo also urges businesses to exercise due diligence and conduct a risk assessment for their entire production chain in order to eliminate risks of human trafficking in their operations.

Source: Ungift.org.

YOUR ADVOCATE

This week your Advocate is Barrister Tasnuva Shelley, Advocate, Supreme Court of Bangladesh. Ms. Shelley is a Senior Associate of a renowned law firm established by the Late Mr. Syed Ishtiaq Ahmed, namely, 'Syed Ishtiaq Ahmed & Associates', which offers full range of legal advice and assistance to business clients in all sectors of industries, both domestic and international. The partners and associates of the firm are highly experienced in litigation and have a sizeable legal practice having expertise mainly in commercial law, corporate law, admiralty, employment and labor law, land law, banking law, constitutional law, telecom law, energy law, Alternative Dispute Resolution, Intellectual Property Rights and in conducting litigations before courts of different hierarchies.

Query

I am indeed in want of help from an expert about a financial family matters. My Grandfather (Paternal) was a food inspector and he died on 29th November, 1998. I have three uncles and two aunts in my paternal side (including my father they are six siblings). My father is second among them. Since my grandfather's death my grandmother is getting the family pension as she is the nominee in this case. My father is mentally disordered since 1990 and he is the only disordered children of my paternal grandparents. I am a student of Dhaka University and I have heard from a BCS government officer that my father is an eligible candidate for family pension if my grandmother dies and my father survives. He also mentioned that it is clearly stated in Bangladesh Service Rule; as to confirm his information I have gone through BSR but I didn't make myself enough comprehensible in this regard. My father was not selected by my grandfather as a nominee but my grandmother wants to give the nomination to my father in her absence if there is any provision. Furthermore, if my father becomes a nominee by my grandmother then what would be the legal process to make the case happen? Moreover, if he gets the pension then does he not get equal proportions to other properties of my paternal grandparents?

Anonymous

Response

Thank you for your query. Let me take this opportunity to inform you that there are various laws, policies, regulations and circulars related to pension benefits and the Pensions Act, 1871, the Public Servants (Retirement) Act, 1974, the Public Servants (Retirement) Rules, 1975, Pension Shahajikaran Nitimala, 2001, Bangladesh Service Rules (Part I&II), Bangladesh Employees' Benevolence Board Act, 2004, the Provident Fund Act, 1925, General Provident Fund Rules, 1979; Contributory Provident Fund Rules, 1979 are only a few to name on public pension. From your statements, you have quite a few concerns and I would answer them sequentially and try to provide a coherent and comprehensive response.

Firstly, it is my understanding that you would like to know whether a nominee of a family pension, being your paternal grandmother can nominate your father to receive the family pension in her absence. This could have after her death or while she is alive and my response with regard to both is affirmative. Provided that your paternal grandmother did not remarry, being the widowed wife of public employee being the Health inspector, she is entitled to full family pension for her whole life. Your paternal grandmother may at any time nominate one or

more members of her family (you mentioned 6 siblings) as successor for the whole or part of her family pension.

Secondly, you would like to know the legal process that your paternal grandmother should follow in order to do the above. Generally, a Power of Attorney (POA) is the legal document that gives the authority to act for another person in legal or financial matters and this legal document should have sufficient stamp duty paid and notarized by an appointed notary office for authenticating the POA.

Your third concern as to whether your father will get equal proportions in all other property of your paternal grandparents involves the law of inheritance



which is a separate issue. Your father as a legal heir shall get his portion in all other properties as per the law of inheritance. A succession certificate has always been an important document when family properties are inherited by the deceased's heirs.

Lastly, I would like to clarify that if your father's condition falls within the definition of "disability" under the Bangladesh Persons with Disability Welfare Act-2001, your father's current condition shall not have any adverse effect in any of his valid claims. However, there must be an appointed legal guardian to decide all matters on behalf of him. The local District's Disability Welfare Executive Committee shall register and provide your father with an ID which should be obtained (if not already) when the legal guardian of your father would be dealing/signing on his behalf (if not done already).

Also note that the loopholes in rules and regulations that govern pension often create scopes of rent-seeking, harassment that induce corruption therefore, proceed with extra caution when approaching government offices/personnel. I hope I have been able to give you some relief and advice you to take professional assistance while actually executing any legal document.

For detailed query contact: tasnuva.shelley@gmail.com

Dear reader,

You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those. Please send your mails, queries, and opinions to: Law Desk, 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel:9144330, 8124944, fax: 9144332; email: dslawdesk@yahoo.co.uk.