

Arrest and remand: Behind the apex court's salutary directives

Blanket arrests in Nasirnagar

Real culprits must be brought to justice

CONFIRMING fears of activists who had warned about blanket arrests in the wake of the attacks on the Hindu community in Nasirnagar, Brahmanbaria, a report published in this paper shows that in the name of nabbing perpetrators, the police are now arresting villagers with no clear evidence of wrongdoing. What is worse is that the powerful and the elite, who are allegedly behind the attacks have managed to escape arrests, some have fled, while many who were reportedly not even in the area during the attacks, are now behind bars.

Police maintain that they are following due procedure. But all evidence points to the contrary, and innocent villagers are being harassed. We understand, and demand, quick action on the part of the police. But procedures of law cannot be arbitrary and turn a blind eye towards the powerful who orchestrated the attacks. It is outrageous that in the name of justice, innocent men are being targeted as scapegoats.

We feel imperative to point out yet again the importance of proper investigation into this matter. The alleged involvement of political parties and the role of the police during the attack have raised legitimate questions and concerns. Therefore, a just and fair investigation to get to the heart of the matter is not only important for attaining justice, but also for ensuring the rights of minorities in the country. The credibility of our justice system and our commitment towards protecting the rights of minorities is at stake. Politics and blame games cannot stand in the way of finding the real culprits of this outrageous crime.

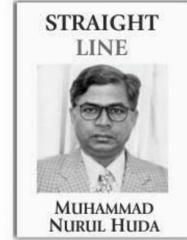
Darkness under the light

Drug market near DNC office

IT is surprising to think that the bustling trade in narcotics at Bastuhara Colony and adjacent Barisal slum in Patiya Chittagong is situated right next to the Office of the Department of Narcotics Control (DNC). Yaba, Phensedyl, heroin and other drugs are available to buyers and the trade is controlled by an underground drug baron who apparently has sources to keep him informed about any impending raid. The claims by DNC to have recovered a thousand bottles of Phensedyl in a month from a spot which is frequented by anywhere up to 500 customers is somewhat ridiculous.

The plying of drug trade in slums brings with it its share of violence over this very lucrative, albeit illegal trade. That none of the kingpins ever get caught during the raids obviously points to something not being done right. With so much cash involved, it is natural that some of it is being used to buy information about when and how the DNC plans to mount an operation.

Drugs pose a clear and present danger to the populace, both young and adult users. The open sale of banned substances in these areas suggests that these underground elements have some "protection" from somewhere. Unless the DNC goes seriously after drug peddlers, the fight against drugs will remain a slogan and lives will continue to be destroyed because the easy availability of these very harmful substance.



MUHAMMAD NURUL HUDA

STRAIGHT LINE
 MEDIA reports have it that the Supreme Court has issued a 19 point guideline for police, magistrates and judges to stop arbitrary arrests on suspicion and torturing arrestees on remand. The concerned section of the procedural legislation that is the Criminal Procedure Code has been termed as draconian. The Supreme Court observes that "In fact, the present Code is not at all suitable for the administration of criminal justice after so many changes made in the meantime and it is high time to promulgate a new Code".

It is interesting to note that media reports project Section 54 of the Code as a nefarious provision that empowers police to arrest anyone on mere suspicion (the law says reasonable suspicion), the apex court did not declare the said provision illegal. It would appear that in doing so the court displayed wisdom and pragmatism and therefore, there is a need to understand and appreciate the relevant issues and its import from a broader perspective.

Coming to law enforcement scenario of the developing countries, a cynical view is that politicians do not want to professionalise the police because control over it is central in a polarised society. Ironically, our political leaders who since 1947 occupied positions of power were enamoured by the administrative and police system left behind and enjoyed exercising power and authority, oblivious of their own demand of yesteryears for far-reaching administrative reforms. The periods of unconstitutional rule in Bangladesh brought out in full virulence the repressive role of the inherited police system.

Historically speaking, for the British, the maintenance of their rule in India was the prime consideration. Crime control was only a secondary objective to be achieved through fear of the police. The Penal Code, Criminal Procedure Code and the Evidence Act put in place a legal framework and a police force equipped for the maintenance of British rule by force. The Penal Code prioritises offences against the state and the maintenance of public order. It begins consideration of traditional crime only from Section 299 onwards. The Criminal Procedure Code begins with the "arrest of persons" and the "maintenance of public order and tranquillity" before getting to grips with criminal procedure relating to investigation and trial.

It would be relevant to remember that our political leaders have failed to introduce administrative changes in tune with the provisions of the republican Constitution of Bangladesh. The police have remained distant from the people and are as disliked as before.

The blanket power of superintendence vested in the government by the Police Act, 1861, is not appropriate in a democracy. Further, the role of intelligence agencies has not been redefined to protect the fundamental right to freedoms of association, expression and movement. The police in Bangladesh still keep a watch on all political activities without discrimination, which gives them authoritarian powers antithetical to the democratic spirit.

The CHRI (Commonwealth Human Rights Initiative) study on South Asian Policing says that it is a considered view that there must be clear understanding of what kind of policing is required by a democracy. Policing in South Asia requires reform of the relationship between police and the political executive, improvement in the management and leadership of police, attitudinal changes of all stakeholders, improvements in provisioning and, most of all, much better external oversight and accountability. These issues have to be considered at the outset and kept at the forefront of any discussion on reform.

The enforcement situation on the ground is admittedly complex; and both the law enforcers and

the rights advocates know the difficulties that exist between establishing principles on the one hand and applying them on the other. The political will has to be established along with embarkation of long-term plan with a multifaceted approach and adequate financial resources.

The primacy of political will lies in the fact that it is at the level of government that law is established. It is thus impossible not to evaluate this aspect when one is considering the subject of human rights and law enforcers. It has to be remembered that the police are required in accordance with law, and it is the law that establishes the condition in which they operate.

Legally speaking, Section 167 of the 'Code of Criminal Procedure' states that "whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 61, and there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of the police-station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest magistrate a copy of the entries in the diary hereinafter

multiple cases lodged against them at a particular point of time but subsequently got it in all the cases with the ushering in of another political regime.

From a literal reading of the law, one may not be able to make much of an issue, but the real problem lies in the application of the law on ground. There is no denying that both law enforcement personnel and the lower judiciary have failed to control or lessen the ill effects of indiscriminate action under Section 54.

So far as police officers are concerned, the register for enquiry under Section 54 maintained at police stations has not been properly supervised. Every enquiry of arrest under Section 54 needs to be disposed of within fifteen days and if no specific case is made by then, the arrestee has to be discharged. This has not been ensured. The majority of such arrests lead to no case being made against the arrested persons. However, for unlawful arrest or damage in terms of liberty or honour, no police officer is charged.

As far as the subordinate judiciary is concerned, the provision of bail for arrests under Section 54 is considered mandatory, unless the subject has been shown as 'unidentified'. Arrest under Section 54 for



prescribed relating to the case and shall at the same time forward the accused to such magistrate."

The magistrate has to decide, though prima facie, on the material contained in the diary relating to the case, whether or not the detention in prison of an accused person is necessary, and in coming to a conclusion, he has to exercise his judicial mind. Only when the magistrate could and did apply that mind can it be said that the order made for the additional detention in police custody is a valid order.

Real-life experience shows that the power to grant remand has not been applied as discreetly as desired in the law. The police as investigator has resorted to prayer for remand on far too many occasions and not enough judicial application of mind has been there in the process. A complaint is often made to the effect that remand is sought to apply to third degree methods with a view to obtaining judicial confession.

In view of the doubts and uncertainties, if the investigating agency stands accused of being dictated by the wishes of successive establishment, as is the apprehension, then we need to find out why this has happened. In the same vein, one needs to know why some very high-profile politically sensitive accused did not have the benefit of obtaining bail in any one of the

prosecution under preventive detention cannot be entertained. Preventive detention requires specific evidence.

If superior police officers and members of subordinate judiciary apply their mind, assert their authority and decide to act proactively, the abuse and misuse of Section 54 of the Criminal Procedure Code can be substantially controlled to the relief of hapless citizens.

The fact is that when investigative skills entailing unbiased efforts emerge consequent upon a strong political direction, there would be no need to resort to extra-legal measures. In such an atmosphere, information and intelligence would come voluntarily to the benefit of victims of crime.

The rule of law and criminal jurisprudence may appear to be unequivocally in favour of the offenders, the criminals, the law-breakers, the accused persons. That does not automatically give a license to resort to illegal measures because a civilised government must earnestly strive to demonstrate that law-enforcement effectiveness and civil liberties can co-exist in a society governed by the rule of law.

The writer is a columnist of The Daily Star.

Professors must have PhDs, at least

DHIMAN CHOWDHURY

IN Bangladesh public universities, a teacher can be promoted to a professor without a PhD degree if he or she serves eighteen years, has twelve published articles, and some administrative experience. This old belief requires further thought. Now-a-days, in good universities around the world, even an entry position without a PhD is rare. Having a doctoral degree as well as having published articles would be a good prerequisite in assessing a potential candidate for a professor. UGC regulations on minimum qualifications for appointment of teachers and other academic staff in universities and colleges in Delhi 2009 require that a PhD will be a compulsory requirement for even an associate professorship. Most universities around the world require professors to have a at least a doctoral degree. Even in Bangladesh, top five private universities do not have a single full time professor without a PhD degree. It is good news that some private universities recently require a Ph.D. even for assistant professorships.

So what is the rationale in requiring a doctoral degree for a potential professor? To earn a PhD, a faculty has to go through some institutional processes including giving and attending seminars, interaction with the internal and external members, and participating in a doctoral colloquium. Doing PhD is more institutional than writing articles. All these activities are aimed at creating better knowledge and new knowledge. Seniority and administrative experience cannot substitute the purpose of a PhD. Individual articles and a PhD work are not the same thing. An article can have internal inconsistencies with another article but a PhD work is likely to be more internally consistent. An article is narrowly focused but a PhD work is both narrowly focused and broad. An article usually deals with one idea whereas a thesis deals with more than one idea. One isolated idea has a greater chance of conflict with another isolated idea. But since a thesis deals with more than one idea in one place these have to be consistent. In a Ph.D. programme a candidate must complete a prescribed course of graduate study which he may not complete in his bachelor's programme. So in addition to his own discipline, a Ph.D. candidate must know some specific prescribed courses particularly of research, e.g.,

statistics, research methodology. A thesis is like a good book, it has to be examined by a panel of expert examiners, many colleagues, and several seminars. To my knowledge, all great pundits have at least a book. A book has several internally consistent ideas, each approached from different angle-philosophy, literature, anthropology, economics, behaviour, and many others. In a Ph.D. thesis philosophic explanation and interpretation of a thesis is generally expected but an article does not always have to satisfy this requirement. But since an article has space constraints, it usually focuses an idea from a limited discipline. An article has

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a smaller audience than that of a good book. Theory of knowledge suggests that an idea has to be explained from various disciplines but without sacrificing focus and specialisation. Nobel Laureate Frederick Hayek is relevant here; he argues that knowledge never exists in concentrated form. Knowledge shall be taken from many individuals who separately possess bits of knowledge and frequently contradictory knowledge.

When you write an article you associate with only your colleagues and peers of your own discipline but when you write a thesis you have to associate with the 'strangers', 'rest of the mankind' (in Adam Smith's words). One's ideas have to be accepted not only by friends and relatives but also by strangers; not only by

insiders but also by outsiders.

Good education is always mostly self-education. Here learning is not limited to specific syllabus, reading materials, and instructions. The researcher travels around wider time, place, persons, history, subjects, and sources of knowledge. Unlike course work, which is basically oriented towards a definite syllabus, skill, procedure, Ph.D. work predominantly is an intellectual exercise. Here the supervisor with whom the researcher works, is more friendly with the latter, and considers him as his colleague. The supervisor is in fact a co-worker and many a times, publishes articles from the thesis under joint bylines. The researcher has more freedom in his learning and working environment. Unlike a teacher in a course work, the supervisor in a Ph.D. work does not give definite answers rather he tries to arouse thinking in the mind of the researcher. The supervisor gives clues at best, and the researcher proceeds further on his own. The entire process gives the researcher virtues such as independence, confidence, tolerance, love for respect and fellow feeling.

Coherent theory suggests that a belief must be consistent with other beliefs, related and unrelated. A Ph.D. scholar has to research not only his own discipline but he has also to search for other beliefs not related to his own discipline. In this process, he will learn two things: first, other beliefs which are consistent with his own will further explain, interpret, widen and broaden his own beliefs in the light of these other beliefs. Second, he will find some gaps and differences or even contradictions in these beliefs. In these cases, he will search for the reasons of these differences and contradictions and diagnose these reasons. He will find bad reasons, good reasons, and better reasons. This evaluation exercise will unearth differences in beliefs for factors such as time, place, person, history, socio-economic conditions, and environment. He will weigh stronger reasons against other weaker reasons, which is the precondition for creating better knowledge. But writing articles do not always follow this epistemic process. That is why a Ph.D. work is usually considered a foundation for doing good research and writing good articles.

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LETTERS TO THE EDITOR
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A historic election comes to an end
 Despite the mixed opinions that ran through the US elections, we congratulate the newly elected US President Donald Trump, as well as people of the US. We hope that the President Elect will uphold rights of refugees and immigrants with the secular spirit of the US constitution, irrespective of their religion, caste, race and ethnicity; and continue with their open market policies and international laws.
 The US administration can play a crucial and effective role in solving global issues, such as terrorism and climate change, to facilitate peace, stability and security worldwide. We hope they will continue in these efforts.
 Md. Abdur Rahim
 University of Dhaka

Why is rape increasing?
 Rape incidents are increasing at an alarming rate in Bangladesh - from 603 cases in 2011 to around 800 by 2014. 86 children were raped in 2012, 280 were raped in 2015; more than one-third of them were under 12 years.
 Possible causes are the lack of religious values and respect for social bonds. Moreover, abuse of internet, such as the availability of pornography, is destroying the youth's morality and encouraging heinous activities.
 Last year, around 1500 cases were reported against sexual assaulters, but we don't know how many of them have been resolved. The government must implement strict rule of law against such crimes, and take measures to ensure girls' safety. Meanwhile, social awareness must be provided to the derailed young.
 Minhazur Rahman Rezvi
 On email