

A General Overview on Arrest and Remand under Criminal Justice System of Bangladesh.

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ABSTRACT

Arrest is the starting point of imprisonment. Return or send back is the dictionary definition of the term remand. The misuse of the power of arrest and remand is the very crucial issue in Bangladesh. This paper is attempts to explain the power of arrest and remand and also the practical use of it under the “Code of Criminal Procedure, 1898”. The power of arrest and remand by the law enforcement agencies is vast but sometimes they abuse the power in so many cases. To ensure the legal protection of unlawful arrest and torture in remand, government should amend the law and take necessary steps to ensure the human rights. This research paper has tried to analyze the issue and knowing the effect of the abuse of the power by law enforcement agencies. Finally, the researcher has tried to given opinion and their implementation to protect the human rights.

Key words: arrest, remand, cognizable, non-cognizable, judgment.

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I. Introduction:

From the very beginning of the British period in this sub-continent “criminal justice system” was introduced. The code of criminal procedure is a part of “criminal justice system”. It is a procedural law which was enacted in 1898 by the British ruler. In this article we are discussed on the topic “Arrest and Remand” as a part of the procedural law. We are trying to highlight the realistic use of the term under “the Code of Criminal Procedure, 1898” in Bangladesh perspective. As we have shown that what is arrest and remand, what is the purpose behind these, how can it apply under the criminal justice system and relevant sections also. Arrest and remand are both two important part of criminal procedure, as this reason the use of these part in practical field is wider. For applying the ‘power of arrest and remand’ by the law enforcement agencies is very sweeping one. Under the system of the procedure in Bangladesh, the misuse of power of remand and arrest by law enforcement agencies in this country is very alarming.

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So many custodial deaths and torture by the police in remand are very crucial one. Arrest by the police of innocent person is also another misuse of police power under section 54. So many cases like these are happen for political reason, bribery or not willingness to illegal offer by the police. As, we have shown that how we can improvise it and what types of necessary steps should be taken and so on.

We have also try to shown that constitutional safeguard, international and national restraints on arrest. Finally a well-known case regarding arrest and remand "*BLAST v. Bangladesh*".⁴ In this matter, the High Court Division has issued 15 orders to the Government, as well as recommendations for amendments to the CrPC.

II. Historical background of Arrest

The word arrest is of "Anglo-Norman" origin, derived from the French word '*arret*,' which means 'to stop or stay,' and denotes a person's detention. The definition of the term arrest can be found in a variety of dictionaries, depending on the context in which it is used. Arrest is referred to by a variety of slang phrases all across the world. The term "nick" can also refer to a police station in British slang, and the adjective "pinched" is sometimes used. The phrase "collared" is sometimes used in the France and United States. On occasion, the terms "lifted" or "picked up" are used.

Chances are you have seen someone get arrested either in true life or on a television program. Hopefully, you have not been captured yourself. In any of these illustration, you will retraction that the police place handcuff s on the person, read a set of rights to him, and take him or her into custody. This looks like all there is to the arrest process. Well there is a lot more that goes into the method.

While individual arrests stretch back to the "Middle Ages", the history of detaining people under the recent statutory framework in the United States may be marked back to early 'Anglo-Saxon law', when people could be charged with a crime. The law evolved into legislation over time, which was then construed in case law.

Currently, if there is probable reason to think that a crime was done and that a specific person committed the offense, one can be arrested in any state in the United States.⁵

III. Conceptual framework of Arrest:

A person is arrested and brought into custody (legal protection or control) when they are suspected of or seen committing a crime. The individual may be interviewed and/or charged after being taken into custody. In Criminal Justice system arrest is the beginning of the legal proceeding.

Law enforcement agencies and other legal authorities have the authority to make arrests. It is legal to detain a citizen in some jurisdictions; for example, in England and Wales, anybody can arrest "anyone whom he has reasonable grounds for suspecting to be committing, have committed, or be guilty of committing an indictable offence," albeit certain requirements must be followed. If someone is caught doing something they shouldn't be doing, they could face serious consequences and is unwilling or unable to show legal identification, same power are practice in Germany, Austria, Switzerland, France and Italy.

Many governments demand that an arrest be conducted for a completely legitimate purpose as a protection against abuse of power, such as the United States 'requirement of reasonable cause.

Furthermore, in most democratic countries, an individual can only be kept in custody for a short period of time (usually 24 hours in the United Kingdom and 24 or 48 hours in the France and United States) before being charged or released.⁶

3.1. Objectives and Legal Characteristics of Arrest:

Arrest is the starting point of imprisonment. Arrest is the first step toward incarceration. Preventive (for example, to end a violation of peace), punitive (for example, to bring someone in front of a magistrate to answer for a crime or be bound over), and protective (for example, to take someone before a magistrate to answer for a crime or to be enslaved) are all reasons for arrest (for example, where mentally sick persons are arrested for their own protection).It is not necessary for an arrest to be followed by a charge. A policeman who has reasonable suspicions that a person has been charged with a crime may arrest that individual and question him in the more official setting of a police station. Arrest must be justified by a positive legal norm. A constable is deemed to not be acting in the execution of his duties if he can't defend his conduct with legal authority.

"*Lewis v. Chief Constable of the South Wales Constabulary [1991]*" was the case. 1 All ER 206 states that whether or not a person has been arrested is determined by whether or not he has been deprived of his personal liberty to go anywhere he wants. While every arrest results in a restriction of liberty, not every deprivation of liberty results in an arrest. If a denial of liberty is illegal, it may be considered false

⁴55 DLR,363

⁵[<https://study.com/academy/lesson/arrest-history-procedure-information.html>, last visited on 10 April 2022]

⁶[<https://en.m.wikipedia.org/wiki/Arrest>, last visited on 10 April 2022]

imprisonment, and it will be illegal if it is not based on the appropriate exercise of a legal power. False incarceration can result from any unlawful confinement (whether or not an unlawful arrest). A person who is falsely imprisoned is someone who is unlawfully arrested by a police officer.⁷

3.2. Nature of Arrest:

There is no requirement that following an arrest, a charge should be filed. An arrest happens when a police official says that someone has been arrested, when he employs violence to confine the person in question, or when he makes it obvious, by words or conduct, that he will use force if compulsory to restrain the person from getting where he wishes to go. As a result, the police official must say to the person who is about to be detained, "I am arresting you."

3.3. Who can make Arrest?

Both the general population and police officials have the ability to make arrests under the Code of Criminal Procedure, 1898. As a result, police officers and, in some cases, individuals may make arrests.⁸

3.4. Procedure of an Arrest:

When a person is bodily brought into the police custody against their desire for questioning or hearing, this is known as an arrest. Handcuffs are frequently applied and the individual is taken to a police station or jail. The Miranda Warnings (or 'Miranda Rights') are read to the person at this point. Miranda Warnings are statements that inform a suspect of their "rights against self-incrimination, including the right to stay silent and the right to an attorney". When someone is arrested, they are unable to leave and are held in police custody. When the cops want to make an arrest, they require what's called probable cause, when there is enough evidence against someone to suspect they committed a crime, it is called probable cause.⁹

In the Code of Criminal Procedure, 1898 sections 46 to 53 provide the method for making an arrest. The entire technique can be broken down into the following steps:

- (i) When a police officer or an individual makes an arrest, they might actually touch or restrict the person who is being detained. (sec.46)
- (ii) If the subject resists or tries to elude arrest, the police official or a person may use all methods required to make the detention.(sec.46)
- (iii) A police official or a person cannot kill the person who is being arrested in the process of making the arrest.(sec.46)
- (iv) While doing an arrest on a warrant or in a warrantable matter, the police officer may request open entry into any dwelling or location if he has reason to suppose the person who will be apprehended is screen off or has entered.(sec.48)
- (v) If access to such a location cannot be gained under section 47, the police officer may enter the home or dwelling to make the arrest.(sec.48)
- (vi) If a break-in is attempted into a 'zanana', the police officer must provide the women inside the 'zanana' the option to flee.(sec.48)
- (vii) The person who has been detained should not be held for any longer than is required to prevent him from fleeing.(sec.49)¹⁰

3.5. Section 54: Arrest without probable cause

The common power of arrest by a police officer is outlined in Section 54 of the CrPC. In general, this power means that a police official can arrest someone without a Warrant or any other form of authorization from a higher dominion, court, or judge.

Without a magistrate's authorization and without a warrant, any police officer can make an arrest -

- (i) any individual who has been convicted of a crime or against whom there has been a feasible allegation or believable information obtained, or any one has a good faith suspect of having committed a crime;
- (ii) any individual who has any tool of housebreaking in his possession without a legitimate cause bears the responsibility of demonstrating that excuse;
- (iii) anyone who has been declared an offender by the government or under this code;

⁷Halim, M. A. (2006), Textbook on the Code of Criminal Procedure, Beacon Publications, Seventeenth Edition, January, pp.63-64.

⁸Halim, M. A. (2006), Textbook on the Code of Criminal Procedure, Beacon Publications, Seventeenth Edition, January, p.64.

⁹[<https://study.com/academy/lesson/arrest-history-procedure-information.html>, last visited on 10 April 2022]

¹⁰Halim, M. A. (2006), Textbook on the Code of Criminal Procedure, Beacon Publications, Seventeenth Edition, January, pp.64-65.

- (iv) any person in whose possession, something that is fairly assumed to be stolen property is discovered, and who is fairly assumed of having committed a crime in relation to such object;
- (v) any individual who impede a police official in the performance of his or her duties, or who has absconded, or seeks to flee, from legal custody;
- (vi) anyone who has a reasonable suspicion of being a fugitive from Bangladesh's military services;
- (vii) every individual who has been involved in, or against whom, a feasible allegation has been filed, reliable information has been obtained, or there is a trustworthy suspicion that he has been involved in, any conduct committed outside of Bangladesh that, if performed in Bangladesh, would have been punishable as an offence, and for which he is liable to be apprehended or detained under any law relating to extradition or "the Fugitive Offenders Act, 1881" or otherwise;
- (viii) any released offender who violates a rule enacted under section 565, subsection (3);
- (ix) any individual, for whom another police officer has issued a requisition, provided that the request states the person to be detained as well as the offense or other basis for the detention, and it appears from the requisition that the subject might be legitimately arrested by the officer who issued the requisition without a warrant.

3.6. Scope and application:

The purpose of this provision is to grant the police the broadest powers possible in cognizable circumstances, with the main restraint being the necessity of reasonableness and reliability to confine abuse of the powers. The verb "may arrest" indicates that the power to arrest is delegated. The rights granted by this clause must be used with caution. A police officer, by virtue of his position, has the authority to make an arrest under this section based on reasonable suspicion (PLD 1966 SC 432). However, the lawmaker did not intend for the police officer to be able to arrest anyone he wants at his leisure, even if he is a peace-loving citizen of the country. A '*bona fide*' belief on the part of the police official that an infraction has been occurred or is about to occur is referred to as reasonable suspicion (AIR 1943 Mad 218).

"Bangladesh Legal Aid and Services Trust (BLAST) and others vs. Bangladesh and others 55 DLR 363 (HC)."¹¹"The suspicion is based" if a person is arrested on reliable suspicion. Such a generic statement cannot justify the arrest if the police official explains the arrest by indicating that, the person is suspected of being engaged in a cognizable offense."

Bangladesh Legal Aid and Services Trust (BLAST) and others vs. Bangladesh and others 55 DLR 363 (HC)–"The word "concerned" used in the clause is a wide term that allows a police officer broad authority to arrest anyone by claiming that the person arrested is engaged in a cognizable offense."¹¹

3.7. An examination of the General Power of Arrest:

We can see that section 54, which deals with general power arrest, offers the police a lot of power and should be strictly construed. The goal of the code is to provide police the broadest powers possible in cognizable circumstances, with the main restriction being the necessity of reasonability and trustworthiness to prevent power abuse. The word "may arrest" indicate that the authority to arrest is delegated. A police official is not always obligated to make arrests for criminal offenses. This section offers a police official broad authority to make a detention without a magistrate's order and without a warrant only in particular circumstances that are limited by the rules of this section, thus it's important to What constitutes a trustworthy allegation or suspicion depends on the facts of each case, but it must at the very least be based on specific facts tending to cast suspicion on the person arrested, rather than on an obscure suspicion or knowledge. Moreover, the police do not have the authority to arrest someone just on the basis of the possibility that something would later be proven against them, as they occasionally appear to do be cautious and circumspect when using these powers.

3.8. Instances of Arrest's Special Power:

- (i) A vagabond or persistent offender may be arrested without a warrant by any officer in charge of a police station, under section 55.
- (ii) A police official can deputize a inferior to make an arrest without a warrant, and the subordinate officer can then make the arrest.(sec.56)
- (iii) An individual who commits a 'non-cognizable' offense in the presence of the police and deny to disclose his name and location, or whose name and location are suspected to be fraudulent, may be arrested by a police officer.(sec.57)
- (iv) Any individual who is a promulgated offender or who, in his opinion, commit a non-bail able and 'cognizable' offence may be arrested without a warrant by a private person.(59)

¹¹Huq, Zahirul. (2018), Law and Practice of Criminal Procedure, Kamrul Book House, Ninth Edition,pp.79-81.

- (v) Within the local bounds of his power, any magistrate may arrest or direct the arrest of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant in his presence.(sec.65)
- (vi) If someone in lawful custody flees or is rescued, the person from whose custody he escaped or was rescued has the right to pursue and arrest him anywhere in Bangladesh.(sec.66)
- (vii) Any participant of an unlawful assembly who refuses to disperse despite being ordered to do so by a police official in charge of a police station may be arrested without a 'Warrant'.(sec.128)
- (viii) A person who is unable to be stopped from committing a 'cognizable' offence by any other means may be arrested without a warrant by any police officer.(sec.151)
- (ix) Any individual who unable to comply with the terms of a sentence that has been suspended or remitted by the government may be detained without a 'Warrant' by any police official.[sec.401(3)]¹²

3.9. Arrest by private persons:

Any private person may arrest someone who exercises a 'non-bail able' and 'cognizable' offence or is a proclaimed offender under section 59. He must immediately hand over the individual he has apprehended to a police officer or have him taken into custody and taken to the nearest police station. If a 'cognizable' offence and non-bail able offence is done in his presence, a private person may make an arrest.¹³

3.10. Rights of an arrested person:

A person arrested under ordinary law in Bangladesh has four fundamental or constitutional rights or safeguards, according to Article 33 of the Bangladeshi constitution. They are:

- (i) He cannot be held in custody without receiving prompt notification of the reasons for his detention.
- (ii) He must be able to consult with and be represented by an attorney of his choice.
- (iii) Within 24 hours of his arrest, it is his right to be entitled to appear in front of the nearest magistrate and
- (iv) Without the permission of the magistrate, he cannot be held in custody for more than 24 hours.¹⁴

3.11. Abuse of police power of Arrest:

The police's power of arrest under Section 54 is a serious problem in this country. This gives the cops a lot of power, and there's a danger they'll abuse it. Different human rights watchdog organizations have identified police abuse of power under 'section 54' of the CrPC and 'The Special Powers Act, 1974' as the main sources of human rights violations in the country. Despite the safeguards included in "the Code of Criminal Procedure and the Constitution" mentioned above, the power of arrest is being used incorrectly and unlawfully in a substantial number of cases across the country. This ability is frequently used to extract money and other valuable property from the person detained, or at the request of an opponent of the person arrested. Even in civil conflicts, this power is used on the basis of a false claim made at the request of an opponent against a party to a civil dispute. The CrPC's broad powers to arrest a person even if they are charged with a bail able offense (not just cognizable offenses, but also non-cognizable offenses), as well as the ability to make preventive arrests (e.g. "City Police Enactments"), invest the police with tremendous powers that can be readily abused. There is no internal process in place in the police department to monitor such usage or abuse, and complaints of such misuse or abuse to higher police officials rarely result in action, save in rare circumstances.

In Bangladesh, the majority of detention deaths are pure ransom killings committed by uniformed criminals. The misuse of power by police and magistrates under 'sections 54 and 167' has been extensively explored by the Supreme Court's High Court Division in "BLAST v. Bangladesh (55 DLR 363)".

IV. What is Remand?

Return or send back is the dictionary definition of the term remand. However, it has two different meanings in the legal world. To begin with, it is employed to return the accused to the responsible authority's custody. Second, it is used to send matters back to the inferior court from the appellate court.

Detaining someone until their trial, also known as pre-trial custody, preventive detention, or temporary detention, takes place after they have been arrested and charged with a crime. A person is imprisoned in a jail or detention center or placed under house arrest while on remand. The terms "remand" and "preventive detention" are used interchangeably, however "remand" is commonly used in 'common law' jurisdictions and "preventive

¹²Halim, M. A. (2006), Textbook on the Code of Criminal Procedure, Beacon Publications, Seventeenth Edition, January, pp.68-69.

¹³Haque, M. H. (2019), Trial of Civil Suits and Criminal Cases, Universal Book House, Third Edition, February, p.366.

¹⁴The Constitution of the People's Republic of Bangladesh.

detention" elsewhere. However, "remand" is only used in formal documents in the United States, and "held in custody until trial" is used in the media whereas even by 'judges and lawyers' when speaking to the public. Custody refers to detention before a charge, while incarceration refers to detention after a conviction.¹⁵

4.1. Need and purpose of remand:

The legal fraternity is divided regarding the need for remand, but it is generally understood that remand becomes necessary on the following grounds:

1. When the initial goal of remand is to acquire custody of a person in order to make sure that the accused attends a required court hearing;
2. For the sake of victim safety; and
3. For the final determination of cases involving the accused who has been remanded in custody.

4.2. Duration of Remand:

Section 167 of the Code of Criminal Procedure contains the following provisions:

- (i) In total, 15 days in police or prison custody maximum.
- (ii) If the investigation cannot be completed within 120 days, of receiving the information relating to the commission of the offence or the magistrate's order for such investigation, the magistrate empowered to take 'cognizance' of the offence or make the order for investigation may release the accused on bail if the offence is not punishable by death, life imprisonment, or imprisonment for more than ten years.
- (iii) If the investigation cannot be completed within 120 days, of receiving the information addressing to the commission of the offence or the magistrate's order for such investigation, the Court of Session may release the accused on bail if the offence is punishable by death, life imprisonment, or imprisonment for more than ten years.
- (iv) The "Magistrate" or the "Court of Session" must record the basis for the accused refusal to be released on bail under this provision.
- (v) As a result, there is no legal limit on how long a magistrate can order detention in police custody. How many times may the magistrate order detention for a period of not more than 15 days? This isn't mentioned anywhere. The Indian CrPC stipulates that a total term of imprisonment in custody cannot exceed 60 days, and that such detention cannot be in police custody.
- (vi) It should be emphasized that in England, it is possible to be held in police custody for no more than three days.
- (vii) There is no statutory time limit for remand if the defendant is out on bail.

4.3. Remand after a finding of guilt or the start of a trial:

Section 344 governs the term of remand following the taking of cognizance of the offense or the start of the court trial.

- (i) Any trial court, other than a magistrate court, has the power to remand or adjourn an investigation or trial for as long as it sees fit, and to send the accused to jail custody.
- (ii) Any magistrate court, whether it is a trial court or a court of inquiry, can remand an investigation or trial, but only for a maximum of 15 days at a time.

4.4. The nature of remand under section 344 and how it differs from remand under section 167:

- (i) The remand and custody described in section 344 are not the same as those described in section 167. Section 167 remands people to police or judicial custody, but section 344 remands them to judicial custody alone.
- (ii) The detention under section 167 is for the exclusive purpose of investigation, whereas in section 344 the 'remand' is for the sole purpose of trial or inquiry due to the absence of a witness or any other legitimate reason.
- (iii) Section 167 remand is for inquiry only, whereas section 344 remand is for pre-trial detainees.

4.5. The misuse of power and the application for remand:

A police officer prays for 'remand' claiming that the accused has committed a 'cognizable' crime and that 'remand' is required for interrogation. Despite the fact that 'remand' for the purpose of interrogation is not specified in sub-section (2) of section 167, "the practice is that an accused is taken on 'remand' only for the purpose of questioning or extortion of information from the accused through interrogation." There is no clear guideline as to whether a magistrate should accept or reject such a prayer, and this legal void allows both police

¹⁵[<https://www.legalserviceindia.com/legal/article-573-remand-by-a-judicial-magistrate-if-investigation-is-not-completed-within-24-hrs.html>, last visited on 15 April 2022]

officers and magistrates to misuse the system. Police officers seek unjustified remand under section 167 of the code because they are prompted or dictated by the 'Executive organ', or because of personal conflict or aggrandizement. And, in the absence of any proper guidance, whether mandated by the executive organ or not, magistrates have been accustomed to following a "parrot-like" order on the forwarding letter of the police officer allowing detention in police custody or in jail.

According to proponents of police remand, it is a civil need since, if force is not utilized, no hint can be gleaned from hard-core criminals. On the other end of the spectrum, there is a generally held belief that sending an apprehended individual to police detention establishes prima facie that the confession was not given voluntarily. When the entire state apparatus is working against him, he is unable to confess voluntarily, and as a result, the provision for several police remands is in place (even if it is only for a total of 15 days) completely defeats the objective. This is because, until a person has previously served 15 days on remand, appearing before a magistrate does not guarantee that he would not be sent back to police remand. As a result, the magistrate must provide reasons for granting a remand. "Article 35(4), of the constitution stipulates that no one can be forced to testify against themselves." As a result, the CrPC's section 167 provisions are in direct conflict with the constitution's provisions. The British government passed the CrPC in 1898, when there were no fundamental rights as we have them now in our constitution. This provision of police remand appears to be unlawful in light of the current provision in article 26, and this is substantially the finding of the High Court Division in the 'BLAST' case.¹⁶

4.6. The BLAST Decision: Background

On 7 April 2003, the court handed down its decision in writ petition no.3806 of 1998, which was later reported as "Bangladesh Legal Aid Services Trust and others in 55(2005) DLR (HCD) 363".

As previously stated, the complaint was filed by 'BLAST' a few months after Rubel's unexpected death in police custody. Brutal treatment of Rubel (a teenage student at Bangladesh's Independent University) by police in custody and later in front of his relative outside his home sparked great public outrage, prompting the then-government to establish an investigative committee. Rubel was beaten up by a number of police officers, who were ultimately punished. Sections 54 and 167 are, of course, at the heart of the decision.

4.7. The High Court's decision on sections '54 and 167' of the Cr.P.C.

Mr. Justice Md. Hamidul Haque and Mr. Justice Salma Masud Chowdhury of the High Court delivered the judgment on the writ petition on April 7, 2003, issuing a 15-point instruction to the government to be obeyed by the Law Enforcement Agencies in arresting, detaining, remanding, and treating offenders. The court also indicated that various procedural adjustments in regard to sections 54 and 167 be implemented in order to prevent arbitrary arrests and deaths in custody, and requested the government to comply with the decision as soon as possible.

1. A police official may not arrest a person under section 54 of the code in order to hold him under section 3 of "The Special Powers Act of 1974".
2. A police official must reveal his identification and, if requested, his identity card to the individual arrested as well as anyone else present at the moment of the arrest.
3. He will keep track of the reasons for the arrest as well as other details.
4. If he discovers any signs of injury on the arrested individual, he must document the cause of the injuries and transport the person to the nearest hospital or government doctor for treatment, as well as acquire a certificate from the attending doctor.
5. Within three hours, after delivering the person detained into the police station, he must provide the reason for his arrest.
6. If the individual is not apprehended at his home or place of business, he must notify the person's nearest relative through phone or messenger within one hour after delivering him to the police station.
7. He must allow the individual arrested to consult with a lawyer of his choosing or meet with any of his close relatives if he so wishes.
8. In his forwarding letter under section 167(1) of the CrPC, "the police officer must explain why the investigation could not be completed within twenty-four hours and why he believes the accusation or information against that person is well-founded when that person is brought before the nearest magistrate under section 61. He will also send a copy of the relevant entries in the case diary BP form 38 to the same magistrate."
9. If the magistrate is convinced that the allegation or information is trustworthy and that there are ingredients in the case diary for retaining the individual in custody, "the magistrate will issue an order for further detention in jail. Otherwise, he must immediately release the individual."

¹⁶Halim, M. A. (2006), Textbook on the Code of Criminal Procedure, Beacon Publications, Seventeenth Edition, January, pp.74-78.

10. If a magistrate releases a person on the grounds that the allegation or information against that person presented before him is unfounded and there are no materials in the case diary against that person, "he may proceed under section 190(1) (c) of the penal code against the police officer who arrested the person without a warrant for violating section 220 of the penal code."

11. If the Magistrate orders further custody in jail, "the investigating officer shall, if necessary, interrogate the accused in a jail room for the purpose of investigation until the room described in recommendation B2(b) is built."

12. "The investigating officer must outline the grounds in detail for taking the accused into police custody for interrogation and for the magistrate's consideration in the application for taking the accused into police custody for interrogation the case diary must produce. If the magistrate is satisfied that the accused should be returned to police custody, he may approve detention in the police custody for duration of not more than three days after recording reasons."

13. If the magistrate orders detention in police custody, "the magistrate must implement the recommendations in B(2)(c)(d) and B(3)(b)(c) (d)."

14. The police officer who arrests a person under section 54, "the investigating officer who takes a person into police custody, or the jailor of the jail, as the case may be, shall immediately notify the nearest magistrates, as advised in recommendation B(3)(e), of any person who dies in custody."

15. Immediately after obtaining knowledge about a person who death in the police custody or in jail, "a magistrate shall conduct an investigation as recommended and recommendation c(1)."

With instructions to implement the directives immediately, the regulation was made absolute. Since the verdict, only a few interrogations have taken place at the jail gate or in the presence of the arrestee's lawyer or relatives.¹⁷

Despite statements from law enforcement agencies that torture in remand for interrogation is a weapon for extorting information from an arrestee, the High Court Division of Bangladesh observed in *BLAST v. Bangladesh* that "any information obtained by using torture, the similar information cannot be treated as evidence and cannot be used against him" in light of Article 35 of the constitution. The procedure of remanding an accused and using force to get information is "totally against the spirit and express provisions of the constitution," according to the High Court.

4.8. Constitutional and International Barrier on Arrest, Remand and Torture:

All human rights documents are built around this concept UDHR¹⁸ affirms "the foundation of global freedom, justice, and peace, the inherent dignity and equal and inalienable rights of all members of the human family."¹⁹ The concept of human dignity is dynamic, in the sense that its fundamental components develop in quantity and volume through time.²⁰

Human rights are crucial for protecting human dignity for every human person, yet all human rights cannot be respected equally.²¹As a result, priorities can be established, which may differ from country to country. However, some fundamental Human Rights may take precedence over all others, regardless of which country they apply to. For example, the right to life, the prohibition of torture, equality before the law, equal protection under the law, and so on. Even when an official state of emergency is declared, "the International Covenant on Civil and Political Rights (ICCPR, 1966)" allows for the restriction of some rights to the degree strictly required by the circumstances. Certain fundamental rights, such as the right to life and the prohibition of torture and other inhuman, cruel, or degrading treatment, may never be limited.²²

"No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment," declared Article 5 of the Universal Declaration of Human Rights. Later, this single article helped to establish a full convention, 'the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. 'Although the phrase "torture" appears in many important International Human Rights texts, it is

¹⁷Hossain, Sara, *Human Rights in Bangladesh 2008*, 1st edition(Dhaka: ASK, 2009), p.89.

¹⁸Universal Declaration of Human Rights (adopted by the United Nations General Assembly on 10 december, 1948).

¹⁹Ibid

²⁰Rahaman, Mizanur, *Unveiling Democracy State & Law* (Dhaka: Parama publishers, 1999) p.12.

²¹Reza, Farhana, 'Human Dignity versus Torture: Legal segments of Bangladesh', Rahman, Mizanur, ed., *Human Rights Sixty Years after UDHR* (Dhaka: ELCOP, 2008),p.223.

²²International Convention On Civil and Political Rights,Art.4.

the Torture Convention that clearly defines the term "torture." The Torture Convention²³, which was enacted on December 10, 1984, and has 145 state parties as of April 2008²⁴, recognizes human rights as the inherent dignity of all human beings. Articles 3 and 5 of the UDHR indicate that everyone has the right to life and protection against torture. "Article 3 of the UDHR states, everyone has the right to life, liberty, and security of person." "No one shall be tortured or subjected to cruel, inhuman, or degrading treatment or punishment, according to Article 5."

"Everyone charged with a penal crime has the right to be assumed innocent unless proven guilty according to law in a public trial at which he has had all necessary guarantee for his defense," says Article 13 of the UDHR. Article 6(1) of the ICCPR also explains the right to life: "Every human being has the intrinsic right to life." This right will be safeguarded by the law. "No one's life shall be taken from him arbitrarily."

4.9. Constitutional Restraints on Remand:

Bangladesh has agreed to a number of limitations on the State's authority of arbitrary detention. In 2000, Turkey ratified "The International Covenant on Civil and Political Rights", which imposes two obligations: it must update its domestic legislation to reflect its international commitments and provide periodic reports on the covenant's rights. It has done neither of these things. The first report to the ICCPR committee, which is due a year after confirmation, has yet to be submitted. Numerous reports claim that torture has continued uninterrupted, and that offenders have escaped accountability because to their clout and status.²⁵ Numerous articles of the Constitution of Bangladesh²⁶ have given likewise powerful instructions to border the State's capacity to make dictatorial arrests.

"Article 27: All citizens are equal in the eyes of the law and are entitled to the same legal protection."

"Article 31: Every citizen, wherever he may be, and every other person for the time being within Bangladesh, has the inalienable right to be protected by the law and to be treated in accordance with the law, and no action detrimental to the life, liberty, body, reputation, or property of any person shall be taken except in accordance with the law. Every citizen, wherever he may be, and every other person for the time being within Bangladesh, has the inalienable right to be protected by the law and to be treated in accordance with the law, and no action detrimental to the life, liberty, body, reputation, or property of any person shall be taken except in accordance with the law."

"Article 32: No one's life or personal liberty may be taken away unless it is done in conformity with the law."

"Article 33(1): No person who is arrested should be held in custody without being notified of the reason for his detention as quickly as possible, nor may he be denied the right to consult and be represented by a lawyer of his choice.

(2) Every person who is arrested and held in custody must be brought before the nearest magistrate within twenty-four hours of their arrest, excluding the time required to travel from the place of arrest to the magistrate's court, and no one may be held in custody beyond that time without the permission of a magistrate.

(3) No law providing for preventive detention shall authorize the detention of a person for more than six months unless an Advisory Board consisting of three persons, two of whom shall be persons who are, or have been, or are qualified to be appointed, as judges of the Supreme Court, and the other shall be a person who is a senior officer in the service of the Republic, has, after affording him an opportunity to be heard in person, affirmed the detention of that person.

(4) When a person is detained in accordance with an order issued under any law allowing for preventive detention, the authority issuing the order must inform the person of the grounds for the detention as soon as possible, and provide him with the earliest opportunity to make a representation against the order: Provided, however, that the authority issuing the order has the authority to refuse to reveal facts that it believes are contrary to the public interest."

²³Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

²⁴[http://en.wikipedia.org/wiki/United_Nations_Convention_Against_Torture, last visited on 26 November 2021].

²⁵Ashrafal Hadi, 'Freedom from Torture and Inhuman Treatment', Hameeda Hossain, ed. Human Rights in Bangladesh 2004 (Dhaka: ASK, 2005), p.40.

²⁶The Constitution of the People's Republic of Bangladesh.

V. Recommendations and conclusion:

Without a doubt, Bangladeshi law enforcement authorities face a challenging and delicate responsibility, particularly in light of deteriorating law and order circumstances, communal riots, political turbulence, and terrorist operations, among other things. However, in order to reduce the abuse of police arrest of power, we propose the following:

- (i) Specific provisions in the CrPC for the police authority of arrest under section 54, as well as sufficient training on how to apply it, are required.
- (ii) Section 54 of the CrPC, which grants police officers more discretionary power to make arrests in cognizable offences, should be repealed or adequately revised in light of the discussion.
- (iii) In order to increase transparency, the presence of the arrestee's gowmsman during the interview may prevent the police from using third-degree interrogation methods.
- (iv) Changing certain procedural procedures involving arrest and remand, as well as responsibility, are two viable safeguards, according to the High Court Division. Outlook must also be discussed in order to appropriately create the police force's work culture, training, and tendencies in accordance with basic human principles. As a result, the police training approach needs to be updated. Basic human values must be instilled in the force, as well as sensitivity to the constitutional concept.
- (v) Police must adjust their mindset and approach to investigations so that, they do not override basic 'Human Rights' during interrogation and do not resort to questionable interrogation techniques.
- (vi) If any police personal misuse of power in regarding arrest, he should be show cause by the department and necessary steps taken against him according to penal section.
- (vii) There should be specific provisions in CrPC regarding remand specially, in section 167. Also ensure strict prohibition, if any police officials torture any person in the name of remand, he should be punished regarding the said rule.

Conclusion:

It's no doubt that the law enforcement agencies have to do the tuff job for ensuring the command of law. For maintaining the sustainable environment in the country police needs to do the best work, however, when exercising this legal privilege, police must keep in mind that the law prohibits the use of torture, inhuman and cruel treatment on an arrestee during questioning, but does allow for arrest without a warrant, remand in custody for interrogation, and criminal inquiry. Everyone in the country wants to put an end to terrorism and criminal activity, but arrests without warrants, remand in custody, and custodial abuse are not the answer. Our constitution guarantees that the right to life is a fundamental human right, and law enforcement officials are required to follow it when using their arrest and detention authority. We need a strong and impartial process, as well as enforcement authorities, to ensure that our laws are consistent with our human rights obligations.

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