



Copyright © 2020 International Journal of Criminal Justice Sciences (IJCJS) – Official Journal of the South Asian Society of Criminology and Victimology (SASCV) - Publisher & Editor-in-Chief – K. Jaishankar ISSN: 0973-5089 July – December 2020. Vol. 15 (1): 298–311. DOI: 10.5281/zenodo.4741534 / IJCJS is a Diamond Open Access (Authors / Readers No Pay Journal). Indexed in Scopus and Emerging Sources Citation Index (Web of Science).

This is an Open Access article distributed under the terms of the Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.



## Arrest Without Warrant in Bangladesh: Law in Books Versus Law in Action

Md. Sohel Rana<sup>1</sup> & Saroja Dhanapal<sup>2</sup>  
University of Malaya, Kuala Lumpur, Malaysia

### Abstract

*The objective of this research is to analyze the discrepancies of textual laws of arrest in Bangladesh which substantially differ from the actual application. The Criminal Procedure Code of 1898 is the key piece of law currently in place in Bangladesh allowing police to arrest anyone who breaches the existing laws of the state. Generally, the police can arrest a person who has been given an arrest warrant by the competent court. But section 54 of the Code of Criminal Procedure authorizes the police to arrest a person without a warrant of arrest. It is the exception to the arrest rule. However, police are alleged to abuse this section in various ways by using the section's ambiguous wording. Bangladesh's constitution granted certain fundamental rights that must be upheld in every way. Having regard to the Bangladesh Constitution, the Supreme Court of Bangladesh issued some guidelines as a form of directives that a police officer requires to follow at the time of the arrest. Although the good laws are in place to function, the realistic or actual implementation of these laws is still in question. Therefore, there is a significant difference existing between the laws in books and the laws in action.*

Keywords: Police, Arrest, Warrant, Bangladesh, BLAST.

### Introduction

The Code of Criminal Procedure 1898 is the major criminal procedural law currently in effect in Bangladesh. According to ss 54 and 167 of the Code, the law allows the law enforcing agencies to arrest on suspicion, followed by police custody detention, with few protections. But there is no clear explanation in the section's wordings and that provides enough scope to abuse. As a result, arbitrary arrest, detention and torture by law enforcement agencies have remained a permanent feature of the criminal justice system in Bangladesh since independence in 1971 (Ain o Salish Kendra, 2008). The state's criminal

<sup>1</sup> Ph.D. Candidate, Faculty of Law at the University of Malaya, Kuala Lumpur, Malaysia. Email: sohel1814@gmail.com

<sup>2</sup> Senior Lecturer, Faculty of Law at the University of Malaya, Kuala Lumpur, Malaysia. Email: saroja.dhanapal@um.edu.my

justice system requires this provision of law as a dissuasive way to prevent a crime before it harms the general public. But it is allegedly seen as the police's vast power to act arbitrarily as to arrest any person without any arrest warrant. Regardless of the form of government in power, these practices have been prevalent in Bangladesh, and successive governments have failed to address the issue. Generally, an arrest is a legal weapon that law enforcement agencies use to fight crime. Many legal instruments allow law enforcement agencies to conduct arrest where the police department is vested with the main power to perform. The Criminal Procedure Code, 1898 is the set of procedural laws that came into force in the British colonial period, a long time ago. The British leaders ruled the subcontinent during the colonial period by enacting many legislations that are still in force. The rulers brought section 54 into the Criminal Procedure Code, which authorizes police to arrest a person without an arrest warrant issued by a competent court to try the sepoys and those who took part in the rebellion against the Empire. This section 54 is an exception to the general arrest law where there is generally a need for an arrest warrant to arrest a person and bring him or her to face the legal procedure of the state. Section 54 states some exceptional circumstances in which police can arrest a person when there is an apprehension of any criminal activity being committed. The aim is to prevent someone from committing a crime when police think that such criminal activity is probable to happen. But the police are deemed to have abused this authority when they arrest anyone without justification. “There is no description in section 54 of the term ‘reasonable suspicion’ and as such it provides enough scope for police abuse” (Faruque, 2013). BLAST (Bangladesh Legal Aid and Service Trust) filed a writ petition in 1998 regarding the necessity of section 54 and to get relief from such abusive scenario. Following a complete hearing in 2003, the High Court Division of Bangladesh Supreme Court issued its judgment with 15 directives that the police must follow to arrest any person. This judgement was upheld by the Appellate Division of the Supreme Court in 2016 by dismissing the appeal made by the government. The state’s highest court also ordered the government to take the required measures to remove any ambiguity in the section's wordings such as reasonable suspicion, reasonable complaint, credible information or concern. Although it is intended to act as a dissuasive measure, the section still has some challenges that need to be resolved to guarantee the right to safeguards as to arrest and detention as guaranteed by Article 33 of the Bangladesh constitution.

### Arrest

Arrest generally implies that the law enforcement agencies take someone away to ask him about a crime that has already been committed or that he may have committed. The legal definition of ‘arrest’ is contained in Lord Diplock's judgment in *Holgate-Mohammed v Duke*, [1984] where he stated that “an arrest is an ongoing act. It begins with the arrester taking an individual into his custody (by action or words preventing him from going anywhere beyond the control of the arrester) and continues until the individual so restricted is either released from custody or placed in custody by the judicial act of the magistrate”. As Wex Legal Dictionary has explained, an arrest is a legal power given to deprive an individual of their liberty of motion. In delivering the judgement of *R v Iqbal* [2011] the court held that “it was an ordinary English word and whether or not a person was arrested does not depend on the legality of the arrest, but on whether or not he was

deprived of his freedom of movement.” It was also held that "a man who was handcuffed by the police in connection with a criminal offence was not under arrest because he was not told that he was under arrest and the officer did not consider that he was making an arrest". It is legally recognized that an arrest is made when someone is charged with a crime by the police and then placed in custody. In this situation, the competent court authorizes the police to keep that arrested person in police custody. Police may, after making an arrest, confine the arrested person for interrogation under their custody. That interrogation is termed as ‘remand’ where torture is a prevalent occurrence to extract the declaration from the confessional (Ullah, 2016). When the police take someone on remand, the arrested person is sometimes brutally tortured before the members of the accused family. Then the members of the accused family screamed to see such torture in remand. Police asked the accused family members directly for cash and said they would no longer torture the accused if they (the accused family) complied with the offer from the police. Now it is alleged that if they want to avoid torture in remand, the arrested person's family will have to pay or satisfy the police demand.

A period of custody is permitted by the law court where the arrested individual is formally compelled to remain in a location, usually a place within a police station region. The police detain the arrested in most cases to do the interrogation in order to find the truth about a crime. Such detention may also occur when the police or any agency suspects someone but has not charged them with a crime. In that case, police may hold the individual from the time of the arrest for no more than twenty-four hours. Both the Constitution and the Code of Criminal Procedure of Bangladesh introduced the provisions of this time frame to be followed by the police. The police must take the arrested individual to the competent court within this time frame.

### **Arrest Without Warrant: Law in The Books**

It is a general rule that a police officer will conduct an arrest with an arrest warrant issued by a magistrate or a competent court. But section 54 of the Criminal Procedure Code 1898 (CrPC) is an exception to that rule and enables the police to arrest anyone without a warrant. Under Section 54 of the CrPC any police officer may arrest a person, without an order from a Magistrate who is concerned in any cognizable offence or against whom a complaint has been lodged or credible information received, or reasonable suspicion exists of his being so concerned or possesses any implement of house-breaking. Further, the person who is a proclaimed offender or is suspected of having stolen property in his possession as well as obstructs a police-officer in performing his duty can be arrested by virtue of section 54. Besides, this section allows to arrest any person who has escaped or attempts to escape from lawful custody or who is suspected of being deserter from the armed forces. Additionally, a person can also be arrested without an arrest warrant who is concerned in or against whom a complaint has been lodged or credible information received or reasonable suspicion exists of his being so concerned in any act committed at any place out of the country, which if committed in the country would have been punishable offence and for which he is subject to extradition or under the Fugitive Offender Act, 1881 or otherwise is liable to be apprehended or detained in custody. Moreover, such an arrest can also be made against any person who is a released convict committing a breach of any rule made by magistrate under Section 565 (3) of the Cr. P.C

or is subject to arrest following a requisition received from another police officer may be arrested without an arrest warrant.

### Law in Action: In Reality

It is the law enforcement agencies' statutory obligation to follow the precise laws contained in the state's various statutes. But when the statute itself empowers law enforcement agencies to perform an arrest without a warrant, the scope or likelihood of such arrest power is assumed to be broader. This legal provision has been adopted a long time ago to avoid an individual from committing a crime as a preventative measure, but it is still in question as to achieve such goal. Police may arrest any individual in the event of apprehended crime if reliable information has been obtained or a sensible complaint against such individual has been made. It is commonly argued that such arrest authority becomes the law enforcement agencies 'abuse weapon' (Hasan, et.al. 2017). This law is a mechanism for stopping any individual anywhere and conducting a search based on a police officer's discretion. It is the discretion that if the police believe a specific individual has committed a crime or is about to commit a crime, they can prevent him anywhere and eventually arrest him even if the competent court does not issue an arrest warrant.

### *Issue with the Wordings*

The wordings of Section 54 of the Criminal Procedure Code empower the police to perform an arrest without a warrant. But this provision lacks the justification when it comes to the actual application. The wordings are unclear and have no definite explanation. 'Reasonable suspicion', 'reasonable complaint' or 'credible information' or 'against any individual involved with any cognizable offence' are the words that have no clear standard or lack clear explanation. Due to the ambiguity, the Supreme Court of Bangladesh itself called for the revision of this arrest provision without a warrant when it delivered the judgment in the BLAST case in 2003.

### *Reasonable suspicion*

It is a word that the police can use to arrest a person without a warrant of arrest. But the term is defined by no legal standards. Generally, reasonable suspicion is not just a presumption, but must be founded on certain clear and articulable facts. Specific and articulable facts may differ from direction to direction. It could include for instance, someone who fits a description of a suspected criminal, a suspect who drops a suspicious item after seeing the police, or a suspect in a high crime region who runs after seeing police. This can be called a standard of the word to be followed when applying the terms 'reasonable suspicion.' This will also determine the legality of police actions when they follow the norm without a warrant. It also needs that the police officer has an objective sensible foundation as opposed to subjective foundation. Objective basis suggests that the same suspicion will be supported by other rational people in the same situation.

In *Saifuzzaman v State* [2004] the court observed that:

*“The ‘reasonable suspicion’ and ‘credible information’ must relate to definite averments, which must be considered by the police officer himself before he arrests a person under this provision. What is a ‘reasonable suspicion’ must*

*depend upon the circumstances of each case, but it should be at least founded on some definite fact tending to throw suspicion on the person arrested and not on a mere vague surmise. The words ‘credible’ and ‘reasonable’ used in the first clause of Section 54 must have reference to the mind of the person receiving the information which must afford sufficient materials for the exercise of an independent judgment at the time of making the arrest. In other words, the police officer upon receipt of such information must have definite and bona fide belief that an offence has been committed or is about to be committed, necessitating the arrest of the person concerned. A bare assertion without anything more cannot form the material for the exercise of an independent judgment and will not therefore amount to credible information”.*

In the BLAST case [2003], the court also held that:

*“...Use of the expression ‘reasonable suspicion’ implies that the suspicion must be based on reasons and reasons are based on existence of some fact which is within the knowledge of that person. So, when the police officer arrests a person without warrant, he must have some knowledge of some definite facts based on which he can have reasonable suspicion”.*

In some other jurisdictions, like in the United States, the police may use probable cause to perform an arrest and it differs from the reasonable suspicion that provides the basis of an arrest's legality without an arrest warrant. Probable cause means the reasonable grounds to believe that a particular person has committed a crime, especially to justify making a search or making an arrest. It generally needs more than a mere suspicion that a suspect has committed a crime, but not as much information as is needed to demonstrate the suspect beyond reasonable doubt.

### *Reasonable Complaint*

Something fair and sensible implies the term reasonable. If a complaint is made which a police officer believes is fair and there is a reason to think, then the police officer can arrest anyone against whom such reasonable complaint has already been made without an arrest warrant. Anyone can make a complaint against anyone else. The term is straight and clear, but it may not be in such a straight line to use the phrases. An individual can even make a complaint about taking vengeance or harassing someone. It happens in the case where a girl name Beauty, aged 16 was hacked to death on March 2018 in presence of her father Sayed Ali as part of their bid to harass Babul Miah, the alleged prime suspect in the kidnap and murder. Habiganj superintendent of police Bidhan Tripura at a briefing at his office claimed that Syed Ali and Mayna confessed to the murder. ‘Beauty’s father was the mastermind behind the murder, and he made the plan to harass Babul and his family,’ Bidhan said referring to reported confessions of Sayed and Mayna. Although the deceased father made a reasonable complaint to the police, later it was revealed that such reasonable complaint was made to harass an opponent.

### *Credible Information*

Police may arrest anyone against whom there is any credible or reliable information. That is another way of justifying police arrest even though the term ‘reliable’ differs from one circumstance to another. The police officer concerned who approaches to conduct an arrest should be provided with reliable information. But such information needs to be based on a strong foundation that is credible. In addition, to justify the information as reliable, the origin of such information is a crucial variable. Therefore, the police officer should evaluate the information source to make it credible that ultimately justified his arrest action. In the *Saifuzzaman v State* [2004] case, the court said that “the material for the exercise of independent judgment cannot be formed by a bare statement without anything else and therefore does not amount to reliable information.”

### *Non observance of High Court Directives*

In *BLAST v Bangladesh and others* [2003] case, a university student was an innocent victim who was arrested under section 54 of the CrPC and subsequently remanded under section 167(2) of the CrPC in 1998. After being tortured in the remand period, he eventually died in police custody. After this unexpected death, BLAST (Bangladesh Legal Aid and Service Trust) filed a writ petition to challenge the application of section 54 of the CrPC in the High Court Division of Bangladesh Supreme Court. In the court hearing, the petitioners referred to some other comparable occurrences of custodial deaths owing to abuse of authority. Subsequently, at the time of hearing on 7 April 2003, a Division Bench of the High Court Division issued a set of fifteen guidelines on arrest and remand (55 DLR 2003 363) on the violation of the fundamental rights of citizens to life and liberty (Article 32 of the Constitution), to equal protection of law (Article 31 of Constitution), safeguards as to arrest and detention (Article 33 of Constitution), protection during trial and punishment (Article 35 of Constitution) and so on.

The fifteen Directives from the judgment of *BLAST v Bangladesh and Others* (55 DLR 2003 363) case are as follows:

1. No Police officer shall arrest anyone under Section 54 for the purpose of detention under Section 3 of the Special Powers Act, 1974.
2. A police officer shall disclose his/her identity and show his/her ID Card on demand to the person arrested or those present at the time of arrest.
3. A record of reasons of arrest and other particulars shall be maintained in a separate register till a special diary is prescribed.
4. The concerned officer shall record reasons for marks of injury, if any, on the person arrested and take him/her to nearest hospital or government doctor.
5. The person arrested shall be furnished with reasons for arrest within three hours of bringing him/her to the Police Station.
6. If the person is not arrested from his/her residence or place of business, the relatives should be informed over the phone or through messenger within one hour of bringing him/her to Police Station.
7. The person concerned must be allowed to consult a lawyer of choice or meet nearest relations.
8. While producing the detained person before the Magistrate under Section 61 of the CrPC, the police officer must forward reasons in a forwarding letter under

Section 167 (1) of the CrPC as to why the investigation could not be completed within twenty-four hours and why s/he considers the accusation and information to be well founded.

9. On perusal of the forwarding letter, if the Magistrate satisfies him/herself that the accusation and information are well founded and materials in the case diary are sufficient for detaining the person in custody, the Magistrate shall pass an order of detention and if not, release him/her forthwith.

10. Where a person is released on the aforesaid grounds, the Magistrate shall proceed under 190(1)(c) of the CrPC against the Officer concerned under Section 220 of the Penal Code.

11. Where the Magistrate orders detention of the person, the Officer shall interrogate the accused in a room in a jail until a room with glass wall or grille on one side within sight of lawyer or relations is constructed.

12. In any application for taking accused in custody for interrogation, reasons should be mentioned as recommended.

13. The Magistrate while authorising detention in police custody shall follow the recommendations laid down in the judgment.

14. The police officer arresting under Section 54, or the Investigating Officer taking a person to custody or the jailor must inform the nearest Magistrate about the death of any person in custody in compliance with these recommendations.

15. The Magistrate shall inquire into the death of any person in police custody or jail as per the recommendations.

On 24 May 2016, the Appellate Division of the Supreme Court of Bangladesh dismissed the government's appeal of the BLAST case and upheld the High Court Division's 2003 rules to ensure that police powers of arrest without warrant (CrPC section 54) and remand powers of the Magistrates' (CrPC section 167) are used in compliance with constitutional protections on arrest and torture prohibition. The Supreme Court's Appellate Division commented at the appeal hearing that "it is strange and unacceptable that even after a long period of delivering the judgement, these guidelines are not being fully followed and the abuse of authority continues unabated. It is even worse that many law enforcement agency employees are not yet clear about the court's rules." The Court directed that a detailed set of guidelines be established following the Police Act, the Penal Code and the Evidence Act and those necessary amendments be made to section 54 and 167 of the CrPC. "It is the beginning of a new chapter where all the controversies regarding section 54 and 167 may be solved in a citizen-friendly manner", said Mr Istiak Uddoula from Brac University Bangladesh. He also hoped that the relationship between police and the citizens may witness new dawn and the whole justice system may achieve remarkable progress through this decision.

Some prominent lawyers like Dr. Shahdeen Malik have voiced the concerns about this abuse by law enforcement agency members. He opined that "when no one (in the law enforcement) is made accountable even for killing, in that context, abuse or arrest without any reason for harassment and extortion is bound to become almost routine for police and law enforcing agencies" (Malik, 2007). "Instead of using it (section 54) to protect the interest of the people, it is rather used to extort money from persons or implicate political

activists,” said by Adilur Rahman Khan, secretary of Human Rights Coalition Odhikar and is also an advocate of the Bangladesh Supreme Court. “We have no information about a decline in the abuse of section 54. When we speak to our human rights defenders in the 40 districts, we see that the section is often abused to implicate journalists and people having different opinions to that of the government,” added by Mr Adilur (Khan, 2009)

There are some other human rights activists raised their thoughtful voice in several writings regarding the abuse of this provision of law. Nilima Jahan, a human rights activist, opined that “these are the cruel laws that are used as a weapon to arrest individuals, and in most instances the arrested person does not understand why they are arrested (Jahan, 2018).” In addition to the section 54, Section 167 of CrPC deals with the procedure when an investigation cannot be finished within twenty-four hours. Whenever a person is arrested and held in custody and it appears that the investigation cannot be finished within the 24-hour period set out in section 61 of the CrPC, and there are grounds for thinking that the accusation or information is well-founded, that the officer in charge of the police station or the police officer carrying out the inquiry if he is not below the rank of sub-inspector shall immediately forward to the nearest Magistrate a copy of the entries in the diary prescribed manner, at the same time, the accused shall be sent to that Magistrate.

The decision of the BLAST case is a revolutionary advancement that analyzed the problem of arrest without a warrant. The Division of the High Court investigated Section 54's as a whole and discovered that the section's wordings are not as evident as the law should be. Justice Hamidul Haque observed that “the word ‘concerned’ is a vague word which eventually empowers the police with wide powers to conduct an arrest without any warrant. In such situations, the police justified their action by claiming that in a cognizable crime the arrested person is concerned.” He added that if a police officer has any ‘definite knowledge’ about a fact then such knowledge can be the basis of an arrest without warrant. As far as credible information is concerned, Justice Haque suggested that if a person is arrested based on ‘credible information,’ the existence and source of such information should be disclosed. He also suggested that a police officer must justify his reason to believe such information based on which he conducted the arrest. Justice Haque also viewed on another term which is ‘reasonable suspicion’. He advised that if a person was arrested by the term ‘reasonable suspicion’, then the police officer would have to report the suspicion justification to justify his action.

When the police carry out an arrest, they always defend themselves by saying that they have acted following the law and that they are within the law. From their view, this could be a satisfying explanation. But anyone who complains or expresses concern about such arrest, they never say that what the police did is unlawful. The question is over the way the arrest was conducted by the police. It raises the risk of using the power of the arrest without a warrant. Since the terms are not clear, the police arbitrarily use these phrases without justification or under an accountability criterion.

### Issues Related to Arrest and Detention in Bangladesh

There are some reasons why arrest can be made without a warrant. This warrantless arrest is justified to stop a person before committing a crime. Therefore, in section 54 of CrPC, it is said that reliable information should be obtained, or a reasonable suspicion



exists to arrest a person under this section. But this section provides broad powers to the police and therefore should be constructed rigorously. The object of the Criminal Procedure Code in cognizable cases is to give the police the widest powers and the only limitation is the need for reasonability and credibility.

There are some instances in which the court makes its findings concerning Section 54's implementation. For example, the court analyzes the extent of using the section in *Mehnaz Sakib v Bangladesh* [2000] where the court held that “since the detainee was arrested pursuant to section 54 of the Code, it was incumbent on the police to produce her within 24 hours before a Magistrate. But the police have not performed and as such the constitutional right guaranteed to her has been breached.” The provisions of this section shall also apply where a police officer gets any reliable information that an individual may be concerned with any cognizable offence or has reasonable suspicion that a man may have committed an act anywhere in Bangladesh that would have been punishable as an offence if committed in Bangladesh, decided in the case of *Kalandiar Kabir v Bangladesh* [2002]. Before arresting an individual under this clause, the ‘reasonable suspicion’ and ‘reliable information’ must relate to certain averages regarded by the police officer himself which can be otherwise characterised as objective basis.

Muhammad Nurul Huda, a columnist of national daily newspaper ‘The Daily Star’ said that “the words ‘credible’ and ‘reasonable’ must refer to the mind of the person receiving the information, and that information must provide sufficient material for the exercise of an independent judgment at the time of the arrest”. He also analyzed the section's language by stating that “the words ‘may’ ‘arrest’ reflect the discretionary power of arrest. Not always a police officer is expected to arrest people for identifiable crimes”. The law in Section 54 of the CrPC states that the police officer ‘may’ arrest a person without a warrant. The word ‘may’ indicate that the police officer may act or not. This is distinguished from the word ‘shall’ which makes it imperative. That simply implies that a police officer has the discretionary powers to conduct an arrest without having an arrest warrant. But those discretionary powers are sometimes turned into wide powers to conduct arrest just by using the terms which do not have any clear meaning. And because of that police can easily abuse these ambiguous words.

Along with this aforesaid issue, there are some other issues relating to arrest without warrant. Like, there are number of different laws contain in different enactments, but the exact or actual implementation of these legislations do not exist. That is the distinction between the ‘law in the books’ and the ‘law in the action’. Besides, in Bangladesh police are working under the Ministry of Home Affairs' oversight and control. An individual from a political party, generally the governing party, heads the ministry. That sometimes makes the opposition members oppressed by the politically motivated police. This ultimately leads to arrest without a warrant to maximize the arrested person's amount. The lower-ranking police officers are unfamiliar with the numerous laws and the ways the law is applied. This is another significant issue arises in application of laws. This caused the arrest issue when they were required to use reasonable suspicion as a means of arrest without a warrant. Moreover, it is quite hard to get the witnesses against the police when an allegation against the force is lodged. Commonly, no one is willing to provide evidence against the police as they are apprehended to be subsequently harassed. As such, there is no security for the safety of victims and witnesses that prevent them from giving testimony

against the police. It's just because they need the security and protection. Police are obliged to follow the directives issued by the Supreme Court, but they do not follow such rules practically. Although police are instructed not to carry out any operation without uniform, on several occasions police conducted arrest operations with plainclothes and in that case, they don't carry the visible identity as they should. Likewise, on August 5th, 2018, a group of thirty plainclothes officers entered Shahidul Alam's (Shahidul Alam – photographer, human rights activist, and founder of multimedia organisation, Dirk) home to arrest him. The photographer is a public figure and had published a video on Facebook a few hours before, expressing his opinion on the demonstrations of students in Dhaka. A government-repressed reaction soon, sending officers to apprehend Shahidul after hiding the arrest by placing tape on the video cameras for surveillance. *"I was not in the flat, but I heard a scream and I ran down to find out what had happened"*, Rahnuma Ahmed, Shahidul's partner explained. *"We heard from the security guards that he had been forced into a car, taken by the Detective Branch of Dhaka"*, she added. Shahidul Alam was on a seven-day remand, accused to have damaged the image of the State, through his video. Apart from the aforesaid issues, the wage system, logistic supports and other modern and scientific equipment for the police force are not good enough. That sometimes distracts the police from their legal duty to the unethical demands from the arrested person or from the family members of the arrested person.

In the country reports on human rights released by the US State Department in 2016, it was reported that security forces shot a news reporter and human rights organization volunteer Mohammad Afzal Hossain in the leg while covering irregularities in an election between two candidates for the Awami League in Rajapur. Anwar Hossain Mahbub, Joint Secretary of a ward-level BNP unit was arrested and allegedly tortured in prison on January 15, 2016, leading to his death on February 16, as stated by the report. Idris Ali, a madrasa (Madrasa is the secondary and high school term in Arabic) teacher and two-time local council candidate for Jamaat, was reportedly kidnapped on August 4 by plain-clothes security officials and found dead on August 12 with alleged signs of torture, including broken hands and legs and tendons. Furthermore, a 16 years old boy named Ainul Haque Rohit was reportedly tortured by police in Jessore on June 8 for supposedly stealing a motorcycle. Rohit was in custody for 30 hours when he was blindfolded, beat with a wooden rod his knees, hands, toes and soles of his feet, stuffed his jacket in his mouth, and poured water in his nose for 10 minutes. After receiving a bribe from his family, police reportedly released Rohit. There was no accountability for these specific actions, and those responsible for similar violence were never prosecuted, convicted or disciplined by the state, the report said.

Another example of this is a case involving the police station in Sylhet Kotowali. In this case, on July 17, 2014, an allegation of torture was brought against five police officers, including Kotowali Police Station's Officer-in-Charge. The victim's family wanted to complain about the alleged police officers. However, the complaint was not received by the authorities concerned. The aggrieved therefore filed a writ petition before the Hon'ble High Court Division of Bangladesh's Supreme Court. The Court ordered the competent authorities to file the complaint on 24 July 2014. A case was filed against the alleged police officers on August 05, 2014, eleven days after the High Court Order. It testifies to the police authority's refusal to prosecute any case brought against them.

The following are the two major cases in which the persons were arrested by police and brutally tortured later. These two instances shocked the entire country and various human rights organisations, both locally and internationally. In July 2011, a student from the Dhaka University named Kader was arrested and detained by the Officer in Charge (OC) of Khilgaon police station, a metropolitan police station under Dhaka Metropolitan Police. Helaluddin, the Officer in Charge of the police station, struck Kader's leg with a machete after he refused to give in to pressure. Kader later sued the police officer and in 2015, a magistrate court sentenced Helaluddin to three years in prison. On 23rd March 2011, when RAB (Rapid Action Battalion- an elite anti-crime and anti-terrorism unit of the Bangladesh Police) members charged Limon Hossain, a college student at the time, in the fields near his village in Jhalakati district accused him of being a criminal and shot him at a point-blank range. Four days later, to save his life, Limon's leg was amputated. He was unable to return home for more than six months for medical reasons. These two events show that the police have humiliated the arrested person, and in some cases, the Supreme Court has to interfere when the alleged victims have not provided any support from the concerned police department.

### **Effectiveness as to Deterrent Method**

Now it is a question under discussion whether section 54 of the CrPC a needed deterrent is or not. The Attorney General Mahbubey Alam defended the record of law enforcement agencies, telling local media that all officers abide by the practice of showing suspects their badges. For his part, Home Minister Asaduzzaman Khan Kamal told reporters at his office that police were careful in enforcing sections 54 and 167. "We must abide by the directives of the Supreme Court in this regard. In case any police officer is found guilty of misusing the two sections, he will face departmental actions," the minister said. But the Law Minister Anisul Huq voiced disagreement over the court's decision, saying that Section 54, in particular, was an emergency provision that was essential in fighting crime. "This is not right that the law enforcers should only be active after a crime takes place. The police should have the authority to arrest a criminal suspect as a deterrent measure," Huq said. Now it is the million dollars question whether the section is truly effective as a deterrent method or not. It may work as its aim, but the application of this law has raised other issues which eventually leads to file a case in 1998, after 100 years of the enactment of the Criminal Procedure Code. The apex court of the state agrees that the application of the section still has some potential issues which lead to deliver 15 directives as a form of directives. The police or any other law enforcing agencies must follow these directives when they approach to arrest any person through the application of section 54 of the CrPC.

### **Recent Development**

Arrest without a warrant that continually raises issues that have been going on for a long time in terms of their actual application. It is highly connected with the life, security and existence of a human being. The country's highest court has expressed its views through its judgment in various instances that approached to it. The Supreme court of the state stated in a court hearing that in any arrest situation, whether with an arrest warrant or without an arrest warrant, officers must comply with the constitutional provisions of

Article 32 which states that “Everyone has the right to life, liberty and security of person”. In a court hearing held on 07th August 2019, the Appellate Division of the Supreme Court instructed the above to the law enforcement agencies. This is a major development relevant to the issue of arrest in which the Supreme Court required the constitutional provisions to be complied with.

### Recommendations

There is clearly an issue with the law in books and the law in application. Different laws contain different provisions to fulfil the state's need, but implementing such laws is in question as they are not being implemented as they should. That is the distinction between the law in books and the law in action. Ensuring the precise execution of the existing laws and the guidelines of the apex court is highly essential. The Supreme Court can regularly play the oversight role in law enforcement as to the application of laws.

In Bangladesh, the police are working under the Ministry of Home Affairs' oversight and control. An individual from a political party, generally the governing party, heads the ministry. That sometimes makes the police politically driven to oppress the leaders of the opposition where the police use section 54. As a democratic nation, when it comes to arresting an opposition political figure, the implementation of section 54 requires to be strictly supervised and scrutinized.

The lower-ranking police officers are unfamiliar with the various legislations and the manner the law is applied. Even they don't know about the arrest strategies delivered by the Supreme Court. This caused the arrest issue when they approached such an arrest scenario. In those instances, it is very essential to provide all police officers with the present law updates. By organizing periodic seminars, conferences, meetings, it can be accomplished. These will also assist to motivate them to deliver friendly behaviour to the general people.

Accountability is a crucial factor in the battle against any existing problem. Although the individual in charge ensures that the police are accountable for all their actions, general people do not believe they are. The penalty for the wrongdoer should be brought out to the public in that situation. So, the general people can be ensured that the wrongdoer will face the implications even if they are the police. This will also warn the other police officials from the police department.

There is no culture of compensation. In an unwarranted arrest, the victim should obtain compensation from the department involved for unlawful arrest, which may be conscious of the police officers making a justified arrest. The police will be afraid that they will have to pay compensation to the victim if they cannot justify their action.

The section's wording also needs to be modified in accordance with the High Court's guidelines. Additionally, it also needs to set a norm for using phrases like reasonable concern, reasonable suspicion or credible information.

Impunity is another factor which given to the law enforcing agencies for their actions. This culture of impunity needs to be completely abolished so that the wrongdoer can be brought to the justice.

It is very important to take immediate steps to ensure access to prisoners, especially during interrogation times. Relatives, doctors and lawyers should have immediate and regular access to detainees.

The procedure of an allegation lacks the witnesses when there is any allegation of wrongful arrest filed against the law enforcing agencies. No one is generally prepared to give evidence against the police as they are apprehended to be harassed later. As such, there is no protection that stopped victims and witnesses from giving testimony against the police even when they were an innocent victim. Therefore, the victim and witnesses are not prepared to provide evidence against the police even if any irregularities happened during an arrest without warrant. It's just because they need security and protection. For this specific need of protection, a Witness Protection Act is strongly recommended to enact by the parliament as to guarantee the witnesses' safety and security.

While police are obliged to follow the guidelines of the apex court of the state, they are allegedly violating such guidelines. On several occasions, even after the judgment was pronounced, the police carried out the arrest operations in plain clothing and in that case, they do not even wear the visible identity as they should. Thus, the penalty for non-observance must be greater than current framework. Not only should this penalty be departmental, but there should be criminal proceedings taken against such non observance.

Additionally, all allegations of torture in custody and deaths in custody should be investigated judicially. And to complete the inquiry, there should be a rigorous timeframe. The entire interrogation procedure must be changed in accordance with the guidelines issued by the Supreme Court of Bangladesh. Also, a pre- and post-remand medical check-up for the arrested individual should be mandatory.

## Conclusion

There is no doubt that the police have a legal duty and a legitimate right to arrest and interrogate the offenders. In exercising this legal right, however, police must be aware that law does not permit the use of torture, cruel and inhuman treatment on an arrested person during an offence interrogation and investigation. The person engaging in any criminal activity must face the law and the legal implications of his or her act. It is commonly asserted that section 54 of the Criminal Procedure Code is abused by police in Bangladesh due to the section's wordings which can lead to ambiguities. Therefore, the state's apex court has given some guidelines that the police must follow in order to arrest any individual. These guidelines of the Supreme Court are well-founded and acts as a standard set of rules providing both the police and the Magistrates involved with their duties in dealing with an arrest and detention. Section 54 had some discrepancies that have been eliminated by the judgement of BLAST case. Nevertheless, the state's apex court frequently emphasizes a justifiable arrest, ordering the departments involved to follow the constitutional provisions and its arrest and detention procedures. However, although the section nowadays is losing its attraction, the wise use of the section can eliminate any additional problems to ensure constitutionally guaranteed rights are honoured.

## References

- BLAST. (2009) *The suspense of suspicion*. Retrieved from <https://www.blast.org.bd/component/content/article/28-nr/270-suspenseofsuspicion>.  
BLAST v Bangladesh and others (2003) 55 DLR HCD 363.

- Correspondent, Dinajpur. (2019, March 14). Cops torture youth for bribe. *The Daily Star* Retrieved from <https://www.thedailystar.net/country/news/cops-torture-youth-bribe-1714795>.
- Correspondent Report. (2019, August 09) In case of an arrest, the Appellate Division directed to comply with Article 12 of the Constitution. *Bangla Tribune*. Retrieved from <http://www.banglatribune.com/others/news/525213st-5-cops-10-days-after-hc-order/>.
- Court Correspondent. (2016, July 27) Court upholds prison term for suspended police officer Helaluddin for Torturing DU student. *Bdnews24.com*. Retrieved from <https://bdnews24.com/bangladesh/2016/07/27/court-upholds-prison-term-for-suspended-police-officer-helaluddin-for-torturing-du-student>.
- Das, S. K., Khan, M. B. U., & Kamruzzaman, M. (2016). Preventive Detention and Section 54 of the Code of Criminal Procedure: The Violation of Human Rights in Bangladesh. *American Journal of Business and Society*, 1(3), 60-67.
- Hasan, M., Arifuzzaman, M., & Rahaman, M. M. (2017). Torture in Lawful Custody: Violation of United Nations Convention against Torture in Criminal Justice System in Bangladesh. *Beijing L. Rev.*, 8, 397.
- Humanrightswatch. (2014, October 20) *Bangladesh: No Justice for Wounded Child*. Retrieved from <https://www.hrw.org/news/2014/10/20/bangladesh-no-justice-wounded-child>.
- Kalandiar Kabir v Bangladesh 54 DLR (2002) 258.
- Mehnaz Sakib v Bangladesh 52 DLR (2000) 526.
- Momtaz, S. (2013). Human rights violations in Bangladesh: A study of the violations by the law enforcing agencies. *Mediterranean Journal of Social Sciences*, 4(13), 101.
- OMTC. (2018, June 26) *Bangladesh: Torture prevails due to deeply rooted culture of impunity*. Retrieved from <https://www.omct.org/statements/bangladesh/2018/06/d24943/>.
- R v Iqbal [2011] EWCA Crim 273
- Saifuzzaman v State 56 DLR (HCD) 2004 324
- The Code of Criminal Procedure, 1898
- The Constitution of the People's Republic of Bangladesh, 1972
- The Evidence Act, 1872
- The Penal Code, 1860
- The Special Powers Act, 1974
- Tsatsas, L., Viand, A., & Moglia, M. (2018, August 7). *Fisheye Magazine*. Bangladesh: un photographe arrêté. Retrieved from <https://www.fisheyemagazine.fr/en/discoveries/news/bangladesh-a-photographer-arrested-by-officers/>
- Uddoula, Istiak (2016, June 25) Arbitrary arrest and human rights violation. *Daily Sun*. Retrieved from <http://www.daily-sun.com/home/printnews/147228>.
- Ullah, S. (2013). Social Research on Police Remand and the Desecration of Human Fundamental Right of Bangladesh. *Available at SSRN 2333148*.
- US Department of State. (2016) *Country Reports on Human Rights Practices*. Retrieved from <https://www.state.gov/country-reports-on-human-rights-practices-for-2016/>