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RIGHT TO REASONABLE INVESTIGATION PROCESS IN CRIMINAL JUSTICE IN BANGLADESH

Dr. M. Abdul Hannan*

1. INTRODUCTION

Every prominent legal system of the world has reached to its development in a particular way in which human conduct and common human conscience played a very important role. The origin and development of administration of justice has its origin and development identical with the nature of human society in which they lived and their tendency towards the society. Human history shows man while leading a social life experienced conflict of interests, which paved the way for a developed machine of justice.¹ It further categorizes the conflict of interest into two categories; one is conflict of civil nature and the other is the conflict of public nature, while the latter was termed as crime.² Crime denotes to an act deemed by law as detrimental to the society at large. So criminal justice administration is intended to restrict those activities by punishing the wrongdoers through some particular procedure like investigation, interrogation, search and seizure of property. At the same time criminal justice system incorporates some rights to the wrongdoers regarding those procedures.

In this paper a discussion have been made on the right to reasonable investigation (although arrest is an important aspect of investigation process, but is not included in the discussion), interrogation, search and seizure of property. Before entering into the discussion it will be relevant to have a short address of criminal legislation.

2. CRIMINAL LEGISLATION

The criminal legislation of Bangladesh has a British colonial legacy, which at the outset of it was suppressive and exploitative in nature, and it does not suit presently in a country of democratic value. In our country we execute the criminal legislation through an institution called police authority. The criminal legislation confers on the police or investigating authority wide power in confiscating, investigating, inquiry and trial. Though it is said to be discretionary power there are limits within which they are to act. But the instance of criminal administration of justice in Bangladesh suggests that viles are being practised by the police authority and abuse of discretionary power is a regular practice in the country. In this context it will not be erroneous to say that in almost all the countries of the world police has been entrusted with the power of

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¹ Salmond WG, *Jurisprudence*, (12th Edition; Maxwell: 1985), 88

² *Ibid.*

using discretion in searching the suspected place or person or premises and the seizure of property. But the core question concerning the discretionary power of police is whether the discretionary power is unbridled or subject to some administrative scrutiny?'

The criminal legislation of Bangladesh determines that the state machinery should involve the criminal process against offenders and also prescribes for securing a reasonable investigation, search and seizure. There are specific provisions regarding these, but some wrongs are being practised in applying these, every now and then. The Law Enforcing Agency (LEA), like police in Bangladesh are placed in a position of great strain in that they are given a mandate of promoting social order, at the same time they should be circumscribed by variety of restraint as because governmental philosophy has transmitted from laissez faire to welfare. So those provisions should be noticed meticulously by the police in practice.

2.1 Criminal Investigation

An activity of the police on apprehension of criminals and detection of crime is criminal investigation.³ The social engineers have emphatically advocated over this point of criminal investigation, because prompt apprehension of the criminals followed by their conviction strongly supported by investigation can result an appreciable reduction in the volume of crime. There are a lot of problems with the investigation procedure. For example the Bangladesh Police continues to hold the outmoded technique and procedure, lack of sophisticated method for detection of crime, insufficiency in communicative manner, and lack of enough manpower. A statistical report of *Daily Prothom Alo* suggest that in entire Bangladesh there are not so much police as New York City in USA has, said Hary K Tomas, the US Ambassador in Bangladesh in 2004, over a meeting while he was presiding.⁴ This information envisages the necessity of enough manpower for upholding the investigation procedure and its efficiency. This is not the case with New York only. Almost all the developed countries have manpower involved in the criminal justice administration system.

One of the main objectives of criminal law is to protect the society by punishing offenders; at the same time justice and fair play require that no one should be convicted without a fair trial.⁵ The primary object of the administration of justice should not only be done but also seen to have been done. Therefore, the administration

³ Kibria ABMG, *Police Administration in Bangladesh*, (First Edition, Jatya mudarn: 1976), 176

⁴ *The Daily Prothom Alo*, Dhaka (Bangladesh), 18 May 2004. The website of the *Daily Prothom Alo* is: <<http://www.prothom-alo.net>>

⁵ Batra M, *Protection of Human Rights in Criminal Justice Administration*, (Deep & Deep Publications, New Delhi: 1989), 42

of justice requires that every person accused of an offence is interrogated and searched in accordance with the procedure established by law so that when he/she is brought before the court for trial, and all the evidence collected against him is made available to the court for deciding as to prove his/her guilt or innocence.⁶

The criminal legislation of Bangladesh confers wide discretionary powers on the investigating authorities to make search and to seize things for the purpose of investigation, inquiry and trial. But the extent and the limit of these powers have been clearly defined by the lawmakers so that an accused is not subjected to unnecessary hardship and harassment at the hands of the investigating authorities. Yet the hardship suffered by the victims under police custody and unnecessary harassment by police have become a common phenomenon now a days. The success of police in ensuring clean and efficient criminal administration system has remained a matter of far away dream.

There are various reasons for this, e.g., because the police authority can not visit the place of occurrence at once both for technical insufficiency, scanty manpower and communication facilities which eventually results in pressure of work upon them. However if these situations could be changed the criminal justice administration system also would have been changed. Because now a days it is common that after the FIR the framing of charges takes a huge time, which results in encroachment of the basic human rights of arrested or detained, if not at least his right to freedom of movement or freedom of enjoyment of property. This lengthy process that results out of the problems mentioned above also have a negative impact upon the probative value of the case. The evidence either perishes or is found in a distorted form.

Efficient investigation is neither a difficult nor an easy task. They should master the technique by which investigation is conducted and should be methodical in their work. Haphazard action and random thought should be discarded to make the criminal justice fruitful. Thus the investigator in arranging investigation must discover the exact moment when he can form a definite opinion. He may form preconceived opinion in reaching the conclusion unless he is forced to abandon it entirely. In this context it is said missing of true moment of forming charge-sheet amounts to a purposeless groping into the darkness.⁷ The investigator shall take the case from the first stage with an open heart. He should have emphasised on the statement of the complaint. He will have to receive information from all quarters and his work at the investigating stage should be

⁶ Kelkar RV, *Outlines of Criminal Procedure*, (Deep & Deep Publications, New Delhi: 1984), 22

⁷ Gross H, *Criminal Investigation*, (Fifth Edition, Sweet & Maxwell Ltd.: 1962), 5

a great detail. He should make notes of everything and visit the place of occurrence etc. whichever an intelligent person thinks fit.

2.2 Initiation of Criminal Cases

The criminal legislation of Bangladesh suggests that a criminal case is initiated by the lodging of First Information Report (FIR) under Section 154 of the Code of Criminal Procedure (Cr. P. C.). It provides, if any information in relation to any cognisable offence is brought to a Police Officer in-charge (OC) that shall be recorded in accordance with Section 154 of Cr. P. C. The FIR is the basis of any criminal case whether it is true or false, it highlights the intention of the informant, which was projected, to be set up by him at that time. The FIR should be meticulously recorded; it records circumstances before there is time for them to be forgotten. The report can be putted in evidence.⁸

Though the FIR is not a substantive piece of evidence still it bears much value. Even the forms of FIR, which have been given under a circumstance of haste, should not be treated as an instrument of less value. The FIR should be distinguished from the information received after investigation, so the FIR should be apparent and of such nature that it creates some sort of encumbrance on police.

The FIR cannot be used for corroboration at the trial. It cannot be used for the conviction at the trial stage as because the FIR may also include within it some statements of confessional nature. It is merely a device of contradiction by prosecutor against the maker thereof, although a mere contradiction cannot be used as substantive evidence.⁹ If the FIR is lodged by the accused himself even then it cannot be used as evidence against him at trial. That will be barred by Section 25 of the Evidence Act, 1872. If it is of confessional nature it cannot be proved against him. Where it is of non-confessional nature it is admissible in evidence as against the accused under Section 21 of the Evidence Act.

It is to be remembered that the FIR is the device of setting the police in action.¹⁰ So FIR should be immediate to the commencement of cognisable offence.¹¹ This rule is to protect manipulation and fabrication with the information. In case of information, which relates to a non-cognisable offence the investigating authority cannot initiate investigation without the approval of a Magistrate having competency and territorial jurisdiction. The Cr. P. C. does neither provide expressly any strict rules or directions

⁸ II CWN 554

⁹ *The Crown vs. Adalat*, 8 DLR (FC) 69

¹⁰ 44 DLR 49

¹¹ *Ataur Rahman vs. The State*, 42 DLR (AD) 31

to be complied with by the Magistrate in doing so nor the Cr. P. C. provides any manner in which the investigation should be carried out in a non-cognisable offence. A mandatory authority of such an order is implied in Section 155(2) of the Cr. P. C. Non-compliance of Section 155(2) may vitiate the ultimate proceedings and it has the probability of colliding with the constitutional provisions, at the same time the provision obliges the investigating authority to send the information of a non-cognisable offence to an empowered Magistrate for initiation of investigation process.¹²

The non-cognisable offences are generally of private nature. The police authority is under no responsibility to initiate the investigation into such cases unless ordered by a Magistrate. If in case of a non-cognisable offence police authority takes up investigation and finally submits a charge-sheet against the accused, and if the concerned Magistrate, being unaware of the provision of law, takes cognisance of the case and issues summon, the whole process is liable to be quashed.¹³ Mere irregularity by an investigating officer not authorized to investigate a non-cognisable offence does not affect the legality of the proceedings of trial unless it is proved to be prejudicial to the accused and resulted in miscarriage of justice. The power to order investigation in non-cognisable cases can be implied from the mandatory provision laid down in Section 155(2) of the Cr. P. C. In case of non-cognisable offences non-compliance with the provision of Section 155(2) of the Cr.P.C. is immaterial.¹⁴

If we take the instances of modern developed countries that have been successful in carrying out an efficient criminal justice administration system we will find that most of them have categorised their crime and have the specificity regarding their investigation rules.

But if we look at the modern developed countries of the world, which are successful in carrying out and settling a suitable criminal justice system, we will find that they have categorized the investigation process in a planned way. They have different sorts of investigation system for different types of crimes.

Almost all the developed countries of the world have adopted sophisticated strategies to cope with sophisticated crimes, the other common law countries also have structuralized their criminal justice system, which serves both the interest of public by punishing the criminal and the interest of the suspects.

¹² 41 DLR 306

¹³ *Abul Hossain vs. State*, 35 DLR 76

¹⁴ *Golam A Maula vs. The State*, 46 DLR 140

In Bangladesh the police perform the functions related with the investigation. The police have been performing the investigative work admirably, but with an outmoded way and procedure. In particular owing to the infra structural under developed condition in the rural areas, the movement of the police gets slow and they cannot reach the place of occurrence at once. The lapse of measures causes the destruction of the *alamat* of offence. Sometimes owing to the lack of manpower the police are incapable of communicating with the place of occurrence, which results in destruction of circumstantial evidence and eventually frustrates justice. Recently the socio-economic condition and degraded form of morality of police entices them to be relaxed in their investigative actions. Some practices of bribes have become a tradition in this respect.

In urban areas the police is a little bit fast. The practicality is that the entire process is boiled down in a stage of investigation by the Police Officer in the place of occurrence by confining the examination to some witnesses only. In cities the form of offences has a diversant nature. The forms and the manner sometimes are so sophisticated that the outmoded police authority owing to the lack of logistic support and proper training cannot cope with and excavate the truth of the fact.

3. RIGHT TO SILENCE

The right to silence is a constitutional right and belongs to the essence of a fair trial. But pertinently it is an inalienable right which requires to be provided to a person accused of an offence for ensuring his/her human rights. It refers to prohibition of use of direct or indirect physical or psychological pressure upon that person. In the modern humanitarian aspect the use of pressure ranging from torture to inordinate judicial sanctions to compel a person to testify against him/her is prohibited. This right of the accused is engrafted in Article 35(4) of the Constitution of Bangladesh. Article 35(4) states that, "No person accused of any offence shall be compelled to be a witness against himself". This is not the case in Bangladesh only. Almost all the countries of the world have inserted such provision within their respective constitutional system both on humanitarian grounds and for the establishment of fair trial. Again the criminal legislations of different countries also contain this right to keep silent to testify against himself.

Such person shall not be compelled to answer those questions, which have the tendency to incriminate him as a wrong doer. However, the accused is allowed to keep his lip sealed placing his reliance on the rule of presumption of silence.¹⁵ The rule giving protection against self-incrimination or in an oblique way right to silence has its

¹⁵ *Ajmer Sign vs. State of Punjab*, (1953), SCR 418

root deep in Article 35(4) of the Constitution of Bangladesh. This constitutional provision can be interpreted to have some aspects, first of all its a right pertaining to a person accused of an offence, secondly, protection against compulsion to be a witness, thirdly, protection against such compulsion resulting in his giving evidence. The accused cannot be convicted of his involuntary confession extorted from him by the police by use of force.

The reasonable interpretation of Article 35(4) will unequivocally disclose the right of any person having right to fair and reasonable questioning and freedom from unfair extraction of information by the police. Which may otherwise mean right to silence is ensured in case of questions of incriminatory nature. Under the provision of Cr. P. C. the accused is obliged to respect investigation but he/she has a right not to incriminate him/herself. He/she is not bound to confer any guilt upon him/her and is entitled to keep his/her lips sealed placing his/her reliance on the presumption of innocence. This applies in case of such circumstances, which have reasonable prospect of exposing him/her to guilt. But if malpractice is done in the investigation procedure and information is extracted by applying the third degree method¹⁶ then the court will be reluctant in giving any evidential value to this sort of confessions.

However it is an established principle of law that the accused has the right not to give evidence against his/her defence. He has the right to remain silent while he is being interrogated by the police. But there may arise a very pertinent question as to what extent this right of the accused will extend. In *Nandini's* case it was held by the Indian Supreme Court that this right extends up to the earning of any evidence which if it were oral evidence would be protected; but this protection or right to keep off the lips of the accused does not cover the production of documents which does not contain any evidence prospecting to expose him/her to guilt. Productions of documents or being a witness are to separate things as has been stated in Section 139 of the Evidence Act, 1872. Section 139 states that persons summoned to produce document cannot be said to have become a witness by the mere fact of his production of document.¹⁷ In view of Section 139 of the Evidence Act the Indian Supreme Court opines that every positive act of violating nature having the tendency of furnishing evidence is a testimony, which connotes coercion and procures the positive violation of evidentiary acts of the person as opposed to the negative attitude of silence or submission on his part.¹⁸

¹⁶ Salmon WG, Jurisprudence (12th Edition, Maxwell : 1985), 89

¹⁷ *Evidence Act 1872*, Section 139; this Section says, "A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross examined unless he is called as a witness". See also Chapter 2.6

¹⁸ *M.P. Sharma vs. Satish Chandra*, (1954) SCR 1077 at 1088

Supreme Court of Bangladesh in dealing with the matter of Section 139 of the Evidence Act followed the principles pronounced by the Indian Supreme court.¹⁹

Therefore the phrase used in Article 35(4) of the Constitution of Bangladesh 'to be a witness' requires meticulous scrutiny which unequivocally reveals that the protection is not only available against the testimonial compulsion but also permeates even to the testimony obtained with priority. This right also extends to a person against whom charge of criminal offence has been brought, which in the normal course of it results in his prosecution.

It is a common principle of criminal jurisprudence that the prosecution has to prove its case and the accused cannot be compelled to open his lips against himself. The rationale behind this principle in Bangladesh is that if the person accused is not safeguarded against self-incrimination he/she would be exposed to force, coercion and torture. The Constitution makers of Bangladesh also incorporated the same rule prohibiting the self-incrimination and have therefore given a constitutional defence under Article 35(4). In this context the rule against self-incrimination as depicted in the Constitution of Bangladesh resembles to this principle of rule against self-incrimination as embodied in the Constitution of USA, which later on was enunciated by the Fifth Amendment of that country. This rule was adopted in order to prevent the laws, which have the tendency to inflict harm upon individual and the society.²⁰ The history of criminal justice administration system suggests that in ancient time the accused was presumed to be guilty, so that the burden of proof of his innocence solely lied upon him. But in course of time when in countries where common law principle was established the principle of presumption of guilt of the accused was replaced by the presumption of innocence. The old concept became obsolete but still in many continental countries their criminal justice administration system is run on the basis of presumption of guilt of the accused.²¹

The rule against self-incrimination has been embodied in Article 35(4) of the Constitution of Bangladesh and Article 20(3) of the Constitution of India. This rule in Article 35(4) of the Constitution of Bangladesh is the composition of the following components: (a) Right pertaining to a person accused of an offence; (b) It is a protection against compulsion to be a witness in his/her own case; (c) It is a protection against such person resulting in his giving evidence. At the same time Section 161(1) of the Cr. P. C. provides that any empowered Police Officer may examine any person while investigating if he thought that the person proposed to be inquired has

¹⁹ Islam M, *Constitutional Law*, (BILIA, Dhaka, 4th Edition: 1995), 191

²⁰ Stephen J F, *A History of Criminal Law in England*, (London: 1883), 354

²¹ David R and Khanna SL, *Comparative Law (History of Common Law)*, Oriental Publishers, 217

acquaintance with the projected offence. At the same time safeguards have been provided to the accused under Section 161(2) of the Cr. P. C.

Since the right to silence which in other words can be termed as the right not to be compelled to testify against own self is a human right protected under Article 14(3) (g) of the ICCPR.

Notably this provision of Section 132 of Evidence Act of USA resembles to the proviso of Section 132 of Evidence Act 1872 of Bangladesh which says "no such answer which a witness shall be compelled to give, shall subject him to arrest or prosecution or be proved against him in any criminal proceeding except a prosecution for giving false evidence by such answer". The USA Supreme Court adopted a liberal interpretation and allowed constitutional right to silence in not only criminal cases but also in civil cases.²² But this right to silence as enshrined in Article 35(4) of the Constitution of Bangladesh covers the criminal cases only. It mandates that an accused cannot be compelled to be a witness against himself.

On the contrary the provision of Section 132 of Evidence Act 1872 may appear to contravene the provision of Article 35(4), but in fact this Article remains unaffected by Section 132. Because Section 132 deals with the witness whereas Article 35(4) deals with the accused and as has previously been shown an accused and witness in a case may not be the same person.

The guarantee provided under Article 35(4) of the Constitution of Bangladesh is against the compulsion to be a witness that means making of oral or written statements in or out of the court by the accused. Such statements do not necessarily mean confessional statements, which have a reasonable tendency to point to the guilt of the accused.

One of the main causes behind that is the society being ridden with corruption there remains an absolute chance of abuse. It is to be observed whether the Supreme Court of Bangladesh should be inclined to apply the protection in cases other than criminal prosecution.

On 2007 the council of advisers has approved the National Human Rights Commission Ordinance to set up the long-awaited National Human Rights Commission (NHRC). The NHRC can investigate human rights violations but is empowered to only settle issues or refer them to the court. The function of the commission will include investigating any allegation of human rights violation received from any individual or quarter, or the commission itself can initiate investigation into any incident of rights

²² *Malloy vs. Hagan*, 378 US 1; *Lefkowitz vs. Cunningham*, 431 US 801

violation. If a human rights violation has been proved, the NHRC can either settle the matter or pass it on to the court or relevant authorities.²³

4. RIGHT TO PROTECTION FROM UNLAWFUL SEARCH AND SEIZURE OF PROPERTY

Search is an inextricable step in the criminal justice, which is a drastic power of an invasion on the sanctity and privacy of citizen's home. Even though it is an encroachment upon some sort of fundamental rights still then people need to brook them for public interest. But at the same time it should be noted that the power of coercive search and seizure should not be abused by the authority under the camouflage of public interest. There should necessarily be some sort of balance between the search of individuals' property and public interest. So some safeguard must inevitably exist. In the context of criminal legislation of Bangladesh it strives to balance between these two interests. It may be brought in mind that the power to commit search in a place under the provision of Cr. P. C. is drastic, and undesirable use of it may frustrate the object for which it was incorporated under the provision of Section 96 of the Cr. P. C. It may cause loss of prestige and business of individuals. The criminal legislation of our country has tried to safeguard the individual against the arbitrary use of power by the authority. In Section 96 of the Cr. P. C. there are 3 grounds under which the police authority can search. Those grounds are a) where the document or thing is known to be in possession of any person b) where the court has reasons to believe that summons for production of anything will not be obeyed and c) where a general search is considered necessary for the purpose of trial.

In the case of *H M Ershad vs. Bangladesh*²⁴ the question was raised before the court whether the search and seizure of property by authority in due course will not amount to violation of fundamental rights. Article 43 of the Constitution of Bangladesh provides that "every citizen shall have the right to be secured in his home against entry, search and seizure and to the privacy of the correspondence, and other means of communication." Thus, it is the constitutional requirement that no Police Officer or any public functionary shall be empowered to enter into the property of any citizen unless he is a person duly authorized by law.²⁵ It also provides that any such law, which so authorizes should be a law made in the interest of state security, public order and public morality.

In Bangladesh such an act of search and seizure will encroach upon the fundamental rights guaranteed under Articles 31 and 32 of the Constitution of Bangladesh. The Constitution mandates such action by police as illegal. If a Police Officer enters into a

²³ Human Rights Concerns 2007 Odhikar Report on Bangladesh 1st January 2008 p.11

²⁴ *H M Ershad vs. Bangladesh*, 52 DLR (AD) 162

²⁵ Islam M, *supra* note 30 at 241

place for the purpose of arresting somebody under Section 47 of Cr. P. C then that act of search by the Government will not be illegitimate. Because Section 47 unequivocally permits a person acting under the warrant of arrest to enter any premises to effect arrest if he has reasons to believe that persons sought to be arrested can be found in that premises. And Section 97 of the Cr. P. C. authorizes the court to issue such a search warrant under certain specified condition and should apply its mind to the facts and circumstances of the case.²⁶ But in Section 97 only home has been inserted but the word 'home' should be considered from a liberal point of view.

Article 43 of the Constitution of Bangladesh expressly relates to home and in view of the language it does not include business premises. In view of Article 31 the business property of any person cannot be subject to search and seizure without the jurisdiction of law.

5. SEARCH AND SEIZURE OF WOMEN ACCUSED:

Due to the difference of sex, women are needed to be searched in a special way and the process of searching of a woman is totally different from that of a man. There exists particular provisions' regarding the search of women accused. Search may be of two kinds, the place suspected to be the abode of the accused may be required to be searched in order to find out and ensure about whether the accused is actually there. In that situation, the person acting under a warrant of arrest; or any Police Officer having authority to arrest has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place, shall, on demand of such person acting as aforesaid or such Police Officers, allow him free ingress thereto, and afford all reasonable facilities for a search therein.²⁷ If the demand mentioned above is not fulfilled then the person acting under a warrant of arrest or the Police Officer is empowered to break open any outer or inner door or window of any house or place, whether that be of the person to be arrested or of any other person.²⁸ If that place where the accused is suspected to be residing is an apartment in the accused's occupancy of a woman, not being the person to be arrested, who according to custom, does not appear in public, such person or Police Officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.²⁹ After arrest is made, the arrested person, male or female, may be searched by the Police Officer arresting the accused or in case of private individual, the Police Officer to whom the private individual makes over the

²⁶ *Hoslidge vs. Crown*, 44 CWN 82

²⁷ *Code of Criminal Procedure* 1898, Section 47

²⁸ *Code of Criminal Procedure* 1898, Section 48

²⁹ *Ibid.*

arrested person and the search should be made in a safe custody.³⁰ All articles other than necessary wearing apparels found upon him may be searched. The female arrestees are, in a bit, taken under special provision in this case. If it becomes necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.³¹ So, the safeguards as to search of an accused woman by the LEA reveals that while searching any arrested woman, the rules of decency that is the assurance of honesty, politeness in behaviour that follows the accepted moral standards and shows respect for others should be strictly followed to its entirety. Another meaning of this is that while searching an accused woman utmost respect and honour have to be shown to the magnanimity of her privacy. Inviolability of her privacy as a female should be given due respect.³²

6. CONCLUSION

The organs of inquiry initiates criminal proceedings and are governed by the rules of criminal procedure, and carries out urgent acts of investigation to establish and record traces of crime: inspection, search, seizure, examination, detention and questioning of suspects and interrogation of injured persons and witnesses.³³ The organ of inquiry is obliged to inform the procurator of the discovery of crime and the opening of inquiry.

Criminal legislation of Bangladesh confers wide discretionary powers on the investigating authorities to make searches and seizure of property in the possession of the accused while conducting an investigation or an inquiry. At the same time they also contain specific provisions safeguarding the interests of the accused.³⁴ For that reason the administration of justice in each country insists that every person accused of an offence is interrogated and searched in accordance with the procedure established by law.

A person against whom criminal proceedings have been instituted has been conceded the right to keep silent about the accusation. This privilege has been conferred upon by the doctrine of presumption of the innocence, which is considered as a cardinal principle in the administration of criminal justice in all countries.

Since the safeguards accorded to the accused against unlawful search and seizure is likely to be in greater jeopardy at the interrogation and the investigation stages, it would be worth for making an appraisal of these safeguards as stipulated under the criminal legislation of Bangladesh.

³⁰ *Code of Criminal Procedure* 1898, Section 51

³¹ *Code of Criminal Procedure* 1898, Section 52

³² *Constitution of Bangladesh*, Article 43 and the *Universal Declaration of Human Rights* 1948, Article 12

³³ *CPC, RSFSR*, Article 119

³⁴ Batra M, *supra* note 7 at 136