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Rajshahi University Law Journal is an official journal of the Faculty of Law, University of Rajshahi that publishes research articles. Contributions to the Journal may be in English or in Bangla and must be unpublished articles containing original research that have not been submitted for publication elsewhere. All submissions are subject to peer review and to edition by the Editorial Board. The decision of the Editorial Board regarding publication is final and the copyright of published articles rests with the Faculty of Law, University of Rajshahi.

Manuscripts submitted for publication must be in three copies, double-spaced typescript or electronic print-out on A4 size (8.5"×11") white sheets with margins of 1" on all sides and pages consecutively numbered. The manuscript should have a title-page with the title of the article and the author's name, designation and contact address. The author's name or anything that may identify the author should not appear anywhere in the text paper. An abstract in English must be provided within 200-300 words at the beginning of the article. Submissions should be addressed to the Editor in Chief, Rajshahi University Law Journal, Faculty of Law, University of Rajshahi, Rajshahi 6205, Bangladesh.

Protection of Human Rights in Criminal Justice System: A Study on Preventive Detention in Bangladesh

Mohammad Abdul Hannan*

Abstract: Human rights form the foundational fabric of society, spanning civil, political, social, economic, and cultural dimensions this article explores criminal justice system of Bangladesh, navigating stages from case initiation to verdict. Emphasizing the pivotal role of the right to defense, it scrutinizes global efforts to comprehensively protect the rights of the accused. The analysis aims to elucidate the constitutional safeguarding and recognition of accused rights within international and Bangladeshi legal frameworks. In the intricate tapestry of criminal justice, key stages such as case filing, arrest, investigation, charge framing, trial, and verdict contribute to the legal landscape. Criminal law designates specific acts as transgressions, imposing sanctions on accountable individuals. The right to defense empowers the accused to counter charges through judicious use of legal provisions. This article contributes to the discourse on harmonizing legal frameworks for the protection and promotion of human rights in criminal justice. By examining the interplay between internationally and nationally safeguarded rights, it sheds light on the delicate balance required for a robust legal framework that respects and upholds human rights.

Keywords: Human Rights, Preventive Detention, Criminal Justice, Constitutional Rights

1. Introduction

Rights are inherent in the human nature and without these, the concept of society is meaningless.² Human rights and related issues, whether civil, political, social, economic, or cultural, are intricately interconnected. The lack of human rights within any community fundamentally negates human dignity.³ Safeguarding the rights of the accused relies on the efficacy of the criminal justice system,

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¹ This article is a modified chapter of a research project submitted at the University of Rajshahi in 2023. The author wishes to thank the University of Rajshahi for the assistance received during work in this project.

² M E Bari, 'The Universal Declaration of Human Rights— The Magna Carta of Mankind' in *Human Rights in Contemporary International Law*, Dhaka, 1995, p. 27

³ *Human Rights Today*-UN Briefing Papers, UN Publications, 1998, p. 6

encompassing various stages of court proceedings. These stages involve the functions of law enforcement, prosecution, including the initiation of a case, arrest, investigation, framing of charges, trial, and the ultimate verdict of conviction or acquittal. The criminal law of any jurisdiction delineates specific actions as criminal and imposes penalties on individuals deemed accountable for such deeds. An individual facing charges for committing a crime is identified as the accused. Once arrested and subjected to criminal proceedings, the accused is treated as a prisoner. The right to a defense empowers the accused to contest the charges brought against them, utilizing all legal avenues available.⁴

Preventive detention is an imprisonment that is putatively justified for non-punitive purposes, most often to prevent further criminal acts. It is used to a considerable extent in countries ruled by dictators. It was also found in the Soviet Union, particularly in cases in which the accused individuals were perceived as political or security threats to the government. In such countries, where there was often little concern for the protection of individual rights, preventive detention was left almost exclusively in the hands of police and prosecuting authorities. Where there is greater concern for individual rights, the courts have been given control, but critics maintain that the practice in any form does not lend itself to vigorous and continuous protection of individual rights.⁵

The safety of the person who has been arrested is given high consideration in every criminal justice system in existence today. Every country has a system in place for criminal justice that ensures the safety and protection of the accused individual while also making the arrest legal. Most of the legislation of Bangladesh were influenced by British colonial rule over a sizable period of time. In many cases, laws that were already in place when the colonies were established have been modified to better suit the demands of the time. It is appropriate to say that the Constitution is the best standard to determine the justice and

⁴ M Batra, *Protection of Human Rights in Criminal Justice Administration*, Deep & Deep Publications, New Delhi, 1989, p. 7

⁵ See, <https://www.britannica.com/topic/preventive-detention>

rationality of current laws, without diminishing the importance of customary rules and practices.⁶ A due process model of the criminal justice system, as opposed to a "crime control" approach, is perhaps better suited to serve the overriding aims of criminal law that are often provided by the Constitution.⁷ As a result, the Bangladeshi Constitution states that "No one who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice."⁸

Numerous international human rights instruments, including the Universal Declaration of Human Rights, 1948,⁹ the International Covenant on Civil and Political Rights, 1966,¹⁰ the United Nations Standard Minimum Rules for the Treatment of Prisoners, 1957, and the United Nations Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), along with diverse domestic legislations, underscore concerted efforts toward safeguarding the rights of the public at large and, specifically, those of accused individuals.

However, issues such as trial delays attributable to a shortage of courts or judges, and unsanitary jail conditions resulting from prisoner overcrowding, warrant scrutiny in safeguarding the rights of prisoners. Ensuring the protection of prisoners' rights, along with addressing their psychological and economic needs, holds vital significance for the equitable execution of criminal laws and cultivating public trust in the criminal justice system. This article aims to delve into the specific factors impeding the criminal justice system and compromising the

⁶ M J Haque, *Human Rights Law*, 1997, Dhaka, p. 48

⁷ *Ibid*, p. 47

⁸ Article 33, *The Constitution of Bangladesh*.

⁹ Hereinafter referred to as the UDHR

¹⁰ Hereinafter referred to as the ICCPR or the Covenant. The Covenant is the component of the International Bill of Human Rights, which were adopted unanimously by 106 States on December 1966 and entered into force in 1976. In 2000 Bangladesh acceded to the ICCPR considered by the human rights experts as the most influential human rights mechanism of the United Nations. Through this ratification Bangladesh has undertaken to respect and to ensure all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant without discrimination of any kind.

rights of prisoners, an endeavor crucial for the effective protection of those rights. This article adopts an analytical research approach, aiming to scrutinize the intricate dynamics between the criminal justice system and human rights in Bangladesh. The methodology is driven by a comprehensive analysis of existing legal frameworks, case studies, and international human rights standards.

2. Right to Life as Constitutional Safeguards

Article 31 of the Constitution of Bangladesh provides that,

“To enjoy the protection of the law and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh and in particular no action detrimental to the life, liberty, body, reputation or property of any other person shall be taken except in accordance with law”.

This Article declares two fundamental rights; first, to enjoy the protection of law, and to be treated in accordance with law, is the inalienable right of every citizen. Second, no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. These provisions are co-related with the subsequent Article in which it is declared,

“No person shall be deprived of life or personal liberty save in accordance with law”.¹¹ Right to life is an inherent right of a man. Because no man can take away the life of other man capriciously this right has been guaranteed with a great accentuation by all national, regional and international law, custom, usage etc. Article 3 of the UDHR states that “Everyone has the right to life”. The International Covenant on Civil and Political Rights (ICCPR), 1966 has stated vividly the right to life.¹²

Every accused person, as a human being, possesses an inherent right to life, safeguarded by law. Arbitrary deprivation of this right is strictly prohibited. The imposition of the death penalty is permissible only in accordance with a conclusive judgment from a competent court. The

¹¹ Article 32, *The Constitution of Bangladesh*,

¹² Article 6, *International Covenant on Civil and Political Rights*, 1966.

European Convention on Human Rights and Fundamental Freedoms (ECHR) also speaks against arbitrary deprivation of life.¹³ It states that "Every one's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law".¹⁴ The American Declaration of the Rights and Duties of Man and the American Convention on Human Rights, 1969 (ACHR) also advocated against arbitrary deprivation of life saying that, "Every human being has the right to life".¹⁵

Every individual possesses the right to have their life respected, a right enshrined in law and generally acknowledged from the moment of conception. Deprivation of life is strictly prohibited. Those sentenced to death retain the right to seek amnesty, pardon, or commutation of sentence, a recourse that remains available throughout the petition process. Capital punishment shall not be imposed while such a petition is pending before the competent authority.¹⁶ The African Charter on Human and Peoples Right also upholds the right to life. It says, "Human rights are inviolable. Every human being shall be entitled to respect for his life and the integrity of his personality. No one may be arbitrarily deprived of right".¹⁷

3. Preventive Detention

In the original Constitution of Bangladesh, Article 33 didn't allow for preventive detention. However, through the second amendment, the present Article 33(3) was introduced. This revised article specifies that the safeguards outlined in Articles 33(1) and 33(2) won't apply to arrested persons under any preventive detention law. Despite this, the Constitution imposes certain restrictions on the exercise of such laws. To safeguard individuals from arbitrary arrest and detention by the executive, Articles 33(4) and 33(5) introduce three crucial safeguards.

¹³ Article 2, *European Convention on Human Rights and Fundamental Freedoms* (ECHR).

¹⁴ *Ibid.*

¹⁵ Article 1, *American Declaration of the Rights and Duties of Man* (ADRDM).

¹⁶ *The American Convention on Human Rights* (ACHR), 1999,

¹⁷ Article 4, *African Charter on Human and Peoples' Rights*.

The introduction of the second amendment in the Constitution of Bangladesh has played a pivotal role in reshaping the legal framework surrounding preventive detention. Notably, Article 33(3)(b) has emerged as a point of contention, as it allows for preventive detention for up to six months without subjecting individuals to the safeguards outlined in Articles 33(1) and 33(2). This provision seemingly expands the executive's authority in matters of preventive detention, creating concerns about potential violations of human rights.

The specific wording of the revised Article 33(3)(b) is worth examining: "The safeguards outlined in Articles 33(1) and 33(2) shall not be applicable to individuals arrested under any preventive detention law." This exemption raises questions about the adequacy of checks and balances within the legal system. While the Constitution imposes essential restrictions on the exercise of such powers, as outlined in Articles 33(4) and 33(5), these safeguards may be insufficient to counterbalance potential abuses.

Article 33(4) mandates that authorities promptly inform detained individuals of the grounds for their arrest, aiming to ensure transparency and accountability in the process. Meanwhile, Article 33(5) grants individuals subjected to preventive detention the right to be represented by legal counsel, upholding the principles of fairness and justice. Additionally, Article 33(5) facilitates judicial oversight, allowing detained individuals to challenge the legality of their detention before a court. Despite these safeguards, the absence of a mandatory Advisory Board review during the six-month period specified in Article 33(3)(b) raises concerns. This loophole potentially enables arbitrary and prolonged detentions, posing risks to due process and human rights. The nuanced exploration of the second amendment emphasizes the dynamic interplay between expanded executive powers and the imperative to protect individuals from arbitrary arrest and detention. This critical examination underscores the need to address the shortcomings inherent in Article 33(3)(b) to ensure a more robust protection of human rights within the legal framework.

A Dhaka court has sentenced Adilur Rahman Khan, the secretary of the human rights organization Odhikar, to two years in prison. He was

convicted of disseminating false information regarding an operation against Hefazat-e-Islam members at Shapla Chattar in Dhaka a decade ago. ASM Nasiruddin, the director of Odhikar, also received a two-year prison sentence in the same case and both were fined Tk10,000 each. The verdict was announced by Dhaka Cyber Tribunal Judge.¹⁸

Regarding the imprisonments, Saad Hammadi, a human rights advocate and global governance fellow at the Canada-based Balsillie School of International Affairs issued a statement on Thursday.¹⁹

“Instead of investigating and responding to the findings of Odhikar independently with facts, the authorities chose a path that penalizes human rights defenders and set a precedent of the repressive actions for reporting human rights violations in Bangladesh. Adil and Elan should not have been charged in the first place, let alone being imprisoned”.

3.1 Approval by Advisory Board

Any law permitting preventive detention cannot allow the confinement of an individual for more than six months unless an Advisory Board, comprising three members – two being individuals qualified to be appointed as Judges of the Supreme Court and the third a Senior Officer in the service of the Republic – has, after providing the person with an opportunity to be heard, reported before the conclusion of the six-month period that there is, in its opinion, sufficient cause for such detention.²⁰

¹⁸ *The Daily Star*, Dhaka, 25 November 2023. The Daily Star states that, On June 10, 2013, Detective Branch (DB) of police filed a general diary with the Gulshan Police Station in this connection, which was later converted into a case. Detectives arrested Adilur at Gulshan on August 10, 2013 shortly after filing the GD complaining that the rights body on its website ran a false report titled "Assembly of Hefajat-e Islam Bangladesh and Human Rights Violation". The report tarnished the image of the country, its government and the law enforcement agencies, read the GD. Odhikar's report claimed that 61 people died in the wee hours of May 6 when the law enforcers flushed several thousand Hefajat activists out of the ShaplaChattar in the capital's Motijheel. The government, however, put the number of deaths at 13.

¹⁹ *The Dhaka Tribune Desk*, 14 Sep 2023

²⁰ Article 33(4), *The Constitution of Bangladesh*,

3.2 Right to Communication of Grounds of Detention

The provision embedded in Article 33(5) of the Constitution of Bangladesh underscores a fundamental right—the right to the communication of grounds of detention. This constitutional safeguard becomes operative when an individual is detained under the authority of a preventive detention law. The language of the article explicitly places an obligation on the issuing authority to promptly convey to the detained person the specific grounds that led to the issuance of the detention order.²¹

This right serves as a crucial cornerstone in the realm of justice and due process. It seeks to ensure transparency and accountability in the process of preventive detention, acknowledging the gravity of depriving an individual of their liberty. The requirement for prompt communication of grounds serves not only as a legal formality but as an essential mechanism for individuals to comprehend the reasons behind their detention, empowering them to exercise their legal rights effectively.

In practice, the effectiveness of this right depends on the adherence of authorities to the constitutional mandate. The real-world application of this provision necessitates scrutiny to ensure that the communication of grounds is not merely a procedural formality but a substantive right that enhances the overall integrity of the legal system. The examination of cases and instances where individuals have been detained under preventive detention laws will shed light on the practical realization of this right, determining whether it stands as a robust guarantee or a precarious reliance on the government's commitment to transparency and justice.

3.3 Right to representation against order of Detention

The authority making the order of detention shall afford the detainee the earliest opportunity of making a representation against the order. The right to representation against order of detention depends on the right to communication of grounds of detention. Because in order to make an effective representation detainee must know the grounds. But

²¹ Article 33(5), *Ibid*

proviso to Article 33(5) and proviso of Section 8 (1) of the Special Powers Act (SPA), 1974 state, the authority making any such order may refuse to disclose facts, which such authority considers to be against the public interest to disclose. Here lies the crux of the problem. The authority takes this opportunity and often decline to communicate the grounds to the detainee. So, the constitutional safeguards have become meaningless. Again, the AB is not a judicial body; though it is constituted under the provision of the Constitution of Bangladesh, it follows the executive proceedings rather than judicial proceedings. Section 11(4) of the SPA stipulates that a detainee subject to a detention order cannot be represented by any legal practitioner in any matter related to the Advisory Board, and the proceedings and report of the Board, except for the part specifying the Board's opinion, shall be confidential. The binding nature of the Board's report on the executive raises concerns about potential influence from the executive, given the restricted access and representation afforded to the detainee during the process.

3.4 Statutory Restrictions

Under the amended provision of Article 33, the Special Powers Act (SPA), 1974 was enacted; there also have some safeguards for the detainee. At first the authority has to prove that the detainee is engaged in any prejudicial act referred in Section 2(f) of the SPA. This Section provides that, "Prejudicial act means any act which is intended or likely:

- i) to prejudice the sovereignty or defence of Bangladesh;
- ii) to prejudice the maintenance of friendly relation of Bangladesh with foreign states;
- iii) to prejudice the security of Bangladesh or to endanger public safety or the maintenance of public order;
- iv) to create to excite feelings of enmity or hatred between different communities, classes or section of people;
- v) to interfere with or encourage interference with the administration of law or the maintenance of law and order;
- vi) to prejudice the maintenance of supplies and services essential to the community;

- vii) to cause fear or alarm to the public or to any section of the public;
- viii) to prejudice the economic or financial interests of the State.”

A person cannot be detained unless those grounds are satisfied. If the DM or ADM satisfies that the above prejudicial acts exist, he can detain any person under Section 3(2) of the SPA.²² Section 3(3) of the SPA provides when any order under Sub-section (2) is made, the DM or ADM should forthwith inform the government about the fact of the detention. It should not continue for more than thirty days, if the government does not approve.²³

In every instance where an order is issued under Section 3 of the SPA, the issuing authority must promptly communicate to the affected person the grounds for the order. The individual must be given the opportunity to make a written representation against the order. It is the responsibility of the authority to inform the person of their right to make such a representation and to provide the earliest opportunity for them to do so.²⁴

Regarding a detention order, the issuing authority is required to inform the detained person of the grounds for their detention at the time of detention or as soon as practicable thereafter, but not later than fifteen days from the date of detention.²⁵ In all cases where a detention order is issued under this Act, the government is obligated, within one hundred and twenty days from the date of the detention order, to present before the Advisory Board the grounds on which the order was made and any representations made by the person affected by the order.²⁶

The Advisory Board shall, after considering the materials placed before it and calling for such further information as it may deem necessary from the government or from the person concerned an opportunity of being heard in person, submit its report to the government within one

²² Section 3(2), *The Special Powers Act, 1974*,

²³ Section 3(3), *Ibid.*

²⁴ Section 8(1), *Ibid.*

²⁵ Section 8(2), *Ibid.*

²⁶ Section 10, *Ibid.*

hundred and seventy days from the date of detention.²⁷ But by expressing the oppressive intention of the executive authority Section 12 of this Act says that in every six months from the date of such detention order the Advisory Board shall, after affording the person concerned an opportunity of being heard in person review such detention order.

By taking the advantages of this SPA, the authority is violating the human rights of the suspects. For a clear conception one of the many examples may be cited here. In *Reita Rahman vs. Bangladesh*²⁸ it was revealed how the executive abuses the provisions of the SPA. In this case, Major Khairuzzaman's detention order by the government was called in question on the ground of non-application of mind. Major Khairuzzaman, the alleged associate in Bangabandhu killing was arrested and detained by the Additional District Magistrate (ADM) of Dhaka on 13 August 1996 under Section 3(2) of the SPA. The order was signed by the District Magistrate (DM) on 13 August 1996 and it was served upon the detainee in Dhaka Central Jail on the same day. The grounds of detention were signed by the DM on 26 August 1996 which were served upon the detainee on 27 August 1996. Under Section 3(3) of the SPA the order of detention is to be approved by the government. It appears that the grounds of detention were signed by the DM on 26 August 1996; but the government passed an order of approval and extension of detention on 18 August 1996. So, on the face of the record, the grounds of detention were not placed before the government when the government passed the order of extension of detention on 18 August 1996. It was a total absurdity of facts and clear violation of Section 3(3) of the SPA as well as the human rights of the suspect.

4. Violation of Rights: Reality vis-a-vis Constitutional Guarantees

Despite the protections mentioned above in the Constitution of Bangladesh the right to life of an accused is being violated by the Law Enforcing Agencies (LEA) like Police, BGP, ANSAR and RAB. It has been reported by the national dailies and the non-governmental organizations that rampant human rights violations are taking place

²⁷ Section 11(1), *Ibid.*

²⁸ *Reita Rahman vs. Bangladesh*, 50 DLR 201

across the country.²⁹ In 1996, 43 persons were killed by firing of the LEA.³⁰ In 1997, 57 persons were killed under the custody of LEA, 23 died in jail custody, 28 by police firing and 6 died by police torture and 163 received bullet injury by police, BDR and ANSAR.³¹ In 1998, 56 prisoners died under police and jail custody,³² among them 14 under police custody, 1 under BDR custody and 41 died more or less by torture by jail and police authority.

Another Report of BRCT³³ discloses the fact that from January 1998 to June 1998, fifteen persons were killed by torture by the LEA, 28 killed by firing, 4 persons died under police custody, 25 persons in jail custody, 17 raped by police, 55 injured seriously by law enforcing agencies and the number of tortured persons by them is 152. In 2002 number of custodial deaths is 38.³⁴ This is absolutely shocking for the nation. Even the President of the country in a speech delivered in 8th National Conference on Human Rights, had to say that torture and inhuman treatment meted out to a person in custody and custodial death are against humanity and civilization.³⁵ In the year 2004 the LEA especially RAB killed people in the name of crossfire that caused death of some 70 people across the country since June to December.³⁶ This information bear the testimony that the right to life, liberty, body, reputation or property of an accused is being violated in spite of ensuring these rights under Articles 31 and 32 of the Constitution of Bangladesh.

²⁹ *Mediterranean Journal of Social Sciences*, 2013 4(13), available at [10.5901/mjss.2013.v4n13p101](http://www.mjss.2013.v4n13p101)

³⁰ *Human Rights Fact Finder*, Bangladesh Rehabilitation Centre for Trauma Victims (BRCT), March-April issues, 1999

³¹ *Human Rights Fact Finder*, BRCT, January Issue, 1998

³² *The Daily Ittefaq*, Dhaka (Bangladesh), 1 January 1999, available at <http://www.ittefaq.com>

³³ *The Daily Inqilab*, Dhaka (Bangladesh), 26 June 1999, available at <http://www.dailyinqilab.com>

³⁴ *The Daily Ittefaq*, Dhaka (Bangladesh), 27 December 2002, available at <http://www.ittefaq.com>

³⁵ *Ibid.*

³⁶ *The Daily Star*, Dhaka (Bangladesh), 10 December 2004, available at <http://www.thedailystar.net>

4.1 Grounds of Arrest or Detention

Article 33(1) and (2) of the Constitution of Bangladesh make provisions against arbitrary arrest and detention saying that, "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice".³⁷ This Article again says,

"Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate".³⁸ This Article is in the line of the UDHR, which states, "No one shall be subjected to arbitrary arrest, detention or exile."³⁹

These fundamental rights of an accused are being violated by the LEA in Bangladesh. By taking advantages of some other provisions of Cr. P. C. the police infringes the fundamental rights of the accused. One of the most controversial provisions is Section 54 of Cr. P. C. For proper appreciation, Section 54 of the Code is reproduced below:

"Any Police Officer, may, without an order from a Magistrate and without warrant, arrest – *first of all*, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned; *secondly*, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implementation of house breaking; *thirdly*, any person who has been proclaimed as an offender either under this Code or by order of the government; *fourthly*, any person in whose possession anything is found which may reasonably be suspected to be stolen property and

³⁷ Article 33(1), *The Constitution of Bangladesh*.

³⁸ Article 33(2), *Ibid*.

³⁹ Article 9, *Universal Declaration of Human Rights*, 1948.

whom a reasonably be suspected of having committed an offence with reference to such thing; *fifthly*, any person who obstructs a Police Officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; *sixthly*, any person reasonably suspected or being a deserter from the Armed Forces of Bangladesh; *seventhly*, any person who has been concerned in or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition under the Fugitive Offenders Act, 1881 or otherwise liable to be apprehended or detained in custody in Bangladesh; *eighthly*, any released convict committing a breach of any rule made under Section 565(3); *ninthly*, any person for whose arrest a requisition has been received from another Police Officer, provided that the requisition specified the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by an officer who issued the requisition."

The police officer is granted the authority to arrest individuals without a warrant based on the nine clauses outlined above. However, the first clause introduces four conditions, articulated in a manner that opens the door to potentially abusive and colorable exercise of power. These conditions stipulate that a police officer may arrest:

(a) Any person involved in a cognizable offence. (b) Individuals against whom a reasonable complaint has been made. (c) Those for whom credible information has been received. (d) Individuals for whom a reasonable suspicion exists regarding their involvement in a cognizable offence.

The word 'concerned' used in first clause is a vague word which gives unhindered power to a police officer to arrest any person stating that the person arrested by him is 'concerned' in a cognizable offence. The language of section 54 of the Cr. P. C. suggests the potential for the

abuse of power by police officers. Notably, this section lacks a provision mandating that the accused be informed of the grounds for their arrest, a fundamental human right. While Section 54 does not require the disclosing of arrest reasons to the arrested person, it's noteworthy that Clause (1) of Article 33 of the Constitution, as mentioned earlier, stipulates that the arrested person should be informed of the grounds for arrest. It's pertinent to observe that this provision does not specify a particular time frame for such disclosure. Article but the expression "as soon as may be" is used which does not mean that furnishing of grounds may be delayed for an indefinite period. Justice Md. Hamidul Haque in *BLAST* case⁴⁰ asserts that the phrase "As soon as may be" implies that the grounds for arrest should be provided after the person is brought to the police station and entries about the arrest are made in the diary. Regrettably, police officers often fail to adhere to this constitutional provision. It is perplexing that while they display enthusiasm in exercising powers under section 54, they exhibit reluctance to comply with constitutional mandates. This anomaly highlights a concerning trend where, instead of adhering to constitutional provisions, police officers prioritize the exercise of powers granted by the Code without hesitation. And more strangely our government is ratifying such practice. It is evident to anyone if s/he observes the mass arrest made under Section 54 during the tenure of each government in various times to suppress the political opponents.

The Constitution, not only stipulates that the arrested person must be informed of the grounds for arrest but also guarantees the right to consult and defend oneself with a legal practitioner of their choice. In the *BLAST* case, it was argued that immediately after providing the grounds for arrest, the police should be obligated to facilitate the person in consulting their lawyer if desired. However, individuals arrested under Section 54 often find this constitutional right denied. This denial extends to the refusal to inform the closest relatives of the arrested person. Justice Hamidul Haque, in this case, contends that the arrested person should be granted these rights upon arrival at the

⁴⁰ *BLAST vs Bangladesh*, 55 DLR 363

police station from the place of arrest, preceding their presentation to the nearest Magistrate, enabling them to mount a proper defense.

4.2 Right to Defend: Consultation with Lawyer

The right of representation by a lawyer is often considered to be a part of natural justice. If the person is denied the service of a spokesman, it will be a clear violation of natural justice. In *Pett vs Greyhound Racing Assn (1)*,⁴¹ Lord Denning observed:

“When a Man’s reputation or livelihood is at stake, he not only has a right to speak by his own mouth. He has also a right to speak by counsel or solicitor”. Even a prisoner can have his friend.”

The right to consult with the lawyer is also approved by some Indian case decisions. The right of the accused to consult his legal advisor and to be defended by him has been put at the highest footing under Article 33 of the Constitution of India and it is really not necessary to deduce it new from other enactments.⁴² Section 340 of the Code has been expressly made applicable not only to person accused of an offence but also to any person against whom proceedings are instituted under the Code in any criminal court.⁴³ The government is entitled as of right to be heard by counsel or advocate in support of the prosecution whether in original or in appellate court. The accused is entitled to be represented by an advocate. This is a privilege given to him. The only duty cast on the court is to afford him the necessary opportunity.⁴⁴ When a person is not defended, the judge should make arrangement for his defence in grave cases. In cases where a lawyer has been engaged to defend the prisoner at the expense of the government, the trial judge must see that a greater experienced advocate is appointed to cross examine the witness. Section 340 of the Cr. P. C. implies that the accused shall have a reasonable opportunity, if in custody, to communicate with his advocate and prepare for his defence.⁴⁵ Full opportunity should be afforded to the accused to get

⁴¹ (1968) 2 All ER 545

⁴² AIR 1954 (Raj) 241

⁴³ 27 Cr. L. J. 1169

⁴⁴ AIR 1951 (SC) 441

⁴⁵ AIR 1935 (Lah) 230

proper legal advice and assistance before he is called upon to cross-examine the prosecution witnesses.⁴⁶ There are sufficient case decisions on this point in Bangladesh. In *Sate vs. Abdul Gazi*,⁴⁷ it was held that Section 340 of the Cr. P. C. confers a right on every accused person brought before a criminal court to be defended by a lawyer. The accused must be afforded full opportunity to be properly defended and he has a right to be defended by a lawyer of his choice. The denial of this right must be held to have rendered the trial as one not according to law and necessitated a fresh trial. Failure to comply with the prayer of the accused to recall prosecution witnesses for cross examination on material points by the newly engaged lawyer after the withdrawal of the previous defence lawyer prejudice the accused.

4.3 Constitutional Safeguards as to Detention

Article 33 clause II of the Constitution of Bangladesh articulates the time limit within which an accused is to be produced to the nearest Magistrate. When a person who is arrested under Section 54 without a warrant, the provisions of Section 61 of the Cr. P. C. apply in this case. It provides that no Police Officer shall detain in custody a person arrested without warrant for a period exceeding 24 hours unless there is a special order of a Magistrate under Section 167 of the Code.⁴⁸ So there is a reference of Section 167, in Section 61 of the Code, which provides, if there is a special order of a Magistrate under Section 167, the police may keep a person in its custody for more than 24 hours.

Upholding the Constitutional provision in *Mehmaz Sakib vs. Bangladesh*⁴⁹ case, it was stated that since the detainee was arrested under Section 54 of the Cr.P.C. It was incumbent upon the police to produce her before a Magistrate within twenty-four hours but the police having not done so, the right guaranteed to her under the Constitution has been violated. It is necessary to peruse what is provided in Section 167 of the Cr. P. C. Relevant provisions of this Section are produced below:

“Procedure when investigation cannot be completed in twenty-four hours -

⁴⁶ AIR 1916 (Mad) 933

⁴⁷ *The State vs. Abdul Gazi*, 33 DLR 79

⁴⁸ Section 61, *The Code of Criminal Procedure*, 1898,

⁴⁹ *Mehmaz Sakib vs. Bangladesh*, 52 DLR (HD) 526

- (1) whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 61, and the rare grounds for believing that the accusation or information is well-founded, the Officer-in-charge of the police station of the police Officer making the investigation if he is not below the rank of Sub- inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.
- (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has no jurisdiction to try the case or send it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Government shall authorize detention in the custody of the police.

- (3) A Magistrate authorizing under this Section detention in the custody of the police shall record his reasons for so doing.
- (4) If such order is given by a Magistrate other than the Chief Metropolitan Magistrate (CMM), District Magistrate (DM) or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately sub-ordinate".

From the above provision it stands that if the requirements of sub-section (1) are not fulfilled, the Magistrate cannot pass an order under Sub-section (2) for detaining a person exceeding twenty-four hours. But such practice is being exercised under the title of remand.⁵⁰

⁵⁰ The word 'remand' is not defined in the codified law. The dictionary meaning of remand is to send back an accused to get further evidence. The term remand does not occur in Section 167 of the Cr.P.C. But in our country the police generally utilize this Section for the purpose of taking an accused person on remand. Though the provisions of Section 167 empower the Magistrate to authorize the detention in police custody, it is surprising to note that no guideline has been given in Sub-sections (2)

Before entering into the aspect of custodial death it is necessary to give a definition of police custody. Police custody means and includes, custody under the authority of the police – every person who is kept in attendance to answer a charge in such a way that he is practically deprived of his freedom.⁵¹ In such custody during the past few years, the numbers of deaths have attracted the attention of the press, human rights groups and international agencies. During the *Operation Clean Heart* in 2002 as many as 47 people were reportedly killed in police custody.⁵² In the year 2003, 115 persons were killed in 95 occurrences in several places of Bangladesh by law enforcement and security personnel. Out of these numbers 27 people were killed in custody.⁵³

5. Criticism of Preventive Detention Law

The preventive detention is observed as black law of the blackest laws in the world. In short span the preventive detention is considered as follows:

5.1 Preventive detention law is full of negative features

- i) Both in the Constitution of Pakistan and India the initial period of detention is 3 months. But in the Constitution of Bangladesh the initial period of detention is 6 months. Nowhere in the world such is a long period of initial detention found.
- ii) No maximum period of detention is fixed either in the Constitution or in the SPA. It means that a person can be detained for an indefinite period once the Advisory Board opines that there exists sufficient cause for such detention.
- iii) In democratically developed countries like USA it is specifically mentioned that only in time of emergency, preventive detention law would be applied. But in our Constitution no such specification is provided. As a result, this law has become the sharp weapon to suppress the political opponent of the government.

and (3) as to the circumstances under which detention in police custody may be authorized.

⁵¹ Article 45, *The Police Regulations of Bengal*, 1943, p. 45

⁵² *Annual Report 2002 of the BRCT*, Dhaka, 18

⁵³ *Annual Report 2003 of the BRCT*, Dhaka, p. 7

5.2 Democratic Constitution turned into a Draconian Law

This is a sinister looking feature of a democratic constitution. This is undoubtedly unfortunate. The SPA has turned into a draconian law. Because-

- (i) A detainee under this law has not been given any right, by appointing a lawyer, to know from a judicial body why has he been detained?
- (ii) The government can arrest and detain any person at any time it wishes.
- (iii) The government can, if wishes, detain a person for an indefinite period.
- (iv) It is factually negating all the avowed commitment and spirit of the constitution and human rights.

5.3 Controversial Nature

On 7 September 2000 a three-member Sub-committee of the Parliamentary Standing Committee submitted a 31 pages report on SPA to the Parliament. The Sub-committee mentioned that 69,010 people were detained under the controversial SPA of 1974 in the last 24 years and 68,195 persons detained under this Act were released by the order of the High Court Division.⁵⁴ After studying the verdicts in 100 cases the Sub-committee identified 16 reasons for which the court declared the detention illegal. These reasons included⁵⁵:

- a) vague, indefinite and uncertain grounds for detention;
- b) governments unlawful authority in ordering detention;
- c) non-placement of grounds for detention within 120days;
- d) lack of basis for detention order;
- e) for political reasons mixing of good grounds with bad one;
- f) failure to show reasons for detention within 15 days;
- g) government failure to produce necessary papers in court; and
- h) delayed government order for extension of detention.

⁵⁴ *The Bangladesh Today*, Dhaka (Bangladesh), 19 February 2005

⁵⁵ *Ibid.*

Despite the findings of the said Sub-committee, the Parliament has recommended the retention of this repressive law, which is surprising to everybody.⁵⁶

6. Suggestions

6.1 Legislative Reforms

Given the historical influence of British colonial laws on Bangladesh, a comprehensive assessment and reform of present legislation, mainly the Special Powers Act (SPA), 1974, have to be taken into consideration. This includes aligning the period of preliminary preventive detention with international standards and establishing a maximum period of detention to prevent indefinite confinement.

6.2 Judicial Oversight Enhancement

Strengthening the position of the judiciary is important. Introducing provisions that grant detainees the proper legal representation in the course of Advisory Board proceedings and ensuring transparent and fair reviews could make a contribution to a more equitable preventive detention procedure.

6.3 Emergency Clause Specification

The constitution should benefit from a clearer delineation of occasions warranting the application of preventive detention, making sure its use in genuine emergencies. This might mitigate the threat of the law being exploited for political functions.

6.4 Human Rights Education

Initiatives to teach law enforcement and judicial government on human rights concepts are vital. This consists of making sure awareness of detainees' rights, proper communication of grounds, and adherence to due technique, fostering a tradition of respect for human rights inside the criminal justice mechanism.

The case against Adilur Rahman Khan and ASM Nasiruddin stemmed from the publication of a fact-finding report on Odhikar's website regarding the number of casualties during a police operation against Hefazat-e-Islam activists at ShaplaChattar in Dhaka on May 5-6, 2013.⁵⁷

⁵⁶ *Ibid.*

⁵⁷ *The Dhaka Tribune Desk*, 14 Sep 2023

As a result of Adilur Rahman case the Bangladeshi government repealed Section 57 of the Information and Communication Technology Act, after widespread concerns and criticism that it violated the right to freedom of expression and contravened Bangladesh's international commitment. Yet, the two prominent human rights advocates were tried under section 57."

7. Concluding Remarks

In end, the safety of human rights in the criminal justice system, particularly concerning preventive detention in Bangladesh, demands a holistic method. The paper has shed light at the interaction among constitutional provisions, international human rights requirements, and the practical realities of the criminal justice system. While acknowledging the fantastic safeguards in area, the critique of the preventive detention regulation underscores the want for continuous scrutiny and adaptation to evolving societal norms and worldwide exceptional practices. The hints put forth aspire to support the existing framework, ensuring a delicate balance among national safety concerns and the fundamental rights of individuals. By addressing legislative shortcomings, enhancing judicial oversight, specifying emergency clauses, and promoting human rights education, Bangladesh can fortify its dedication to a truthful and just criminal justice device. This, in flip, contributes to public confidence inside the legal equipment and aligns the state's practices with the wider international human rights discourse.