



EAST WEST UNIVERSITY

DISSERTATION

ON

**Unlawful Arrest and
Wrongful Detention: A Study
on Police Brutality as
Violation of Law**

Course Title: Supervised Dissertation

Course Code: LAW406

**Submitted To:
Mridul Bepari
Lecturer
Department of Law
East West University**

**Submitted by:
Aysha Akter
ID: 2017-3-66-045
Semester: Spring 2023**

Date of Submission: 18.01.2023

Acknowledgement

First and foremost, I am grateful to almighty Allah, by whose grace I have been able to come so far. I am also thankful to my respected supervisor Mridul Bepari (Lecturer) Department of Law, East West University, who assisted me in determining my thesis topic and guided me in this journey, and provided various research supports to conduct my thesis work. I want to thank all of East West University Department of Law faculty members for their advice and support throughout my undergraduate career. Finally, I want to thank my family and friends for motivating me at every stage of my life.

Declaration

I, Aysha Akter, bearing Student Id: 2017-3-66-045, hereby solemnly declare and affirm that I have done this research work and that the entire or limited portion of this research paper has not been submitted or published by any journal or any newspaper or any article. I have completely created this Dissertation paper. The materials used for this research work has been acknowledged duly, and a list of references and footnote has also been provided.

List of Abbreviation

ICCPR: International Covenant on Civil and Political Rights

CrPC: The Code of Criminal Procedure

HCD: High Court Division

AD: Appellate Division

NHRC: National Human Rights Commission

MISA : . The Maintenance of Internal Security Act

CAP: Civil Air Patrol

BLAST: Bangladesh legal aid and services trust

Table of Content

Serial No.	List of Content
i	ABSTRACT
ii	LIST OF ABBREVIATIONS
1	Chapter – Introduction
1.1	Introductory Statement
1.2	Methodology
1.3	Research Question
1.4	Limitations
2	Chapter – Concept of unlawful arrest and wrongful detention in Bangladesh
2.1	Introduction
2.2	What is Unlawful Arrest & detention
2.3	Laws Relating to Arrest without a Warrant in Bangladesh, India and Pakistan: A Comparative Analysis
2.4	Conclusion
	Chapter – 3 Violation of law and legal rights of a person.
3.1	Introduction
3.2	Rights of a person detained unlawfully
3.3	Wrongful arrest and unlawful detention by the police
3.4	Conclusion
	Chapter - 4 Legal Remedy for Unlawful Arrest & Prevention
4.1	Introduction
4.2	Analysis of decisions of the Higher Judiciary on Arrest and Detention in Bangladesh
4.2.1	The Constitution of Bangladesh

- 4.2.2 The Penal Code, 1860
- 4.2.3 The Code of Criminal Procedure, 1898
- 4.2.4 Legal framework for prevention of arrest and detention of police custody in Bangladeshi
- 4.3 Compensation for wrongful conviction and imprisonment.
- 4.3.4 Preventive detention, violation of individual human rights.
- 4.4 Conclusion

Chapter – 5 Findings, Recommendations, and Conclusion

- 5.1 Findings
- 5.2 Recommendations
- 5.3 Conclusion

BIBLIOGRAPHY

Abstract

The legality of preventive arrests or arrests made without a warrant by law enforcement has been contested for decades throughout the world. The primary goal of a preventive arrest is to deter a suspect from committing a punishable offense in the future. A person's rights are temporarily violated when they are arrested, and if the arrest is performed without a warrant, it may be arbitrary and in violation of fundamental rights. In contrast to India's and Pakistan's constitutions, Bangladesh's constitution did not initially guarantee the use of the power of preventative detention in any circumstance. However, on September 22, 1973, the Bangladesh Constitution was changed, giving the national legislature the authority to establish legislation relating to preventive detention without defining the protections.

Keywords- Arrest without warrant, human rights, detention, police officer.

Chapter-1

INTRODUCTION

People cannot be detained by the police in an arbitrary manner or based only on a single suspicion. Before placing someone under arrest, authorities must have sufficient proof that a crime was committed, according to the U.S. Constitution. Probable cause is the required level of evidence. Arbitrary or unlawful detention happens when someone is taken into custody by the government without being given a fair trial or due process, or when someone is imprisoned without a valid reason to restrict their freedom. If an arrest is made with the intention of transferring the suspect to the appropriate authorities but without a valid warrant or any other justification, the people making the arrest are responsible for any damages that result.

The element of unlawful arrest are-

1. The offender detains or makes an arrest of a third party.
2. There is no legitimate justification for the arrest or detention, or the law does not permit it. If someone is being held without warrants The policeman may be fired in extreme circumstances. Additionally, they may be suspended or reprimanded. Exclusionary motions may be filed by those who were detained by the police without authorization and later charged with a crime. In that motion, the court would be urged to reject any evidence gleaned through the detention. Anyone who has been involved in any cognizable offense, against whom a reasonable complaint has been made, credible information has been received, or against whom a reasonable suspicion exists that he has been so concerned, may be arrested by any police officer without a warrant and without an order from a magistrate. the offender to the relevant authorities is the offender's goal.

Unjustified Detention Involuntary custody of a CAP Member by any person(s) acting as agents of, or with the implicit permission of, any government or governmental agency, or acting or appearing to act on behalf of, any insurgent party, organization, or group is referred to as "wrongful detention."

The term "wrongful detention" refers to the arbitrary or capricious confinement of an insured person (without the demand of ransom money) by a person(s) acting as an agent(s) of, or with

the tacit approval of, any government or government entity, or acting or purporting to act on behalf of, any insurgent party, organization, or group. A person who has had their conviction overturned or overturned by the court may in some cases petition for compensation for the time they spent in jail as a result of their incorrect conviction.

Methodology - The nature of this research is qualitative oriented. The method is focused on the exploration of the connection. In conducting the research, the resources like statutes, international conventions, are considered primary sources. Regarding the secondary resources, national and international journals, newspaper articles, websites, online journals, scholars' blogs are considered. Lack of resources described in limitation.

Research Question-

- i) Whether unlawful arrests are committed frequently in Bangladesh? If so, what is the legal framework for safeguarding against unlawful arrests in Bangladesh?
- ii) Is there any lacuna in the existing framework regarding safeguarding unlawful arrests? If so, which measures can be taken to fulfill those lacunas?

Limitations

Many restrictions were encountered while doing the research. Internet access issues made it difficult to conduct resource collection study. Because of my time limitation I could not utilize many of my academic resources along with that I was allotted with other courses which barred me from giving proper effort to complete this dissertation. If there is sufficient time for this research, it might be able to get a better result. This study would be more planned, spontaneous, and informative without this limitation.

Chapter- 2

CONCEPT OF UNLAWFUL ARREST AND WRONGFUL DETENTION IN BANGLADESH

The criminal justice system in Bangladesh continues to be characterized by arbitrary arrest, confinement, and death in custody. Even though there are statutory and constitutional protections for the liberty and security of individuals, many complaints of misuse or abuse of the laws' provisions governing arrest and detention have been made in practice. The article provides information regarding legal detention in Bangladesh.¹ Although the top court in Bangladesh has taken a proactive role in protecting people's rights by issuing directives and rulings that limit arbitrary detention and arrest, these measures are still mostly ineffective due to the absence of law enforcement cooperation and a lack of legal change.² Aspects of recent tests initiatives to address the problem of custodial death in Bangladesh are also looked at in this article.

What is wrongful Arrest and detention-

Every person has a right to respect for their freedom and security. Without an effective guarantee of the freedom and security of the human being, it goes without saying that other individual rights are more at risk and frequently illusory. However, as the work of the international monitoring organizations shows, it is routine practice to make arrests and detain people without a good justification and without giving the victims any real legal recourse.³ The detainees are regularly denied access to both lawyers and their own families during such arbitrary and unlawful deprivations of liberty, and they are also tortured and subjected to various sorts of cruel treatment. It is crucial that the laws that are in place are international.⁴ What Exactly Is an Illegal

¹ Abdullah Al-Faruque and Hussain Mohammad Fazlul Bari, 'Arbitrary Arrest and Detention in Bangladesh' (30 May 2019) < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3396356> Accessed 3 Jan. 2023

² ibid

³ Morgan and Morgan, 'Wrongful & False Imprisonment' (17 Jun 2020) < <https://www.forthethepeople.com/false-imprisonment-lawyers/>> Accessed 3 Jan. 2023

⁴ ibid

Arrest? People cannot be detained by the police in an arbitrary manner or based only on a single suspicion. Before placing someone under arrest, authorities must have sufficient proof that a crime was committed, according to the U.S. Constitution.⁵ Probable cause is the required level of evidence. When a person is detained by the government without a fair trial or other due process, or when they are locked up against their will, this is known as arbitrary or unlawful detention.⁶ If an arrest is made without a legal warrant or any of the conditions necessary for a warrantless arrest but is done so with the intention of handing the apprehended individual to the correct authorities. False imprisonment, also known as unlawful confinement, occurs when someone intentionally limits another person's freedom of movement without that person's consent, a court order, a good reason, or any other legal protection. Actual physical restraint is not necessary in cases of false detention.⁷ A claim of false incarceration may be filed either on one's own actions or on improperly detaining someone by the government. Proof of false imprisonment in a police detention situation gives grounds for requesting a petition of habeas corpus.

Laws relating to arrest without warrant in Bangladesh, India and Pakistan- A Comparative Analysis –

No law now in effect in Bangladesh, including the Code of Criminal Procedure from 1898, defines the term "arrest." A person's freedom is restricted when they are arrested, according to traditional definitions. An order to hold an accused individual in custody and bring him before a judge is known as a "warrant."⁸ The Code of Criminal Procedure, 1898, section 54 contains the legislation governing the arrest of people without a warrant in Bangladesh.⁹ (*BLAST v Bangladesh*)¹⁰ In this case the sentence gives police complete freedom to detain someone without a warrant (Faruque, 2013). When someone is arrested, they are stripped of their freedom and are unable to exercise their legal rights while they are in custody. (2003) breach of this right

⁵ ibid

⁶ Wrongful detention, 'The Encyclopedia Of World Problems & Human Potential' (12 Feb 2017) <<http://encyclopedia.uia.org/en/problem/wrongful-detention>> Accessed 3 Jan. 2023

⁷ ibid

⁸ Arfan Ahmed, 'Laws Relating to Arrest without a Warrant in Bangladesh, India and Pakistan: A Comparative Analysis' (1 Jun 2020) <https://www.seu.edu.bd/seujass/downloads/vol_03_issue_01_Jun_2020/SEUJASS-Vol03Issue01-11.pdf> Accessed 3 Jan 2023

⁹ ibid

¹⁰ 55 DLR (HCD) (2003) 363

by administrative authorities, mainly by law enforcing authorities is a common fact in Bangladesh". Anyone who has been found guilty should always be taken into custody; but, before any form of conviction by an appropriate court, no one should be imprisoned. However, under unusual circumstances, police might be given the authority to detain with adequate protections so they cannot in any way violate the rights of the person being detained.¹¹ The law enforcement agencies in Bangladesh have been shown to have abused this power rather often and with impunity. This occurs mostly as a result of ambiguity in section 54 of the Code of Criminal Procedure, 1898.¹² The Code of Criminal Procedure, 1973, section 41, section 41A, and section 41B in India include the provisions governing arrests without warrants. In comparison to Pakistan and Bangladesh, India's revised laws on warrantless arrest offer residents better protection against unlawful detention and application of the law.¹³ Similar to Bangladesh, the same outdated colonial statute about arrest is in effect in Pakistan. The arbitrary application of the legislation, which allows the agencies responsible for implementing the law the authority to detain anyone without warrant, has caused great misery to the population of Bangladesh and Pakistan.¹⁴ The members of the law enforcement agencies must not abuse the power given to them by law and must not use the power in an arbitrary manner. Rule of law only in the judicial process cannot prevent the arbitrary use of law; rather, rule of law in administrative process is a prerequisite to prevent abuse.¹⁵ The law in India, Bangladesh, and Pakistan that allows police to arbitrarily detain anyone without a warrant must be changed to better protect citizens' rights.¹⁶ Laws governing preventive detention are remarkably similar in Bangladesh, India, and Pakistan, however they are applied in diverse ways. The Bengal State Prisoners Registration iii introduced the first regulations prohibiting warrantless arrests in the Indian subcontinent in 1818¹⁷. Similar rules were passed by the Madras and Bombay presidencies in 1819 and 1827, respectively.

¹¹ Duncan Lewis Solicitors, 'Wrongful Arrest and Unlawful Detention by The Police' (13 March 2019)<<https://www.duncanlewis.co.uk/Wrongful-Arrest--And-Unlawful-Detention-By-The-Police.html>> accessed 09 January 2023

¹² Aiman R Khan, 'Is s.54 of CrPC aiding wrongful arrests? | An Analytical approach towards Police Misconducts in Bangladesh.'https://www.academia.edu/25707276/Is_s_54_of_CrPC_aiding_wrongful_arrests_An_Analytical_approach_towards_Police_Misconducts_in_Bangladesh> Accessed 09 January 2023

¹³ Afroza begum, 'Disrespecting constitutional safeguards for fundamental rights in bangladesh'<https://www.jstor.org/stable/43952073>> accessed on 11 january 2023

¹⁴ Aiman R Khan, 'Is s.54 of CrPC aiding wrongful arrests? | An Analytical approach towards Police Misconducts in Bangladesh.'https://www.academia.edu/25707276/Is_s_54_of_CrPC_aiding_wrongful_arrests_An_Analytical_approach_towards_Police_Misconducts_in_Bangladesh> Accessed 09 January 2023

¹⁵ ibid

¹⁶ ibid

¹⁷ The bengal state prissioners registration iii 1881

Preventive detention was covered by the Defense of India Ordinance and the Government of India Act, 1935. (Devi, 2012). Following that, it became the Defense of India Act of 1939 and remained in effect until the start of World War II. The definition of preventative detention was also included in the Defense Act of 1915. The Indian Constitution the Preventive Detention Act, 1950, was the name given to the preventive detention statute that was adopted

India in 1950. The Maintenance of Internal Security Act (MISA) 1971 later revised it and replaced it. The Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) of 1974, the National Security Act of 1980, the Essential Services Maintenance Act of 1981, and finally the Terrorist and Disruptive Activities (Prevention) Act of 1985 all introduced preventive detention laws into the Indian subcontinent's legal history.¹⁸ Preventive detention laws were implemented in Pakistan under the guise of several Acts/Ordinances, including the Security of Pakistan Act, 1952, the Public Safety Act, (Amendment)1950, and the Public Safety Ordinance, 1952. (Halim, 1998). The parliament was given authority under the 1956, 1962, and 1973 Pakistani constitutions.

Parliament the authority to enact preventive legislation, subject to the restrictions outlined in Article 22. Like the Constitution of Bangladesh, clause (1) of Article 22 of the Indian Constitution which is one of the fundamental rights in Part III, declares that “no person who is arrested shall be detained in custody without having informed, as soon as maybe, on the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice.” Clause (2) of Article 22 states that every person arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest excluding of course the time necessary for the journey from the place of arrest to the court of magistrate. Though India has amended its criminal procedure code so as to safeguard the rights of citizens from arbitrary arrest, in Bangladesh and Pakistan the law is still the same as it was in 1898.

Conclusion- The protections against warrantless arrests in Bangladesh, Pakistan, and India differ significantly from one another. Compared to Bangladesh and Pakistan, India's law on arrest

¹⁸ CM Abraham, ‘Preventive detention and security law’
<https://brill.com/display/book/edcoll/9789004479456/B9789004479456_s007.xml> accessed 11 january 2023

without a warrant better and more effectively protects and safeguards the rights of the arrested person. The laws in Bangladesh and Pakistan allowing for arrest without a warrant need to adequately protect citizens' rights. The country's common citizens occasionally encounter the corruption of the Bangladeshi police. Money, not the law, is occasionally what drives illegal detentions and arrests. Through bribes to the police, the guilty may get away with their crimes and be replaced by the innocent. Dicey contends that in order to apply and enforce laws in both judicial and administrative settings, the rule of law is a must. For instance, if a man is unjustly detained by the police, he may initiate a lawsuit for damages against the offending police officers as if they were private individuals. In the administrative process of implementing the law, the rule of law is crucial. To ensure that the law is upheld, the law enforcement agencies' personnel must receive training.

Chapter-3

VIOLATION OF LAW AND LEGAL RIGHTS OF A PERSON

In this chapter, the fundamental legal principles regulating arrest, imprisonment, and administrative detention under international human rights law will be examined. In doing so, it will, among other things, go into some detail about the justifications for arrest and continued detention as well as the right of a person who has been deprived of their liberty to contest the validity of this loss of liberty. The focus will be on Human and Peoples' Rights, the Inter-American and European Courts of Human Rights, and the Human Rights Committee, which offers interpretations that are essential for fully comprehending the significance of the international legal norms governing arrest and detention.¹⁹

Rights of a person detained unlawfully-

Article 33 of the Constitution of People's Republic of Bangladesh guarantees the following rights for the arrested/detained person²⁰:

- a) Right to be informed of the grounds for arrest/detention immediately
- b) Right to consult and be defended by a legal practitioner of his/her choice
- c) Right to be produced before the nearest magistrate within a period of 24 hours of arrest and
- d) Right not to be detained in custody beyond the said period without the authority of a magistrate.

However, the aforementioned rights are not available to enemy aliens or people who have been arrested or detained under legislation that allows for preventative detention.

¹⁹ ' Human Rights Arrest and pre trial detention and administrative detention
<<https://www.ohchr.org/sites/default/files/Documents/Publications/training9chapter5en.pdf>> accessed on 11
january 2023

²⁰ The Constitution of the People's Republic of Bangladesh, Art 33

The protection of one's freedom, personal liberty, and security is promoted in Article 9 of the (ICCPR).²¹

Examples of restricting this freedom include unlawful police detention, remand detention, imprisonment after conviction, house arrest, administrative detention, involuntary hospitalization, institutional custody of children, confinement to a confined region, and being moved against one's will.²² According to the right to personal liberty, no one may be arrested or detained unless it is authorized by law and provided that neither the arrest nor the detention is capricious. All forms of confinement that rob persons of their liberty fall under the scope of this right²³. In order to fulfill a person's right to security, the nation must take reasonable precautions to ensure their physical safety. According to the right to personal liberty, no one may be detained or arrested unless specifically authorized by law, and only then if both the legislation itself and how it is applied are not arbitrary.²⁴ A detention or arrest may be legal under local law, yet it nevertheless may be arbitrary, according to the UN Human Rights Committee. According to the Committee, "arbitrariness" should be understood widely to include features of inappropriateness, injustice, and lack of predictability rather than being synonymous with "against the law"²⁵. The right applies to all types of detention, including administrative detention used for contagious disease control, mental health treatment, and criminal punishment and removal of unauthorized immigrants. According to the Committee, a detention that initially complies with article 9 of the ICCPR²⁶ can turn into arbitrary if it lasts longer than the time for which it can be justified. Additionally, if a person has been detained initially for a particular reason, there needs to be a proper defense for keeping them in custody after the original reason has been fulfilled.²⁷

²¹ international Covenant on Civil and Political Rights 1996I

²² 'Wrongful arrest and false imprisonment must stop' New Age Opinion (Bangladesh, 14 June 2021) <<https://www.newagebd.net/article/140638/wrongful-arrest-and-false-imprisonment-must-stop>> accessed 09 January 2023

²³ ibid

²⁴ 'Equality and human rights commission' <<https://www.equalityhumanrights.com/en/human-rights-act/article-5-right-liberty-and-security>> accessed on 11 January 2023

²⁵ Anika Tahsin, 'A grim picture of wrongful convictions in Bangladesh' (Bangladesh, 29 Nov 2020) <https://www.tbsnews.net/thoughts/grim-picture-wrongful-convictions-bangladesh-164614> accessed 09 January 2023

²⁶ International Convent on Civil and Political Rights, 1966

²⁷ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988

Wrongful arrest and unlawful detention by police-

Police must have justification before they can detain or arrest members of the public, however sometimes mistakes are made, the wrong information or tip-offs are given to the police, or the proper detention processes are not followed, leading to wrongful arrests and detentions. (false imprisonment)²⁸.

Arrests are basically made by police. Most of the cases we can see that police officers arrest any person based on a warrant which is given by a magistrate. Sometimes arrested people may wonder which types of officers can legally make arrests²⁹. In fact, all law enforcement officers can arrest if they have probable cause, whether they are on or off duty at the time of arrest. However, police officers can arrest anyone even without a warrant³⁰. Section 55 of the 1898 Code of Criminal Procedure demonstrates this. The officer-in-charge of the police station may also arrest or cause the arrest of the following people: (1) those who come into his territory and attempt to hide themselves in order to conduct major crimes; and (2) those who have no public sources of living. (3) A person known as a thief or robber. Section 56 provides that the officer-in-charge of the police station or the investigating officer may delegate the authority to arrest to their subordinates. Section 58 states that, if necessary, a police officer from one police station may enter another police station or any place in Bangladesh to arrest the accused³¹. Private person arrest, as defined in section 59 of the CrPC 1898. (1) Any normal citizen may arrest any person who, in his opinion, commits a non-bailable and cognizable offense, or any declared offender, and shall, without undue delay, hand over any person so arrested to a police-officer, or, in the absence of a police-officer, take or cause such person to be taken in custody to the nearest police-station. When a suspect has never interacted with the police before and is clear of all charges, mistaken arrest and identity can be incredibly upsetting. Without justification, arresting and holding someone is a violation of their human rights.³² We can offer advice on how to file a claim for compensation and are frequently able to offer a no win no fee

²⁸ Duncan Lewis Solicitors, 'Wrongful Arrest and Unlawful Detention by The Police' (13 March 2019) <<https://www.duncanlewis.co.uk/Wrongful-Arrest--And-Unlawful-Detention-By-The-Police.html>> accessed 09 January 2023

²⁹ Lauren Freidenberg, 'Unlawful Detention and False Arrest' <<https://www.mhb.com/news/unlawful-detention-and-false-arrest>> accessed 09 January 2023

³⁰ The Code of Criminal Procedure (CRPC), 1898, section 54

³¹ Ibid

³² <<https://www.ojp.gov/pdffiles1/nij/grants/249850.pdf>> accessed on 11 January 2023

solution for claims for unlawful arrest or unlawful detention where a police arrest or detention cannot be legally justified. There are several different situations where claims for wrongful custody may be made, ranging from stop and search-related unlawful detention to immigration-related unlawful detention. People who are subjected to unlawful custody by the police, jail service, Border Control and immigration agents may experience extreme distress. Police need a valid reason to hold someone without violating any laws. A person may be detained for their personal safety and protection or for the protection of the general public.³³

Conclusion-

In this chapter we discussed wrongful arrest and unlawful detention by the police and also the rights of the person who was detained unlawfully. When a suspect has never interacted with the police before and is clear of all charges, mistaken arrest and identity can be incredibly upsetting. Without justification, arresting and holding someone is a violation of their human rights lawful detention by the police and also the rights of the person who was detained unlawfully.

³³ *ibid*

Chapter-4

LEGAL REMEDY FOR UNLAWFUL ARREST AND PREVENTION

Introduction- In our country innocent people continue to be wrongfully detained and falsely imprisoned by law enforcement officials who are investigating cases and working together with attorneys in some instances. This is allegedly because the individuals responsible for these frauds, including law enforcement officials and attorneys in some instances, go unpunished. At least 26 persons are said to have served lengthy prison sentences between September 2013 and March 2021 because their fathers' names coincided with the culprits'. Most of the time, those who were imprisoned in this way have been freed on court rulings, but the law enforcement officials who looked into the case have never been disciplined for their negligence. The fact that the police officers were not penalized. Therefore, the government must establish a system for punishing law enforcement officials who wrongfully detain innocent persons, as well as lawyers and other complicit parties, and pass legislation providing victims of such dishonest police practices with adequate recompense. In order to properly address this problematic situation, the government must also make arrangements for police training if there is a shortage on this count, especially based on the presumption of innocence.

Analysis of decision of the higher judiciary on arrest and detention in Bangladesh-

Police have broad authority under Sections 54 and 167 of CR.PC 1898, to detain someone without a warrant if they have a good basis to believe they are guilty. Since "reasonable suspicion" is not defined, there is room for abuse on the part of the authorities. Custodial confessions are forbidden in Bangladesh unless they are made to a magistrate, and even then, if the accused says he doesn't want to confess, he can only be placed in judicial custody if he isn't already free.³⁴A statement made by the suspect while they are being held by the police that results in the recovery of evidence against them is admissible in court under Section 27 of the Evidence Act if it is later shown to be truthful³⁵. This clause permits law enforcement to use

³⁴ Abdullah Al Faraque and Hussain Mohammad Fazlul Bari, 'Arbitrary Arrest and Detention in Bangladesh' (19 Jul 2019)< https://www.researchgate.net/publication/334204748_Arbitrary_Arrest_and_Detention_in_Bangladesh> accessed 09 January 9, 2023

³⁵ ibid

tangible evidence. Article 35(4) of the Constitution prohibits self-incrimination, and Article 35(5) states that "No person should be subjected to torture or to cruel, barbaric, or degrading punishment or treatment." The involuntary methods used to elicit confessions are against these provisions. However, on numerous occasions, individuals passed away following their detention even before they were brought before the courts as required by article 33 of the constitution. Despite the legal and constitutional prohibitions on arbitrary arrest, confinement, and torture, these practices are all too common in Bangladesh. Thankfully, Bangladesh's higher judiciary has taken a proactive stance to stop arbitrary arrest and detention as well as to safeguard victims from torture. In this context, *BLAST v. Bangladesh* is the most significant recent court ruling. In *BLAST (Bangladesh legal Aid and Services Trust)*³⁶ vs. Bangladesh, Shamim Reza Rubel, On July 23, 1998, at 4.30 p.m., the Detective Branch (DB) of the police picked up and severely assaulted a university student in front of his home on Siddeswari Road in Dhaka. At 9:45 p.m. on the same day, doctors at DMCH's emergency room declared Shamim dead. He was delivered by a group of males in civilian clothing who claimed to be DB members. The deceased person was not registered, according to a hospital official. The witnesses claimed that Shamim was being questioned by police about whether or not he had any illegal weapons on him. Public outrage followed the police officer's shooting of Shamim, which received extensive media coverage. An investigation was conducted as a result of the death of Shamim receiving extensive media coverage. Following a post-mortem and an inquiry, the suspects were charged in accordance with section 302 of the Penal Code. It was discovered that the victim was mercilessly tortured to death by Detective Branch officer AC Akram and a few other cops. The defendant was found guilty and given a life sentence after the trial.

The constitution of Bangladesh-

The Bangladesh Constitution upholds the protection and respect for fundamental human rights, equality, and the rule of law in order to create a just society. Articles 27, 31, 33, and 35 of the

³⁶ 55 DLR (HCD) (2003) 363

Constitution include the most significant constitutional protections against arrest and detention.³⁷ In accordance with Bangladeshi Constitution Article 102, a person who feels wronged may submit a writ petition. Article 31 states that all citizens have the unalienable right to only be treated "in accordance with the law," whereas Article 27 ensures the right to equality and equal protection of the law. A person detained under ordinary law is granted four fundamental liberties or protections under Bangladesh Constitution Article 33.³⁸

-He cannot be held in jail without being made aware of the charges brought against him/her and the reasons for their detention as soon as possible.

-He must be granted the freedom to choose his own attorney to consult with and represent him.

-He must be allowed to select the lawyer he wants to speak with and represent him.

-Within 24 hours of his arrest, he has the right to appear before the local magistrate, and he cannot be held in custody for longer than 24 hours without the magistrate's permission.

The penal code 1860

If the arrested person is placed in police custody, he or she must appear before the magistrate once the duration of the custody is up. Under no circumstances may the person be transferred to judicial custody after the duration of the custody without first appearing before the magistrate.

- For the purposes of section 167(2) of the Code, the filing of a case against the person who was arrested is a requirement sine qua non before the arrestee may be placed in either police or court custody.

-In the event that a person is brought before a magistrate with a request for his detention in any custody but fails to present a copy of the journal entries as required by item No. (iv) above, the magistrate shall release the person in accordance with section 169 of the Code upon receiving a bond from him.

- The Magistrate shall not grant such a prayer unless the accused or arrestee is presented before him with a copy of the entries in the diary relating to such a case. This is true if a police officer

³⁷ Rumana Islam ' Human Rights in the constitution of bangladesh'
<<https://www.thedailystar.net/supplements/50-years-our-constitution-original-ideals-vs-reality/news/human-rights-the-constitution-bangladesh-3160256>> accessed on 11 january 2023

³⁸ ibid

requests that an arrested person who is already in custody be shown to have been arrested in a specific case.

-The Magistrate with jurisdiction to take cognizance of the case, or with the prior consent of the Judge or Tribunal having such power, may place the accused person on remand under section 344 of the Code for a term not to exceed 15 days at a time if the investigation of the case cannot be completed within 15 days of the detention of the accused under section 167(2).

The code of criminal procedure 1898-

Section 54(1) of CR.PC and abusing of the law- In Bangladesh, laws frequently contain flaws. In actuality, it is your application of the law, not the law that is flawed. The appropriate term in this context is ‘abusing laws’ People abuse the legal system to their own advantage. However, the consequences of exploiting or abusing the law are extremely grave. It is a typical practice not only in Bangladesh but also in other affluent nations. However, the situation we have here is much more dangerous and immoral in our culture.³⁹ Actually, we don't care about the consequences of what we do when we abuse the law. If we look closely at our society, we will see that there are many instances of lawbreaking that happen frequently. The subject is quite broad and cannot be simply discussed. We face a wide range of issues in our society. I have focused on Sections 54, 167, and 61 of the Code of Criminal Procedure 1898 in this section. These sections include topics including detention guidelines and unauthorized arrest. In our nation, these provisions are arbitrarily misinterpreted, which violates provisions and encourages corruption. In reality, politicians and a few strongmen in our society do these crimes in the name of the law to overcome their problems legally.⁴⁰

Legal framework for prevention of arrest and detention of police custody in Bangladesh-

Article 33 of our constitution covers an arrested person's rights. A person who has been detained is granted three constitutional rights or protections under Article 33.

³⁹ ‘section 54 of the CR.PC and abusing the law’

<<https://www.lawyersnjurists.com/article/section-54-of-the-cr-p-c-and-abusing-the-law/#:~:text=According%20to%20section%2054%2C%20police.or%20by%20persuading%20own%20benefit.>> accessed on 11 january 2023

⁴⁰ ibid

Any person can not be held in custody without being promptly informed of the reasons for the arrest, according to sub articles (1) and (2).

Any person has the right to appear in front of the local magistrate within 24 hours. And cannot be held in jail for an additional 24 hours without the magistrate's permission. Articles (3), (4), (5), and (6) discuss four constitutional protections for detention. Arrested person has also the right to consult with and be represented by a lawyer of their own choosing.

The creation of human rights and democracy, which are the ideal aspects of our constitution, depend on the rule of law⁴¹. However, every government in Bangladesh has used the Special Powers Act of 1974 as a brutal tool to imprison a large number of people without charge or trial every year in order to silence political opponents. Additionally, the fundamental rights guaranteed by Articles 31, 32 (A), 33(1) and (2) of our Constitution, namely the right to protection of the law, the right to one's personal liberty, and the right to safety while in custody, are not protected by the constitution itself for the detainee, who is imprisoned without charge. Thus, once a person is unlawfully detained pursuant to this statute, he discovers that all of his fundamental rights aside from his right to life have been strangled in.

Compensation for wrongful conviction and imprisonment-

In some circumstances, a person whose conviction has been reversed by a court or the appeals process may file a petition to be compensated for the time they spent in jail as a result of their erroneous conviction. There is no legal right to receive compensation from the government for illegal arrest, conviction, and detention.⁴². However, the government has the option to make an ex gratis (voluntary) payment to someone who was wrongfully convicted and imprisoned⁴³. In recent years, many Bangladeshis have been unjustly jailed and imprisoned. Unreasonably many

⁴¹ Md Sohel Rana, Nadhratul Wardah Salman and Saroja Dhanapal, ' Legal Framework Of Arrest And Post-Arrestsafeguards: A Comparative Analysis As To The Laws Of Bangladesh, India, And The United Kingdom' (02 Nov 2021)< <https://journals.iium.edu.my/iiumlj/index.php/iiumlj/article/download/645/333>> accessed 09 January 2023

⁴² Constitutional Issues & Human Rights, ' Compensation for wrongful conviction & imprisonment' (1st January 2023)< <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/miscarriages-of-justice/compensation-for-wrongful-conviction-and-imprisonment/>> accessed 09 January 2023

⁴³ A Report by Justice, 'Compensation for Wrongful Imprisonment' (London 1982) < <https://archives.novascotia.ca/pdf/marshall/RG44v271n8-ReportJustice-1.PDF>> accessed 09 January 2023

people have been wrongfully imprisoned and detained over the past ten years.⁴⁴ Political oppression-related issues include false confessions coerced into being made through torture, the defendants' poor economic situation, and a lack of knowledge of the rights of the accused. Additionally, there is a dearth of competent defense lawyers at the district level, and law enforcement officials are generally recognized for abusing their authority by arresting and detaining suspects on the basis of guilt rather than innocence. In Bangladesh, the court's decision and verdict on compensation are all focused on wrongful imprisonment. This essay advocates for restitution for both unjust detention and unlawful imprisonment. Criminal justice is widely available, and the conditions in Bangladesh make it simple to deny someone their right to life and freedom.⁴⁵ There are just a few instances of especially polarizing legislation, insufficient investigation tools, law enforcement corruption, political meddling, criminal violence against other members of the populace, a huge backlog in the courts, but severely stratified judicial access. Then, just to be procedurally fair in general If an individual's life or freedom has been wrongfully taken away by the State while carrying out its constitutional duties, it must be restored. Bangladesh must therefore utilize a combination.

Preventive detention and violation of individual human rights-

Concerningly, innocent people continue to be wrongfully detained and falsely imprisoned by law enforcement officials who are investigating cases and working together with attorneys in some instances. This is allegedly because the individuals responsible for these frauds, including law enforcement officials and attorneys in some instances, go unpunished. At least 26 persons are said to have served lengthy prison sentences between September 2013 and March 2021 because their names coincided with the culprits'.⁴⁶ Most of the time, those who were imprisoned in this way have been freed on court rulings, but the law enforcement officials who looked into the case

⁴⁴ Atiqur Rahman, 'Ensuring Compensation for the Victims of Wrongful Imprisonment and Wrongful Detention' (2020)

<https://www.researchgate.net/publication/341840026_Ensuring_Compensation_for_the_Victims_of_Wrongful_Imprisonment_and_Wrongful_Detention_in_Bangladesh> accessed 09 January 2023

⁴⁵ 'Compensating the wrongly convicted' <<https://innocenceproject.org/compensating-wrongly-convicted/>> accessed on 11 January 2023

⁴⁶ Md. Nazir Ahmed, 'Preventive Detention, Violation Of Individual Human Rights: An Overview From Bangladesh Perspective' < <http://miurs.manarat.ac.bd/download/Issue-05/08.pdf>> accessed 09 January 2023

have never been disciplined for their negligence.⁴⁷ The fact that the police officers were not penalized appears to. Therefore, the government must establish a system for punishing law enforcement officials who wrongfully detain innocent persons, as well as lawyers and other complicit parties, and pass legislation providing victims of such dishonest police practices with adequate recompense.⁴⁸ In order to properly address this problematic situation, the government must also make arrangements for police training if there is a shortage on this count, especially based on the presumption of innocence. One of the most contentious legal issues in our nation is preventive detention. Preventive detention is the custody of a person without a court-ordered trial or a finding of guilt, but only because the executive authority has a suspicion about them. Human rights have been violated since the very beginning of our society. Preventive detention is used in a culture that violates human rights all throughout the world.⁴⁹ Especially in the developing world. I regret having to mention Bangladesh as one of them. In my essay, I'll discuss its definition, background, nature, and justification as well as the protections afforded by our constitution. I'll also make some suggestions for how to prevent human rights violations through preventive detention. In this essay, I would like to demonstrate how preventative detention violates human rights.⁵⁰

Conclusion-

In this chapter we discussed the legal remedies for unlawful arrest and prevention. In the past, under Article 102(b)(1) of the Constitution, anyone detained in a preventive detention case could submit a writ of habeas corpus in the High Court Division. If HCD determines that such detention is unlawful, the court may only issue a release order. For instance, in the 1974 case of *Mrs. Aruna Sen v. Bangladesh and Others*,⁵¹ The court ruled that preventative detention was unlawful and released the accused, although it did not take compensation into account. Actually, the Bangladesh constitution article 3 guarantee of fundamental rights cannot be satisfied with a release order alone.

⁴⁷ *ibid*

⁴⁸ Universal Declaration of Human Rights, 1948

⁴⁹ Farhan hasan bhuyan shan, 'Ensuring compensation against unlawful preventive detention cases in Bangladesh' <<https://lawyersclubbangladesh.com/en/2022/10/06/ensuring-compensation-against-unlawful-preventiv-e-detention-cases-in-bangladesh/>> accessed on 11 january 2023

⁵⁰ *idib*

⁵¹ (1975) 27 DLR (HCD) !22

Chapter-5

FINDINGS, RECOMMENDATION AND CONCLUSION

Findings-

- 1) There is no statutory law for compensating victims of unlawful arrest and wrongful detention in Bangladesh, unlike in the USA, Canada, France, and Sweden.
- 2) Also, no statutory provision specifically defines arbitrary arrest, wrongful conviction, and illegal detention.
- 3) Right now, in Bangladesh, the victims of wrongful detention have some indirect remedies. The decision to award compensation and the amount of compensation remains at the discretion of the court under the current system, and the remedy of compensation results in an ex-gratia obligation rather than a statutory obligation on the part of the State to compensate.
- 4) The government has not implemented an adequate punishment system for police officers and other people involved in the conspiracy who have unlawfully arrest or detain innocent people.
- 5) Section 54 of CrPC, 1898 has empowered the police officer to arrest any person without a warrant on reasonable suspicion and credible information. But such reasonable suspicion and credible information lack a clear definition, giving the police plenty of room to abuse their power to cause false imprisonment and wrongful detention.
- 6) The study finds that, unlawful arrest and wrongful detention victims lack of the resources and capacity to challenge the negligence of police power and seek redress in court. Also, the law enforcement agency sometimes intimidates victims and their families into taking action against them.

Recommendation-

- 1-All individuals who are subject to any type of confinement or incarceration must be treated with compassion and respect for the inherent worth of the human being.

2-Only law enforcement officers who are qualified and allowed to do so may make arrests, hold someone in detention, or imprison them.

3-There shall be no restriction on or derogation from any human rights of persons subject to any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations, or custom on the grounds that this Body of Principles does not recognize such rights or recognizes them to a lesser extent.

4-When someone is subject to any kind of imprisonment or incarceration, all actions that may have an influence on their human rights must be authorized by, or effectively be under the control of, a court or other authority.

5-No one should ever be tortured or subjected to any cruel, barbaric, or degrading treatment or punishment while incarcerated or in any type of detention. 1 Under no circumstances may the use of justification for torture or other cruel, inhumane, or degrading treatment or punishment occur.

6-Every person must be informed of their rights and how to exercise them by the authority in charge of their arrest, detention, or imprisonment at the time of their arrest, at the start of their confinement, or as soon as possible after.

7-Even with their consent, no person who is in custody or incarcerated should be the subject of a medical or scientific experiment that could be damaging to their health.

Conclusion-

In Bangladesh, arbitrary imprisonment, arrest, and torture are still commonplace. The High Court Division's recommendations must be put into effect right away, and those responsible for arbitrary imprisonment, arrest, and torture cannot continue to operate with impunity. One of the main reasons for human rights violations continues to be the ignorance of law enforcement agencies regarding human rights and the applicable legal protections against torture and arbitrary detention. The human rights laws should be widely understood by the law enforcement organizations. The efficient operation of the criminal justice system is thought to depend equally on a service-oriented, proactive, and human rights-aware police force. A writ of habeas corpus may be filed in one of the High Courts or the Supreme Court by a person who has been unjustly

detained or by someone who is representing them. The Court next sends a notification to the public or private entity that has wrongfully held the subject and orders them to turn over the detainee. Preventive detention is usually acknowledged as a precaution for any country in the event of serious emergencies or wartime, but in countries that are at peace, like Bangladesh, it functions more as a tool of oppression. A person may use the legal remedy known as habeas corpus to report an unauthorized arrest or detention to a court, typically through a jail official. Preventive Detention is generally recognized as a safeguard for any country in case of grave emergencies or war periods but countries which are in state of peace, like Bangladesh, it does not interpret as a shield rather it transforms into a weapon of oppression.

BIBLIOGRAPHY

Primary Sources

Statues-

1. The Constitution of the people's republic of Bangladesh 1972
2. Penal Code, 1860
3. Code of Criminal Procedure, 1898
4. Universal Declaration of Human Rights, 1948
6. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988
7. International covenant on civil and political rights

Cases-

BLAST VS. BANGLADESH 55 DLR (HCD) (2003) 363

Mrs. Aruna Sen v. Bangladesh and Others (1975) 27 DLR (HCD) 122

Secondary Sources

Article and Journal

- Abdullah Al-Faruque and Hussain Mohmmad Fazlul Bari, 'Arbitrary Arrest and Detention in Bangladesh' (30 May 2019) < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3396356> Accessed 3 Jan. 2023
- Morgan and Morgan, 'Wrongful & False Imprisonment' (17 Jun 2020) < <https://www.forthethepeople.com/false-imprisonment-lawyers/>> Accessed 3 Jan. 2023
- Wrongful detention, 'The Encyclopedia Of World Problems & Human Potential' (12 Feb 2017) < <http://encyclopedia.uia.org/en/problem/wrongful-detention>> Accessed 3 Jan. 2023
- Arfan Ahmed, 'Laws Relating to Arrest without a Warrant in Bangladesh, India and Pakistan: A Comparative Analysis' (1 Jun 2020)<

https://www.seu.edu.bd/seujass/downloads/vol_03_issue_01_Jun_2020/SEUJASS-Vol03_Issue01-11.pdf> Accessed 3 Jan 2023

- Duncan Lewis Solicitors, 'Wrongful Arrest and Unlawful Detention by The Police' (13 March 2019)<
<https://www.duncanlewis.co.uk/Wrongful-Arrest--And-Unlawful-Detention-By-The-Police.html>> accessed 09 January 2023
- Aiman R Khan, 'Is s.54 of CrPC aiding wrongful arrests? | An Analytical approach towards Police Misconducts in Bangladesh.'
<https://www.academia.edu/25707276/Is_s_54_of_CrPC_aiding_wrongful_arrests_An_Analytical_approach_towards_Police_Misconducts_in_Bangladesh>
Accessed 09 January 2023
- Afroza begum, 'Disrespecting constitutional safeguards for fundamental rights in bangladesh' <<https://www.jstor.org/stable/43952073>> accessed on 11 January 2023
- Aiman R Khan, 'Is s.54 of CrPC aiding wrongful arrests? | An Analytical approach towards Police Misconducts in Bangladesh.'
<https://www.academia.edu/25707276/Is_s_54_of_CrPC_aiding_wrongful_arrests_An_Analytical_approach_towards_Police_Misconducts_in_Bangladesh>
Accessed 09 January 2023
- CM Abraham, 'Preventive detention and security law' <https://brill.com/display/book/edcoll/9789004479456/B9789004479456_s007.xml> accessed 11 January 2023
- Human Rights Arrest and pre trial detention and administrative detention <<https://www.ohchr.org/sites/default/files/Documents/Publications/training9chapter5en.pdf>> accessed on 11 January 2023
- 'Wrongful arrest and false imprisonment must stop' New Age Opinion (Bangladesh, 14 June 2021) <
<https://www.newagebd.net/article/140638/wrongful-arrest-and-false-imprisonment-must-stop>> accessed 09 January 2023
- 'Equality and human rights commission' <<https://www.equalityhumanrights.com/en/human-rights-act/article-5-right-liberty-and-security>> accessed on 11 January 2023
- Anika Tahsin, 'A grim picture of wrongful convictions in Bangladesh' (Bangladesh, 29 Nov 2020)
<https://www.tbsnews.net/thoughts/grim-picture-wrongful-convictions-bangladesh-164614> accessed 09 January 2023
- Duncan Lewis Solicitors, 'Wrongful Arrest and Unlawful Detention by The Police' (13 March 2019) <
<https://www.duncanlewis.co.uk/Wrongful-Arrest--And-Unlawful-Detention-By-The-Police.html>> accessed 09 January 2023
- Lauren Freidenberg, 'Unlawful Detention and False Arrest' <
<https://www.mhb.com/news/unlawful-detention-and-false-arrest>> accessed 09 January 2023
- <<https://www.ojp.gov/pdffiles1/nij/grants/249850.pdf>> accessed on 11 January 2023

- Abdullah Al Faraque and Hussain Mohammad Fazlul Bari, 'Arbitrary Arrest and Detention in Bangladesh' (19 Jul 2019) <https://www.researchgate.net/publication/334204748_Arbitrary_Arrest_and_Detention_in_Bangladesh> accessed 09 January 9, 2023
- Rumana Islam 'Human Rights in the constitution of bangladesh' <<https://www.thedailystar.net/supplements/50-years-our-constitution-original-ideals-vs-reality/news/human-rights-the-constitution-bangladesh-3160256>> accessed on 11 january 2023
- 'section 54 of the CR.PC and abusing the law' <<https://www.lawyersjurists.com/article/section-54-of-the-cr-p-c-and-abusing-the-law/#:~:text=According%20to%20section%2054%2C%20police,or%20by%20persuading%20o wn%20benefit.>> accessed on 11 january 2023
- Md Sohel Rana, Nadhratul Wardah Salman and Saroja Dhanapal, 'Legal Framework Of Arrest And Post-Arrestsafeguards: A Comparative Analysis As To The Laws Of Bangladesh, India, And The United Kingdom' (02 Nov 2021) <<https://journals.iium.edu.my/iiumlj/index.php/iiumlj/article/download/645/333>> accessed 09 January 2023
- Constitutional Issues & Human Rights, 'Compensation for wrongful conviction & imprisonment' (1st January 2023) <<https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-right s/miscarriages-of-justice/compensation-for-wrongful-conviction-and-imprisonment/>> accessed 09 January 2023
- A Report by Justice, 'Compensation for Wrongful Imprisonment' (London 1982) <<https://archives.novascotia.ca/pdf/marshall/RG44v271n8-ReportJustice-1.PDF>> accessed 09 January 2023
- Atiqur Rahman, 'Ensuring Compensation for the Victims of Wrongful Imprisonment and WrongfulDetention' (2020) <https://www.researchgate.net/publication/341840026_Ensuring_Compensation_for_the_Victims_of_Wrongful_Imprisonment_and_Wrongful_Detention_in_Bangladesh> accessed 09 January 2023
- 'Compensating the wrongly convicted' <<https://innocenceproject.org/compensating-wrongly-convicted/>> accessed on 11 january 2023
- Md. Nazir Ahmed, 'Preventive Detention, Violation Of Individual Human Rights: An Overview From Bangladesh Perspective' <<http://miurs.manarat.ac.bd/download/Issue-05/08.pdf>> accessed 09 January 2023
- Farhan hasan bhuyan shan, 'Ensuring compensation against unlawful preventive detention cases in Bangladesh' <<https://lawyersclubbangladesh.com/en/2022/10/06/ensuring-compensatio n-against-unlawful-preventive-detention-cases-in-bangladesh/>> accessed on 11 january 2023

