



EAST WEST UNIVERSITY

Supervised Dissertation

On

**A Critical Analysis of Arrest without Warrant: Legal Framework
and Practical Implications in the Context of Bangladesh.**

Submitted by

Md Tanvirul Sazzad

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Consent Form

The dissertation titled — "**A Critical Analysis of Arrest without Warrant: Legal Framework and Practical Implications in the Context of Bangladesh,**" prepared by Md. Tanvirul Sazzad, ID: 2018-3-66-025, submitted to Adity Rahman Shah, Senior Lecturer of the Department of Law, East West University, for the fulfillment of the requirements of Course Law 406 (Supervised Dissertation) for the LL.B. (Hons.) degree offered by the Department of Law, East West University, is approved for submission.

.....

Signature of the Supervisor

Date:

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Declaration

I, Md. Tanvirul Sazzad, bearing the student ID: 2018-3-66-025, hereby declare that the dissertation titled "A Critical Analysis of Arrest without Warrant: Legal Framework and Practical Implications in the Context of Bangladesh" was entirely prepared by me under the supervision of Adity Rahman Shah, Senior Lecturer, Department of Law, East West University, for the fulfillment of the requirements of Course Law 406 (Supervised Dissertation) for the LL.B (Hons.) degree offered by the Department of Law, East West University. I further declare that the content of the dissertation has not been submitted to or published by any journal, newspaper, or article. The content and materials used for the dissertation are duly acknowledged and recognized in the references and properly cited.

.....

Signature

Md. Tanvirul Sazzad

Id: 2018-3-66-025

Department of Law,
East West University

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Abstract

Arrest without a warrant is the most arbitrary and widespread issue, and there has been a question regarding the legitimacy of arrest without warrant by law enforcement authorities across the world. Arrest without warrant is done to prevent an individual from committing a cognizable offense in the future. An arrest of a person means temporary deprivation of human rights and if an arrest is made without warrant and if it happens to be arbitrary, then it violates fundamental human rights. In Bangladesh, the power of arrest without a warrant is primarily governed by the Code of Criminal Procedure (CrPC), which grants the police certain powers to make arrests without warrant specific circumstances. Nevertheless, there have been concerns raised regarding the potential misuse of this authority and its inconsistency with global human rights norms. From an international perspective, the right to liberty and security of a person is protected by various international human rights instruments. The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) are two significant instruments that guarantee the person's rights to liberty and security. Article 9 of both covenants establishes the principle that individuals should not be subjected to arbitrary arrest or imprisonment, emphasizing that any arrest or detention must be justified by valid grounds.

List of Abbreviations

CrPC	Code of Criminal Procedure
UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
SPA	Special Powers Act
DSA	Digital Security Act
CSA	Cyber Security Act
HCD	High Court Division
BLAST	Bangladesh Legal AID and Services Trust
RTA	Road Transport Act

Chapter I

Introduction

1.1. Introductory Statement

Arrest without a warrant, where individuals are apprehended on mere suspicion by the law enforcement officials, is considered a breach of human rights.¹ International human rights conventions like UDHR and ICCPR have declared this a violation.² This chapter serves as the preliminary chapter and comprehensively states the background and objective of the research, methodology, limitations, and literature review of the dissertation.

1.2. Background of the Research: The practice of arrests without a warrant is a matter of concern globally since its improper application can result in the infringement of both constitutional and human rights.³ The genesis of this dissertation arose as a result of a series of events that brought the topic to the forefront of legal discussions in Bangladesh. There have been documented cases where law enforcement officials have been accused of abusing their power by apprehending individuals without sufficient justification or corroborating evidence. These incidents have generated significant public outrage and prompted debates on the urgent necessity of reassessing the existing legislative provisions.

The primary objective of the Constitution of the People's Republic of Bangladesh is to ensure the preservation of fundamental rights for all citizens. These rights include the safeguarding of the right to life and personal liberty, freedom of movement, and the entitlement to seek an appropriate remedy in instances of unjust arrest.⁴

¹ Shashi Kanto Das, Md. Bashir Uddin Khan, Md. Kamruzzaman, 'Preventive Detention and Section 54 of the Code of Criminal Procedure: The Violation of Human Rights in Bangladesh' (2016)

<https://www.researchgate.net/publication/318848696_Preventive_Detention_and_Section_54_of_the_Code_of_Criminal_Procedure_The_Violation_of_Human_Rights_in_Bangladesh> accessed 23 July 2023

² Md Nazir Ahmed, 'Preventive Detention, Violation of Individual Human Rights: An Overview from Bangladesh Perspective' (2015) <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8ved=2ahUKEwjF4v2Zu9GAAxUGzjgGHSRCCPwQFnoECBQQAQ&url=http%3A%2F%2Fmiurs.manarat.ac.bd%2Fdownload%2Fissue-05%2F08.pdf&usg=AOvVaw0bu4EPdeCB_apM-oUL3lQG&opi=89978449> accessed 10 August 2023

³ ibid

⁴ Rumana Islam 'Human Rights in the constitution of Bangladesh' *The Daily Star* (Dhaka, 4 November 2022) <<https://www.thedailystar.net/supplements/50-years-our-constitution-original-ideals-vs-reality/news/human-rights-the-constitution-bangladesh-3160256>> accessed 23 July 2023

The Special Powers Act (SPA), 1974 grants the government the power to apprehend individuals in order to prevent their engagement in any prejudicial actions. The infringement of fundamental human rights is clearly observed as a consequence of the inappropriate implementation of this regulation.⁵ The Code of Criminal Procedure 1898 and the Digital Security Act (DSA), 2018 confers significant authority upon law enforcement officials to apprehend an individual without the requirement of a warrant.⁶ However, the misuse of these provisions has resulted in the infringement of fundamental human rights. Furthermore, it has been observed that the law enforcement authorities in Bangladesh are not adhering to the prescribed criteria set forth by the Supreme Court.⁷

Furthermore, the UDHR and ICCPR are two international conventions that guarantee an individual's right to life, liberty, and security. The provisions outlined in Article 9 of both conventions establish the fundamental principle that individuals should not be subjected to arbitrary arrest.⁸ These articles further assert that any arrest or detention should be carried out only on lawful grounds.⁹ However, it is observed that law enforcement authorities in Bangladesh continue to engage in warrantless arrests, thereby resulting in infringements upon the human rights of Bangladeshi citizens.

1.3. Objectives of the Research: The dissertation titled “A Critical Analysis of Arrest Without Warrant: Legal Framework and Practical Implications in the Context of Bangladesh” aims-

- To explore and evaluate the legal framework surrounding the practice of arrest without warrant in Bangladesh

⁵ Pinak Sarkar, 'Why the Special Powers Act, 1974 Should be repealed' (2022) <https://www.researchgate.net/publication/348010145_Why_The_Special_Powers_Act1974_Should_be_Repealed> accessed 29 July 2023

⁶ Afran Ahmed, 'Laws Relating to Arrest without a Warrant in Bangladesh, India and Pakistan: A Comparative Analysis' (2020) <https://www.seu.edu.bd/seujass/downloads/vol_03_issue_01_Jun_2020/SEUJASS-Vol03Issue01-11.pdf> accessed 29 July 2023

⁷ Md. Ahsan Kabir, 'Arrest without warrant and Police Remand: A Critical Analysis of High Court Division of Bangladesh on Rubel Case' (2017) <<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewin5LiIzO2AAxVgzjgGHXI7BYsQFnoECCsQAQ&url=https%3A%2F%2Fbilibd.com%2Findex.php%2Fblj%2Fissue%2Fview%2F12&usq=AOvVaw1BDmT4mXSKMnFmH3TU4fp&opi=89978449>> accessed 23 July 2023

⁸ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 9

⁹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 9

- To explore the international instruments and standard practices regarding arrest without warrant
- To analysis how arrest without warrant in Bangladesh violates the human rights established by the constitution and international instruments.

Moreover, the dissertation seeks to provide a comprehensive analysis of the topic by considering relevant legislation, case law, and scholarly perspectives.

1.4. Research question: How far the legal framework regarding arrest without a warrant in Bangladesh align with the international human rights standards?

1.5. Research Methodology: To achieve the objective of the dissertation, the research is conducted using a qualitative research approach based on the collection and analysis of data to comprehend the concepts. The study is focused on both primary and secondary sources. International laws, domestic laws, regulations, and statutes are referred to as the primary sources, whereas secondary sources are collected from national and international journals, newspaper articles, online journals, websites, and blogs for exploring relevant knowledge about the arrest without warrant. However, the footnotes and bibliography have been referred to in the OSCOLA referencing system.

1.6. Scope of the Research: The primary aim of the dissertation is to examine the legal framework governing arrests without warrants in Bangladesh, with a comparative analysis of international practices. Moreover, the paper tries to establish the flaws within the framework and asserts that law enforcement officials misuse such flaws, leading to abuses of power that ultimately infringe on the human rights guaranteed by both the constitution and international law.

1.7. Limitations of the Research: The scope of this research is limited to an examination of the current legal framework surrounding arrests without a warrant, with a particular emphasis on the infringement of human rights in Bangladesh resulting from the misuse of these provisions. Consequently, this study does not go into the recommended course of action for individuals following their arrest. The study only examines the existence of legal gaps and the potential for their exploitation by law enforcement agencies. Numerous articles have been written by

researchers on the matter of issue because it is one of the most divisive topics in the world, but owing to time constraints, several aspects of the study, such as the rights of people after being arrested, were unable to be thoroughly examined. Restricted access to specific sites often resulted in the unavailability of journals, research papers, books, and articles in many instances.

1.8. Literature Review: The topic of arrests without a warrant has been extensively studied by scholars from various regions, who view it as a highly contentious issue with significant implications.

Dr. Malik critically examines the cases *Blast vs. Bangladesh* and *Saifuzzaman vs. State* in his article, where he highlights the issue of police abuse of power during the arrest and remand process, where citizens are subjected to torture.¹⁰

Md. Rana enunciated the importance of the criminal justice system in common law in his article by stating that developed, developing, and least-developed countries all face problems with arrest irregularities and torture in prison, which violate the fundamental rights of people.¹¹

Mr. Das, in his article, highlights the significance of human rights standards established by international instruments. They assert that the practice of preventive detention in Bangladesh is in violation of these rights.¹²

Md. Rana asserts in his article that there is a discrepancy between the prescribed legal framework and the actual implementation of arrest without a warrant in Bangladesh.¹³

Mr. Faruque elaborated on the significance of adhering to the arrest and detention guidelines established by the Supreme Court of Bangladesh in his article.¹⁴

Rumana Islam asserts in her article that the constitution establishes a framework aimed at safeguarding human rights, yet contends that this framework is not being adhered to.¹⁵

1.9. Dissertation Outline

¹⁰ Shadeen Malik, 'Arrest and Remand: Towards a Rights Paradigm' < <https://www.biliabd.org/wp-content/uploads/2021/08/Dr.-Shahdeen-Malik.pdf>> accessed 23 July 2023

¹¹ Md. Sohel Rana, Saroja Dhanapal, 'Arrest Without Warrant in Bangladesh: Law in Books Versus Law in Action'(2020) < <https://ijcjs.com/menu-script/index.php/ijcjs/article/view/267>> accessed 23 July 2023

¹² Das (n 1)

¹³ ibid

¹⁴ Abdullah Al Faruque and Hossain Mohammad Fazlul Bari, 'Arbitrary arrest and Detention in Bangladesh' (19 July 2019)<https://www.researchgate.net/publication/334204748_Arbitrary_Arrest_and_Detention_in_Bangladesh> accessed 23 July 2023

¹⁵ Islam (n 4)

The dissertation is divided into five chapters. Chapter I of the dissertation describes the introductory statement, background of the research, objective of the research, research question, research methodology and materials, literature review and limitations. Chapter II focuses on the historical background and legal framework of arrest without a warrant in Bangladesh. Chapter III asserts the international instruments and standard practices regarding arrest without a warrant. Chapter IV enunciates the practical implications of arrest without a warrant in Bangladesh, which lead to violation of human rights. Chapter V of the dissertation will comprise the overall findings and recommendations.

Chapter II

Historical Background and Legal Framework of Arrest Without a Warrant in Bangladesh

2.1. Introduction

The legal framework in case of arrests without warrants in Bangladesh is a vital component of the country's criminal justice system.¹⁶ The legal provisions governing arrests without warrants in Bangladesh are enshrined in its Constitution, alongside various statutes and codes that aim to uphold the principles of justice, fairness, and due process.¹⁷ It is essential to understand these provisions to protect this rights of individuals, prevent misuse of power, and maintain the integrity of the legal system. This chapter combines all the existing provisions of arrest without warrant in Bangladesh.

2.2. Background History of Arrest Without Warrant

In the Indian Subcontinent it was the British who introduced the idea of arrest without a warrant. Arrest without warrant was infamously used on this continent during British rule under the Bengal State Prisoners Regulation, 1818, which empowered the government to detain or arrest anybody on mere suspicion.¹⁸ In 1917, in Britain, arrest without a warrant or preventive detention was first introduced in the case called *Rex v. Halliday*.¹⁹ Moreover in 1933, it was the leader of the Nazi who redefined the power of the police by giving them broad power such as to search, arrest without warrant, incarcerate real or perceived sate enemies and others whom they considered criminals.²⁰ However, in the first enacted Constitution of Bangladesh, there was no term defined as preventive detention or arrest without a warrant, but by the 2nd Amendment of 1973, through "The Special Powers Act 1974," it was enacted, which is still in in force, after all these years of Independence.²¹

¹⁶ Dr. Abdullah Al Faruque, 'Goals and purposes of Criminal Justice System in Bangladesh: An Evaluation' <<https://www.biliabd.org/wp-content/uploads/2021/08/Dr.-Abdullah-Al-Farooque.pdf>> accessed 29 July 2023

¹⁷ *ibid*

¹⁸ Md. Jahid Hossain Bhuiyan, 'Preventive Detention and Violation of Human Rights: Bangladesh, India, and Pakistan Perspective' [2004] Bangladesh Law Journal 8, p 104

¹⁹ [1917] UKHL 662

²⁰ United States Holocaust Memorial Museum, 'Introduction to the Holocaust' Holocaust Encyclopedia<<https://encyclopedia.ushmm.org/content/en/article/arrests-without-warrant-or-judicial-review>> accessed 04 August 2023

²¹ Hossain Mohammad Younus Sirazi and Md. Sadekur Rahman, 'Incompatibility of the Special Powers Act with Constitutional Jurisprudence and Human Rights Norms: A Comprehensive Analysis' (2018)

Different governments have used this practice to infringe upon several human rights, justifying their actions as necessary for the overall welfare of the state. They argue that by employing such measures, they have effectively deterred criminal activities that could potentially endanger the peace and security of the state.²²

2.3. Definition

The word "arrest" comes from Latin through French²³ which literally means to stop, restrain someone into custody in answer to a criminal charge.²⁴ A person's liberty is taken away when they are arrested to ensure the safety of society. A "warrant" is a document or legal instrument that is issued by a judge or a government official that instructs the police or another entity to make arrests, search properties, or perform other relevant actions to secure the ends of justice.²⁵ Therefore, taking someone into custody without a valid court order is known as an arrest without a warrant. Generally, it means any executive authority can arrest an individual based on mere suspicion and he even does not need any trial or confirmation from the court to exercise this power.²⁶ It is a tool by which the authority can inflict restrictions upon the freedom of any citizen who is about commit an offense but has not done anything yet.²⁷

2.4. Existing State Laws Regarding Arrest Without Warrant in Bangladesh

The laws governing arrest without a warrant in Bangladesh are primarily covered under Section 54 of the CrPC, Section 3 of the SPA, Section 43 of the DSA, Section 110 of the RTA, and the directives of the Supreme Court from different case laws regarding how an arrest without a warrant can be made in the case of *Blast v. Bangladesh*.

<https://www.researchgate.net/publication/328365531_Incompatibility_of_the_Special_Powers_Act_with_Constitutional_Jurisprudence_and_Human_Rights_Norms_A_Comprehensive_Analysis> accessed 29 July 2023

²² ibid

²³ Horace L. Wilgus, Michigan Law Review, < <https://www.jstor.org/stable/1277468>> accessed 04 Aug 2023

²⁴ Rana (n 11)

²⁵ Kushagra Varma, 'All you need to know about arrest without warrant' (2021) < <https://blog.ipleaders.in/need-know-arrest-without-warrant/>> accessed 29 July 2023

²⁶ Bhuiyan (n 18)

²⁷ ibid

2.4.1. Section 54 of the Code of Criminal Procedure, 1898

The lack of proper definitions for the terms used in section 54 makes the grounds for arrest without warrant of an individual highly contentious.²⁸ The grounds encompass those who have been involved in a cognizable offense, against whom a reasonable complaint has been lodged, for whom credible information has been received, or for whom there exists a reasonable suspicion of involvement in such an offense.²⁹ Therefore, this section confers expansive authority upon the law enforcement authorities to apprehend an individual without warrant based on a subjective view. The concept of a ‘reasonable complaint’ is subject to significant ambiguity, as there is much uncertainty about which complaints can be classified as reasonable. The determination of the reasonableness of a complaint and identification of potential abuse lies within the purview of the officer. The lack of clear definitions for ‘reasonable suspicion’ and ‘credible information’ within the statute poses a significant risk for potential misuse by law enforcement authorities.³⁰ Empirical evidence suggests that law enforcement authorities have exhibited a tendency to demonstrate leniency in their approach, wherein they tend to treat each complaint as reasonable and every piece of information as reliable.³¹ The language employed in section 54 exhibits a degree of uncertainty, which law enforcement authorities exploit to engage in arbitrary arrests and infringe upon individuals’ protection against unlawful apprehension.³² There have been instances where individuals have been apprehended by law enforcement authorities without a warrant, thereafter, detained under police custody, and subjected to acts of physical abuse, potentially resulting in fatal outcomes. The arrest in question, characterized by its arbitrary and whimsical nature, constitutes a violation of the fundamental rights as enshrined in the constitution, as well as several other rights recognized under International law.³³

2.4.2. Section 3 of the Special Powers Act, 1974

According to section 3 of the Special Powers Act 1974, if any ‘District Magistrate’ or ‘Additional District Magistrate’ finds it satisfactory that any person has an intention to commit prejudicial

²⁸ Ahmed (n 6)

²⁹ Code of Criminal Procedure 1898, s 54

³⁰ Dr. Abdullah Al Faruque, ‘Analysis of the Decisions of the Higher Judiciary on Arrest and Detention in Bangladesh, National Human Rights Commission, Bangladesh (NHRC)’, January 2013, p 20

³¹ Ahmed (n 6)

³² *ibid*

³³ *ibid*

activities, he may order the arrest of that person, but the phrase prejudicial activities has not been defined anywhere in the Act.³⁴ In the case of *Mostafizur Rahman v. Bangladesh (1992)*³⁵ it was held that if any statement affects the audience, then it is considered a prejudicial act³⁶ that contradicts the freedom of press and freedom of speech. According to our constitutional law, if any law breaches the constitution, it should be repealed,³⁷ but this Act has not been repealed yet because it is politically influenced and used as a weapon by the ruling party to control and tackle the opposition.³⁸

2.4.3. Section 43 of the Digital Security Act 2018

Though the government has declared that the Digital Security Act (DSA) will be replaced as the Cyber Security Act; it is still in force and hasn't lost its effectiveness and application. Section 43 of the DSA states that any police officer can arrest any individual without a warrant if the person is suspected to have committed, be committing, or be likely to commit an offense under the DSA.³⁹ This gives an immense power to the law enforcement authorities to arrest anyone they think is likely to have committed a crime based on their subjected view.⁴⁰ Also the ambiguity and vagueness of the provision made this a powerful tool for harassing dissidents.⁴¹

2.4.4. Section 110 of the Road Transport Act 2018

Even under section 110 of the Road Transport Act 2018, any police officer wearing a uniform can arrest people without a warrant who violates the section 72 (driving unregistered vehicle), 73 (using and showing fake registration number), 75 (unfitted vehicle), 77 (without route permit), 79 (using personal vehicle for business without permission), 84 (non-compliance with any motor

³⁴ Special Powers Act 1974, s 3

³⁵ 44 DLR 312

³⁶ *ibid*

³⁷ The Constitution of the People's Republic of Bangladesh, art 7(2)

³⁸ Sarkar (n 5)

³⁹ The Digital Security Act, 2018, s 43

⁴⁰ Amnesty International, 'Bangladesh: New Digital Security Act is attack on freedom of expression', 12 November 2018, <<https://www.amnesty.org/en/latest/press-release/2018/11/bangladesh-muzzling-dissent-online/>> accessed 29 July 2023

⁴¹ Ananya Azad, 'Digital Security Act in Bangladesh: The death of Dissent and of Freedom of Expression' (2021), <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiq1f6ihbeAAxXt-zgGHRPqDWOQFnoECBsQAO&url=https%3A%2F%2Fwww.etd.ceu.edu%2F2021%2Fazad_ananya.pdf&usg=AOvVaw08OXTkVWzPPEgnsIF4f5IH&opi=89978449> accessed 29 July 2023

vehicle's technical specifications as set forth by the authorities), 86 (Driving a vehicle with excess weight), 89 (violations of restrictions on the use of motor vehicles that are hazardous to the environment), 92(1) (violations of general guidelines for driving motor vehicles), 98 (Loss of life and property due to overloading or uncontrolled driving), 105 (grievous hurt or death by accident) in their presence.⁴²

2.4.5. Directives Given by the High Court Division in the Blast Case regarding how an arrest without a warrant can be made

Eighteen years ago, the death of Shamim Reza Rubel under police custody sparked a legal campaign against the police's power to apprehend individuals based on suspicion and torture them in the name of remand.⁴³ After a long battle, in 2003, the HCD ruled that government cannot detain anyone under the Special Power Act upon arrest based solely on suspicion.⁴⁴ The HCD also formulated 15 directives, determining that sections 54 and 167 of the CrPC are incompatible with constitutional safeguards protecting fundamental human rights.⁴⁵ The Directives from the judgment of the High Court Division (55 DLR 363) are as follows:

1. "Police officers' are prohibited from apprehending individuals under section 54 with the intention of detaining them under section 3 of the SPA
2. A police officer conducting an arrest without a warrant shall reveal his identity and show his ID card to the person being arrested or those present at the time of arrest
3. The reasons for arrest and other details must be written down in a separate register until a special diary is prescribed
4. The concerned officer shall record reasons for marks of injury, if any, on the person arrested and take him to the nearest hospital or government doctor
5. The person arrested shall be furnished with reasons for arrest within three hours of being brought to the Police Station

⁴² Road Transport Act, 2018, s 110

⁴³ Mohammad Al-Masum Molla, 'Sad Death Gives Hope' *The Daily Star* (Dhaka, May 25, 2016) <<https://www.thedailystar.net/frontpage/sad-death-gives-hopes-all-1228921>> accessed 05 August 2023

⁴⁴ 55 DLR 363

⁴⁵ *ibid*

6. In the event that an individual is not arrested at their place of residence or business, it is advisable to promptly notify their family through telephone or through a messaging platform within a maximum of one hour subsequent to their being at the police station
7. The arrested individual must be permitted to consult a lawyer of their choosing or confer with their closest relatives
8. If the officer presented the arrested person after 24 hours before the magistrate under Section 61 of the CrPC, the officer must explain the reasons of his being late in a letter under Section 167 (1)
9. If the Magistrate satisfies himself or herself that there are sufficient reasons for detaining the person in custody, the Magistrate shall pass an order of detention and, if not, release him or her forthwith
10. If an individual is released, then the magistrate must initiate proceedings against the officer in question under Section 190(1)(c) of the CrPC, in accordance with Section 220 of the Penal Code
11. When a magistrate orders detention, the officer must question the suspect in a jail cell with a glass wall or grille, accessible to the defendant's counsel or family
12. The application for interrogation of an accused requires a detailed explanation of the circumstances that led to their arrest
13. The Magistrate is obligated to follow the guidelines outlined in the ruling when approving detention in police custody
14. Investigating officer or the jailors must inform the nearest magistrate of any instances of custodial death, following the recommendations outlined
15. The Magistrate shall conduct an inquiry into death of any individual in police custody or jail as per the recommendations.”⁴⁶

2.5. Conclusion

The occurrence of arbitrary arrest, imprisonment, and custodial torture by law enforcement authorities has consistently persisted throughout our criminal justice system.⁴⁷ Irrespective of the

⁴⁶ ibid

⁴⁷ Rana (n 11)

system of government, these practice have been widely prevalent in Bangladesh; whoever comes into power has failed to stop this endemic problem.⁴⁸ In Bangladesh, despite the existence of legal and constitutional safeguards against arbitrary arrest and detention, there is widespread prevalence of such practices, along with instances of torture. The violation of these provisions by executive authorities is a commonly observed phenomenon in the country.⁴⁹

⁴⁸ Moshiur Rahman Sikder, 'Arrest, Remand, and Torture in Bangladesh: Seeking Effective Remedies' <https://www.academia.edu/10636039/ARREST_REMAND_AND_TORTURE_IN_BANGLADESH_SEEKING_EFFECTIVE_REMEDIES> accessed 23 July 2023

⁴⁹ Islam (n 4)

Chapter III

International Instruments and Standard Practices Regarding Arrest Without Warrant

3.1. Introduction

There are different international treaties and covenants that speak against arrest without a warrant, such as UDHR and ICCPR, which are of a special kind and have been rectified by Bangladesh.⁵⁰ The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the European Convention on Human Rights, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights also state against arbitrary arrest and provide standards of safeguards against it. This chapter serves as a comprehensive exploration of the issues surrounding arrests without a warrant, focusing on the international legal framework and standard practices that guide and safeguard these crucial procedures.

3.2. The Universal Declaration of Human Rights, 1948

According to Article 9 of the UDHR no individual shall be subjected to arbitrary arrest, detention or exile⁵¹ while Article 3 ensured the right to life, liberty and security of person for everyone.⁵²

3.3. The International Covenant on Civil and Political Rights, 1966

According to Article 9(1) of the ICCPR, all individuals possess the entitlement to the preservation of their personal liberty and security. Individuals shall not be subjected to arbitrary arrest and must not be deprived of their freedom unless there are legitimate reasons and proper legal procedures in place to justify such deprivation.⁵³ By referring to the legitimate reasons and proper procedures, it means at the time of carry out an arrest the officer shall follow the procedures and the reasons of arrest must be according to the law.⁵⁴

⁵⁰ Farhan Islam, 'Preventive Detention in Bangladesh: Violation of Human Rights Using Preventive Detention and their Increased use day day'(2020)
<https://www.academia.edu/43520060/Title_Preventive_Detention_in_Bangladesh_Violation_of_Human_Rights_Using_Preventive_Detention_and_Their_Increased_Use_Day_by_Day> accessed 9 August 2023

⁵¹ UDHR (n 8)

⁵² *ibid*; art 3

⁵³ ICCPR art 9(1)

⁵⁴ Claire Macken, 'Preventive Detention and the Right of Personal Liberty and Security under the International Covenant on Civil and Political Rights, 1966',
<<https://www.ilsa.org/Jessup/Jessup16/Batch%202/MackenDEtention.pdf>> accessed 10 August 2023

3.4. The Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment, 1988

According to principle 2 of the Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment 1988, the act of arrest, detention, or imprisonment must adhere strictly to the legal provisions and be conducted by competent officials.⁵⁵

3.5. Internationally recognized Safeguards which should be followed during Arrest without Warrant

According to Article 9(2) of the ICCPR, individuals who are apprehended must be notified, at the moment of their detention, about the grounds of their apprehension. Furthermore, they should be expeditiously informed of any accusations brought against them.⁵⁶ While Article 9(3) states that individuals who are arrested on criminal charges must be expeditiously presented before a judge. Moreover, they have the rights to a fair trial within a reasonable time or to be released subject to the assurance of appearing for trial.⁵⁷ Furthermore, it should be noted that according to Article 9(4), individuals who have been deprived of their freedom through arrest possess the right to initiate defense before a court.⁵⁸ Finally, according to Article 9(5), individuals who have experienced an unjust arrest or detention possess a legally binding entitlement to receive compensation.⁵⁹

3.6. Regional Instruments Regarding Arrest without Warrant

The European Convention on Human Rights, 1950; the American Convention on Human Rights, 1969; and the African Charter on Human and Peoples' Rights, 1981, provide the standard of safeguards while making an arrest without a warrant.

3.6.1. European Convention on Human Rights, 1950

⁵⁵ The Body of Principles for the Protection of all persons under any form of Detention or Imprisonment (adopted at the 76th plenary meeting, 9 December, 1988) principle 2

⁵⁶ ICCPR art 9(2)

⁵⁷ ICCPR art 9(3)

⁵⁸ ICCPR art 9(4)

⁵⁹ ICCPR art 9(5)

According to Article 5(1) of the European Convention on Human Rights, individuals are entitled to the fundamental rights of personal liberty and security.⁶⁰ Individuals shall not be deprived of their freedom unless their detention is in accordance with the law and has been determined by a competent court.⁶¹ However, individuals may be detained without a warrant if they fail to comply with a lawful court order or to ensure the fulfillment of any legal obligation.⁶²

3.6.2. American Convention on Human Rights, 1969

According to Article 7 of the American Convention on Human Rights, individuals possess the entitlement to personal liberty and security. Furthermore, Article 7(3) stipulates that individuals should not be subjected to arbitrary arrest or imprisonment.⁶³

3.6.3. African Charter on Human and Peoples' Rights, 1981

According to Article 6 of the Charter, each person is entitled to the rights of personal liberty and security. Additionally, it is emphasized that individuals shall not be deprived of their liberty unless in accordance with grounds and conditions established by law. Furthermore, it is imperative that no person should be subjected to arbitrary arrest or detention.⁶⁴

3.7. Regional Safeguards Against Arrest Without Warrant

The European Convention on Human Rights, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights provide the standard of safeguards against arrest without warrant, which are described below.

3.7.1. Safeguards Provided by the European Convention on Human Rights: According to Article 5(2) of the European Convention on Human Rights, individuals who are apprehended must be promptly notified, in a language that they comprehend, on the grounds for their arrest and any

⁶⁰ Council of Europe, 'Convention for the Protection of Human Rights and Fundamental Freedoms' Council of Europe Treaty Series 005, Council of Europe, 1950 art 5(1)

⁶¹ *ibid* art 5(1)(a)

⁶² *ibid* art 5(1)(b)

⁶³ Organizations of American States 'American Convention on Human Rights' Treaty Series No. 36, organization of American States 1969, art 7

⁶⁴ The African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) art 6

accusations made against them.⁶⁵ Moreover, according to Article 5(3), all individuals who are arrested must be expeditiously presented before a judicial body. Additionally, they have the right to a fair trial within a reasonable period or to be released subject to the assurance of appearing for trial.⁶⁶ Moreover, it should be noted that according to Article 5(4), individuals who are subjected to arrest have the right to initiate defense and if it is found that the detention is unlawful, then the court is empowered to order the release of the individual.⁶⁷ Furthermore, it is stipulated in Article 5(5) that individuals who have experienced arrest or imprisonment in violation of the regulations outlined in this Article possess a legally enforceable entitlement to receive compensation.⁶⁸

3.7.2. Safeguards provided by the American Convention on Human Rights: According to Article 7(4) of the American Convention on Human Rights, individuals who are subjected to detention must be provided with information regarding the grounds for their arrest, and they should be quickly told about the specific charges brought against them.⁶⁹ Additionally, according to Article 7(5), it is stipulated that those who are imprisoned must be expeditiously presented before a judicial body and these individuals are entitled to a trial within a reasonable time.⁷⁰ Moreover, it should be noted that according to Article 7(6), individuals who are deprived of their freedom possess the right to seek remedies from a competent judicial authority. This allows the court to promptly determine the legality of their arrest and if such arrest is found to be unlawful, the court shall order their immediate release.⁷¹ Moreover, Article 7(7) explicitly states that individuals are immune from arrest on the grounds of a financial obligation. Nevertheless, it is crucial to acknowledge that this particular clause does not impose limitations on the authority of a capable judicial entity to issue mandates in cases of non-compliance with responsibilities.⁷²

3.7.3. Safeguards Provided by the African Charter on Human and Peoples' Rights: According to Article 7 of the African Charter on Human and Peoples' Rights, each person is

⁶⁵ (n 63) art 5(2)

⁶⁶ *ibid* art 5(3)

⁶⁷ *ibid* art 5(4)

⁶⁸ *ibid* art 5(5)

⁶⁹ Organization of American States. "American Convention on Human Rights" Treaty Series No. 36, Organization of American States, 1969 art 7(4)

⁷⁰ *ibid* art 7(5)

⁷¹ *ibid* art 7(6)

⁷² *ibid* art 7(7)

entitled to the right of a fair, which includes the right to present their case, the right to appeal, and the right to legal representation. Additionally, individuals have the right to be considered innocent until proven guilty, and they should be tried in a reasonable time by an impartial court.⁷³

3.8. Standard Practices Regarding Arrest Without a Warrant

From such aforementioned-covenant, convention, and charter, it can be argued that, though in such instruments nothing is explicitly said about the arrest without warrant, it is possible by the wide interpretation of such provisions of international and regional instruments under some grounds and conditions, and these conditions must be followed during such an arrest, which are described below.

- According to the provisions and grounds as are established by law.⁷⁴
- If a person is arrested without a warrant, then such an arrest must be done following the procedures as are established by law; but such arrest must not be arbitrary and unlawful.⁷⁵
- The act of apprehending an individual is permissible under legal provisions and legitimate justifications, in adherence to established legislative protocols.⁷⁶
- The arrest of an individual must adhere to the stipulations, intentions, and goals set forth by the Covenant.⁷⁷

3.9. Conclusion

Although international laws do not explicitly authorize arrests without a warrant, such actions may be justified through a broad interpretation of Article 31(1) of the Vienna Convention.⁷⁸ This interpretation allows for arrests to be conducted in accordance with the law and on legitimate grounds, following proper legislative procedures. However, the law itself must adhere to the provisions, aims, and objectives of the Covenant.⁷⁹

⁷³ The African Charter on Human and Peoples' Rights, 1981; Article 7

⁷⁴ The International Covenant on Civil and Political Rights, 1966, Article 9(1)

⁷⁵ Macken (n 57)

⁷⁶ *ibid*

⁷⁷ *ibid*

⁷⁸ United Nations. 'Vienna Convention on the Law of Treaties' vol 1155, May 1969 art 31(1)

⁷⁹ Macken (n 57)

Chapter IV

The Practical Implications of Arrest Without Warrant in Bangladesh Lead to the Violation of Human Rights

4.1. Introduction

Generally, law enforcement authorities have the authority to apprehend individuals for whom a court has issued an arrest warrant.⁸⁰ But the provisions of arrest without a warrant give law enforcement authority to arrest anyone at their discretion, and in Bangladesh, the enforcement of laws, including arrest procedures, sometimes deviates from the codified provisions due to various factors, such as corruption, a lack of proper training, and political influences that violate the human rights guaranteed by the constitution and international law.⁸¹ The aim of this chapter is observe the disparities between the statutory provisions regarding arrests without warrant in Bangladesh and their practical implementation, which lead to violations of human rights guaranteed by the constitution and international law.

4.2. Arrest without Warrant in Bangladesh in Lights of Constitution and International law

The fundamental rights granted to all individuals within the state are expressly outlined in Articles 31, 32, and 36 of the Constitution of the People's Republic of Bangladesh. These rights include legal safeguards, the entitlement to life and personal freedom, as well as the liberty to move around.⁸² These constitutional rights are frequently violated by the abuse of the provisions related to arrest without a warrant by law enforcement authorities in Bangladesh.⁸³ Also, Article 33 is known as the constitutional safeguard for individuals who have been held under preventive detention laws. According to the article, there are three constitutional safeguards for any kind of preventive detention:⁸⁴

- ❑ **Review by Advisory Board:** An arrested person under any preventive detention law will be brought before an advisory board if the executive authority wants to detain that person for more than 6 months.⁸⁵

⁸⁰ Faruque (n 14)

⁸¹ *ibid*

⁸² The Constitution of Peoples' Republic of Bangladesh (Act of No 1972), art 32, & 36

⁸³ Islam (n 53)

⁸⁴ The constitution of Peoples' Republic of Bangladesh, art 33

⁸⁵ *Ibid*, art 33(4)

❑ **Right to Communication on Grounds of Detention:** The authority will have to communicate with the detainee as soon as possible on the grounds on which the order has been passed.⁸⁶

❑ **Right to Representation against the Orders of Detention:** The preservation of the right to representation for detainees is also provided under Article 33(5) of the constitution which affords him the opportunity to promptly file a lawsuit against the order of custody.⁸⁷

These safeguards did not eventually work as predicted, as the executive authority has been abusing the loopholes of this system, which ultimately caused the violation of human rights and constitutional rights of the citizens.⁸⁸

Moreover, Article 3 of the Universal Declaration of Human Rights (UDHR) guarantees the entitlement of all individuals to the preservation of life, freedom, and personal security.⁸⁹ In a similar vein, Article 6 of the ICCPR confirms the intrinsic entitlement to life for all individuals, explicitly forbidding any unjustified denial of life.⁹⁰ Moreover, the right to liberty and personal security for all individuals is established by Article 9(1) of the ICCPR.⁹¹ Furthermore, it is worth noting that principle 4 of the 1988 Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment stipulates that the act of detaining or imprisoning someone must be authorized by judicial or other competent authorities. Additionally, principles 10 and 11 establish the rights of individuals to be promptly informed and to be entitled to a defense. Furthermore, principle 7 stipulates that states shall prohibit any acts that are in violation of the rights and obligations established by these principles.⁹²

Though there are constitutional and international safeguards, the practice of arresting without a warrant violates various rights ensured by the constitution and international law. Arrest without a warrant, as well as arrest only on mere suspicion, is a gross violation of human rights. The second and third safeguards provided by Article 33 of the Constitution are not effective, and the authority

⁸⁶ Ibid; art 33(5)

⁸⁷ ibid

⁸⁸ Islam (n 53)

⁸⁹ UDHR 1948, art 3

⁹⁰ International Covenant on Civil and Political Rights 1966, art 6

⁹¹ ibid, art 9(1)

⁹² Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, principles 4,7,10, & 11

has yet to take any steps for that after all these years, and as a result, the practice of these provisions violates human rights.⁹³

Furthermore, when individuals are arrested without a warrant at the discretion of the police officer, where he doesn't have to explain to the judicial authority beforehand why he will arrest the person, and if it is not made by following the due process of law, such a discretionary arrest violates the human rights provided by the Constitution and international law.⁹⁴ In Bangladesh, the practice of arrest without a warrant is rapidly increasing day by day, and different Human Rights Organizations have expressed their concerns in this particular issue. When a person is arrested without a warrant, his rights, such as liberty, freedom of movement, the presumption of innocence, the right to know the reason, and the right to defense, are curtailed. As a result, the violations of these rights violates the human rights guaranteed by the constitution and international law.⁹⁵

4.3. Rights violated by the misuse of section 54 of the CrPC, 1898

Section 54 of the Code of Criminal Procedure empowers the police to make an arrest without a warrant, but this provision lacks justification when it comes to its actual application. The wording is unclear and has no definite explanation or has no clear standard. Due to the ambiguity, the Supreme Court of Bangladesh itself called for the revision of the arrest provision without warrant when it delivered the judgement in the blast case in 2003.⁹⁶ Also, the HCD annexed that police don't usually reveal the ground of arrest to the arrested person, and this is a direct violation of Article 33 of the Constitution of Bangladesh.⁹⁷ It has been frequently claimed that law enforcement officials exploit the vague language of this provision, thereby engaging in various forms of misconduct.⁹⁸ The Constitution of Bangladesh and international law guaranteed the human rights that are required to be protected in all respects. In light of constitutional provisions, the Supreme Court of Bangladesh has promulgated guidelines in the form of directives that mandate compliance by police officers during the process of arrest.⁹⁹ But police officers overlook these guidelines and by using the ambiguity of this section make arrests without warrant at their discretion which

⁹³ Bhuiyan (n 18)

⁹⁴ Mohammad (n 21)

⁹⁵ ibid

⁹⁶ Kabir (n 7)

⁹⁷ (2003) 55 DLR 363

⁹⁸ Mohammad (n 21)

⁹⁹ Faruque (n 14)

violated the rights of an individual such as freedom of movement, right to life and liberty as are guaranteed by the constitution and international law.

4.4. Special Powers Act, 1974: Incompatibility with Human Rights

The most controversial law in the history of Bangladesh is known as the Special Powers Act, 1974 and the reasons behind such controversy are the vagueness of the laws, giving excessive power to the authority, and having preventive detention powers in a safe and democratic state like Bangladesh.¹⁰⁰ But unfortunately, even after the fall of that regime, no other government has changed or abolished the law until now and uses it for their own purposes.¹⁰¹ Basically, Section 3 states that if anyone does any prejudicial acts or is certain to do one, then it gives the power to detain someone without any warrant.¹⁰² The prejudicial acts mentioned in Section 2(f) of the Act are very confusing as they include prejudice against the independence or security of Bangladesh, the preservation of alliances with other states, disturbance of public safety, creation of hatred between different communities, interfering with administrative work or law maintenance, prejudice against the maintenance of supplies or economic interests, and causing fear among the public.¹⁰³ It was meant to be for the safety of the citizen and their protection of life, which means a person's life cannot be endangered, but this law severely violates many constitutional and human rights, and as a result, the continuous use of the law has gradually made it more political than a safeguard for citizens.¹⁰⁴

Moreover, under this law, arrest without a warrant or preventive detention was first introduced in Bangladesh, and the state has made the SPA a tool for depreciating the freedom and security of people by giving the law enforcers the authority to exercise the power to arrest anyone without a warrant.¹⁰⁵ The law has a few loopholes, and it is not clearly stated which executive authority can make any person fall under the prejudicial acts stated by Section 2 of the SPA.¹⁰⁶ According to the ICCPR, this kind of action cannot be taken if it is not clearly defined in the law.¹⁰⁷ Additionally,

¹⁰⁰ Islam (n 53)

¹⁰¹ Bhuiyan (n18)

¹⁰² The Special Powers Act 1974, s 3

¹⁰³ *ibid*, s 2(f)

¹⁰⁴ Islam (n 53)

¹⁰⁵ Sarkar (n 5)

¹⁰⁶ Islam (n 53)

¹⁰⁷ Macken (n 57)

the Act states that a senior executive officer and two judges from the High Court will serve on an advisory board for those who will face charges under the SPA.¹⁰⁸ People who are accused under this law will be sent straight to this board within 120 days of arrest but not to the court, and the accused can be punished or maybe detained to the satisfaction of the board and not the court.¹⁰⁹ But, in the case of *Habibullah Khan vs. S.A Ahmed*, the Appellate Division held that the Court must be satisfied with the Board to punish or detain any person; only the satisfaction of the Board will not be enough.¹¹⁰ Still, there are many drawbacks to this law, which violates many constitutional and human rights on various scales.

Further, under Article 33 of the Constitution of Bangladesh, the authority can abstain from revealing the grounds of detention if it goes against the public interest. But, in the case of *Md. Sekandar Ali vs. Bangladesh*, the HCD ordered the government to disclose the reasons behind detention under Section 3 of the SPA so that the detainee can prepare for an effective representation.¹¹¹ But, in most of the cases, the authority does not abide by the rules or orders given by the HCD, and because of that, the detainee ends up having only one right up his sleeve, which is the review by the advisory board, but the truth is that they don't go there before 120 days¹¹², and for that, the detainee has to suffer in the hands of the authority for several months. But, in the case of *Manik Chowdhury vs. Govt. of Bangladesh*, it has been decided that no detainee can be imprisoned for more than 120 days as it will be illegal.¹¹³

Furthermore, the Advisory Board can detain that person for an unspecified period, but no longer than six months, as there is no law regarding it.¹¹⁴ All these things led to the violation of various constitutional and human rights by the SPA. The enforcement of stringent laws in Bangladesh has violated many rights established in many international conventions, yet Bangladesh has ratified the UDHR and ICCPR. Also, the SPA ironically breached some of the constitutional rights such as freedom of press and freedom of speech ensured by the constitution of Bangladesh as well.¹¹⁵

¹⁰⁸ The Special Powers Act 1974, s 9

¹⁰⁹ *ibid*, s 10

¹¹⁰ (1983) 35 DLR(AD) 72

¹¹¹ (1990) 42 DLR(HCD) 346

¹¹² The Special Powers Act 1974, s 10

¹¹³ (1975) 27 DLR 295

¹¹⁴ The Constitution of the Peoples' Republic of Bangladesh, art 33(4)

¹¹⁵ Sarkar (n 5)

In Bangladesh, the political parties, whoever come to the power, are using these provisions of the SPA for their own benefit despite being signed into the ICCPR and UDHR.¹¹⁶

4.5. The Digital Security Act, 2018: Violations of Constitutional and Human Rights

According to section 43 of the Digital Security Act 2018, it is stipulated that a police officer possesses the authority to apprehend an individual without a warrant.¹¹⁷ This extends significant power to law enforcement authorities to apprehend individuals based on their subjective view. However, in the instance of the case, *Bangladesh vs. Bangladesh Legal Aid and Services Trust*, the Supreme Court has issued comprehensive guidelines regarding to the exercise of the power of arrest without a warrant.¹¹⁸

Nevertheless, in practice, these standards are not adhered to. The journalist, Kajol, was subjected to charges under the DSA subsequent to his involuntary disappearance for a duration of 53 days, followed by a period of detention lasting seven months, during which no trial or formal charges were presented.¹¹⁹ Likewise, it has been reported that Ahmed Kabir Kishore was allegedly placed in an extensive period of detention lasting 60 hours prior to his formal declaration of arrest.¹²⁰ The daily star provided a graphic account detailing the infliction of torture on the individuals.¹²¹ The inclusion of provisions allowing for warrantless arrests, along with the ambiguous nature of the legislation, has become the law a formidable tool for the purpose of intimidating and persecuting anyone expressing dissenting views.

Furthermore, as a result of the non-bailable characteristic of the offense, obtaining bail becomes a challenging task for the individual under arrest. Consequently, individuals who are apprehended without a warrant based on the discretionary power of the law enforcement authorities are required to endure an extended period of imprisonment prior to obtaining a fair and lawful resolution of their case. This Practice violates the constitutional and international legal protections safeguarding the human rights of citizens.

¹¹⁶ *ibid*

¹¹⁷ The Digital Security Act, 2018; s 43

¹¹⁸ (2016) 8 SCOB 1

¹¹⁹ Azad (n 44)

¹²⁰ Zyma Islam, 'Scars of torture all over him' *The Daily Star* (Dhaka, 5 March 2021), <

<https://www.thedailystar.net/news/investigative-stories/news/scars-torture-all-over-him-2055265>> accessed 25 August 2023

¹²¹ *ibid*

4.6. The Road Transport Act, 2018

Despite the extensive authority granted to the law enforcement authorities by Section 110 of this Act, allowing them to make arrests without warrants under several provisions of the same Act, there have been no confirmed reports of abuse or misuse of this provision thus far.

4.7. Root Cause of the Violation of Human Rights: Nature of the Law Enforcement and Criminal Trial System in Bangladesh

The criminal justice system in Bangladesh originated in the legislative framework established during British colonial period. The development of criminal law, procedure, institutions, and principles in Bangladesh mostly happened during the British colonial era, and these elements continue to shape and regulate the operation of the country's legal system.¹²² After the unsuccessful mutiny in 1857, the British crown assumed direct rule over the subcontinent in 1858. Subsequently, significant legislative efforts were undertaken in the field of criminal justice, resulting in the enactment of the Penal Code 1860 and the Code of Criminal Procedure 1861.¹²³ Presently, the Penal Code 1860, the Police Act 1861, the Evidence Act 1872, the CrPC 1898 and the Jail Code 1943 remain in effect, albeit with minor modifications. The law-making process in colonial Bengal has frequently been subjected to criticism for its irregular nature, with rules being implemented in a seemingly arbitrary manner.¹²⁴ Furthermore, after the independence the enactment of "Special Laws" has increased as well as certain limited remedial measures have also been introduced in an attempt to alleviate the burden in criminal proceedings.¹²⁵ Despite this, the contemporary law of Bangladesh is still largely colonial in nature. As a result, the Code of Criminal Procedure of 1898 is still the major procedural criminal legislation in Bangladesh, enabling the apprehension based on suspicion and subsequent confinement in police custody in accordance with section 54.¹²⁶ Since gaining independence in 1971, Bangladesh has had a consistent presence of arbitrary arrest, imprisonment, and custodial torture perpetrated by law enforcement authorities.¹²⁷

¹²² Faruque (n 14)

¹²³ *ibid*

¹²⁴ *ibid*

¹²⁵ Abdullah Al Faruque (n 16)

¹²⁶ The Code of Criminal Procedure, 1898, (n 88)

¹²⁷ Faruque (n 14)

The aforementioned activities have been extensively rampant in Bangladesh, regardless of the prevailing political regime, and consecutive administrations have been ineffective to solve this issue.¹²⁸ Although there has been a lot of concern from both citizens and human rights organizations about the abuse of criminal laws in Bangladesh, no judicial intervention to stop the misuse of these provisions occurred until 2003. When the police make an arrest, they always defend themselves by asserting that they acted lawfully.¹²⁹ From their perspective, this may be a satisfactory explanation. However, no one who complains or expresses concern about such arrests ever claims that the police acted illegally. The issue is with the manner in which the police conducted the arrest, which increases the risk of using arrest authority without a warrant.¹³⁰ These provisions of arrest without a warrant are being used arbitrarily and without justification or accountability criteria by the police. To effectively address this issue, legal reforms, comprehensive training for law enforcement personnel, and public awareness campaigns are essential.

4.8. Conclusion

The criminal trial system in Bangladesh evolved during the British period, and most of the procedural law was enacted after the abortive mutiny in 1857.¹³¹ During that time, it was the British who enacted the provisions of arrest without warrant to eradicate the rebellious character from the people, which are still in force after so many years of independence in Bangladesh, and today law enforcement authorities are abusing these provisions at their own discretion without any justifications or accountability, which ultimately violates the human rights of the citizens of this country.¹³²

¹²⁸ *ibid*

¹²⁹ Rana (n 11)

¹³⁰ *ibid*

¹³¹ Faruque (n 14)

¹³² *ibid*

Chapter V

Findings of the Study, Recommendations and Conclusion

5.1. Introduction

This is the final chapter of the dissertation. In this chapter, the findings of the study and the recommendations that are necessary to implement for addressing and eliminating the abusive exercise of power by the law enforcement officials. Lastly, a comprehensive overview will be drawn in the conclusion.

5.2. Findings of the Study

- There is a proper guideline and directives given by the Supreme Court of Bangladesh in the Blast case, but the authority is not abiding by the guideline while they exercise their power of making an arrest without warrant. Also, the recommendations that have been given in *the Blast* and *Saifuzzaman v. State* case, still those recommendations are not implemented properly.
- In Bangladesh, there is no statutory remedy for the victims of arrests without warrants. In addition, there is no statutory provision that gives a clear definition of arbitrary arrest, wrongful conviction, or illegal detention.
- However, victims of arrest without a warrant in Bangladesh have indirect remedies. Under the current system, the decision to award compensation and the amount of compensation remains up to the court's discretion, and the remedy of compensation results in an ex-gratia obligation rather than a statutory obligation for the state to compensate.
- The government has not implemented an adequate system of punishment for police officers and other conspirators who unlawfully arrest or detain innocent individuals. Section 54 of the CrPC authorizes the police officers to make warrantless arrests based on reasonable suspicion and credible information. Section 3 of the Special Powers Act authorizes the arrest of individuals without a warrant if they are suspicious of doing any prejudicial act.
- However, reasonable suspicion, credible evidence, and prejudicial acts lack a clear definition, giving the authority ample room to abuse their authority and cause false imprisonment and unlawful detention.

Lastly, the study reveals that the authority is not following the proper guideline regarding arrest without warrant set forth by the international law and the Supreme Court of Bangladesh which ultimately violates human rights guaranteed by the constitution and international law.

5.3. Recommendations

- The guidelines and directives, as well as the recommendations regarding arrests without warrant provided by the Supreme Court of Bangladesh in the Blast and Saifuzzaman cases, should be implemented with immediate effect.
- The Court should observe the law and order of the country from time to time and pass necessary orders when they are required.
- The court must compel the law enforcement authority to follow the procedures regarding arrest without a warrant.
- The procedures of the court must be run without any interference or influence.
- The government should establish a proper training system for the law enforcement officials where they can practically learn how the power of arrest without a warrant can be executed while maintaining all the national and international procedures.
- The government should not interfere and influence any organ of the state for its own benefit to make an arrest; otherwise, law and order will be broken and there will be a public outcry.
- The Special Power Act should be repelled immediately as well as the provision of arrest without warrant from the Digital Security Act should be repelled.
- The obligation to compensate the victim of arbitrary arrest and wrongful detention should be declared a statutory obligation.
- The legislature must enact a statutory provision regarding remedy and compensation for the victim of arbitrary arrest and wrongful detention.
- The legislature should enact a law for the punishment of law enforcement officials for conducting unlawful arrests.
- Law enforcement officials should abide by the rules set forth by the legislature and the court.

- ❑ They must follow the guidelines, directives, and international standards while making an arrest without a warrant. Moreover, they must uphold human rights and ensure natural justice for all the citizens of the state.

5.4. Conclusion

Arrest without a warrant, if not executed by following the proper rules and regulations set forth by the Supreme Court of Bangladesh, constitutions, and international law, violates the numerous human rights ensured by the constitution and international laws. Despite the existence of established guidelines, directives, rules, and regulations outlined in the constitution and international law, officials frequently disregard these provisions when exercising their authority to make arrests without warrants. In the end, this disregard results in a violation of fundamental human rights, such as the rights to life and liberty, freedom of movement, and other rights that the constitution guarantees. Also, the aforementioned rights are legally binding and recognized as peremptory norms, so any disregard of such rights constitutes a violation of the mandate of jus cogens within the framework of international law. Currently, there is a lack of formal recourse or reparation for the violation of these fundamental human rights. Furthermore, there is a notable absence of punitive measures for authorities who engage in unlawful arrests. It is crucial to implement statutory provisions and ensure that law enforcement officials adhere to the appropriate guidelines and directives established by the Supreme Court. The provisions allowing for warrantless arrests should only be utilized in cases of urgency or emergency, and efforts should be made to repeal such provisions.

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