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Arrest on Reasonable Suspicion and Credible Information: Policy and Practice in Bangladesh

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Abstract

In Bangladesh, a police officer has the discretion to arrest an individual on the pretext of “reasonable suspicion” and “credible information” even without a warrant of arrest from the Magistrate. Though there are statutory and constitutional safeguards to protect liberty, security and human rights of the arrestee, practically there are numerous allegations of misuse or abuse of Section 54 of Code of Criminal Procedure 1898 by the police officers. High Court Division (HCD) in ‘BLAST HCD case’ and ‘Saifuzzaman Case’ rightly denounced all sorts of such abuses. HCD held that some provisions were, to some extent, inconsistent with the Constitution and also recommended for amendment of those questionable provisions. HCD also provided some directives to be followed while applying those existing provisions for arrest until such laws are modified. However, after rigorous hearing for about 12 years, Appellate Division (AD) dismissed the appeal preferred against BLAST HCD judgment. While AD concurred with the observations and findings of the HCD, it found recommendations and directives of the HCD as being either redundant or an exaggeration. In view of the observations of the AD, the legislature should also make a holistic review of Code of Criminal Procedure.

Introduction

In Bangladesh, Code of Criminal Procedure 1898 (Code) provisions for arresting an individual on the plea of “reasonable suspicion” or “credible information”. However, due process and procedural safeguards are often alleged to be the casualties as there have been widespread speculations that members of the law enforcing agency of Bangladesh often take resort to high-handedness and unbridled discretion while conducting arrests without warrants for arrest.

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It may be recalled that the legal system of Bangladesh is rich in tradition and content.¹ In particular, the basic legal regime on arbitrary arrest now in Bangladesh was codified during British colonial era long before the massive development of human rights discourse and the constitutional notion of fundamental freedoms took a wave. We have inherited a system of administration of justice in our country from the British colonial rulers, who gradually replaced the *Mughal* system of administration of justice then prevalent on the Islamic Law.² Some elements of pre-Mughal elements of Hindu regime and the indigenous notion of fairness also ostensibly permeated the British imposed legal system in Indian Sub-continent.³ In essence, colonial relics including Penal Code of 1860, Police Act of 1861, Evidence Act of 1872, and Code of Criminal Procedure 1898 are still in force with only peripheral reforms.

In *Bangladesh Legal Aid and Services Trust and others V. State*,⁴ 2003, High Court Division (BLASTHCD) of the Supreme Court of Bangladesh came forward to denounce any kind of abuse in the name of arrest. HCD also declared that provisions of Code on such arrest are to some extent inconsistent with the provisions of the Constitution and accordingly HCD put forward a set of recommendations. In 2004, almost an identical set of findings and recommendations were made by another bench of the HCD in *Saifuzzaman v State and others*.⁵ However, in *Bangladesh V. Bangladesh Legal Aid Services Trust and others*⁶ 2016 Appellate Division (BLAST AD) of Supreme Court of Bangladesh upheld the above BLAST judgment of the HCD with some modifications. However, AD was of the view that most of the recommendations provided by HCD were either redundant or exaggeration. AD also promulgated a set of responsibilities and guidelines for the law enforcing agencies and the Judges with a view to checking abuse in the name of arbitrary arrest. AD made a series of scathing observations regarding the high-handedness of the police personnel and made reference to parliamentary debates and international instruments to gauge the application of due process and rule of law. It also boldly declared that the objectives and perspective of the framing of colonial legislation no longer exist with the passage of time *vis-à-vis* emergence of the notion of human rights. Thus, the Apex Court recommended for replacing the old Code with a new one.

Against this backdrop, the present study sheds light on perspective, policy, practice and judicial intervention on the arrest on suspicion and credible

¹ M. Shah Alam, *Legal Reforms in Bangladesh and Law Commission*, New Warsi Book, Dhaka, 2016, p. 122.

² Kazi Ebadul Haque, *Administration of Justice in Bangladesh*, Asiatic Society of Bangladesh, Dhaka, 2003, Preface.

Hussain M. F. Bari, 'Evolution of Criminal Justice System in Bangladesh: Colonial Legacy and Current Issues', vol. 2, *Jagannath University Journal of Law*, 2016.

⁴ *Bangladesh Legal Aid Services Trust and others V. Bangladesh* (2003) 55 DLR 363 (HCD).

⁵ *Saifuzzaman V. State and others* (2004) 56 DLR 342 (HCD).

⁶ *Bangladesh V. Bangladesh Legal Aid Services Trust and others* (2016) (Civil Appeal no.53 of 2004) (AD).

information in the context of Bangladesh. This research is based on both primary sources including statutes, rules, regulations, and secondary sources including books, journal articles, periodicals, reports and other sources from the internet. One limitation of this study is that it fails to contact the stakeholders to gauge their opinion on the alleged abusive exercise of such provisions of law. This study intends to make a significant contribution in strengthening policy and practice in the context of Bangladesh. The present research will also add value to the contemporary literature on criminal jurisprudence that would be of great value to the academicians, practitioners and policy makers as well. There is a dearth of research materials purely concentrated on such topic in Bangladesh. By using the content analysis method of research, the present research conducts a systematic study and analysis of a body of texts, images and other forms of literature from an objective perspective.

Historic Events and International Standards for Liberty Jurisprudence

Even centuries back, the common law has attempted to safeguard individual liberty or sense of freedom from arbitrary detention.⁷ Even Hammurabi Code (approx. 2000 BC) appears to be an ancient document that showed some sort of protective fairness against whimsical curtail of individual liberty.⁸ In fact, the safeguard of individuals from oppression and abuse of the members of law enforcing agency have always been an essential prerequisite for a society based on rule of law.⁹ Similarly, there is also an urgency to maintain the law and order situation by protecting the general members of the society from alleged wrongful activities of criminals. So there lies an ever competing tension between due process and control of crime from time immemorial.

A brief reference may be made to some historic events that helped develop the pathway to the modern concept of individualism and rule of law. In fact, documents are galore in the popular struggle to protect the liberty of individuals against despotism, theocracy, and monarchs. For instance, Magna Carta 1215 unequivocally declared that '*no man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by other law of land*'.¹⁰ Indeed, personal freedom is fundamental to the 'libertarian conscience' of the common law that Lord Bingham described dating back to chapter 39 of the Magna Carta 1215.¹¹

⁷ Adam Gearey et al, *The Politics of the Common Law: Perspectives, Rights, Processes, Institutions*, Routledge- Cavendish, London, 2009, p. 355.

⁸ Chilperic Edwards, *The Oldest Laws in the World*, Watts & Co., London, 1906, pp. 14-26.
Sarker Ali Akkas, 'Constitutional Rights against Arbitrary Arrest and Detention: The Case of Bangladesh' vol. 11, *Bangladesh Journal of Law* p. 55, 2003, p. 57.

¹⁰ *Magna Carta*, 1215, clause 39.

¹¹ *A V. Home Secretary* [2004] UKHL.

Similarly, French Declaration on Rights of the Men and Citizens 1789 postulates that ‘no person shall be accused, arrested, or imprisoned except in the cases and according to the forms prescribed by law’.¹² In modern times, Universal Declaration of Human Rights (UDHR) 1948 sets the common standard to the effect that ‘no one shall be subjected to arbitrary arrest, detention or exile’.¹³ Ultimately, in the form of a legally binding treaty, International Covenant on Civil and Political Rights (ICCPR) 1966 addresses some of the most basic liberty rights thus: ‘Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.’¹⁴

Further, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984¹⁵ denounces all forms of torture. Therefore, coercion, intimidation, degradation or any kind of discrimination during custody of the suspect that has an immense impact on the body and mind will be amounting to torture.¹⁶ It may also be noted that in corresponding with the international standards, in many jurisdictions, appropriate constitutional provisions and statutory laws and measures are now in place to protect life, liberty and security of the individuals.

Arrest and Due Process Protection

An arrest is a formal step of detaining and locking up a person in police custody for purpose of filing a criminal charge against him/her.¹⁷ Generally, a police officer cannot arrest a person accused of a non-cognizable offence¹⁸ without a warrant from a Magistrate. However, under certain circumstances, a police officer can arrest for non-cognizable offence as well. According to Section 54 of Code of Criminal Procedure, a police officer may, without an order from a Magistrate and without a warrant, arrest any person who has been concerned in any cognizable offence or a person, against whom a reasonable complaint has been made or “credible information” has been received, or “reasonable suspicion” exists about him/her having been so concerned. Though there are other eight grounds that empower the police officer to arrest without warrant, they are essentially beyond

¹² Declaration of the Rights of Men and of the Citizens, 1789, art 7.

¹³ Universal Declaration of Human Rights, 1948, art 9.

¹⁴ International Covenant on Civil and Political Rights, 1966, art 9.

¹⁵ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

¹⁶ Khondoker Mohammad Mushfiqul Huda et al, ‘Impact of Torture and Torture Evidence in the Human Rights and Criminal Justice System: International Context’, in Mir Shamsur Rahman et al (eds), *Understanding Crime and Policing in Bangladesh*, Center for Criminological Research, Dhaka, 2009, pp. 177-209.

¹⁷ David A. Jones, *The Law of Criminal Procedure: An Analysis and Critique*, Little Brown, Boston, 1981, p. 142.

¹⁸ Non-cognizable offence is an offence in which a police officer cannot arrest an accused without the order or warrant of arrest (Code of Criminal Procedure 1898, s 4(f)).

the scope of this article.¹⁹ Practically speaking, “credible information” and “reasonable suspicion” for affecting arrest without warrant appear to be a tool that leaves an apparent blank cheque at the hands of the police personnel. Here comes the perennial dilemma of “individual liberty” versus “maintenance of law and order” of the society. For instance, arbitrarily arresting an individual definitely tends to curtail the individual liberty, legal protection and few core fundamental freedoms of the arrested person. However, the general version of the law enforcing agency is that they have the legitimate authority to arrest or detain an individual to deter him/her from potentially harmful activities that may have a serious impact on overall law and order situation of a society. Therefore, they try to argue for curtailing or suspending liberty and protection of some suspected or concerned persons for the sake of greater benefit of the members of the society at large given that preventive policing is preferred to ‘aftermath invention’.

Protection against Arbitrary Arrest

For monitoring the activities of the police, Judicial Magistrates are legally assigned.²⁰ Section 60 of Code reads that police officers, making an arrest without unnecessary delay and subject to the provisions of bail, take or send the arrestee before the nearest Magistrate. An equally important requirement is that the arrested person is told promptly about the protection against arbitrary powers of the State. The fundamental reason for this safeguard is to allow the detained

¹⁹ Any police-officer may, without an order from a Magistrate and without a warrant, arrest—*firstly*, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned; *Second*, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; *Third*, any person who has been proclaimed as an offender either under this Code or by order of the Government; *Fourth*, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; *Fifth*, any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; *Sixth*, any person reasonably suspected of being a deserter from the armed forces of Bangladesh; *Seventh*, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in Bangladesh; *Eighth*, any released convict committing a breach of any rule made under section 565, sub section (3); *Ninth*, any person for whose arrest a requisition has been received from another police officer, provided that the requisition specified the person to be arrested is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition. (Code of Criminal Procedure 1898, s 54)

²⁰ Without any qualifying word, to a Magistrate, shall be construed as a reference to a Judicial Magistrate (Code of Criminal Procedure 1898, Section 4A (1) (a)).

person to challenge conditions as laid down under Section 54 of Code of Criminal Procedure 1898 and in cases as specified in Schedule II.

Without undermining the role of ordinary laws and practices, it can be safely said that the Constitution is the ideal yardstick to gauge the reasonableness and fairness of existing laws.²¹ The Constitution usually provides an overarching purpose of criminal law²² which is arguably best served by a due process model as opposed to crime control model of criminal justice system.²³ Based on the constitutional framework²⁴ and substantive *vis-a-vis* procedural laws, at least it can be theoretically termed that ours is a system founded on 'due process model' in contrast to 'crime control model'.²⁵ A fundamental feature of such model is that a cluster of procedural rights and safeguards are accorded to the accused so that the right to fair trial is meaningful to that person in course of criminal trial. These rights include right to be produced before Magistrate, right to counsel and legal aid, right to bail and so on. Article 33 of Constitution provides some procedural safeguards and articles 34 and 35 provide some specific, substantive and procedural safeguards in respect of deprivation of life and personal liberty. Article 33 provides protection against unreasonable arrest and detention while Article 35 ensures a fair trial in criminal prosecutions. Like the American due process, where clause ensures fair procedure in any proceeding affecting rights and liberties, this fairness concept of Article 31 is embodied in the principle of natural justice.²⁶

In particular, Bangladesh's Constitution declares that:

*No one who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.*²⁷ Constitution further states that an arrestee requires being produced before the nearest Magistrate within 24 hours of the arrest, excluding the journey-time required for bringing the arrestee to the Magistrate.²⁸ This constitutional provision is further echoed in section 61 of the Code of Criminal Procedure. However, in practice, the slow pace of traditional justice system alleged excessive authoritarian attitude of law enforcement agencies.

²¹ Ridwanul Hoque, 'Criminal Law and Constitution: The Relationship Revisited', Special Issue, *Bangladesh Journal of Law* p. 46, 2007.

²² *Constitution of the People's Republic of Bangladesh*, 1972, art 7.

²³ Ridwanul Hoque (n 21), p. 49.

²⁴ For instance, Constitution, arts 27, 33, 35 provide for some procedural due process in criminal trials.

²⁵ See L. H. Packer, 'Two Models of Criminal Process', in George F. Cole (ed.), *Criminal Justice: Law and Politics*, Massachusettes, 1990, pp. 17-33. However, as failure of the law enforcing agencies to quickly apprehend and prosecute the real offenders for trial, long delay in disposal of cases, increasing costs of litigation and at times those give rise to lack of respect in the law and induces many to take the law in their own hand. See generally Kazi Ebadul Hoque, *Administration of Justice in Bangladesh*, Asiatic Society of Bangladesh, Dhaka, 2003, p. 252.

²⁶ Mahmudul Islam, *Constitutional Law of Bangladesh*, Mullick Brothers Dhaka, 2012, p. 247.

²⁷ *Constitution of the People's Republic of Bangladesh*, 1972, art 33.

²⁸ *Ibid.*

Thereby having delays in delivering justice and disproportionate crime-to-conviction ratio are few issues that haunt our crippling criminal justice system.²⁹ This is an area that essentially falls beyond the scope of this study.

Judicial Intervention in Upholding Liberty Jurisprudence

The framers of the criminal law had the circumspection in rightfully allowing law enforcing officers to conduct arrest on reasonable suspicion and credible information. The phrases “credible and reasonable” have been interpreted by Courts.

British Development

In *Dumbell v Roberts*³⁰, Scott J explained that reasonable grounds for ‘suspicion of guilt’ are a ‘safeguard’ designed for ‘the protection of the public’. Powers of arrest given to police officers are more extensive. A police officer can arrest on reasonable grounds of suspicion that a cognizable offence has been committed. In the UK, the criminal law appears to have preserved the fundamental legal safeguards on arrest as the threshold of reasonable suspicion. The requirement of reasonable suspicion is based on the information available to the arresting officer at the time s/he makes the arrest.³¹ So, critical questions take place as what the police officer knew or had in mind when s/he made the arrest. The case of *Castorina v Chief Constable of Surrey*³² defined ‘reasonable cause’ as ‘an honest belief found upon reasonable suspicion leading an ordinary cautious individual to the conclusion that the person arrested was guilty of the offence’. The Court then denied the appeal asserting that the proposed test was too severe and based on misleading subjective satisfaction hence it requires being objective. There may be due process constraints over these additional police powers. Therefore, the arrest may not be lawful until the person arrested is told of the reason for the arrest and this must be done as soon as possible after the arrest. In *Christie v Leachinsbky*³³, it was held that ‘A person is *prima facie* entitled to personal freedom and should know why for the time being his/her personal freedom is interfered with. No one would approve a situation in which a person arrested is not explained for the reason. If the policeman replies ‘that has nothing to do with you; come along with me’ it is not practically considerable. If the charge is then and they’ve to be made known to him/her. S/he has the opportunity of giving an explanation of any misunderstanding or of calling attention to the other persons for whom s/he may have been mistaken with. The result that further inquiries may save him/her from

²⁹ Hussain M. F. Bari (n3).

³⁰ *Dumbell v Roberts* [1944], ER 326, p. 329.

³¹ *Redmond-Bate v DPP* [1999], Crime LR, 998.

³² *Castorina v Chief Constable of Surrey* [1988], 138 NLJ 180.

³³ *Christie v Leachinsbky* [1947] AC.

the consequence of false accusation. It suggests that Court would take the directives with great seriousness. In particular, ‘reasonableness’ of the suspicion, on which arrest must be based, is essential part of the safeguard against arbitrary arrest and detention’.³⁴

Role of High Court Division

Let me now move to Bangladesh jurisdiction. The epoch-making case which scrutinised the issue of above arbitrary arrest and wholesale remand by police was *BLAST v Bangladesh and another*.³⁵ On 23 July 1998, Shamim Reza Rubel, a sophomore student at the Independent University of Bangladesh died in police custody after being arrested under Section 54 of Code. Police claimed that he had committed suicide whereas the media & human rights organisations rejected it by indicating that his death was a result of torture in the police custody. The government formed a Commission under Justice Habibur Rahman Khan inquired into the cause of the death in police custody and made some recommendations to prevent abuse of police power. Since no headway was made in the implementation of the said recommendations, Bangladesh Legal Aid and Services Trust (BLAST), *Ain o Salish Kendra* (ASK), *Sammili to Samajik Andolon* and five individuals filed the writ petition in the public interest seeking direction upon the respondents to refrain from unwarranted and abusive exercise of powers under section 54 of Code or to seek remand under section 167 of Code and to strictly exercise powers of arrest and remand within the limits established by law and the constitution. In *Saifuzzaman v State*³⁶, similar issues also came under the legal scanner of another bench of the HCD.

In *BLAST HCD case* Justice, Md. Hamidul Haque made his observation that the word “concerned”- used in section 54 of Code-is a vague word which gives unhindered power to a police officer to arrest any person stating that the person arrested is ‘concerned’ in a cognizable offence.³⁷ He added that a police officer can exercise the power if s/he has “definite knowledge” of the existence of some facts and such knowledge shall be the basis of arrest without warrant. There can be knowledge of a thing only if the thing exists.³⁸ Accordingly, Justice Haque made a suggestion that if a person is arrested on the basis of credible information then nature of the information and source of information must be disclosed by the police officer alongside with the reason why s/he believed the information.³⁹

Regarding reasonable suspicion for affecting an arbitrary arrest, Justice Haque argued that if a person is arrested on “reasonable suspicion”, the police officer

³⁴ *Kurt v Turkey*, 1988, EHRR 373.

³⁵ *BLAST HCD Case* (n 4), para 31.

³⁶ *Saifuzzaman Case* (n 5) p. 341.

³⁷ *BLAST HCD Case* (n4), para 10.

³⁸ *Ibid*.

³⁹ *Ibid*, para 11.

must record the reason on which the suspicion is based. If the police officer justifies the arrest only by saying that the person is suspected to be involved in a cognizable offence, such 'general statement' cannot justify such arrest.⁴⁰ HCD further opined that a police officer cannot arrest a person under section 54 of the Code with a view to detain him/her under the Special Powers Act 1974. Such arrest is neither lawful nor permissible under section 54.⁴¹

HCD also emphatically noted that if the right to be informed of his/her grounds of arrest and the right to consult legal practitioners are denied then this will amount to confining the arrestee in custody beyond the authority of the Constitution.⁴² This observation simply echoed the constitutional protection of the arrestee. HCD had the circumspection to hold that mere judicial interpretation of credible and reasonable is not enough to check the police excesses; rather provision itself shall be amended in such a manner that the safeguard will be found in the provision itself.⁴³

While suggesting a definiteness in *Saifuzgaman HCD case*, Justice S K Sinha (as he was then) advocated that the "reasonable suspicion" and "credible information" must relate to definite averments considered by the police officer him/herself before arresting a person under this provision.⁴⁴ He added that 'reasonable suspicion' must depend upon the circumstances of each case; however, it should be at least found on some definite facts tending to throw suspicion on the person arrested than being mere a vague surmise.⁴⁵ Therefore, Justice Sinha observed that bare assertion without anything more cannot form the material for the exercise of an independent judgment and will not, therefore, amount to credible information.⁴⁶ In *Md. Yusuf Ali v State*⁴⁷, HCD elaborated that "reasonable suspicion" in exercising power under section 54 means a *bona fide* belief on the part of the police officer that an offence has already been committed or is about to be committed, but certainly not a move to go on a wild- goose hunting. Necessitating the arrest of the person concerned, police officer upon receipt of such information must have definite and *bona fide* belief that an offence has been committed or is about to be committed. A bare assertion without anything more cannot form the material for the exercise of an independent judgment and will not, therefore, amount to credible information. Police are under legal duty and have legitimate right to arrest a criminal and to interrogate him/her during the investigation with a view to solving the crime.⁴⁸

⁴⁰ Ibid, para 12.

⁴¹ Ibid, para 27.

⁴² Ibid, para 26.

⁴³ Ibid, paras 10, 29.

⁴⁴ *Saifuzgaman Case* (n5), p. 349.

⁴⁵ Ibid, p. 352.

⁴⁶ Ibid.

⁴⁷ *Md. Yusuf Ali v State* (1995) 8 BLC 74 (HCD).

⁴⁸ *Saifuzgaman Case* (n5), p.351.

Role of Appellate Division

Against the above *BLAST judgment* of HCD, the Civil Petition for Leave to Appeal (CPLA) was granted with the direction that the respondents were directed to observe and implement the directions in its letters and spirits till disposal of the appeal.⁴⁹ After rigorous hearing and long arguments for 12 years, Appellate Division (AD) of the Supreme Court upheld the *BLAST judgment* pronounced by HCD. At the outset, the judgment of AD dwells upon the emergence of Bangladesh. In doing so, AD started with the genesis and development of British legal system, the originator of the modern legal system of this region.⁵⁰ AD also lamented that during last 12 years of non-implementation of directives of HCD is nothing but a travesty to irony.

Though AD dismissed the appeal preferred against *BLAST judgment*, AD observed that all the recommendations pronounced by HCD are not relevant or even redundant.⁵¹ Consequently, AD has formulated responsibilities and guidelines to be followed by each member of the law enforcing agencies at all level and in the case of arrest and detention of a person out of suspicion. AD rightly postulated that the discretion of executive authorities should be confined within clearly defined limits and there can be no such thing as unfettered unreviewable discretion.⁵² AD advanced that the rule of law demands that power is to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving rooms for discrimination. Where the law confers wide discretionary powers there should be adequate safeguards against their abuse and unfair discrimination should in no way be sanctioned by law.⁵³

AD also reproduced Principles for the Protection of All Persons under any form of Detention or Imprisonment 1988.⁵⁴ It also refers to Code of Conduct for Law Enforcement Officials 1979.⁵⁵ For a better appreciation of the intricate issues raised in the case, AD refers to Universal Declaration of Human Rights 1948, International Covenant on Civil and Political Rights 1966 and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984. The judgment of AD further referred to Articles 7, 26, 28, 30, 31, 32, 33, and 53 of the Constitution. AD also reproduced the list of terrorist incidents in India from Wikipedia which may not always be termed as almost reliable source.⁵⁶ Robert Peel's Principles of Law Enforcement 1829 is an old reference that was also

⁴⁹ CPLA 498 of 2003 (AD).

⁵⁰ *BLAST AD Case* (n5), p. 191.

⁵¹ Ibid.

⁵² *SG Jaisinghani v Union of India*, SCR, 1976, SC; *Khurdiram Das v State of West Bengal* SCC, 1975, SC.

⁵³ *BLAST AD Case* (n6) p. 178.

⁵⁴ General Assembly Resolution 43/173, adopted on 9 December 1988.

⁵⁵ General Assembly Resolution 34/169, adopted on 17 December 1979.

⁵⁶ *BLAST AD Case* (n 6), p. 199.

profitably referred to in the judgment of the AD.⁵⁷ AD also discussed a set of policing values in greater detail.

The traditional view of common law countries is that parliamentary debate could not be readily referred by a Court to gauge the intention of the legislature.⁵⁸ However, following the footsteps of a case of *Pepper v Hart*⁵⁹, AD for the first time in Bangladesh has perhaps reproduced parliamentary debates and tried to remind us the solemn objectives and intention of the framers of the Constitution. AD recalled that in the above parliamentary debates, Bangabandhu Sheikh Mujibur Rahman stressed upon promoting the human rights and rule of law.⁶⁰

AD lamented that police department has failed to maintain required standard of integrity and professionalism.⁶¹ AD further added that police department has forgotten its core value that it is accountable to the community it serves and by the same line the prevention of crime is its prime operational priority.⁶² AD postulated that Bangalee people have a Constitution, which has been achieved at the costs of millions of martyrs and all human values, which are recognised by international communities as well enshrined in it. It further mentioned that police officers must not only know how to maintain order but must do so in a manner consistent with the democratic form of government.⁶³ AD had no hesitation to hold that the long cherished independence achieved after huge sacrifice should not be frustrated only for a few members of law enforcing agencies.⁶⁴ AD further elaborated that the fundamental rights to people's life and liberty and security should be given primacy over other terrorism. Therefore, on the plea of terrorism, a blank cheque cannot be given to the law enforcing agencies to transgress fundamental rights of the citizens.⁶⁵ AD made the observation that if they fail to safeguard the fundamental rights of the citizens of the country and allow the police officers use power arbitrarily then it will be practically difficult to establish constitutional law and rule of law in this country.⁶⁶

In particular, AD recalled the urge of the human rights defenders that the reasonable suspicion and credible information must relate to definite averments which must be considered by the police officer him/herself before s/he arrests a person under section 54.⁶⁷ The AD ruled that the definition of a reasonable

⁵⁷ Ibid.

⁵⁸ James Holland et al, *Learning Legal Rules*, Oxford University Press, London, 2006, pp. 248-251.

⁵⁹ *Pepper v Hart* [1992] WLR 1032.

⁶⁰ *BLAST AD Case* (n 6), p. 91.

⁶¹ Ibid, p. 93.

⁶² Ibid, p.76.

⁶³ Ibid, p. 79.

⁶⁴ Ibid, p. 171.

⁶⁵ *BLAST AD Case* (n6), p. 200.

⁶⁶ Ibid, p. 223.

⁶⁷ Ibid, p. 248.

complaint or suspicion must depend upon the circumstances of each case, and it should be at least found on some definite facts that tend to throw suspicion on the person arrested but not on a mere surmise.⁶⁸ It pointed out that the words “credible” and “reasonable” used in the first clause of section 54 of the Code must have reference to the mind of the person receiving the information which must afford sufficient materials for the exercise of an independent judgment at the time of making an arrest.⁶⁹ AD appears to be more concerned about the due application of provisions of law. AD thus pointed out that the Magistrate must be satisfied that the requirements of the sections 54 and 61 of Code are complied with each other otherwise the Magistrate is not bound to forward the accused either in the judicial custody or in the police custody.⁷⁰

AD noticed that the police officers taking advantage of the language used in section 54 of are arresting innocent citizens rampantly without any complaint being filed or making any investigation in this regard and thereby the fundamental rights guaranteed to a citizen under Articles 27, 30, 31, 32, 33 and 35 of the Constitution are violated.⁷¹ It also denies that no person shall be subjected to torture or to cruel, inhuman, dignity or degrading punishment or treatment.⁷² Apex Court rightly refreshed that the present Code was promulgated by the colonial rulers to consolidate their imperial power through the exercise of abusive powers by the police.⁷³ AD made the observation that there was no constitution at that time and the fundamental rights were a far cry which is being not at all recognised. After driving out colonial rulers, Bangladesh could not afford to detain and prosecute an offender under draconian provisions of law.⁷⁴ According to AD, the present Code is not at all suitable for the administration of criminal justice thus it is high time to promulgate a new Code.⁷⁵ Though AD found no massive fault in the law itself, however, AD concurs with the findings of HCD regarding the improper or illegal application of the process of law.

Evaluation

Arrest on suspicion and credible information obviously makes a fine line between legitimate policing and abusive police excesses. Arbitrary arrest of individuals has a great impact on the law and order situation of a country as well. It often transgresses the human rights and constitutional protection of the arrestee. There is no problem in proper policing; rather the police officers are under a legal duty

⁶⁸ Ibid, p. 250.

⁶⁹ *Saifuzzaman Case* (n 5), p. 339.

⁶⁹ CPLA no. 498 of 2003 (n48).

⁷⁰ *BLAST HCD Case* (n4), p. 251.

⁷¹ *BLAST AD Case* (n6), p. 263.

⁷² Ibid.

⁷³ *BLAST AD Case* (n6), p. 267.

⁷⁴ Ibid.

⁷⁵ Ibid.

to arrest the person on definite suspicion and information. However, such information or suspicion must be based on "specific and articulated facts", along with rational inferences from those facts, and the suspicion must be associated with the specific individual. When determining reasonable suspicion or credible information, the Court should consider the events from the standpoint of an objectively reasonable police officer. The totality of the circumstances of each may be measured from the case records alone.

Proper application of criminal laws is a basic yardstick to gauge the level of the governance a state follows. Therefore, it is the role the Judicial Magistracy that comes under legal scanner whether it adheres to the basic principles of liberty jurisprudence while supervising arrest on credible information or reasonable suspicion. HCD rightly opined that if the Magistrates perform their responsibilities within their judicially permissible limit, the abuse of police power can be checked to a great extent.⁷⁶ It should be borne in mind that arbitrary arrest without any plausible legal cause is tantamount to the travesty of judicial procedure. Criminal depredations of police have an extremely deleterious implication for the overall image of the nation.⁷⁷

Police personals' work is largely discretionary, and although the law gives police powers, it does not make the exercise of these powers mandatory. The best means for police to improve their image is through continuous training and development of officers and through recruitment of persons of the right standard.⁷⁸ Public insistence on law observance can be achieved best if the police themselves, as the country's principal law-enforcement agency, set the example of law-abidingness before the citizens by scrupulously observing the law. It is often argued that organisational culture and practice are often responsible for police misconduct. Therefore, such issues and remedies could not be viewed in isolation; rather challenges in the police force should be holistically investigated into. It is thus expected that a strong accountability mechanism coupled with commensurate compensation policies could be essential elements of the desirable system.

AD issued a set of responsibilities and guidelines for the law enforcers and Judges to apply the powers of arrest and remand. It may be added that AD also appears to have taken a quite conservative approach while rejecting the HCD view on the inconsistency of section 54 of Code. Without undermining the positive impact of the judgment of AD, it may be argued whether such general flowery wishes in the name of wholesale guidelines will be an effective shield to check the abuse or misuse of those colonial rules. Further, AD's sudden prescription for replacing the Code of Criminal Procedure 1898 does not fully match its findings, especially when AD finds no apparent *vires* in section 54 of Code.

⁷⁶ *Saifuzzaman Case* (n5), p. 350.

⁷⁷ Muhammad Nurul Huda, 'Taming Rogue Policemen', *The Daily Star*, 2016.

⁷⁸ *Ibid.*

It also appears that *in toto* reproduction of ICCPR, UDHR, Articles of Constitution, and Principles for the Protection of All Persons under any form of though being sparingly used by the researchers as ready reference, Detention or Imprisonment 1988 and Code of Conduct for Law Enforcement Officials 1979 have made the judgment quite verbose. Nevertheless, the contents, background reference, discussion, overall findings and directives of *BLAST AD case* will be a beacon light in the legal literature of Bangladesh. It is imperative that police personnel and judges should follow the mandates inherent in the Constitution, directives of the Apex Court and the spirit of our legal obligation under international law. There is no scope under the law to act arbitrarily or as a matter of course when a citizen is put under arrest and scrupulous care must be exercised when the matter comes before a Court for its decision.⁷⁹

There is no denying that law enforcing agency possesses a germane right to arrest a suspect within the sphere of law. Though Code of Criminal Procedure and few other laws, including Metropolitan Police Ordinance and Public Gamble Act, empower the police officials to arrest a person suspected on many trivial issues, unbridled discriminatory power and lack of supervisory role of the authority and non-compliance with the directives of the Apex Court often put the liberty of the common citizens into jeopardy at the sweet will and caprice of the police officers.

Though our constitution puts an emphasis on due process, the slow pace of traditional justice system, occasional pro-active intervention of the Supreme Court of Bangladesh alleges excessive authoritarian attitude of law enforcement agencies, delays in delivering justice, makes disproportionate crime-to-conviction ratio, overcrowdes and inhumane prison system, causes absence of an explicit penal policy and notes missing emphasis on victim justice as major issues that haunt our crippling criminal justice system.⁸⁰ Therefore, the issue of arbitrary arrest should not be inquired in isolation, rather all the stumbling blocks, which often cripple our system, should be holistically investigated. It is also imperative for national dialogue to be initiated to review the questionable legislations and to remove all obscurities and contradictions affecting individual liberty.

The AD pointed out that the poor and illiterate people who are victims of police abuse cannot argue for legal actions against those organised, trained and disciplined armed forces unless law enforcing agencies are compelled to abide by the tenets of law and respect the fundamental rights of the citizens.

Shahdeen Malik rightly lamented that directive principles of liberty are yet to receive the required attention and advocacy by the relevant civil society

⁷⁹ Dhaka Law Reports, *The Law on Bail*, DLR, Dhaka, 2016, p. 4.

⁸⁰ Hussain M. F. Bari, 'An Appraisal of Sentencing in Bangladesh: Between Conviction and Punishment', vol. 14, *Bangladesh Journal of Law*, 2014, pp.89-115.

organisations.⁸¹ Though the British are widely acclaimed for erecting a systematic legal system in this region, Shahdeen Malik observed that the law making process of the new colonial rulers was rational and modern only on the surface.⁸² He further advanced that it was not the enlightened rationality of law but perceptions about Indians and their laws that shaped the formulations of these rules by colonial rulers.⁸³ These observations were further supported by the recent judgment of AD.⁸⁴

Key Recommendations

In view of above analysed of challenges, which are broadly affecting the liberty of the arrestee in cases of arrest on reasonable suspicion and credible information, following remedial points are recast for the effective and due exercise of discretion by the Judges and the police personnel.

1. In examining the arrest on suspicion, the role of Judicial Magistrate is particularly important in striking the balance between legitimate intervening and police excesses. It is the solemn duty of the Magistrate to uphold the letter and spirits of provisions of the laws and precedents relating to such arrest and other related issues.
2. In the case of arrest on suspicion, it is the duty of the Judicial Magistrate to examine the veracity of reasonable suspicion or credible information. If there is the clear identity of the suspected accused, s/he may be bailed out for time being for pending a report from the police within a very short period, for example, 3/4 days. In the case of clear implication of cognizable offence in the report, s/he must be shown arrested in the relevant case. However, the suspect accused may be entitled to release if the police fail to submit a report on a date-fixed.
3. Police shall disclose and record the reasons for such arrest and his/her nearest relations must be informed of the same as soon as possible.
4. Where it appears that the accused one bears injuries on his/her body, it is the legal duty of the Magistrate to inquire into how the accused has sustained those injuries before remanding him/her back into police custody. In an appropriate case, Custodial Torture and Death (Prevention) Act 2013 is required to be set in motion against the delinquent police officer.

⁸¹ Shahdeen Malik, 'Arrest and Remand: Judicial Interpretation and Police Practice', Special Issue, *Bangladesh Journal of Law*, p. 291, 2006.

⁸² Shahdeen Malik, 'Perceiving crimes and criminals: Law making in the early 19th century Bengal' vol. 6 *Bangladesh Journal of Law*, p. 59, 2002.

⁸³ Ibid.

⁸⁴ *BLAST AD Case* (n 6), p. 387.

5. Superintendent of Police (SP) of the District is to see whether normative provisions of the law on arrest are carried out by police personnel at the grassroots level in accordance with law and procedure.
6. Magistrates, police and advocates require being well- trained and sensitised about human rights and liberty jurisprudence reiterated by Supreme Court.
7. Forced confession or even enforced disappearance etc. may develop from the illegal practice of abuse in the name of suspected accused. Therefore, Judicial Magistrate owes a legal duty to check such practices.
8. Supreme Court should compel the police, Magistrate to follow the letter and spirits of the Constitution, provisions of criminal laws and precedents espoused by the Apex Court.
9. Errant and delinquent officers should be admonished while efficient officers should be given incentives.
10. The pro-active role of the sensitised bar, civil society and media are of paramount importance to follow the basic norms of human rights in the application of criminal laws.
11. In educating and developing a culture of human rights, the important role of Human Rights Commission can in no way be overlooked.
12. Law Schools should put more emphasis on the practical course on criminal laws and human rights which will produce pro-rights law graduates.
13. In order to have a just and equitable criminal process, legislative representatives should look at the holistic review of Code of Criminal Procedure that was promulgated during colonial era for the interest of the British rulers.

Conclusion

Arresting is obviously an important aspect of criminal justice system. Code of Criminal Procedure provides for scope and conditions that may allow arrest on credible information and reasonable suspicion even without a warrant of arrest. However, it is a power that can be easily abused or misused if not exercised with due diligence and circumspection. Arbitrarily arresting without a legal cause contradicts the notion of rule of law and fair trial discourse given that such arrest tends to curtail the individual liberty and legal protection of the arrestee.

An overview of the criminal law shows that section 54 of Code was enacted by the British rulers long ago and there has always been an outcry about abuse or

misuse of such provision. HCD in its famous BLAST HCD judgment took a rather pro-active view while examining provisions of law that sanctions arrest without warrant. However, AD took a rather lukewarm approach in disposing of the BLAST judgment of the High Court Division. Without endorsing the proposed amendment of HCD, AD instead aimed at passive interpretation and due application of section 54 of Code.

There is no denying that the deprivation of personal liberty is permitted only in accordance with law. It is more expected that the law enforcing officers much adhere to laws and principles of liberty jurisprudence. Similarly, it is in no way accepted that concerned Judicial Magistrate allows arbitrary arrest like ‘a parrot without due application of judicial mind’⁸⁵.

There is obviously a fine- line that exists between proper policing and abuse or misuse of police power. The role of the Judicial Magistracy in monitoring the activities of the police in this regard is also crucially important. In particular, it is incumbent upon the justice sector officials including the police and Magistrates to follow the letters and spirits of the precedents, constitutional laws along with our international treaty obligations in relation to liberty jurisprudence. Further, the legislature should holistically review the Code of Criminal Procedure that was enacted during the colonial era. Furthermore, the culture of human rights and liberty jurisprudence require active nurturing and development at familial, local and national levels. Sensitised police officials, Magistrates, Judges, advocates, human-right activists, journalist, elected representatives and common citizenry can accelerate the human rights movement in Bangladesh.

⁸⁵ *BLAST HCD Case* (n 4), para 23.