



Star LAW report

Judgement on Sections 54 & 167 of CrPC

Provisions relating to arrest, remand and detention require amendment to protect citizens' rights

High Court Division (Special Original Jurisdiction),  
The Supreme Court of Bangladesh,  
Writ Petition No 3806 of 1998,  
Bangladesh Legal Aid and Services Trust (BLAST)  
and others  
Vs  
Bangladesh and others,  
Before Mr. Justice Md Hamidul Haque and Justice Salma Masud Chowdhury.  
Date of Judgement: April 7, 2003.  
Result: Rule is disposed with directions.

Magistrate may proceed for committing offence under section 220 of the Penal Code suo motu against the police officer who arrested the person without warrant even if no petition of complaint is filed before him.

2. Sub-section (2) be substituted by a new sub-section (3) with the following provisions:

(a) If a specific case has been filed against the accused by the Investigating Officer within the time as specified in sub-section (2) (b), the Magistrate may authorise further detention of the accused in jail custody.

(b) If no order for police custody is made under clause (c), the Investigating officer shall interrogate the accused, if necessary for the purpose of investigation, in a room specially made for the purpose with glass wall and grill in one side, within the view but not within hearing of a close relation or lawyer of the accused.

(c) If the Investigating officer files any application for taking any accused to custody for interrogation, he shall state in detail the grounds for taking the accused in custody and shall produce the case diary for consideration of the Magistrate. If the Magistrate is satisfied that the accused be sent back to police custody for a period not exceeded three days, after recording reasons, he may authorise detention in police custody for that period.

(d) Before passing an order under clause (c), the Magistrate shall ascertain whether the grounds for the arrest was furnished to the accused and the accused was given opportunity to consult lawyer of his choice. The Magistrate shall also hear the accused or his lawyer.

3. Sub-section (4) be substituted as follows:

(a) If the order under clause (c) is made by a Metropolitan Magistrate or any other Magistrate he shall forward a copy of the order to the Metropolitan Sessions Judge or the Sessions Judge as the case may be, for approval. The Metropolitan Sessions Judge or the Sessions Judge shall pass order within fifteen days from the date of the receipt of the copy.

(b) If the order of the Magistrate is approved under clause (a), the accused, before he is taken in custody of the Investigating officer, shall be examined by a doctor designated or by a Medical Board constituted for the purpose and the report shall be submitted to the Magistrate concerned.

(c) After taking the accused in custody, only the investigating officer shall be entitled to interrogate the accused and after expiry of the period, the Investigating officer shall produce him before the Magistrate. If the accused makes any allegation of any torture, the Magistrate shall at once send the accused to the same doctor or Medical Board for examination.

(d) If the Magistrate finds from the report of the doctor or Medical Board that the accused sustained injury during the period under police custody, he shall proceed under section 190(1)(c) of the Code against the Investigating officer for committing offence under section 330 of the Penal Code without filing of any petition of complaint by the accused.

(e) When any person dies in police custody or in jail, the Investigating officer or the Jailor shall at once inform the nearest Magistrate of such death.

**Recommendation-C**  
(With regard to section 176 of CrPC)

Existing sub-section (2) be re-numbered as sub-section (3) and the following be added as sub-section (2).

(2) When any information of death of a person in the custody of the police or in jail is received by the Magistrate under section 167(4)(e) of the Code (as recommended by us), he shall proceed to the place, make an investigation, draw up a report of the cause of the death describing marks of injuries found on the body stating in what manner or by what weapon the injuries appear to have been inflicted. The Magistrate shall then send the body for post mortem examination. The report of such examination shall be forwarded to the same Magistrate immediately after such examination.

**Recommendation-D**  
(With regard to section 202 of CrPC)

1. A new subsection (3) be added with the following provisions:

(3) (a) The Magistrate on receipt of the post mortem report under section 176(2) of the Code (as recommended by us) shall hold inquiry into the case and if necessary may take evidence of witnesses on oath.

(b) After completion of the inquiry, the Magistrate shall transmit the record of the case along with the report drawn up under section 176(2) (as recommended by us), the post mortem report, his inquiry report and a list of the witnesses to the Sessions Judge or Metropolitan Sessions Judge, as the case may be and shall also send the accused to such Judge.

(c) In case of death in police custody, after a person taken in such custody on the prayer of the Investigating officer, the Magistrate may proceed against the Investigating officer, without holding any inquiry as provided in clause (a) above and may send the Investigating officer to the Sessions Judge or the Metropolitan Sessions as provided in clause (b) along with his own report under sub-section (2) of section 176 and post mortem report.

**Recommendation-E**  
(With regard to Sections 330, 302 and 348 of the Penal Code)

1. (a) One proviso be added in section 330 providing enhanced punishment up to ten years imprisonment with minimum punishment of sentence of seven years if hurt is caused while in police custody or in jail including payment of compensation to the victim.

(b) 2nd proviso for causing grievous hurt while in such custody providing minimum punishment of sentence of ten-year imprisonment including payment of compensation to the victim.

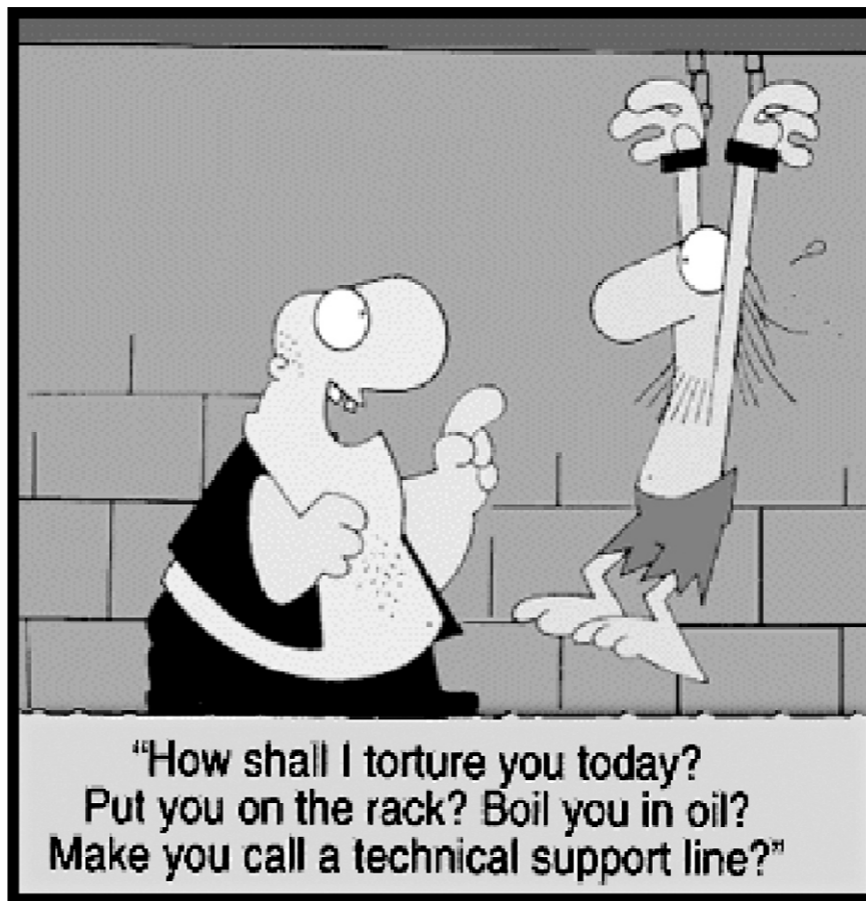
(c) A new section be added as section 302A providing punishment for causing death in police custody or in jail including payment of compensation to the nearest relation of the victim.

(d) A new section be added after section 348 providing for punishment for unlawful confinement by police officer for extorting information etc as provided in section 348 with minimum punishment of imprisonment for three years and with imprisonment which may extend to seven years.

**Recommendation-F**  
(With regard to Evidence Act 1872)

If death takes place in police custody or in jail it is difficult to prove by the relations of the victim as to who caused the death. In many cases, this court has decided that when a wife dies while in custody of the husband, the husband shall explain how the wife met her death. Similar principle may be applied when a person dies in police custody or in jail. To give a legal backing to the above principle, we like to recommend that a section in the Evidence Act (after section 106) or a clause may be added in section 114 of that Act incorporating the above principle.

The new section in the Evidence Act shall provide that when a person dies in police custody or in jail, the police officer who arrested the person or the police officer who has taken him in his custody for the purpose of interrogation or the jail authority in which jail the death took place, shall explain the reasons for death and shall prove the relevant facts to substantiate the explanation.



**Recommendation-G**  
(With regard to Police Act 1861)

In the Police Act of 1861, there is no provision for maintaining any diary for recording the reasons for arrest without warrant and other necessary particulars as have been mentioned in the recommended sub-section (2) of section 54 of the Code. So, we like to recommend that a new section be added after section 44 of the Police Act.

The new section in the Police Act shall provide that the officer in charge of a police station shall keep a special diary for recording the reasons and other particulars as required under recommended new sub-section (2) of section 54 of the Code.

We have already mentioned that the provisions of the existing sections 54 and 167 of the Code are to some extent inconsistent with the provisions of Article 27, 30, 31, 32, 33 and 35 of the Constitution and we have recommended that the above two sections may be amended for the purpose of safeguarding the liberty and fundamental rights of the citizens. We also like to emphasise that the respondents are to be directed to remove the inconsistency within the time fixed by us.

Dr. Kamal Hossain with Mr. M. Amir-ul Islam, Mr. Md. Idrisul Rahman, Mr. M. A. Mannan Khan, Mr. Tanzibul Alam, Mr. Abu Obaidur Rahman and Mr. Kowshan Ahmed, for the petitioner.  
Mr. A. F. Hassain Arif, Attorney General with Mr. Abdur Razaque Khan, Additional Attorney General, Mr. Zaman Akter, AAG and Ms. Kumrunnessa, AAG for the respondents.

(Continue from the previous issue)

In the above, we have scrutinised two sections of the Code and have found that the provisions of these sections are to some extent inconsistent with the provisions of the constitution and requires some amendments. To remove the inconsistencies, now we would like to make some recommendations, which are as follows:

**Recommendation-A**  
(With regard to section 54 of CrPC)

1. The first condition of section 54 of CrPC may be amended as follows:

first, any person against whom there is a definite knowledge about his involvement in any cognisable 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 involved;

2. The seventh condition may be also amended like the first condition.

3. A sub-section (2) shall be added which shall contain the following provisions:

(a) Whenever a person is arrested by a police officer under sub-section (1) he shall disclose his identity to that person and if the person arrested from any place of residence or place of business, he shall disclose his identity to the inmates or the persons present and shall show his official identity card if so demanded.

(b) Immediately after bringing the person arrested to the police station, the police officer shall record the reasons for the arrest including the knowledge which he has about the involvement of the person in a cognisable offence, particulars of the offence, circumstances under which arrest was made, the source of information and the reasons for believing the information, description of the place, note the date and time of arrest, name and address of the persons, if any, present at the time of arrest in a diary kept in the police-station for that purpose.

(c) The particulars as referred to in clause (b) shall be recorded in a special diary kept in the police station for recording such particulars in respect of persons arrested under this section.

(d) If at the time of arrest, the police officer finds any marks of injury on the body of the person arrested, he shall record the reasons for such injury and shall take the person to the nearest hospital or to a Government doctor for treatment and shall obtain a certificate from the attending doctor about the injuries.

(e) When the person arrested is brought to the police station, after recording the reasons for the arrest and other particulars as mentioned in clause (b), the police officer shall furnish a copy of the entries made by him relating to the grounds of the arrest to the person arrested by him. Such grounds shall be furnished not later than three hours from the time of bringing him in the police station.

(f) If the person is not arrested from his residence and not from his place of business or not in presence of any person known to the accused, the police officer shall inform the nearest relation of the person over phone, if any, or through a messenger within one hour of bringing him in the police station.

(g) The police officer shall allow the person arrested to consult a lawyer, if the person so desires. Such consultation shall be allowed before the person is produced to the nearest Magistrate under section 61 of the Code.

**Recommendations B**  
(With regard to section 167 of CrPC)

1. Existing sub-section (2) be re-numbered as sub-section (3) and a new sub-section (2) may be added with the following provisions:

Sub-section (2) (a): If the Magistrate, after considering the forwarding of the Investigating officer and the entries in the diary relating to the case is satisfied that there are grounds for believing that the accusation or information about the accused is well-founded, he shall pass an order for detaining the accused in the jail. If the Magistrate is not so satisfied, he shall forthwith release the accused. If in the forwarding of the Investigating Officer the grounds for believing that the accusation or information is well founded are not mentioned and if the copy of the entries in the diary is not produced, the Magistrate shall also release the accused forthwith.

(b) If the Investigating Officer prays for time to complete the investigation, the Magistrate may allow time not exceeding seven days and if no specific case about the involvement of the accused in a cognisable offence can be filed within that period, the accused shall be released by the Magistrate after expiry of that period.

(c) If the accused is released under clause (a) and (b) above, the

FOR YOU information

Conventions and protocols relating to war



There are four Geneva Conventions, signed August 12, 1949, and the two additional Protocols of June 8, 1977.

**Convention I**  
For the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, and 12 August 1949: Sets forth the protections

for members of the armed forces who become wounded or sick.

**Convention II**  
For the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva 12 August 1949: Extends these protections to wounded, sick and shipwrecked members of naval forces.

**Convention III**  
Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949 lists the rights of prisoners of war.

**Convention IV**  
Relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949: Deals with the protection of the civilian population in times of war.

**Protocol I**  
Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977: Extends protection to victims of wars against racist regimes, wars of self-determination, and against alien oppression.

**Protocol II**  
Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977: Extends protection to victims of internal conflicts in which an armed opposition controls enough territory to enable them to carry out sustained military operations.

LAW lexicon

**Garnishment**

The seizing of a person's property, credit or salary, on the basis of a law which allows it, and for the purposes of paying off a debt. The person who possesses the assets of the debtor and is the subject of the seizure is called a "garnishee". This is frequently used in the enforcement of child support where delinquent debtors will be subjected to salary garnishment. A percentage of their wages is subtracted directly off their pay-check and directed to the person in need of support (the employer being the garnishee).

**Gift over**

A device used in wills and trusts to provide for the gift of property to a second recipient if a certain event occurs, such as the death of the first recipient. For example, I give you my car but on your death you must give it to your child; that is a gift over to the benefit of your child.

**Grand Jury**

An American criminal justice procedure whereby, in each court district, a group of 16-23 citizens hold an inquiry on criminal complaints brought by the prosecutor and decide if a trial is warranted, in which case an indictment is issued. If a Grand Jury rejects a proposed indictment it is known as a "no bill"; if they accept to endorse a proposed indictment it is known as a "true bill".

**Gross negligence**

Any action or an omission in reckless disregard of the consequences to the safety or property of another. Sometimes referred to as "very great negligence" and it is more than just neglect of ordinary care towards others or just inadvertence. Also known as the Latin term culpa lata.

**Guardian**

An individual who, by legal appointment or by the effect of a written law, is given custody of both the property and the person of one who is unable to manage their own affairs, such as a child or mentally-disabled person.

LAWweek

Rehabilitation plan for sex workers urged

Speakers at a workshop urged the government to undertake need-based rehabilitation program to improve living conditions of sex workers. They also stressed the need for media campaign to change the negative attitude of the society towards the sex workers. CARE Bangladesh organised the workshop on the findings of the 'Needs assessment study on knowledge, attitudes, practice for advocacy on protection and promotion of human rights of sex workers. The study revealed that restoration of basic rights of sex workers could break the intergenerational cycle of prostitution. It said that interventions to change attitude could bring about improvements in four main areas- personal relations with family, relations with community and opportunities for children, working and living conditions, and relations with clients. The study was conducted with around 400 participants including MPs, politicians, journalists, UP members, religious leaders and local leaders. - Daily Star, 07 June.

Another anti-crime drive soon

The government is going to launch a countrywide massive crackdown on organised crimes and terrorists activities very soon by deploying army personnel along with Bangladesh Rifles (BDR). At least 10,000 extra men from BDR, Armed Police Battalion (APB) armed Ansar including 30,000 army personnel will be deployed to help the regular law enforcers during the time of massive hunt to catch the illegal arms holders and organised criminals. The decision was taken recently at the high level of the government following severe pressure from all corners of the society to take stern action against the organised criminals in a wake of deteriorating law and order situation. This is for the second time the government is going to conduct a countrywide anti-crime operation after the 'Operation Clean Heart'. - Observer, 07 June.

Cases pending in Rajshahi

The special tribunal for Prevention of Women and Children Repression in Rajshahi has been facing with problems in disposing pending cases. The tribunal was set up in 1996 and functioning in a tin-shed building having no toilet, sereshata and record room. Some 1959 cases are now pending in the court. Besides the tribunal has a number of miss-cases sent for disposal from other criminal courts aggravated the situation. The sufferings of the litigants have increased due to delay in disposing the cases. - Independent, 07 June.

84 pc women tortured by husband

About 75 to 84 percent women in Bangladesh are subjected to systematic and regular physical torture by their husbands. This was revealed by Bangladesh Mohila Parishad (BMP) at a discussion meeting. Other findings revealed in the meeting showed that around 6-7 percent of the women battered and abused by their husbands grow a trend for committing suicide and 54 percent of the women surveyed complained of sexual torture at post marriage phase of their lives. - Independent, 08 June.

Corruption case against ex-ministers

The Bureau of Anti-Corruption (BAC) has filed two corruption cases against four persons including former minister Shah AMS Kibria and Prof. Abu Sayeed. BAC Inspector Mohammad Zulfikar Ali filed the cases with the Ramna police station. The first case has been filed against Mr. Kibria and AS Mahmud accusing them of misuse of power which caused a loss of Tk. 1.247 crore of public money. In another case former state minister for information Professor Abu Sayeed, former information secretary M Akmal Hossain and former chairman of the ETV were charged with irregularities in the licensing process of ETV, which did not participate in the tender within the stipulated time. - Bhorer Kagoj, 09 June.

Rehabilitation project in Barishal

The government has allocated Tk. 1.14 crore for rehabilitation of acid victims and physically disabled people in six district under Barishal division. The programmes will aim at making them self-reliant through income generating project and training so that they can lead normal life. A nine-member district steering committee and ten-member upazila committees will implement the programmes under the supervision of Social Service Directorate under the Ministry of Social Welfare. - Daily Star, 02 June

Law to protect plant varieties soon

The government is going to enact a law to protect plant varieties and ensure farmers' rights. The aim of the law is to encourage the breeders to invest in the development of plant varieties. Other objectives of the proposed law are to develop control mechanism for commercialisation of varieties, fulfil commitments under Trade Related Aspects of Intellectual Property Rights agreement, create non-commercial awards and ensure constitutional arrangements for effective implementation of the act. - Daily Star, 09 June.

Cabinet okays flag rule amendment

The cabinet has approved a proposal for amendment to the Bangladesh Flag Vessels (Protection) Ordinance 1982. According to the proposed amendment foreign flag vessels will be exempted to take waiver certificates for two years for loading and unloading cargo at Bangladesh ports. A bill to this end will be placed before the parliament after necessary vetting by the law ministry. The amendment will empower the shipping directorate to issue a general waiver to all foreign vessel operators for two years. Under the existing rule, the shipping directorate issues waiver certificate in individual cases. - Prathom Alo, 10 June.

Formation of RAB approved

The cabinet has approved a proposal to form an elite law enforcing force ie. Rapid Action Force (RAF) to combat the growing streams of crimes. RAB will be formed by drawing skilled, physically fit and meritorious serving members from the armed forces, BDR and other law enforcement agencies. As per the proposal, RAB will be constituted as a striking arm of the Armed Police Battalion (APB). The force will be equipped with sophisticated weapons and well trained personnel drawn on a maximum of two years deployment. It will function under the supervision of the Inspector General of Police. - Daily Star, 10 June.

Advocacy for Water Act

Bangladesh needs a Water Act immediately to tap its huge water resources. Bangladesh has formulated a draft of water act without discussing with the people concerned. It was alleged that the draft has been copied from the laws of some African countries. The speakers of a seminar revealed these which was organised by the Environment Directorate on 'Water and biodiversity' was held under the auspices of UBINIG and Naya Krishi Andolon (NKA). - Daily Star, 04 June.

385 cases settled in CHT

The Public Safety Tribunal of Chittagong has set a record by settling 385 cases out of 548 during the last three years. Judge ANM Bashirullah delivered verdicts of all cases from April 2000 to April 2003 during his 33 working months. This was stated in a fact-finding report jointly written by president and secretary of Chittagong chapter of Bangladesh Society for the Enforcement of Human Rights (BSEHR). The report said that a total of 548 cases were filed with the Tribunal and it settled 358 cases during the period. Among the unsettled cases, the Higher Court stayed 63 cases, while 100 cases were pending for disposal. The Tribunal recorded statements of 3,816 witnesses during the period. - Daily Star, 05 July.

31 policemen killed in 20 months

A total of 31 policemen were killed in the last 20 months across the country. During the period 341 policemen were injured in clash with criminals. Among the 31, 14 were killed including seven in the capital by the terrorists in the last five months of the current year. - Observer, 05 June.

Corresponding Law Desk

Please send your mails, queries, and opinions to: post - Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, 8124966; fax 8125155, 8126154; email dslawdesk@yahoo.co.uk