



LAW REVIEW

# SIGNIFICANCE OF REFORMS AROUND ARREST PROCESSES

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**One major roadblock is the reluctance among police officers to go by new protocols on arrests, often due to entrenched habits or fear of increased scrutiny. Furthermore, the significant lack of comprehensive training on these procedures means many officers may be unaware of their legal obligations. On the other hand, insufficient awareness among citizens about their rights during arrest further weakens the reform's impact, as arrestees may not be aware of what protections they are entitled to.**

Bangladesh has recently introduced section 46A to the Code of Criminal Procedure (CrPC), 1898, a reform aimed at ensuring transparency, accountability, and fundamental fairness during the process of arrest. In a country like Bangladesh, where allegations of arbitrary detention and custodial abuse are fairly and disturbingly common, this amendment could mark the dawn of change. The High Court Division (HCD), in *Bangladesh Legal Aid and Services Trust (BLAST) v Bangladesh (2003)* issued 15 concrete directives, such as mandating disclosure of arresting officers' identity, prompt medical examination, access to legal representation, and timely family notification to align arrest and remand practices with constitutional and international human rights standards. Consequently, these safeguards were codified into law via the Code of Criminal Procedure (Second Amendment) Ordinance, 2025 on 10 August 2025, when it was officially gazetted.

Under the recently incorporated section 46A of the CrPC, several important safeguards have been introduced to ensure transparency and accountability during arrest procedures. Officers making an arrest must wear a visible and legible identification tag and disclose their identity to the arrested person as well as any bystanders. A written memorandum of arrest must be prepared at the time, attested by a family member or a local witness, and where no such witness is available, the reasons thereof must also be recorded. If the arrested individual shows any signs of injury, immediate medical attention must be provided, and the injury must be documented by a registered practitioner. Additionally, when an arrest occurs away from the individual's residence, family members, a relative, or a nominated friend must be notified within 12 hours. Crucially, the arrestee must also be allowed to consult an advocate of their choice or meet a close relative.

The introduction of section 46A marks a significant step forward in safeguarding fundamental rights during the arrest process (Articles 33 and 35 of the Constitution of Bangladesh) in Bangladesh. One of the most crucial impacts is successful implementation of this provision potentially could be prevention of enforced disappearances and arbitrary arrests, which have long been a concern among human rights advocates. By mandating clear identification of arresting officers and timely notification to family members or friends, the amendment injects much-needed transparency into a process often shrouded in secrecy. Importantly, the requirement to prepare a memorandum of arrest and document any injuries create a vital paper trail, which is essential for ensuring accountability and deterring misconduct. Such documentation not only protects the arrested individual but also shields honest law enforcement officers who follow due procedure from false allegations. Together, these provisions foster a more just and accountable policing system, reinforcing the rule of law and promoting public trust in legal institutions. While implementation challenges remain, section 46A sets a positive legislative instance in protecting citizens' rights in Bangladesh's criminal justice system.

Before the introduction of this section in Bangladesh, the arrest process lacked transparency and accountability. Arresting officers often did not disclose their identities, detainees were denied timely legal access, and families remained uninformed.

Internationally, Bangladesh is bound to implement these provisions regarding arrest and detention under various human rights treaties, particularly the International Covenant on Civil and Political Rights (ICCPR), which Bangladesh ratified in 2000. The ICCPR obliges states parties to ensure protection against arbitrary arrest and detention and grants the right to be informed of reasons for arrest (Article 9), access to legal counsel

(Article 14), and protection from torture or ill-treatment (Article 7). Additionally, Bangladesh has endorsed the UN Convention Against Torture (CAT) and the Universal Declaration of Human Rights (UDHR), both of which emphasise fair legal procedures and humane treatment during arrest and detention. Therefore, codifying safeguards like those in section 46A aligns Bangladesh's domestic law with its international legal obligations, reinforcing its commitment to both human rights and the rule of law.

While section 46A introduces important reforms to ensure transparency and accountability during arrests, several challenges may hinder its effective implementation. One major roadblock is the reluctance among police officers to go by new protocols, often due to entrenched habits or fear of increased scrutiny. Furthermore, the significant lack of comprehensive training on these procedures means many officers may be unaware of their legal obligations. On the other hand, insufficient awareness among citizens about their rights during arrest further weakens the reform's impact, as arrestees may not be aware of what protections they are entitled to. Moreover, the absence of an independent monitoring mechanism leaves enforcement largely dependent on internal police accountability, which has historically been inadequate.

To overcome these challenges, a structured and continuous training program for law enforcement personnel is essential to ensure proper understanding and compliance with section 46A. Simultaneously, legal aid organisations and civil society groups should play an active role in monitoring arrests and advocating for the rights of detainees. Together, these measures can bridge the gap between law and practice, making the amendment truly effective in protecting citizens' rights.

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COURT CORRIDOR

## The enduring crisis of administrative corruption

PARVEZ RAHMAN

One of the enduring maledictions that plagues Bangladesh is bribery and corruption, which is prevalent across sectors, including our judiciary. Reform proposals on the independence of judiciary, or a separate secretariat of the judiciary are certainly promising. However, even if the proposals are materialised, we will not be able to reap the benefit of their implementation, if the problem of corruption is not dealt with first. This is because corruption poses a significant barrier to rendering true justice to litigants. A survey conducted by the Transparency International Bangladesh (TIB) released on 3 December 2024 revealed that 62.3% of surveyed households had become victims of corruption while seeking judicial services. Usually, the litigants seeking judicial service cannot have direct access to the judges of a court. Here, the administrative officers of a court i.e., bench officers, staff, and clerks often stand in the way of justice.

While judges play the central role in delivering justice, court staff - including clerks, bailiffs, typists, record keepers, and other administrative personnel - also hold significant influence over the judicial process. Law practitioners are often inclined to seek dates of their hearing at their convenience from a peshkar (court clerk) or bench officer. Though the duty of fixing a date for the hearing is theoretically upon the judges, practically, such is carried out by the staff. Corruption occurs when the court staff intentionally delay hearings or final decisions in a case. The delay in such cases often occurs due largely to benefit one party, allowing them time to manipulate the situation. Such practice can be widely noticed in almost every district court, even at the higher judiciary.



Record manipulation (tampering with or losing case documents) holds a significant place in the sphere of administrative corruption. In this form of corruption, important case documents get intentionally misplaced, altered, or destroyed from the court offices. One news report from January 2025 by the Daily Prothom Alo found that Case Dockets (CDs) of 1,911 cases from the Chattogram court are missing. This is just one example of many such incidents.

One of the least discussed yet critical areas of corruption within the judicial system involves the issuance of summons. The summons issuers, entrusted with delivering court summons and notices, often engage in corrupt practices that obstruct dispensation of justice. Instances include deliberately delaying the delivery of summons, falsely reporting that the concerned party could not be located, or demanding unofficial payments to fulfil their regular duties. In some cases, they collude with litigating parties to manipulate service records, thereby causing undue delays or *ex parte* proceedings.

However, the recent 2025 amendment to the Code of Civil Procedure (CPC) seeks to address this issue by introducing a more efficient and transparent mechanism for the service of summons. Under the amended provisions, summons may now be served through electronic means such as Short Message Service (SMS) and telephone calls. This reform aims to reduce the chances of manipulations, minimise delays, and ensure greater accountability in the service process.

Notwithstanding the major reform proposals suggested by the Judicial Reform Commission, without uprooting the structure of administrative corruption, a judiciary embodying the aspirations of the July uprising may never dawn. To effectively address administrative corruption within the judiciary, a multifaceted reform strategy is needed. A well-calibrated system of incentives, both positive (adequate remuneration, career progression, and conducive working conditions) and negative (proportionate and enforceable sanctions), should be institutionalised to deter corrupt practices. Moreover, regular and focused capability strengthening initiatives must be introduced to aggrandise the administrative competence of court personnel, having recourse to international best practices.

The integrity and accountability of court operations further depend on the conduct of presiding officers; thus, having strict and principled judges who apply both corrective and developmental disciplinary measures is critical. Additionally, performance evaluation mechanisms, particularly Annual Confidential Reports require reform to ensure objectivity, transparency, and protection against misuse by senior officers. Finally, fostering a professional yet collaborative working relationship between judges and court staff can promote institutional cohesion while upholding ethical standards, especially for newly appointed judges navigating the court system.

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INTELLECTUAL PROPERTY LAW

## Trademark law and the curious case of Sattar Buksh



**If Sattar Buksh had not changed their logo and made the necessary changes, they could have possibly landed in legal complications, especially since the parody and cultural elements of their defence would hardly be valid under the trademark regime**

ARAFAT IBNUL BASHAR

Recently, a local café in Pakistan named Sattar Buksh, known for its branding, which resembled that of the global coffee giant Starbucks, has been making headlines for "winning a trademark battle" against the corporate giant. However, the dispute never actually made its way to court.

Starbucks Corporation, a globally recognised coffeehouse chain with thousands of branches worldwide, exists since 1971 and their distinctive green siren logo of the brand is globally recognisable as synonymous with coffee culture. But they have no branch in Pakistan. Sattar Buksh café, on the other hand, has been operational since 2013 in Karachi, Pakistan. The name and logo of the café - a round green logo containing a mustached man in place of Starbucks' mermaid - resembled Starbucks, though the founders contended that it was a satire with cultural elements, with their menu and identity being rather unique. Aside from their phonetic (name wise) and visual resemblance to Starbucks,

they were known for their local, relatable, and humorous approach to food.

Starbucks objected to Sattar Buksh's name and visual similarity to its brand, issuing a cease-and-desist letter to them, citing that such resemblance will likely create confusion among the consumers regarding the origin of the services, dilute its famous trademark's distinctiveness and may potentially tarnish its reputation too. Section 86(3) of the Trade Marks Ordinance, 2001 of Pakistan allows the owner of a well-known trademark to seek restrain by injunction the use of a trademark in Pakistan which, or the essential part of which, is identical with or deceptively similar to their trademark, in relation to identical or similar goods or services, where the use is likely to confuse or where such use causes dilution of the distinctive quality of the well-known trademark.

In response to the action, Sattar Buksh, apart from justifying the cultural and parody-based side of their actions and clarifying that their name was from a 500-year-old Arabic source, made changes to their logo and also added a disclaimer to their Facebook page stating that they are not affiliated with Starbucks. Perhaps due to these adjustments, Starbucks has not opted to pursue litigation.

Although it is being hailed as a decisive win of local creativity and cultural expression over corporate dominance, the "alleged win" is perhaps owed to the steps taken by Sattar Buksh to make reasonable adjustments to its logo and make efforts to separate its identity from that of Starbucks.

Trademark anti-dilution protection, a concept originated in the German legal system and later adopted by other jurisdictions, is a legal mechanism to protect well-known brands from infringement of their trademarks. This protection applies to those infringements that blur the connection between brands, tarnish its reputation due to the difference in quality, or the violator

relying on the trademark of the famous brand to sell its own goods. Article 6bis of the Paris Convention for the Protection of Industrial Property, 1883 and article 16 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) contains protection for the "well-known marks." The Jordanian High Court of Justice in *Amana v Adidas (2011)* even went on to extend this protection when the opposing parties are dealing with non-competing goods and services. Similarly, in India, a café named Sardarbuksh Coffee was forced to change its name after Starbucks successfully established trademark infringement through deceptive similarity in the Delhi High Court. However, in the case of *Starbucks Corporation v Wolfe's Borough Coffee, Inc. d/b/a Black Bear Micro Roastery*, Starbucks failed to establish the claim of trademark dilution against a company, which marketed coffee named "Charbucks," due to weak similarity.

We can only argue what the outcome would have been if Sattar Buksh had been sued. But trademark dilution is a strong legal remedy in the hands of the owner of a well-known mark. If Sattar Buksh had not changed their logo and made the necessary changes, they could have possibly landed in legal complications, especially since the parody and cultural elements of their defence would hardly be valid under the trademark regime.

This case is important in our context as well since local businesses in Bangladesh often plagiarise the brand names and logos of famous brands. Sections 26(3) and (7) of the Trademarks Act, 2009 consider the use of a well-known mark an act of trademark infringement. As such, even giants such as Facebook and Adidas can sue local businesses in Bangladesh for using their names and logos in a deceptive manner.

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