



[Ensuring Effective Policing: Bangladesh High Court's Guidelines on Arrest without Warrant](#)

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In *Bangladesh Legal Aid and Services Trust vs. Bangladesh* (55 DLR (HCD) 2003 363), the High Court Division of the Supreme Court of Bangladesh provided elaborate guidelines in the form of fifteen directives on arrest without warrant, detention, remand and treatment of suspects to be followed by law enforcement agencies and magistrates. Subsequently, in *Saifuzzaman vs. State and others* (56 DLR (HCD) 2004 324) the Court issued guidelines to be followed by the government, magistrates and police in respect of arbitrary arrest, detention, investigation and treatment of suspects. Bangladesh Legal Aid and Services Trust (BLAST) filed their writ petition in 1998, while the latter petition came before the Court in 2002.

In the BLAST case, the Court directed that the legislature consider amending sections 54, 167, 176 and 202 of the Code of Criminal Procedure dealing with the powers and functions of police and magistrates. The proposed amendments of these sections explicitly ensure accountability on the part of the police and magistrates while dealing with issues relating to arrest of a person in suspicion of any offence, detention in custody, investigation manner, persons empowered to investigate, duties of magistrates in case of detention and custodial deaths. It further observed that the existing provisions of sections 54 and 167 of the Code (which provide police with powers to arrest without warrant, and magistrates to place persons on police remand, respectively) are inconsistent with the constitutionally guaranteed rights to equality before law and equal protection of law, to be treated in accordance with law to life and personal liberty, to protection against arbitrary arrest and detention, and to ensures fair trial in criminal prosecution (Arts 27, 31, 32 33 and 35 respectively)

The BLAST Guidelines provide that in order to prevent torture, or cruel or inhuman punishment or treatment, a police officer shall not arrest any person under section 54 of the Code for the purpose of detaining him under Special Powers Act, 1974, and the magistrate shall not make any such order of detention. Lacking the necessary knowledge, magistrates often grant detention of arrestees in such cases. Clearly, arrest under Special Powers Act is preventive in nature. A person is arrested under this Act not for his involvement in any offence; rather to prevent him from getting engaged with any prejudicial activity. The Court ruling requires every arresting officer to disclose his/her identity to the arrestee/detainee, and to inform their relatives about the arrest. The Guidelines also require the officer to record all information relating to the arrest of the person in an arrest memo. In a particularly important measure, designed to prevent torture, a police officer is required to record any marks of injury on an arrestee, and to take him to the nearest hospital for

treatment. The police officer shall furnish reasons for arrest within three hours of bringing the person to the police station and allow the arrested person to consult a lawyer of his choice. A police officer shall incorporate reasons as to why investigation could not be completed within 24 hours of arrest of a person under section 54 of Cr. P. C (if this occurs), and why he considers that the information regarding the allegations well founded along with transmitting a copy of the case diary. The magistrate must be satisfied with the reasons stated in the forwarding letter of the police officer before making any order for detention in jail. Otherwise he shall release the person. For interrogation purpose the accused shall be kept inside a room in the jail as prescribed by the Court within the view but not hearing of a close relatives or lawyer of the arrestee, rather than in police custody per se. In the application for taking the accused on remand in police custody for interrogation, the investigating officer shall state grounds for taking the accused to the custody.

These Guidelines, though not systematically observed, have played an essential role in safeguarding vulnerable persons from the threat of violence in custody by being cited in lower courts and, in the course of writ petitions to the High Court, to prevent persons being taken on remand or being maltreated while on remand. For instance, in 2005 a Division Bench of the High Court directed the government to show cause as to why the case against Mr Shaibal Saha Partha, who was falsely arrested and detained after allegedly sending an email threat of a grenade attack to the former Prime Minister Sheikh Hasina, should not be quashed. Mr Partha was later released on Court order.

But a more systematic approach is necessary. To incorporate the guidelines made by the judiciary, certain initiatives need to be taken. It is critical that the government as well as the police change their mindset by avoiding the use of unlawful methods of interrogation on an accused and only bring them to justice under the due process of the law. To make the law effective, law enforcement personnel have to be given proper training consistent with fundamental rights. The government must be more vigilant to prevent and to punish instances of arbitrary arrests, remand and custodial violence. The government must also ensure police effectiveness and accountability, both of which go hand in hand.

The BLAST judgment highlighted the need to ensure effective policing alongside safeguards for arrestees and detainees. Reformation of the existing police code is a prerequisite for its effective function. Monitoring cells could be established in different police stations to identify if there is any abuse of power by the police under sections 54 and 167 of the Code; unless benefits like salary, ration and other social incentives are provided, the police cannot work fairly and without influence. In order to ensure accountability and improve the service of the police, the Government had earlier initiated a 'Draft of Police Ordinance, 2007' to reform the century and a half old existing Police Act of 1861. However, no such initiative was taken for the implementation of this draft Ordinance so far. We hope that the 150th anniversary of the Police Act can best be celebrated by observing its demise and its rebirth in the form of a new Police Act that incorporates the High Court's BLAST Guidelines. This would usher in a new era of police effectiveness on the one hand and accountability on the other.

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