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# Arrest without warrant and Police Remand: A Critical Analysis of High Court Division of Bangladesh on Rubel Case

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## Abstract

The issue of custodial deaths in the recent time has been occurred in an alarming rate. This is because of the black provisions of the Code of Criminal Procedure, 1898 and the Special Powers Act, 1974 which is the violation of the fundamental rights of the citizens and also disobey the principles of the Constitution of Peoples Republic of Bangladesh. As a result, Rubel Case<sup>2</sup> is the beginning of the beginning in the history of the SC against the reckless power of the police officer and the political government. The executive must rethink to implement the directives of the SC. So, the article seeks to explore the Rubel Case. It also focuses that the State should give quick response to amend the laws and implementing the directives. Furthermore, the paper presents, in short, the analysis and assessment of suspicion arrest and police remand by the different political government.

**Keywords:** Arrest, Police Remand, SC Directives, Fundamental Rights

## Introduction

Arrest is the beginning of imprisonment.<sup>3</sup> Arbitrary arrest, detention and custodial torture by law-enforcing agencies have remained a persistent feature of our criminal justice system. These practices have been widespread in Bangladesh irrespective of the forms of political government and successive governments have failed to stop this endemic problem. Arbitrary arrest, detention and infliction of torture are unacceptable in any form of government that is committed to democracy and the rule of law. The violation of this right by the executive authorities, particularly by the law enforcing agencies is the common phenomenon in

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<sup>2</sup> *BLAST v. Bangladesh*, 55 DLR (2003), HCD, p.363.

<sup>3</sup> Md. Abdul Halim, Test Book on Code of Criminal Procedure, CCB Foundation, Dhaka, 2009, 3<sup>rd</sup> Edition, p.63.

Bangladesh.<sup>4</sup> Despite the legal and constitutional provisions against arbitrary arrest and detention, the practice of arbitrary arrest, detention and torture is rampant in Bangladesh.<sup>5</sup>

## **Objectives of the Study**

Now-a-days arrest without warrant and police remand is the bargaining issue in Bangladesh. This study will smooth the progress to know about the terminology like arrest without warrant and police remand. This paper explores the status of section 54 and 167 of CrPC under the shadow of some leading cases especially Rubel Case. Besides giving a better understanding of the of the status of law with respect to abuse of police power, this study, it is hoped, will give a parameter to the police force about their limit to arrest and police remand. The study will become significant as it progress with present situation regarding arrest and remand by implementing the SC directives.

## **Methodology**

Methodology is one of the important parts of a study and also need to understand the assumptions underlying various methodologies. The study is based on both primary and secondary sources. The primary sources used in this writings are collected from Statutes, Case laws, Conventions etc. The secondary which is used in this study to collect relevant information to fulfil the objectives of the study is text-books, journal articles, newspaper articles, reports and websites. This study is prepared by using the analytical approach of research which is the most important one and widely used in academic legal research.

## **Fact of the Case**

Shamim Reza Rubel, an IUB student picked up on July 23, 1998 by plain clothes law enforcers, tortured and killed in their custody.<sup>6</sup> Rubel, a soft spoken, shy student had been chatting with the shopkeeper of neighborhood lungi shop in the afternoon. On July 23, at around 4pm a

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<sup>4</sup> Sarkar Ali Akkas, Constitutional Rights against Arbitrary arrest and Detention: The Case of Bangladesh, Bangladesh Journal of Law, 2011.

<sup>5</sup> Dr. Abdullah Al Faruque, Professor, Department of Law, University of Chittagong, Analysis of the Decisions of the Higher Judiciary on Arrest and Detention in Bangladesh, National Human Rights Commission, Bangladesh (NHRC), January 2013.

<sup>6</sup> Aasha Mehreen Amin, Remembering Rubel, The Daily Star, Editorial, p.6, May 22, 2016.

microbus with several members of the DB (Detective Branch) came to Rubel's house; in a matter of minutes they had caught the young man and started beating him up indiscriminately, accusing him of having illegal weapons.<sup>7</sup> They were in plainclothes but everyone knew who they really were. They took him away. At the DB office in Mintu Road, the torture continued until Rubel, to save himself, 'confessed' that there were indeed weapons in his house. They brought him back. But there were no weapons and when Rubel admitted he had lied just so they would stop the beating their fury knew no bounds. The young man's bloodcurdling screams were heard by many in the neighborhood. One of the men stuck Rubel on the head, another one kicked him so hard he hit the electric pole. Then they dragged him back into the microbus, despite the desperate pleas of the young man's father who asked them to take him along with his son. In a matter of seconds, Rubel was gone.<sup>8</sup> The family didn't give up and tried everything to get him back. They did get him back but as a corpse with gruesome marks of torture on his body. The post mortem report stated that Rubel died of haemorrhage and shock due to severe beating.<sup>9</sup> So Rubel was arrested by police under section 54 of CrPC and died in the police custody due to alleged torture by the police.<sup>10</sup>

As a result, Rubel's death in custody had encouraged a writ petition to be filed as public interest litigation before HCD (High Court Division) by human rights organization by the petitioners including Bangladesh Legal Aid and Services Trust (BLAST), Ain-O-Salish Kendra, Sammilita Samajik Andolon and some other individuals. The subject matter involves a burning question of the day which is now hotly debated by the intellectual quarters, lawyers and even the general public. It has been alleged in this writ petition that the police, by abusing the power given under section 54 of the Code of Criminal Procedure, has been curtailing the liberty of the citizens and that by misuse and abuse of the power of taking an accused into police custody as given in section 167, has been violating the fundamental rights guaranteed under different Articles of the constitution. In this writ petition, several instances of such abusive exercise of power and violation of fundamental rights have been narrated. This led to the High Court issuing directives on April 7, 2003 to stop the arbitrary arrests of citizens on mere suspicion and on the way the arrestees were to be treated while in custody.<sup>11</sup>

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *BLAST v. Bangladesh*, 55 DLR (2003), HCD, p.363.

<sup>11</sup> Aasha Mehreen Amin, Remembering Rubel, The Daily Star, Editorial, p.6, May 22, 2016.

## **Arrest without warrant and Police Remand under the Laws of Bangladesh**

Section 54 and 167 of the Code of Criminal Procedure, 1898, gives wide powers to the police to arrest a person without warrant on reasonable suspicion. The phrase 'reasonable suspicion' is not defined and as such creates ample scope for misuse by police.<sup>12</sup> This is the general power of police in that sense a police officer can arrest without any warrant or any kind of order from the superior authority or Court or Magistrate. So there different grounds where the police may arrest without warrant. Any police-officer may, without an order from a Magistrate and without a warrant, arrest<sup>13</sup> -

*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;

*secondly*, 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;

*thirdly*, any person who has been proclaimed as an offender either under this Code or by order of the Government;

*fourthly*, 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;

*fifthly*, 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;

*sixthly*, any person reasonably suspected of being a deserter from the armed forces of Bangladesh;

*seventhly*, 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

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<sup>12</sup> Dr. Abdullah Al Faruque, Professor, Department of Law, University of Chittagong, Analysis of the Decisions of the Higher Judiciary on Arrest and Detention in Bangladesh, National Human Rights Commission, Bangladesh (NHRC), January 2013.

<sup>13</sup> Section 54 of the Code of Criminal Procedure, 1898.

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;

*eighthly*, any released convict committing a breach of any rule made under section 565, sub-section (3);

*ninthly*, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.<sup>14</sup>

Now, let us see what is provided in section 167 of CrPC. Section 167 of the Code said about the police remand. Relevant provisions of the section 167 are produced below by sub-section.

“(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or send it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Government shall authorize detention in the custody of the police.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

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<sup>14</sup> Section 54 of the Code of Criminal Procedure, 1898.

- (4) If such order is given by a Magistrate other than the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, he shall forward a copy of his order, with his reasons for making it to the Chief Metropolitan Magistrate or to the Chief Judicial Magistrate to whom he is subordinate.
- (4A) If such order is given by a Chief Metropolitan Magistrate or a Chief Judicial Magistrate, he shall forward a copy of his order, with reasons for making it to the Chief Metropolitan Sessions Judge or to the Sessions Judge to whom he is subordinate.
- (5) If the investigation is not concluded within one hundred and twenty days from the date of receipt of the information relating to the commission of the offence or the order of the Magistrate for such investigation- ”

### **High Court Division directives on Arrest and Detention**

In our country, there is a wide spread practice that the government first arrests an individual under Section 54 of CrPC or under the one of the four Metropolitan Ordinances and thereafter an order of detention is served or he is shown arrest in some other cases pending.<sup>15</sup>

The shocking death of private university student Shamim Reza Rubel in police custody 18 years ago had triggered a storm of protest in the country, promoting some rights bodies to start a legal battle against police's discretionary power to pick up people on suspicion and torture of arrestees in remand.<sup>16</sup> After a long battle, the HC on April 7, 2003 delivered a verdict, barring the government from detaining a person under the Special Powers Act upon arrest on suspicion. It also came up with 15 directives and ruled that sections 54 and 167 of the CrPC dealing with the arrest on suspicion and subsequent remand were not consistent with the fundamental rights guaranteed by the Constitution.<sup>17</sup> The directions are as follows:

1. No police officer shall arrest a person under section 54 of the Code for the purpose of detaining him under section 3 of the Special Powers Act, 1974.

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<sup>15</sup> M. Jashim Ali Chowdhury, *An Introduction to The Constitutional Law of Bangladesh*, Northern University Bangladesh, Dhaka, 2010, 1<sup>st</sup> Edition, p.204.

<sup>16</sup> Sad death gives hopes for all, *The Daily Star*, pp.1-2, May 25, 2016.

<sup>17</sup> *Ibid.*

2. A police officer shall disclose his identity and, if demanded, shall show his identity card to the person arrested and to the persons present at the time of arrest.
3. He shall record the reasons for the arrest and other particulars as mentioned in recommendations A(3)(b) in a separate register till a special diary is prescribed.
4. If he finds, any marks of injury on the person arrested, he shall record the reasons for such injury and shall take the person to the nearest hospital or Government doctor for treatment and shall obtain a certificate from the attending doctor.
5. He shall furnish the reasons for arrest to the person arrested within three hours of bringing him to the police station.
6. If the person is not arrested from his residence or place of business, he shall inform the nearest relation of the person over phone, if any, or through a messenger within one hour of bringing him to the police station.
7. He shall allow the person arrested to consult a lawyer of his choice if he so desires or to meet any of his nearest relations.
8. When such person is produced before the nearest Magistrate under section 61, the police officer shall state in his forwarding letter under section 167(1) of the Code as to why the investigation could not be completed within twenty-four hours, why he considers that the accusation or the information against that person is well-founded. He shall also transmit copy of the relevant entries in the case diary BP Form 38 to the same Magistrate.
9. If the Magistrate is satisfied on consideration of the reasons stated in the forwarding letter as to whether the accusation or the information is well-founded and that there are materials in the case diary for detaining the person in custody, the Magistrate shall pass an order for further detention in jail. Otherwise, he shall release the person forthwith.
10. If the Magistrate releases a person on the ground that the accusation or the information against the person produced before him is not well-founded and there are no materials in the case diary against that person, he shall proceed under section 190(1)(c) of the Code against that police officer who arrested the person

without warrant for committing offence under section 220 of the Penal Code.

11. If the Magistrate passes an order for further detention in jail, the Investigating officer shall interrogate the accused, if necessary, for the purpose of investigation in a room in the jail till the room as mentioned in recommendation B(2)(b) is constructed.
12. In the application for taking the accused in police custody for interrogation, the investigating officer shall state reasons as mentioned in recommendation B(2)(c).
13. If the Magistrate authorizes detention in police custody, he shall follow the recommendations contained in recommendation B(2)(c)(d) and B(3)(b)(c)(d).
14. The police officer of the police station who arrests a person under section 54 or the Investigating Officer who takes a person in police custody or the jailor of the jail, as the case may be, shall at once inform the nearest Magistrate as recommended in recommendation B(3)(e) of the death of any person who dies in custody.
15. A Magistrate shall inquire into the death of a person in police custody or in jail as recommended in recommendation C(1) immediately after receiving information of such death.<sup>18</sup>

The Hon'ble Supreme Court of India also in *D.K. Basu Case*<sup>19</sup> has given directions to be followed scrupulously after the arrest of an accused person that we can see in Rubel Case. Subsequently, in *Saifuzzaman Case*<sup>20</sup> the Court issued guidelines to be followed by the government, magistrates and police in respect of arbitrary arrest, detention, investigation and treatment of suspects.<sup>21</sup>

Failure to comply with the said directions shall render the concerned Police Officer liable for Departmental action and he will also be liable to be punished for contempt of Court. All Officers arresting an accused must

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<sup>18</sup> *BLAST v. Bangladesh*, 55 DLR (2003), HCD, pp.380-381.

<sup>19</sup> *D.K. Basu v. The State of West Bengal* (AIR 1997, S.C. 610).

<sup>20</sup> *Saifuzzaman v. State and others*, (56 DLR (HCD) 2004 324).

<sup>21</sup> Arafat Hosen Khan and Kazi Ataul-Al-Osman, *Ensuring Effective Policing: Bangladesh High Court's Guidelines on Arrest without Warrant*, <http://www.blast.org.bd/news/news-reports/91nipsa> (accessed on 7 June, 2016).



therefore, follow the guidelines.<sup>22</sup> The verdict contained the directives to the police, the jailors and the Sessions judges to ensure that no violation of human rights occurred to anyone arrested on suspicion.<sup>23</sup>

It is expected that the sincere fulfillment of the above requirements will reduce the abusive power of the police and harassment of citizens in their custody.<sup>24</sup> On May 24, 2016, the apex court upheld the HC directives with some modifications and guidelines to stop arbitrary arrests by police on suspicion and torturing in remand.<sup>25</sup> The SC's verdict is viewed by legal experts and human rights activities as a boost to people's liberty and fundamental rights. They said the judgment also set an example of how a student's death came as a hope for ensuring fundamental rights.<sup>26</sup>

### Reasons behind the Non-implementation of the Directives

Though, the HC asked the government to amend the relevant sections of the CrPC within six months from the date of the ruling. Within this period, different government had been passed their regime. But no one had taken the initiative to implement the directives of HC. Then BNP-led alliance government opted to challenge the verdict by filing an appeal with the Appellate Division of the Supreme Court.<sup>27</sup> Now, the AL-led government is pursuing that appeal. This is because the political parties apparently investing their total efforts and time for devising ways and means mainly to go to power.<sup>28</sup> Here democracy is being used in a limited sense because all the political parties, while in power, hardly make any attempt voluntarily to strengthen the bases of democracy and human rights.<sup>29</sup> Though, the government is turning a blind eye on the activities of its law enforcement.<sup>30</sup> Even, the government officials and the law enforcement agencies could not hold their candid role to overcome the problem. Later

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<sup>22</sup> *D.K. Basu v. The State of West Bengal*, (AIR 1997, S.C. 610).

<sup>23</sup> Tapos Kanti Das and Manzur H Maswood, Arrest without Warrant on Suspicion: Police Flout HC directives, New Age, February 10, 2016.

<sup>24</sup> Shadaka Jahan, Section 54 and 167 of CrPC: some recommendations, The Daily Star, Law and Our Rights, July 30, 2005.

<sup>25</sup> Sad death gives hopes for all, The Daily Star, pp.1-2, May 25, 2016.

<sup>26</sup> Sad death gives hopes for all, The Daily Star, pp.1-2, May 25, 2016.

<sup>27</sup> Sad death gives hopes for all, The Daily Star, pp.1-2, May 25, 2016.

<sup>28</sup> Javid Rehman, International Rights Law- A practical Approach, New Warsi Book Corporation, Dhaka, 2013, 2<sup>nd</sup> Edition, p.34.

<sup>29</sup> Javid Rehman, International Rights Law- A practical Approach, New Warsi Book Corporation, Dhaka, 2013, 2<sup>nd</sup> Edition, p.34.

<sup>30</sup> S. Augender, Questioning the Universality of Human Rights, Indian Socio Legal Journal, 2002, 3<sup>rd</sup> Edition, p.80.

on, the Supreme Court expressed dismay at the government's unwillingness to implement the 15 directives issued by the High Court 13 years ago to stop policemen making arbitrary arrests on suspicion and torturing arrestees on remand.<sup>31</sup> Appellate Division of the SC during the hearing on an appeal on the issue said "Thirteen years back, the High Court had given some specific directives on the detention of any person and subsequent dealings with the detainees on remand. But the government did not implement any of them".<sup>32</sup> Because this undue force has been used by every government as a brutal weapon to suppress anti-government movement, sometimes democratic movement and to perpetuate rule.<sup>33</sup>

### **Suggestions**

The study considering the above mentioned discussions it can be easily presumed that the arrest without warrant and custodial death is done ignoring the laws. So, it is an extreme necessity to lessen the unruly arrest and custodial death in the police custody. However, there are some suggestions that may be easier to sort out the problem.

- Emphasize on the proper application of law which is stated in the Code of Criminal Procedure, 1898.
- The law enforcing agencies need to maintain the judicial precedent especially which is related with arrest and police remand.
- The government needs to provide the proper salary to the police officer so that they cannot take the bribery when someone is arrested.
- A mandatory special law relating to the arrest and police remand can be passed without any reservation.
- Voices have to be raised to implement the verdict of Rubel Case so that no one can be a victim of unruly arrest and custodial death.

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<sup>31</sup> Power abuse by police: SC irked as HC directives unheeded, No action by government in 13 years, *The Daily Star*, pp.1-2, May 18, 2016.

<sup>32</sup> Power abuse by police: SC irked as HC directives unheeded, No action by government in 13 years, *The Daily Star*, pp.1-2, May 18, 2016.

<sup>33</sup> Md. Abdul Halim, *Constitution, Constitutional Law and Politics: Bangladesh Perspective*, CCB Foundation, Dhaka, March, 2008, 4<sup>th</sup> Edition, p.298.

At the end of the discussion, we may say that the government may actively take into consideration the above suggestions.

## **Conclusion**

The law enforcing agencies are prohibit to practice the unruly arrest and all forms of cruel, inhuman and degrading treatment in custody and these are the violation according to the Constitution and UDHR and the International Covenant on Civil and Political Rights (ICCPR). Despite these standards, and important safeguards enunciated in national laws and through judgments of the High Court, torture remains widespread across the country. At the end of the discussion, we may draw a conclusion that a person has the right to life. No person should be arrested unduly, unruly, unjustly or extra judicially. The modern State is more responsible for the protection and the promotion of the human rights. The effective implementation of the directives ruling by the SC may lessen the unruly arrest by the law enforcer agencies.