



DISSERTATION

ON

Police Remand in Bangladesh: A Critical Evaluation of Statutory Implication

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DECLARATION

I, Md. Riaz Hossain, with student identification number 2017-3-66-036, hereby solemnly declare and affirm that I conducted this research and that neither the entire research paper nor a portion of it has been submitted to or published by any journal, newspaper, or other article-publishing organization. This dissertation paper is my original work. A list of references and a footnote are also included, together with the proper acknowledgment of the sources used for this research.

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List of Abbreviations

Abbreviation	Definition
UDHR	Universal Declaration of Human Rights
UNCAT	United Nations Convention Against Torture
NGO	Non-Governmental Organizations
NHRC	National Human Rights Commission
LEA	Law Enforcement Agency
ICCPR	International Covenant on Civil and Political Rights
O.C	Officer-in-Charge
S.I	Sub Inspector
A.S.I	Assistant Sub Inspector
PBI	Police Bureau of Investigation
RAB	Rapid Action Battalion
BLAST	Bangladesh Legal Aid and Services Trust
HCD	High Court Division
TIB	Transparency International Bangladesh
C.D	Case Diary
CrPC	The Code of Criminal Procedure

Abstract

Torture and brutality under any circumstances cannot be treated as acceptable for human kind. In every independent nation the foremost concern is to protect the people, giving the rights to the people. Internationally the concern of human rights gives birth to several organizations to protect the human rights but derogation of human rights have occurred time to time and still happening in the world through torture and brutality. Sometimes such torture occurred by the persons who are in the charge to protect the people, namely the police.

Police being involve in brutality and torture is a matter of great concern as they have the power which is different from the mass-people. In Asia sub-continent police are being seen praising when they committed cross-fire. Such revengeful activities do not decrease when they have the backup by law as we can see in the matter of Bangladesh. In Bangladesh remand is in the statute by which police are being accused of torture and brutality. We need to study the grounds of such provisions in the light of jurisprudence and evaluate the derogation of rights by Bangladesh police and to identify the reasons behind the terrified assumption of police remand in the people of Bangladesh.

Keywords: police remand, Torture, police- brutality, human rights.

Chapter 1

Introductory

1.1 Introduction

Remand is a criminal justice system process. Due to the abuse of authority by law enforcement authorities, this system has been abused. In Bangladesh, torture is the most severe type of human rights violation. Although the law allows for remand to facilitate in the administration of justice, law enforcement agencies exploit it to abuse innocent civilians in their custody. In Bangladesh, there are numerous legal safeguards against torture while in remand, including constitutional and specific statutes. Bangladesh has also signed several international treaties that prohibit torture in police custody. Torture, on the other hand, occurs and is not prohibited in Bangladesh. Several human rights organizations have raised questions over brutality in Bangladeshi remand facilities. There have been some earlier researches on abuse in police custody in Bangladesh, the most of which have concentrated on the gaps in outdated statutes and judicial development. This study focuses on brutality in custody and the ineffectiveness of the newly established law addressing torture prevention and ratification of the Torture Convention's Optional Protocol (United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). ¹Arrest, detention, and death in custody continue to be frequent parts of the criminal justice system in Bangladesh. Despite the fact that there are legal and constitutional protections for the liberty and security of citizens, there are numerous charges of abuse or exploitation of the laws' provisions governing arrest and detention². The act of torture, which affects victims'

¹ SHAIKH MD MAMUN, 'Remand-A Tool for Torturing the Arrestee in Bangladesh' (30 Sep 2021) < https://kanazawa-u.repo.nii.ac.jp/?action=repository_action_common_download&item_id=57831&item_no=1&attribute_id=26&file_no=1 > accessed on July 20, 2022

dignity and hampers their ability to carry on with their lives and daily activities, is one of the most terrible abuses of human rights. Since the beginning of time, torture has been evident in every society. After the Second World War, various forms and types of torture gained wide acceptance inside the state. Concern about this type of human rights abuse is widespread. Because of the narrow understanding of sovereignty, it is irrelevant.

1.2 Research Question

- a) Whether the police remand comply with the statutory provisions or not?
- b) Whether police has discretion to act beyond the statutory provisions or not?

1.3 Research Objective

If we look closely, we can understand what actually happens in our country in the name of police remand. The constitution is the supreme law of Bangladesh; it says that no person should be subjected to physical or mental torture in police custody. If torture is done it will be a direct violation of human rights. But the image of our Bangladesh is completely opposite. Although Bangladesh constitution and various organizations of the world do not mention human rights and torture, police torture in the name of remand is increasing day by day. In order to get rid of these harassment, physical and mental problems in the name of police remand, some changes should be made in the power of the police. The area of police accountability should be strengthened, and the methods of police remand in developed countries should be observed carefully.

1.4. Literature Review

Law enforcement authority from the time of its establishment, evolved with occurrence which put question to the human rights. If we look it to recent times police brutality such as racial profiling, cross-fire, bribe etc are in the prime concern which conflicting the police and other law enforcing authorities true motto which is to serve the people. In the Asia sub-continent the police were even involve in the custodial death of the person who is detained by them. If we focused

² Hussain Mohammad Fazlul Bari, 'Arbitrary Arrest and Detention in Bangladesh'(Jul 2019)
https://www.researchgate.net/publication/334204748_Arbitrary_Arrest_and_Detention_in_Bangladesh >
 accessed on Jul 20, 2022

more specifically on the police brutality what emerged first is the police remand and in Bangladesh police are being accused of using the power excessively beyond their limit. As Giles Lindon and Stephen Roe elaborately discussed with the issue of such connection but pointed less on the concern of such connection in their research report "Deaths in police custody: A review of the international evidence," various scholars attempted to establish their points on such subjects over determining the connection between these two. Despite leaving out many important details, this report attempted to capture the routine nature of police detention. The potential threat concerns that are likely in the characteristics of police remand have been described by Shahdeen Malik in his journal "ARREST AND REMAND: TOWARDS A RIGHTS PARADIGM." The dynamics of remand are nothing new, and academics are working to understand all the negative features of this problem and how to stop it. Given that it is one of the significant issues in the world, torture and police brutality are likewise broad concepts with many various components that require much more analysis to understand its roots. Several works of literature have discussed how to avoid them and have looked at the causes of such things. More study and discussion are needed to determine the best course of action for the current police remand situation in Bangladesh.

1.5 Research Methodology

The nature of this research is qualitative oriented. The method is focused on the exploration of the connection. In conducting the research, the resources like statutes, international conventions, and books are considered primary sources. Regarding the secondary resources, national and international journals, newspaper articles website, online journals, scholars' blogs are considered. Lack of resources described in limitation.

1.6 Limitations

Many restrictions were encountered while doing the research. Internet access issues made it difficult to conduct resource collection study. Because of my time limitation I could not utilize many of my academic resources along with that I was allotted with other courses which barred me from giving proper effort to complete this dissertation. If there is sufficient time for this research, it might be able to get a better result. This study would be more planned, spontaneous, and informative without this limitation.

Chapter 2

Definition and Concept Police Remand

2.1. Introduction:

In a society where the law is supreme, nobody is ever above the law. Everyone must conduct themselves within the bounds of the law. In order to maintain social order and protect the peace, society gives members of law enforcement organizations significant control over its residents. When determining which laws to enforce, when to do so, and against whom, the police are granted a large amount of discretion. The most unpleasant aspects of being a police officer are being detained without bail and being arrested without a warrant. This chapter discusses the definition, contributing elements of arrest and remand under the context of constitution and criminal law.

2.2. Concept of Arrest:

An arrest is the exercise of legal authority to restrict someone's freedom of movement. It is the act of charging someone and bringing them to a police station because they have done or are about to commit an offense. If the accused try to escape or does not want to be arrested then the police officer or legal authorized person can apply physical force. However, in the name of physical force the police officer cannot torture any accused or any suspicious person. Law enforcement agents are required to preserve and uphold everyone's human rights as well as respect and protect human dignity³. When the arrest is lawful whoever tries to obstruct to such arrest those persons will be convicted under section 224 of the Penal Code 1860. If any police

³Human Rights Standards and Practice for the Police,' UNITED NATIONS New York and Geneva, 2004
<<https://www.ohchr.org/sites/default/files/Documents/Publications/training5Add3en.pdf> > accessed on Jul 23, 2022

officer arrest any person unlawfully that police officer or person will be convicted under section 220 of the Penal Code 1860. Anyone can obstruct any unlawful arrest⁴.

2.2.1. How Arrest Made:

Arrests can be made by police or, in some cases, by individuals. If someone refuses to give themselves as required by law, a police officer or other person may arrest them by touching their bodies. The police officer or other person may use any necessary methods to execute the arrest if the subject violently resists being taken into custody or tries to flee. Nothing in the law gives the right to execute someone who has not been accused of a heinous crime that carries the death penalty. It is always acceptable and logical to arrest a person convicted but before any sort of conviction by a competent court, nobody should be detained⁵. In some circumstances police can arrest without warrant which is mentioned in section 54 of the Code of Criminal Procedure 1898. In this section there are nine situations where police can arrest a person without warrant.

Any police officer may arrest someone without a Magistrate's permission or a warrant: First and foremost, any individual who has been involved in any cognizable offence or against whom a reasonable accusation has been made or solid information has been given, or there is a reason to suspect that he has been engaged. *Secondly*: any person having in his possession, without a legitimate excuse, any instrument of home breaking, the obligation of showing which excuse should be on such person. *Thirdly*: anyone who has been declared an offender under this Code or by order of the State. *Fourthly*: anybody in possession of something that is reasonably considered to be stolen property and who is generally suspected of committing an offence in connection to such thing. *Fifthly*: any individual who disrupts a police officer while doing his job, or who has escaped or intends to escape from lawful custody. *Sixth*: anyone who is reasonably suspected to be a deserter from Bangladesh's military services. *seventh*, Any person who is liable to be apprehended under any law relating to extradition or the Fugitive Offenders

⁴ The Penal Code 1860

⁵Arfan Ahmed,' Laws Relating to Arrest without a Warrant in Bangladesh, India and Pakistan: A Comparative Analysis'(June 1, 2020)> https://www.seu.edu.bd/seujass/downloads/vol_03_issue_01_Jun_2020/SEUJASS-Vol03Issue01-11.pdf > accessed on July 25,2020

Act, 1881 or otherwise, or against whom a sufficient allegation has been made, credible information has been received, or there is probable cause to believe that he is involved in, any offense committed outside of Bangladesh that, if committed in Bangladesh, would have been punishable as an offense. While a police officer is allowed to make an arrest without a warrant, they are not allowed to hold someone for longer than twenty-four hours. *Eighthly*, any rehabilitated offender who disobeys a rule defined in Section 565, Subsection (3). Lastly, any person whose arrest has been requested by another police officer may be lawfully imprisoned without a warrant by the officer who made the request as long as the request is clear about the person to be arrested, the offense or other reason for the arrest, and it appears from the request that the person may lawfully be detained without a warrant⁶.

2.2.2. Who has the authority to make arrest?

Arrests are typically made by police. In most cases, police officers arrest persons based on a warrant issued by a magistrate. You might be curious about the types of cops who are authorized to make arrests if you've been detained. In practice, whether they are on or off duty at the time of the arrest, all law enforcement officials have the authority to make an arrest if they have probable cause.⁷ However, police officers can arrest anyone even without a warrant. Section 55 of the 1898 Code of Criminal Procedure demonstrates this. The officer-in-charge of the police station may also arrest or cause the arrest of the following people: (1) those who come into his territory and attempt to hide themselves in order to conduct major crimes; and (2) those who have no public sources of living. (3) A person known as a thief or robber. Section 56 provides that the officer-in-charge of the police station or the investigating officer may delegate the authority to arrest to their subordinates. Section 58 states that if necessary, a police officer from one police station may enter another police station or anyplace in Bangladesh to arrest the accused. Private

⁶ The Code of Criminal Procedure 1898

⁷ Bruno Law Offices, 'Champaign-Urbana Criminal Defense Lawyers <<https://www.tombruno.com/articles/who-can-make-an-arrest/>> accessed on Jul 26, 2022

person arrest, as defined in section 59 of the CrPC 1898. (1) Any normal citizen may arrest any person who, in his opinion, commits a non-billable and cognizable offence, or any declared offender, and shall, without undue delay, hand over any person so arrested to a police-officer, or, in the absence of a police-officer, take or cause such person to be taken in custody to the nearest police-station.

(2) If a police officer has cause to suspect that such a person is subject to the provisions of section 54, he shall re-arrest him. (3) If there is reason to suspect that he has committed a billable offence and refuses to reveal his name and address on the order of a police officer, or provides a name or residence that officer has reason to believe is false, he shall be dealt with in accordance with section 57. If there is no reasonable suspicion that he has committed any crime, he will be released immediately. Arrest can be done by the magistrate as well according to section 64 of the CrPC Any Magistrate may arrest or command the arrest of any person in his presence, within the local limits of his jurisdiction, for whom he is qualified to issues a warrant at the moment and under the situations.⁸

2.3. Concept of Remand:

Under the terms of the Code of Criminal Procedure, the police can remand an accused. However, the police cannot remand an accused on their own. The police must obtain the magistrate's permission before remanding someone. Remanding implies to putting the offender to custody or releases him on bail. When a case is rescheduled, the court may have the power or obligation to keep the suspect locked up rather than just rearranging the trial date. While all adjournments are remands, not all adjournments are remands, it is true. Remanding an accused person can take one of three forms: remand on bail, remand in police custody, or remand in prison custody or jail. This is different from simply adjourning the case because when the judge remands a defendant, the judge must decide whether the defendant should be released on bail, kept in police custody, or kept in prison custody. The judicial magistrate has the authority to issue remand under Section 167(2) of the CrPC. This power is invoked when the investigation is not done within 24 hours after detention and the suspect is forced to remain in custody until the investigation is finished successfully. Bangladesh's perspective on remand is much different. In our general definition,

⁸ The Code of Criminal Procedure 1898

remand means that police arrest a suspect and torture him while he is in custody. If we look across the country, we can see that the police do not respect the rule of law or the command of the law. In Bangladesh, after detaining the suspect, police do not wait for a court warrant or approval before beginning to force the accused; police officers illegally threaten suspects and manufacture false accusations. We frequently witness police officers obtaining numerous privileges from one side and obtaining bogus victim statements before bringing the accused to court under the threat of death.

In police custody, the suspect is entitled to various rights, such as the ability to:

- Seek legal counsel;
- Keep in touch with family members
- Obtain medical care when ill; and
- Remain silent⁹.

2.4 Time Period of Remand:

The main focus of Sections 167(2) and 344 of the Code of Criminal Procedure of 1898 was the remand time restriction. Regardless of whether he has jurisdiction to hear the matter, the magistrate to whom an accused person is sent under this section may occasionally permit the accused's detention in the custody that the magistrate thinks suitable, for a total of no more than fifteen days. If he lacks jurisdiction to try the case or 2[send] it for trial and believes that continued imprisonment is unnecessary, he may order that the accused be delivered to a Magistrate who has the jurisdiction. On the other hand, a Magistrate who approves a person's detention in police custody in accordance with this rule is required to document his grounds. According to section 167(5), if the investigation is not finished within 120 days of the date the information relating to the offense was received or the magistrate made the order for the investigation, the following options may be available:

- (a) If the offense to which the investigation relates is not punishable by death, life in prison, or imprisonment for more than ten years, the magistrate who has the authority to take

⁹ Muhammad Bilal Nazir Marath, ' Remand and its Types' (28April, 2020)

cognizance of the offense or make the order for investigation may release the suspect on bail

- (b) If the offence to which the investigation involves is punishable by the death penalty, life in prison, or imprisonment for more than 10 years, the Court of Session may release the suspect on bail if such Court is satisfied.¹⁰

In England, you can be held by the police for up to 24 hours before they have to decide whether to accuse you of a crime or release you. They might ask to hold you for a maximum of 36 or 96 hours. If you're under suspicion for a terrible offense, like murder, this might be the case. If you are detained under the Terrorism Act, you could be held without being charged for up to 28 days.¹¹

2.5 Conclusion

This chapter discusses why we need to know about remand. Although there is no direct mention of remand in the Code of Criminal Procedure 1898, some provisions provided for the custody of the accused, how long he can be detained, and who can provide these directions, which can be considered remand. In the following chapter, we will look at what has occurred in Bangladesh in the name of remand in the past and in the present scenario.

he Code of Criminal Procedure 1898

11 How long do the police have to hold me in custody in England and Wales?, '<<https://hnksolicitors.com/advice/how-long-do-police-have-to-charge-you-with-a-crime-in-england/>> accessed on august 1, 2022

CHAPTER 3

The Current Scenario in Bangladesh

3.1 Introduction

Nowadays, the police power has been called into doubt. Many officers of law enforcement are constantly accused of misusing their powers and violating human rights¹². Many people in Bangladesh understand that remand implies an inhumane torture cell, and that police or other law enforcers have a complete power to torture. It's remarkable that many individuals in our society believe law enforcement has the right to arrest and torture anyone at any time and without a warrant. We will not be able to understand the general public's absolute thinking unless we examine the matter from the ground up.¹³

3.2 Present situation in Bangladesh

The present scenario of remand is different from these provisions. In reality, political meddling has gradually weakened the authority of Bangladesh's police leadership, leading to a lack of discipline in the force and encouraging a tendency at various police levels to seek external favor in exchange for benefits and immunity from punishment. There are also claims that police departments may cover up incidents of misconduct by specific officers if doing so would damage their reputation. All of these factors contribute to a decrease in the efficiency of departmental systems to ensure police legitimacy.¹⁴

¹² Masrur Abdullah Abid, ' Human Rights Violations in Bangladesh and the Role of Law Enforcement Agencies: A Critical Analysis'(June2022)<https://www.researchgate.net/publication/361348492_Human_Rights_Violations_in_Bangladesh_and_the_Role_of_Law_Enforcement_Agencies_A_Critical_Analysis > accessed on August 3, 2022

¹³ Jessica Kaur, ' Article 21: Meaning & Scope of Protection of Life & Personal Liberty'(January 7, 2020)<<https://blog.ipleaders.in/article-21/>> accessed on August 3, 2022

¹⁴ DR. ZAHIDUL ISLAM BISWAS,' Police accountability and the 'rule of politics' the daily star(July 2012)<<https://archive.thedailystar.net/forum/2012/July/politics.htm>> accessed on July 5, 2022

3.2.1 RECENT CASES of ARREST AND REMAND

*Torture Against Limon Hossain*¹⁵

On March 23 near Jhalakathi, a college student named Limon Hossain was shot in the leg by the RAB. His injuries were so severe that four days later, his leg had to be amputated. According to Limon's mother, the RAB fired shots at her son without cause because he was merely returning the family's animals. Limon was not a criminal, she stated. Limon Hossain's mother filed a case three weeks later, alleging five RAB men of attempting murder and wounding his son. The preliminary police inquiry revealed that there was no proof of RAB participation in Limon Hossain's shooting. Even more tragically, Limon Hossain's suffering did not finish with his leg being amputated. His family experienced barriers at every stage of his quest to seek justice; procedural violations were extensively documented in the media. It is completely intolerable that a young boy from working-class had to fight against the state apparatus for over seven years in order to expose the System's failure.

Torture against abdul kader

On July 15, police detained Abdul Kader, a Dhaka University student, on charges of attempted robbery and possession of guns, and brutally beaten him. Even after a departmental investigation regarding his abuse in police custody, he was declared innocent. Following media coverage of the incident, a High Court panel of Justices AHM Shamsuddin Chowdhury and Gobinda Chandra Tagore called two police station's officers-in-charge to appear before the court on Thursday. The court mandated that Kader receive the necessary medical care at the Bangabandhu Sheikh Mujib Medical University Hospital following the trial. Kader was brought to the hospital on Thursday night shortly after the court decision.¹⁶

¹⁵ Probe of law enforcement failure in Limon case must,'newagebd(Apr03,2018)
<<https://www.newagebd.net/article/38152/probe-of-law-enforcement-failure-in-limon-case-must>> accessed on 7 august 2022

¹⁶ **Md Sanaul Islam Tipu,** 'DU student torture case deposition recorded 'dhaka tribune (12th march ,2014)<<https://archive.dhakatribune.com/uncategorized/2014/03/12/du-student-torture-case-deposition-recorded>> accessed on august 7, 2022

Torture Against Mohammad Rashed Khan¹⁷

On July 1, 2018 after being arrested in the capital's Mirpur region, a student activist named Mohammad Rashed Khan was taken to Dhaka Metropolitan Police Headquarters to demand reform of the quota system in government jobs. He was then led into the office of the Cyber Crime Investigation Division where a senior assistant commissioner began beating him with a stick as he was blindfolded, handcuffed, and tied with a towel. They forced him to stay standing, but he kept tumbling down again and again. The young officer used nasty language and abused him for half an hour. Then they kept him standing all day,' said Rashed, acting president of the Chhatra Adhikar Parishad. Rashed claimed he was detained for 15 days and was unable to sleep for a day due to extreme illness. He recognized the young police but refused to reveal his identity in order to avoid retribution.

Torture against Ahmed Kabir Kishore¹⁸

After RAB members snatched up artist Ahmed Kabir Kishore from his Lalmatia home on May 5, last year, he was subjected to brutal physical and emotional torture in detention. On February 25, one of his co-accused, writers Mushtaq Ahmed, died while in jail after being refused bail six times in the DSA case. According to Kishore's allegation, on May 2, 2020, he was picked up by 16-17 plain clothes guys from his residence in Kakrail and blindfolded before being transported to a wet room. According to Kishore, one of the investigators slapped him in the ear extremely hard. He was stunned for a few minutes before realizing his ear was bleeding, he added. As interrogators began striking his legs with steel-plated sticks, the cartoonist passed out. On May 5, 2020, three days after being hauled up, Kishore located him at the Rapid Action Battalion office. Mushtaq, a writer, was also present.

Torture against Ahmed Kar¹⁹

¹⁷ Muktadir Rashid, 'Custodial torture, death on in Bangladesh as victims hardly see justice' newagebd (Jun 25,2021)<<https://www.newagebd.net/article/141943/custodial-torture-death-on-in-bangladesh-as-victims-hardly-see-Justice>>accessed on august 10, 2022

¹⁸ cartoonist Kishore files complaint "over torture in custody", 'UNB(march 10, 2021)<<https://unb.com.bd/m/category/Bangladesh/cartoonist-kishore-files-complaint-over-torture-in-custody/65891>> accessed on August 14, 2022

Rajib Kar was employed in a jewelry store. On February 10, 2019, he was picked up by SI Mizanur Rahman and ASI Farid Bhuiyan from his Goalnagar apartment in the capital. While being tortured, he lost consciousness three times in one night. The policemen first beat him with a bat before stomping on his face with a boot and extracting his nails with scissors. Finally, they stripped him naked and shocked his penis with electric shocks. While Police Bureau of Investigation (PBI) is conducting the investigation during this investigation, locals claimed that during the time, police officers came to Rajib's house in seek of him. They even threaten him that the policemen have the authority to do anything they want. When news of his torture became public, some police officers tried to propagate rumors that he had stolen gold from an Indian person. However, they were unable to locate the Indian citizen. Even the police did not file a case against him. Rajib stated that he has no idea why he was picked up. In this context, the National Human Rights Commission NHRC wrote to the police headquarters to inquire whether any action had been taken against the convicted officers. The committee first demanded a response from the police headquarters by May 19, but afterwards extended the deadline to May 25. However, the NHRC has got no response.

3.3 Reason Behind the Misuse of Power of Remand

The Criminal Procedure Law of Bangladesh gives police extensive authority over arrests without a warrant. The most commonly misapplied section of the code is the provision for arrest without a warrant, which permits police to detain anyone on suspicion without a warrant but provides no safeguards for such arrests. The police are also granted the power to investigate crimes under the provisions of the code. When we talk about the abuse of remand power, the first thing that comes to mind is bribery. Bribery is one of the most effective causes for failing to ensure human and fundamental rights. Almost all lawful agencies accept bribes for performing immoral activities in the course of their duty. According to the Transparency International Bangladesh (TIB) survey study, law enforcement authorities are the most corrupt of the 18 departments and sectors providing services to households in 2017.²⁰ The most unpleasant remand in Bangladesh is in

¹⁹ Sheikh Sabiha Alam,' Plaintiff on the run after filing case against police' prothom alo(12june,2022)<<https://en.prothomalo.com/bangladesh/crime-and-law/plaintiff-on-the-run-after-filing-case-against-police>> accessed on 17 august 2022

police custody due of the police use of illegal torture on the accused in an effort to get information from them. In recent history, terrible torture, inhumane treatment, and harsh punishment have been synonymous with police detention in Bangladesh, leading to numerous deaths while detained.²¹ When the victims are members of opposition parties, complaints of torture are rarely looked into. In other situations, victims who submitted complaints regarding abuse in police custody were pressured by officers to drop their allegations. Threats and intimidation have often been used to achieve this, but in other instances, the victim has been offered money in exchange for the lawsuit being withdrawn as a form of out-of-court settlement.

3.4 Torture in Police Custody

Physical abuse while police interrogation is now a tradition in Bangladesh. The police's job is to conduct an investigation and report the results to the court. On the other hand, torture is common in Bangladesh, and it frequently causes an innocent person to become a criminal. This is repugnant and unacceptable practice.

People are too afraid. No one wants to bring an action against law enforcement officials after being tortured. Human rights activists are calling on the government to intervene to end physical abuse and death in detention, while also raising public awareness about the issue. According to the Dhaka-based rights organization Odhikar, over the last two decades, about 4,000 people have been victims of extrajudicial and custodial killings in Bangladesh (Rights)²²

3.4.1 Methods of Torture

Torture is defined as any act that intentionally causes great pain or suffering to a person with the intent to extract information or an admission of guilt from him or another person, punish him for an act he or another person has committed or is believed to have committed, intimidate or coerce him or another person, or for any other reason based on discrimination of any kind. Such suffering or pain is caused by, at the request of, or with the approval of the person who is being

²⁰ Shaikh md mamun,' Remand-A Tool for Torturing the Arrestee in Bangladesh'(30sep,2021)<https://kanazawa-u.repo.nii.ac.jp/?action=repository_action_common_download&item_id=57831&item_no=1&attribute_id=26&file_no=1> accessed on 18 august 2022

²¹ Barrister Md. Abdul Halim,' Concerns and realities for judicial magistrates' the daily star(17jul 2010)< <https://www.thedailystar.net/law/2010/07/03/index.htm>> accessed on 20 august 2022

²² Stop custodial torture and deaths in Bangladesh, demand activists,'ucanews(29 june, 2022)<<https://www.ucanews.com/news/stop-custodial-torture-and-deaths-in-bangladesh-demand-activists/97833>> accessed on 21 august 2022

tortured. Torture methods also include beating with rifle butts, metal bars, wooden sticks, or bottles filled with hot water to avoid leaving marks on the body, hanging by the hands, rape, "water treatment" in which hose pipes are fixed into each nostril and taps are turned on full for a period of time, pliers used to squash fingers, and electric shocks.²³

There is another case named **Saifuzzaman vs. State**²⁴, When the Court ruled that before making an arrest under this clause, a police officer must establish his or her reasonable suspicion and credible information to specific charges. What constitutes a reasonable suspicion must be determined by the facts of each individual case, but it must be based on some solid fact tending to cast suspicion on the person arrested rather than a mere impression.

3.5 Conclusion

In this chapter we have seen that misuse of police power in the name of remand/ police custody. Sections 54 and 167, as well as police power, have been called into doubt on various occasions. Police abuse of authority has been identified as one of the main sources of human rights violations in the country by many human rights watchdog organizations. Legal loopholes give police an opportunity to arrest someone who has immunity. The arrest isn't the only thing that happened. The police way of getting information from arrested people is barbaric, and it is the cause of so many custody fatalities. In the next chapter we will discuss the Critical evaluation of law and application of remand.

²³ Aditya Sharma, ' Physical Abuse, Electric Shocks and Torture: What a Supreme Court Ordered Study Found in Haryana Jails' news18(28 august 2019)<<https://www.news18.com/news/india/physical-abuse-electric-shocks-and-torture-what-a-supreme-court-ordered-study-found-in-haryana-jails-2287125.html>> accessed on 21st august 2022

²⁴ Saifuzzaman vs. State [56 DLR 324]

Chapter 4

Critical evaluation of law and application of remand

4.1. Introduction:

In the previous chapter we have discussed about the context of the arrest and remand in the judicial proceeding and we tried to establish through the fact and circumstances about the current situation in the Bangladesh with the light of practical approach of the police regarding the remand. In this chapter we will try to determine the approach of the police by focusing the legal provisions of the state in the matter of the police remand.

4.2. International provision against remand:

As from the previous chapter it is evident to tell that the process of remand has violated the right of human as the methods of the remand can be considered as inhuman, barbaric in nature. International law by many conventions tried to point out the inhuman treatment of the people in custody and try to accumulate both judicial custody and prisoners of war.

4.2.1 Universal Declaration of Human Rights (UDHR)

In the article 3 of the UDHR it stated,

Everyone has the right to life, liberty and security of person.²⁵

In article 5 of the UDHR it stated that,

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.²⁶

In article 9 it has been stated that,

No one shall be subjected to arbitrary arrest, detention or exile.²⁷

The convention has pointed the right of person of getting protection as to the matter of life, law and equality.

4.2.2 International Covenant on Civil and Political Rights

Article 6 (1) of the ICCPR stated that,

²⁵ Universal Declaration of Human Rights

²⁶ *ibid*

²⁷ *ibid*

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.²⁸

Article 9(1) of the ICCPR stated that,

Everyone has the right to personal freedom and security. No person shall be arbitrarily detained or arrested. No one may be deprived of their liberty other than for legal reasons and in line with legal procedures.²⁹

This convention has articulated the rights of the person as to the fundamental in nature.

4.2.3. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

This convention establishes with some non-derogatory provision which prevent the torture in the sense of the convention.

Article 2(1) of the convention stated that,

Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction³⁰.

In **article 2(2)** it has clearly indicated the non-derogatory motivation. No extraordinary circumstances, including a state of war or the prospect of war, domestic political unrest, or any other public emergency, may be used to justify torture, it was claimed.³¹

Again in sub-article 2(3) it stated that order of the superior cannot be a justification in the matter of the torture.³²

Article 4 of the convention stated that all the torture must be addressed as criminal offence under the criminal law of the country who is the party of the convention.

Bangladesh has ratified the convention in 2008 and also incorporated an act regarding this convention.

4.3. National provisions against the remand:

The statutes of the Bangladesh were establishes to give the people rights which are provided in the constitution of Bangladesh. As the birth of the nation was a struggle against torture and

²⁸ INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

²⁹ ibid

³⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

³¹ ibid

³² ibid

repression and exploitation of Pakistan it can be said without a shadow of doubt that any of the statute will reflect which favor the torture and brutality.

4.3.1. Constitution of Bangladesh:

The constitution of People's Republic of Bangladesh has provided some fundamental safeguard as to the matter of protection of law and equal rights.

Article 27 of the Constitution of Bangladesh guarantees the right to equality and equal protection of law.³³

Article 31 provides that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken.³⁴

Article 32 provides that no person shall be deprived of life, personal liberty, save in accordance with law.³⁵

Article 33 Grants a person apprehended under ordinary law four fundamental liberties or protections.

- He cannot be held in jail without being promptly notified of the charges brought against him or her and the reasons for their arrest.
- He cannot be held in jail without being promptly notified of the charges brought against him or her and the reasons for their arrest.
- He must be granted the option to select the attorney who will represent him.
- He is entitled to appear before the closest magistrate within 24 hours of being detained.³⁶

Article 35 provides that

- (2) No person may be tried and punished more than once for the same offense.
- (4) No one may be forced to testify against themselves.
- (5) Torture or other cruel, inhumane, or humiliating punishment or treatment is prohibited.³⁷

³³ Constitution of peoples republic of Bangladesh

³⁴ ibid

³⁵ ibid

³⁶ ibid

³⁷ ibid

The Torture and Custodial Death (Prevention) Act, 2013 : The Act is Bangladesh's first attempt to define "torture" and "custodial death" legally. It has also tried to put in existence appropriate victim protection systems. The Act also contains information on how to file a complaint, how investigations work, and how sentences are determined³⁸

4.3.2 Bangladesh Legal Aid and Services Trust (BLAST) and others vs. Bangladesh and others

Police detained a boy for not following the laws under Section 54 and tortured him in the name of remand under Section 167, in such a way that he died. A number of police personnel's who had beaten up Rubel were later prosecuted. The Supreme Court of Bangladesh's High Court Division has issued detailed rules in the form of 15 directives regarding arrest without a warrant, detention, remand, and treatment of suspects to be followed by law enforcement agencies and magistrates after the shocking death of Rubel in police custody a few months prior to the filing of the case by BLAST. These regulations protect people from unwarranted arrests. The HCD in this matter brought up the following significant issues. It's possible to split the instructions into two sections.

Arrest without warrant

- Under Section 54, no police officer shall arrest somebody for the purpose of detention under Section 3 of the Special Powers Act, 1974.
- On demand, a police officer must reveal his or her identify and provide his or her ID card to the individual arrested or those present at the time of arrest.
- The source of the information, as well as the reason for believing it, must be documented.
- A record of the grounds for the arrest and other details must be kept in a separate register until a specific diary is authorized.
- The officer in charge must record the causes for any marks of harm on the detained person and transport him or her to the closest hospital or government doctor.
- The individual arrested must be given the reasons for his or her detention within three hours of being brought to the police station.

³⁸ The Torture and Custodial Death (Prevention) Act, 2013

- If the person is not detained at his or her home or place of business, the relatives should be notified by phone or messenger within one hour of delivering him or her to the police station.
- The person in question must be allowed to contact a lawyer of his or her choice or meet with nearest relatives.
- The individual in question must be allowed to contact a lawyer of their choosing or meet with nearest relatives; and the investigation must be finished within 7 days or the person will be released.

For Remand:

- Police must record the reason for any detention.
 - Explain why the claim or information is credible.
 - Why has not the inquiry been completed within 24 hours?
- A copy of the C.D. and the convicted individual must be shown to the Magistrate.
- If the accusation is completely baseless, the accused is released, and actions can be taken against the police officer under section 190(1)(c) of the CrPC and 220 of the Penal Code.
- The accused person is interviewed in a specially designed room with glass and a grill, within the view but not within the hearing of close relatives and lawyer.
- No more than three days of investigation in police detention.
- Before issuing a remand order,
 - The accused must be given the reasons for his arrest.
 - Be allowed to speak with his solicitor and to hear the accused and his lawyer.
- The reasons for remand must be included in the C.D.

- Within 15 days, the remand order must be submitted to the Sessions Judge for approval.
- Medical tests must be performed prior to remand, and any objections must be addressed by the same medical board.
- If torture is proven, the police officer can be charged under sections 190(1)(c) of the CrPC and 330 of the Penal Code.
- If the suspect dies while in police custody, a murder case can be initiated against the officer and damages can be pursued.³⁹

4.4. Conflict between statutory provisions and practice of law enforcing

authority: In reality our law enforcing authority does not care about statutory provisions, they do not follow command of the law and order Torture and impunity are common in Bangladesh, making it difficult for torture victims to seek justice. An important breach of Bangladesh's international responsibilities, particularly those under the UNCAT, which Bangladesh ratified more than 20 years ago, is the systemic incapacity to find, convict, and punish offenders. For more than two decades, Bangladesh's numerous administrations have failed to provide any report to the UNCAT⁴⁰, making it one of the world's most delayed and non-reporting States today. 10 Torture is still used in our country to extract information or obtain confessions, and it is still regarded the gold standard of proof.

4.5 Conclusion

It is clear from the above discussion that there are many national and international law and provision there are laws relating to the police remand such as Constitutional law, Torture and Custodial Death (prevention) Act 2013, UDHR,ICCPR, UNACT these are all support Human Rights and do not support torture in Police custody. But the reality of Police Remand is terrible if

³⁹ Bangladesh Legal Aid and Services Trust (BLAST) and others vs. Bangladesh and others [55 DLR 363 (HC); 23BLD 115 (HC) 1]

⁴⁰ Sikandar Ali Usman,' Torture in Lawful Custody in the context of Bangladesh'(jan2022) <[researchgate.net/publication/358266250_Torture_in_Lawful_Custody_in_the_context_of_Bangladesh](https://www.researchgate.net/publication/358266250_Torture_in_Lawful_Custody_in_the_context_of_Bangladesh)> accessed on 26th august 2022

we want to compare between this. Torture is prohibited not only for moral and legal reasons, but also because it is inefficient as an interrogation tactic. According to the various cases we've heard, officials sometimes use torture to obtain the confessions they seek from the accused. In next chapter I would like to suggest what would be best for this situation.

Chapter 5

Findings, Recommendations and Conclusion

5.1 Findings

The concept of Police Remand is not a new phenomenon as well as the torture in police custody is not something new in this world. The study of police remand is necessary as police brutality are devastating for human rights, and the connection will affect a wrong way. The research has been conducted keeping in mind several aspects of police remand, torture in remand and violation of human rights. We have found:-

1. The Bangladeshi police frequently carry out numerous brutalities in the name of remand. The police continue to engage in this abuse without regard for anyone.
2. In the name of police remand police often misuse their power and which is clearly violation of fundamental right.
3. People in Bangladesh are afraid to speak publicly about the tortures of police remand, because they have the fear of arrest.
4. Sometimes the police are politically compromised, which hampers the execution of real justice.
5. There are no similarities in Bangladesh between the application of statutory provisions and the practices of actual police remand.
6. Torture in police remand is forbid by the constitution of the People's Republic of Bangladesh.
7. International provisions against remand, Universal Declaration of Human Right (UDHR) forbid any torture, cruel, inhuman treatment.
8. Police intentionally inflicts severe pain or suffering on a person for the purpose of obtaining information or an admission of guilt from accused person.
9. No one wants to bring an action against law enforcement officials after being tortured, because the fear of police remand.
10. Bangladeshi existing laws gives police extensive authority over arrests without a warrant.
11. Bribery is one of the most effective causes for failing to ensure human and fundamental rights.

12. Victims are regularly pressured by police officers to drop their allegations that are also violation of fundamental right.
13. The authority does not protect the fundamental rights guaranteed by the constitution, including the right to life, personal freedom, and self-defense.
13. Police have the power to arrest without warrant under section 54 of the Code of Criminal Procedure 1898.
14. Police take bribes and blame one person's crime on another, along with brutally tortured the accused for money.
15. Police officers fabricate false accusations and unlawfully intimidate suspects, for their own benefit.
16. If any police officer arrest any person unlawfully that police officer or person will be convicted under section 220 of the Penal Code 1860. However, in real life practice this is not happening.
17. The Convention against Torture (CAT) was signed by Bangladesh in 1998 but Bangladesh does not follow the rules regulation of CAT.
18. Existing laws are not sufficient to prevent torture in Police remand.
19. Absence of any magistrates taking confession by the police does not have any value.

5.2 Recommendations

The government of Bangladesh, along with the people of that nation, must take immediate action to prohibit or prevent cruelty in the police remand:-

- It is urgent to alter the Torture and Custodial Death (Prevention) Act, 2013.
- Section 15 of the Torture and Custodial Death (Prevention) Act, 2013, is being amended to ensure that torture victims receive appropriate compensation.
- The victims of torture and others who have been injured by a person or who died in custody should receive the full amount of compensation.
- During an arrest, law enforcement officers are required to display their identity (ID) card.
- When making an arrest, law enforcement officers should be in official uniform, not normal attire.
- Two neighbors must be present when the arrest is made.

- The location of the arrest and the family or friends of the detained person must be immediately disclosed to them by police departments.
- Protecting the safety of anyone who brings a complaint against a law enforcement officer.
- Any death that occurs while a person is being held in police custody must be reported Bangladesh's National Human Rights Commission (NHRC) before 24 hours.
- In accordance with recommendations given by the Supreme Court in the BLAST case, the Parliament should alter sections 54, 167, and 344 of the Code of Criminal Procedure at the suggestion of the Ministry of Law, Justice, and Legislative Relations.
- Arrest, investigation, and remand policies and directives issued by the High Court Division in the cases of BLAST and Others v. Bangladesh and Saifuzzaman v. State shall be completely followed.
- During the remand process, the judiciary should take rigorous scrutiny over the conditions of custody and questioning by the police.
- Separating the investigation division from the police force should be done to safeguard the authenticity of the investigation.
- Human rights training should be provided for law enforcement officers, and they shouldn't be utilized for political purposes.
- The study of human rights should be taught in schools, colleges, and universities so that students become aware of how often they are violated.
- The person who has been tortured should speak out against the abusers. The Human Rights NGO might be quite important in this regard.
- Government, media, and non-profit organizations should conduct awareness initiatives.

5.3 Conclusion

It is disappointing that torturing occurs frequently in places of legal detention in Bangladesh and is currently a major issue in the country's criminal justice system. Torture is a crime that violates humanity and is condemned by every nation and civilized society, however it is a frequent occurrence throughout Bangladesh. The majority of human rights organizations have focused on this issue. They are attempting to prevent such unethical behavior. Lawyers, judges, educators,

and other experts are speaking out against this cruel practice, but there are currently no visible effective tools or countermeasures. The criminal justice system is developing an increasingly inhumane environment. Torture has periodically been a crucial tool in the fight against political rivals⁴¹. People are unaware of their rights both before and after arrest. People are becoming more aware as a result of campaigns by BLAST and other organizations for human rights. They are aware of their legal and police obligations. However, when a police officer violates the law, no one dares to speak up. In this regard, normal citizens are powerless because there is no impartial place to complain police violence and failure to comply with the law.⁴²

⁴¹ Md. Monjur Hasan, 'Torture in Lawful Custody: Violation of United Nations Convention against Torture in Criminal Justice System in Bangladesh' (December 2017) <<https://www.scirp.org/journal/paperinformation.aspx?paperid=80444#:~:text=Constitution%20of%20Bangladesh%20states%20that,1976%20also%20speak%20against%20torture.>> accessed on 27 august 2022

⁴² Bangladesh Legal Aid and Services Trust (BLAST), 'The Advocacy Programme on the Use of Section 54 and 167 of CrPC by the Police Officers' <<https://www.blast.org.bd/content/publications/Section54and167.pdf>> accessed on 27 august 2022

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