

Arresting Powers of Police under the Legal Framework of Bangladesh

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Letter of Transmittal

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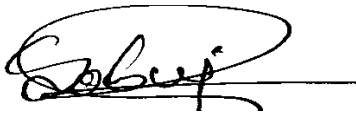
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Declaration

I hereby solemnly declare that the thesis title “**Arresting Powers of Police under the Legal Framework of Bangladesh**” submitted by me in partial fulfillment of the requirement for the award of the degree of master of laws, Department of Law, Daffodil International University.

I further declare that the research work presented in this thesis is original and it has not been submitted earlier either partly or wholly to any other university for any academic qualification/certificate/diploma degree. The work I have presented does not breach any copyright.



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This is to certify that thesis on “**Arresting Powers of Police under the Legal Framework of Bangladesh**” has been prepared by Sobuj Hossain. It is prepared for the partial fulfillment of the requirement for the award of the degree of Master of Laws, Department of Law, Daffodil International University. The research has been carried out with my guidance and as research of the bonafide work carried out successfully.



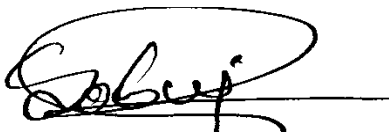
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ABSTRACT

The police are the initial faces of law enforcement and commence the criminal justice process and thus hold significant responsibility for functioning law and order. As key representatives of the state, the integrity of the police in all societies is pivotal to retain public trust in the rule of law and the preservation of internal security. When police corruption is exposed or is perceived by the public to be prevalent, confidence in and communal relations with the police force become disjointed. Poor credibility of the police also negatively impacts on the legitimacy of the government. Negative public perceptions of both the police and government are particularly troublesome in violently divided societies or states undergoing armed conflict. The article focuses on the main causes and consequences of police corruption in hostile environments to introduce a range of prevention strategies to combat it and restore public confidence in policing and governance. The article suggests that a holistic anticorruption strategy, rather than a linear one, has the potential to raise awareness, increase pay to deter petty forms of corruption, install independent anticorruption agencies, and periodically rotate police officers to increase police integrity and loyalty for the host country. It is recommended that these multifaceted prevention strategies are needed within a police force that is faced with a violently divided society to reaffirm public support and deter support for armed anti-governmental oppositional groups.

Keywords: police corruption; police reform; rule of law; anticorruption; state capture; armed conflict

Chapter 1

INTRODUCTION

The police are part of a government organization tasked with preserving the law, maintaining tranquility, and preventing and identifying crime. The criminal justice system's police force is a crucial component. The main body responsible for upholding the law in the nation is the Bangladesh Police. The Ministry of Home Affairs of the Government of Bangladesh is in charge of managing it. It is essential for maintaining the peace and upholding the law throughout Bangladesh. The police have a significant part in the criminal justice system, even though their main concerns are the maintenance of law and order and the safety of residents' people and property. The need to strike a compromise between societal interests and individual freedom never goes away. The fundamental conundrum that arises during the application of the law is how to strike this equilibrium. This must be followed at every stage of the process' implementation. Not only are these protections mandated by the Constitution, but also by a number of procedural laws. This study will make an effort to determine if various laws offer such protection. Arrest is one of the procedures that poses a serious threat to a person's right to liberty. This is very important in some situations to defend the larger interests of society; yet, the police may abuse the law of arrest for the countless crimes that may be done behind their backs, whether they have a warrant or not. The laws granting the authority specify the regulations for each of the several arrest authorities available under a warrant issued by a justice of the peace or court. The abilities of the police to make arrests without a warrant are covered in Section 54 of the Code of Criminal Procedure. Police abuse of power, torture, and brutal treatment of common citizens are all frequent occurrences. Strangely, a lot of people have been detained under Section 54 of the Criminal Procedure Code due to harassment or for political reasons. Several institutions have spoken out after a large number of people—including Rubel, Jamal, and Arun Chakraborty—were murdered by police while in their care and while acting against the same irate citizens of the nation.

False arrest is a common law tort in which the plaintiff contends that they were detained without a court order or reasonable suspicion. Although law enforcement officials may be held liable for false arrest, private security agencies are frequently named as the defendant in such cases. Today, there are a lot of human rights breaches happening all around the world.

No different in Bangladesh. The prevalence of human rights breaches has increased, and there are hardly any effective remedies. Human rights violations and abuse of power are common accusations leveled against law enforcement personnel. They frequently face accusations of torture and money extortion. The world nowadays is very concerned about human rights violations. The same is true of Bangladesh. Human rights abuses are become commonplace, and there are hardly any remedies available. Those in charge of upholding the law are frequently accused of violating human rights and abusing their authority. They frequently face accusations of being subjected to torture and being forced to pay money. Human rights are broken when a victim passes away while being held by the police. Several people died while in the custody of the police. According to Bangladesh's Constitution, Article 35(5), no one shall be subjected to torture or cruel, brutal, or degrading punishment or treatment. No legislation in the nation permits the police to torture an accused person or otherwise treat him cruelly, inhumanely, or degradingly, even if they take him into custody. In light of this, the police remand process is against the specific constitutional provisions included in Articles 27, 33, and 35.

To ensure the protection of the arrestee's fundamental human rights and the documentation of any abuses committed by law enforcement . To raise awareness among the police and courts of core human rights issues, such as the right to be free from torture and other forms of abuse while in custody and the prevention of arbitrary arrests. Finally, an effort will be made to understand the issue and increase awareness. In light of the situation, Bangladesh Legal Aid and Service Trust (BLAST) adopted a comprehensive strategy to increase awareness among judges, magistrates, police officers, attorneys and the media, elected public representatives, and rights activists. BLAST also requested that the Supreme Court issue directives and guidelines on police arrest, detention, and interrogation of suspects. Based on it, BLAST filed a Writ Petition in the High Court Division to the Supreme Court of Bangladesh, commonly known as the BLAST and Others v. Bangladesh Case, disputing the abuse of authority.

Under section 167 of the Criminal Process Code, torture is prohibited, as is the arbitrary use of remand under section 54. The entire thesis makes an effort to offer an interpretation of the rulings made by the Supreme Court in this regard. Since both involve holding a subject against their will, kidnapping and false arrest are closely related crimes. Kidnapping is a more serious crime because the perpetrator intends to harm the victim, holds the victim as a hostage in

exchange for money, or otherwise helps to commit a crime. In some places, you also need to move the victim from one place to another to commit a kidnapping.

Since false imprisonment involves the same fundamental behaviors as kidnapped but without the more serious intentions, it is referred to as a "lesser included offense" of kidnapping.

Chapter 2

POLICE POWER AND PROCEDURE OF ARREST

2.1 Definition of Arrest

The first step toward jail is arrest. Three categories can be made out of its goals: preventative (to put a halt to a breach of the peace), punitive (to bring someone before a magistrate to answer for a crime or to be bound over), and protective (for example, where mentally ill persons are arrested for their own protection). An accusation does not have to come after an arrest. A constable may detain a person and question him in a more formal setting at a police station if he has a reasonable suspicion that the person has committed a crime. Any positive legal provision must be used to support an arrest. Police officers are not considered to be performing their duty if they cannot provide a legal justification for their actions. In *Rice v. Connolly* [1996] 2 QB 414, it was decided that police officers are not allowed to halt someone from going about their business unless they have the authority to stop, search, or arrest them. On the other hand, taking a man's arm without intending to detain or arrest him and just to draw his attention to what is being said to him is neither an arrest nor an actionable trespass to the person, unless it exceeds what is permissible by customary standards of everyday life.¹

¹ Abdul Halim, *Text Book on Criminal Procedure Code*, 7th ed. (Dhaka: CCB Foundation, 2013), p. 63.

2.2 Police Power of Arrest

The Criminal Process Code gives both ordinary citizens and police officers the authority to make arrests. As a result, both police officers and, in rare circumstances, unarmed citizens, can make arrests. A person is considered to have been arrested when a police officer employs force to confine the subject, declares that the person has been arrested, or makes it clear by words or deeds that he will, if necessary, use force to stop the person from going where he wants to go. The police officer must therefore say to the person they are about to arrest, "I am arresting you," before actually doing so.

2.2.1 General Power of Arrest

In Section 54 of the Code of Criminal Procedure-1898, the general authority of a police officer to make an arrest is laid out. A police officer may make an arrest without a warrant or any other kind of consent from a magistrate, court, or higher authority since this power is so broad. Without a warrant or the approval of a magistrate, a police officer may detain someone in nine circumstances:

- i. Anyone who has committed a crime that is punishable by law, or anyone who has been the subject of a legitimate complaint, the discovery of solid evidence, or a plausible suspicion that they are implicated.
- ii. Anybody who is in possession of a tool for breaking into a residence without a permit;
- iii. Anyone who has been declared an offender under this Code or by government order;
- iv. someone found to be in possession of something that is logically considered to be stolen property, as well as anyone who is logically suspected of having committed an offense involving that item;
- v. Somebody who hinders a police officer during their execution any person who is logically suspected of having deserted the Bangladeshi military;
- vi. Any individual found to be in possession of something that could be reasonably suspected to be stolen property and who could be reasonably considered to be a criminal. Anyone who is liable to be apprehended or detained under any extradition law, the Fugitive Offenders Act of 1881, or other applicable law, or against whom a reasonable complaint has been made, credible information has been received, or a reasonable suspicion exists of his involvement in, any act committed outside of Bangladesh that, if

committed in Bangladesh, would have been punishable as an offence. any convicted felon who violates a rule established under section 565, subsection 3;

- vii. Any individual for whom a requisition has been received from another police officer, provided that the requisition identified the individual to be arrested as well as the crime or other reason for the arrest, and it appears that the individual may be lawfully detained by the officer issuing the requisition without a warrant.

2.2.2 Special Power of Arrest

The Code of Criminal Process of 1898 addresses extraordinary arrest powers in Sections 55, 56, 64, and 65. The extraordinary rights of arrest provided by section 54 are not superseded by the special powers afforded by these provisions. As a result, the empowerment of a police officer's special power of arrest has no bearing on the officer's ability to execute his general power of arrest under section 54 while utilizing the special authority.

- i. a police officer in charge of a police station may arrest a vagrant or habitual offender without a warrant under section 55;
- ii. a police officer may deputize a subordinate to cause an arrest without a warrant under section 56;
- iii. a police officer may arrest a person who commits a non-cognizable crime in the presence of the police and refuses to give his name and address or the name and address given is believed to be if a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in Bangladesh under section 66;
- iv. An officer in charge of a police station has the authority to detain without a warrant any member of an unlawful assembly who refuses to leave after being ordered to do so in accordance with section 128;
- v. Any police officer has the authority to detain without a warrant any person who cannot be prevented from being detained in any other way. Anyone who does not adhere to the conditions under which a sentence has been suspended or remitted by the Government under section 401 may be arrested by any police officer without a warrant (3).

2.2.3 Arrest: Under Metropolitan Police Ordinances

According to the four Metropolitan Police Ordinances, if a person is found between dusk and dawn in the following situations, police may detain him without a warrant:

- i. being in possession of dangerous weapons without a good reason;
- ii. being disguised or with a face cover without a good reason;
- iii. being inside a house, building, or on board a boat, vehicle, or other vessel without a good reason;
- iv. lying down or loitering in a public place without a good reason; and
- v. having a tool for breaking into houses without a good reason. Obstructs a police officer in the performance of his duty, or has escaped or attempts to escape from lawful custody;
- vi. Has been the subject of a complaint, is the subject of credible information, or there is good grounds to believe that he was involved in an incident that was done somewhere outside.

2.2.4 Rights of an Arrested Person

A person detained under ordinary law in Bangladesh is entitled to four fundamental constitutional rights or protections under Article 33 of the country's constitution. Here are some of them:

- i. He cannot be held without being informed of the circumstances for his imprisonment as quickly as practicable.
- ii. He must be given the opportunity to speak with and be represented by the attorney of his choice.
- iii. Within 24 hours of his arrest, he has the right to be presented before the closest magistrate, and without the magistrate's consent, he cannot be held in custody for longer than 24 hours.

2.3 Illegal Arrest

A person may file a lawsuit or a complaint against the agency that made the arrest once the charges are dropped. Police and police officers typically have more authority to make arrests than average citizens (see citizen's arrest). But, police officers' ability to make arrests is limited. Generally speaking

1. Anybody who has a court-issued arrest warrant may take someone into custody. To bring a criminal defendant who has skipped bail to court for trial, bounty hunters (agents of bail bondsmen) who work under the authority of a bench warrant are included.
2. Anybody who has committed a crime, in the opinion of a police officer or a person who is authorized by a jurisdiction's police powers act, may be detained. The officer may only make an arrest for the purpose of identifying the suspect and issuing a summons to appear in court in the case of a misdemeanor, summary conviction offense, or non-criminal offense (such as a violation of a municipal by-law), unless there is cause to believe the suspect won't show up in response to the summons.
3. If the person making the arrest thinks the suspect is attempting to flee the scene of the crime, they may arrest someone who is suspected of committing a felony or an indictable act. Without an arrest warrant, an individual cannot be detained after the fact on suspicion of committing a crime.

2.4 Citizens and Businesses

Charges of theft against security staff and retail businesses are present in the majority of unlawful arrests. Someone cannot be detained by a guard merely because they are suspected of committing theft. To prove that a crime was actually committed, most nations require evidence. If a customer hasn't made a payment for the products they're carrying, for instance, and the guard thinks they're about to leave without making a purchase, that isn't reasonable and probable cause to stop them. As an alternative, the person must attempt to leave the establishment without paying for the item.

To get around this limitation, numerous states have passed "merchandise concealing" legislation. According to these laws, simply concealing anything that has not been paid for constitutes a crime, providing retailers the right to detain suspects even if they have made no attempt to take the goods out of the store.

2.5 Police Officers

According to a US Supreme Court test, police officers and other government officials in the US and other countries are liable for obvious rights infringement, but they are partially protected from legal arrest lawsuits under the doctrine of qualified immunity. This is the case when the violation of the Fourth Amendment is deemed to be "not obvious." This strategy can protect authorities from responsibility when they engage in questionable legal behavior, such as when they use their discretion to arrest suspects. However, this protection is void if the officer's actions are in violation of "clearly established law." This entails serving the wrong person with an arrest warrant. Federal law also prohibits public officials from making false statements to justify or hide an unlawful detention. An instance of this hypothesis being tested is *Sorrell v. McGuigan* (4th Cir. 2002). Based on the description of a suspect who had committed a theft at a nearby store, a police officer (McGuigan) stopped a man (Sorrell) who was shopping at a mall and then carried out a normal search for weapons. When the company owner arrived, he claimed that Sorrell and his friends had not stolen from him. Yet because Sorrell was carrying a folding knife with a 3 inch blade concealed in his pocket, the officer held him for having a concealed weapon. Maryland law does not classify non-automatic folding knives as weapons regardless of length, and the state's high court has repeatedly upheld the lack of a length restriction. On the other hand, the police officer believed the knife to be a weapon. As there was no crime, Sorrell was quickly released after being taken into custody. He eventually filed a lawsuit against the cop for unlawful imprisonment. The officer's qualified immunity was rejected by the court, and the US Court of Appeals upheld the decision.²

² "Sorrell v. McGuigan", *United States Court of Appeals for the Fourth Circuit*. Retrieved 2017-06-22.

2.6 Bounty Hunters

Bounty hunters have been accused of engaging in illegal arrest after attempting to carry out bench warrants outside of the country, where they are not authorized to carry out warrants and only law enforcement officers are. When bounty hunters captured a bail jumper outside of the country and returned him to the court that issued the warrant, they were accused of kidnapping in at least two high-profile cases. One of them, Daniel Kear, was brought back from the US and found guilty. In certain instances, police officers or bounty hunters have executed legitimate arrest orders against the wrong person. Even though many illegal arrest lawsuits only result in minor damages, these mistakes typically lead to large awards against the arresting officers.

2.7 Resisting Unlawful Arrest

- Those who are aware that they are being unlawfully detained may attempt to resist or flee. In order to defend against wrongful arrest, a small number of jurisdictions (14 U.S. states as of 2012) recognize the target's right to self-defense. Normally, this only happens in the following situations:
 - The arresting officer used more force than was necessary to make the arrest;
 - The resistance is only of the intensity necessary to defend oneself from significant bodily harm or death.³
 - When opposing an unlawful arrest would normally be illegal, it may be used as an excuse in such jurisdictions - and under the strictly limited circumstances mentioned above (i. e. resisting arrest, flight to avoid prosecution, assault, etc). There have been a few instances where a manslaughter charge was substituted in place of a murder charge. Such behavior is only acceptable in certain situations, and justification for it might be challenging to prove in court. Simple factual mistakes almost never justify trying to elude law enforcement. Yet, some may, such as when the arresting officer fails to identify themselves, giving the defendant reason to believe they are the target of an armed robbery or kidnapping.

³ *Plummer v. State*, 34 N. E. 968 (Ind. 1893).

- A plausible suspicion that the arresting officer is a fraud who wants to harm the defendant.

2.8 Procedure on an Arrest

The Criminal Process Law, 1898, Sections 46 through 53, covers the legal requirements for police arrests. Here is a list of these sections:

2.8.1 Who can make arrest

The general public and police officers are authorized to make arrests under the CrPC. As a result, arrests can be made by both police officers and, in rare circumstances, by citizens.

2.8.2 Arrest how made

The 1898 Code of Criminal Procedure's Section 46

- i. Unless there is a verbal or physical surrender to detention, the police officer performing the arrest or other person making the arrest must actually touch or restrict the subject's body.
- ii. Resisting Arrest: If the subject actively resists or attempts to avoid arrest, the police officer or other person may take whatever steps are necessary to make the subject into custody.
- iii. Nothing in this provision gives the right to murder someone who has not been accused of a crime that carries a death sentence or a life sentence in prison.

2.8.3 Search of place entered by

According to Section 47, the person residing in or in charge of a place must grant free entry to the person acting under a warrant of arrest or a police officer with the authority to make an arrest if they have reason to believe the person to be arrested has entered or is inside the location. They must also provide all reasonable facilities for a search of the location.

2.8.4 Procedure where ingress not obtainable

If entry to the location cannot be gained in accordance with section 47, it shall be legal for anyone acting under the authority of a warrant to enter the location, conduct a search, and break open any outer or inner door or window of any house or plaza, as well as to enter any location where a warrant may issue but cannot be obtained without giving the subject of the arrest a chance to flee.

2.8.5 Power to break open doors and windows for purposes of liberation

According to Section 49, any police officer or other person authorized to make an arrest may break any exterior or interior door or window of a building or other structure in order to liberate themselves or any other person who is imprisoned there after properly entering to make an arrest.

2.8.6 No unnecessary restraint

The seized person should not be subjected to more restrictions than are necessary to stop his escape, according to Section 50.

2.8.7 Search of arrested persons

In accordance with Section 51, whenever a person is detained by a police officer pursuant to a warrant that does not authorize the taking of bail or pursuant to a warrant that authorizes the taking of bail but the person detained is unable to post bail, and whenever a person is detained without a warrant or by a private person pursuant to a warrant and cannot lawfully be admitted to bail or is unable to post bail, the arresting officer or, when the detention is made by.

2.8.8 Power to seize offensive weapons

According to Section 53, any offensive weapons on the person detained may be taken by the officer or other person effecting the arrest, who must then give them to the court or officer where the person arrested must appear in accordance with the provisions of this code.⁴

⁴ Moniruzzaman, *The Code of Criminal Procedure*, 4th ed. (Kamal Law Book Publications, 2014), pp. 42-45.

2.9 Police Power of Remand

When an inquiry can be finished in less than 24 hours, according to Section 167 of the, and when it cannot be performed in less than 24 hours. According to Section 167, a police officer must explain to a magistrate why an arrest without a warrant was made, why the investigation took longer than 24 hours, and why the officer thinks the accusation or information against the person is credible. Second, a copy of the case diary entries must be sent by the police officer to the magistrate (B. P. Form No. 38). (B. P. Police Rule No. 236). After considering the information in the case diary and the police officer's explanations, the magistrate will decide whether the person should be released right away or detained longer. Magistrates are required to adhere to this law. In the absence of any relevant rules, the Magistrate has become accustomed to parroting the police officer's forwarding letter's order for detention in either police custody or a jail. As a result of the Magistrates' inability to apply proper judicial judgment in light of subsections (1), (2), and (3) of Section 167 of the Code, there have been a great number of deaths and instances of torture in police custody.⁵

2.10 Rights When our Are Arrested

You must be informed of the following if you are arrested:

1. The justifications for your arrest must be disclosed (Fundamental Rights : Article 22 and Sec. 50 Cr. P. C.)
2. You have the right to read a warrant before being arrested.
3. You have the right to seek legal advice from any attorney of your choosing.
4. You must show up in front of the closest magistrate within 24 hours (Article 22 of the Constitution, Basic Rights). (Article 22 of the Constitution's Basic Rights)
5. It is your right to know if you can be freed on bond.⁶

⁵ Abdul Halim, *ibid*, p. 76.

⁶ *Ibid.*, Sec. 50.

2.11 Detention of an arrested person

According to Article 22 (2) of the Constitution, everyone who is detained and arrested shall appear before the closest magistrate within 24 hours of their incarceration, with the exception of the time needed to travel from the place of detention to the magistrate's court. However, if the investigation cannot be finished in that time limit, Section 167 of the Criminal Procedure Code gives the Magistrate the power to hold the detained person for longer than 24 hours. The accused may never be imprisoned for more than twenty-four hours without a special order from a magistrate, who may also order his imprisonment for a period longer than 15 days based on the charges. After the 15 days have passed, he must appear before the magistrate. He may issue an order for up to 15 days if there are good enough grounds for further detention in judicial custody (prison). Regardless of whether the criminal case against him is resolved, the total amount of time spent in custody cannot exceed 60 days. An order from a magistrate allowing for indefinite detention is unconstitutional. The accused might spend more than 60 days in judicial jail if he is unable to post bail throughout the investigation. The person who was arrested might be held until the trial is over if the crime is one for which bail is not permitted.

Chapter 3

ABUSE OF POWER BY POLICE DURING ILLEGAL ARREST

3.1 Abuse of Police Power of Arrest

Article 32 of the Constitution protects a person's fundamental right to life and liberty, which is violated by all arrests, whether they are made with or without a warrant. His rights to life and liberty can only be limited to the extent permitted by law and not otherwise, because under the relevant circumstances, arresting a person is necessary for the administration of criminal justice or the maintenance of peace and order. A formal warrant is required before making any arrests, though. The one exception is that police can make arbitrary and unconstitutional arrests thanks to Section 54 of the Criminal Procedure Code and Metropolitan Ordinances. In such cases, it is only possible to assess the legality of the arrests once the arrestee has appeared before an

appropriate court and a comprehensive investigation has been conducted. Until that time, the police are free to detain anyone they deem fit. Although it is possible under the law to penalize a police officer who unlawfully detains a person, this is an uncommon occurrence. This makes it easier for the police to detain someone without probable cause and disappear.⁷

In Dhaka alone, police detained more than 6069 people between April 18 and April 24, according to the Daily Star. "4775 of them were arrested under the Dhaka Metropolitan Police (DMP) Ordinance and convicted without ever appearing before magistrates, let alone having a chance to defend themselves," the newspaper claims. According to the report, the remaining 1,294 people were detained on different charges that had been previously filed with local police stations. Yet in the initial information report, their identities were not disclosed. In accordance with Criminal Procedure Code Section 54, they detained 612 people. 14 428 persons were apprehended between April 19 and April 25, 2004, according to "The Daily SangbadApril "'s 26 report citing DMP statistics. A total of 7, 785 individuals were detained by The police report that 166 people were detained without a warrant, 466 people were detained without a warrant under sections 54 and 151, 6 people were detained under the DMP Ordinance, 435 people were detained under section 6 of the DMP Ordinance, and 668 people were detained in special circumstances. Of them, only five had criminal records. On the eve of a "mass arrest," which is being carried out in broad daylight, police stations are allegedly conducting an open "business," according to the publication in the same issue.

3.2 Abuse Police Power of Arrest under Section 54, *The Code of Criminal Procedure, 1898*

- 1) A person cannot be detained under Section 3 of the Special Powers Act of 1974 by an officer of the law who has just arrested them under Section 54 of the code.
- 2) The person being detained and anybody else present at the time of the arrest must see the police officer's identification, and he or she must display it upon request.
- 3) The police officer must immediately after bringing the person under arrest to the police station write down the specifics of the offense, the circumstances surrounding the arrest, the source of information and the justification for believing it, a description of the location, the date and time of the arrest, the names and addresses of the people

⁷ [<http://www.bing.com>, Last visited on 25.05.2017]

- involved, and any knowledge he may have about the person's involvement in a cognizable offense.
- 4) If the police officer sees any signs of injury on the person being detained, he or she should note the reasons for the harm and take the person to the nearest hospital or government clinic for treatment. The doctor there should then sign a document stating that the person has been injured.
 - 5) Within three hours of bringing the arrested person to the police station, he must explain the circumstances of the arrest to the person in custody.
 - 6) Within an hour of taking the individual to the police station, the person's closest relative, if any, must be notified by phone or messenger that the person has not been detained at his home or place of business.
 - 7) The police officer must explain in his subsequent letter pursuant to Section 167(1) of the Code why the investigation could not be finished within 24 hours and why he believes the accusation or information against that person is well-founded when such a person is brought before the nearest magistrate as required by Section 61. He must also deliver a copy of the pertinent entries to the same magistrate.⁸

Also suspected of aiding the perpetrators are the Bangladeshi police. It is said that the police lessen charges, don't perform full investigations, and remove evidence. Instead, they take bribes and focus on other things. Many people were allegedly held by police on March 19, 2004, and were later arrested under CrPC section 54, according to a satellite TV program. To protect real culprits, they may even falsely accuse innocent people. An innocent businessman named Shah Alam was arrested and accused of killing Sundar Babu by a police official in Dhaka. He was supported by the government's prosecutor. Sundar Babu was given a death sentence notwithstanding the complainant's claims that he wasn't the killer who had been presented before the court. Shah Alam's wife argued that her husband was falsely charged in the case because he refused to pay a bribe to the relevant police officer. She further asserted that the case was contrived to serve the personal interests of the GP and the police, who were working to protect notorious criminal Sunder Babu. The Daily Bhorer Kagoj, March 16, 2003.⁹

⁸ Abdul Halim, *ibid*, pp. 72-73.

⁹ [http://www.academia.edu/15956132/The_State_of_Governance_in_Bangladesh_The_Capture_of_State_Institutions, Last visited on 23.05.2017]

3.3 Application for Remand and the Abuse of Power

The accused is allegedly involved in a cognizable offense, and a police officer requests that they be kept in custody so that they can be questioned. Even though sub-part (2) of section 167 does not explicitly say that "remand" may be given for the purpose of interrogation, it is common practice to place an accused person on "remand" solely for the purpose of questioning them or using interrogation to extort information from them. Because there is no appropriate standard for when the Magistrate should grant such requests and when they should be denied, both police officers and Magistrates are able to abuse the system. Police officers request unjustified remand in accordance with Section 167 of the Code when they are being prodded or directed to do so by the executive organ, or when they are looking to advance their own interests. A "parrot-like" order on the forwarding letter of the police officer permitting detention in either police custody or a jail has been utilized by the Magistrates in the absence of any clear guidelines. Supporters of police remand argue that it is a civil obligation because, without force, hard-core offenders won't give any indication. On the other extreme, it's typically believed that placing the detained person in police custody establishes beyond a reasonable doubt that the accused did not voluntarily provide the confession. Because the entire state apparatus is working against him, he cannot confess voluntarily, and as a result, the provision allowing for multiple police remands (even if the total is just for 15 days) entirely destroys the goal. The reason for this is that a person appearing before the magistrate has no assurance that he won't be returned to police custody before having served the required 15 days. As a result, the Magistrate is required to give justification for granting remand. Again, no one may be forced to testify against themselves, as stated in Article 35(4) of the Constitution. The Constitution's provisions are in conflict with Section 167 of the CrPC as a result. When this CrPC was authorized by the British government in 1898, our Constitution did not yet contain any fundamental rights. In light of the existing provision in article 26, the police remand provision appears to be illegal; this is primarily the conclusion of the High Court Division in the BLAST case, which is discussed below. We must wait until the Appellate Division of the Supreme Court issues its ruling on the matter, nevertheless, given that police remand is legal in the majority of democratic countries, including the United Kingdom.¹⁰

¹⁰ Abdul Halim, *ibid*, pp. 77-78.

Chapter 4

POLICE POWER ABUSE CONTROL AND PREVENTION

4.1 The screening and recruitment process

The police hiring process must go by the proper guidelines and criteria (Quah, 2006; Punch, 2000). The candidates must have their entire backgrounds thoroughly investigated, including any criminal history, educational history, career history, etc. If this is not done properly, people with mental problems or criminal histories can end up working for the police. For instance, Williams (2002) remembers a case in New Orleans, US, when a flawed and weak recruiting strategy allowed a woman with violent tendencies to join the police force. The government and police force should put in place sufficient checks and balances to get rid of flawed and dishonest hiring practices in order to resolve this issue.

4.2 Training and monitoring

After joining the team, it is crucial that the police officers receive training to advance their skills, understanding, and morals. Police officers should receive training in the use of weapons, dealing with criminals and drug dealers, unarmed combat, fundamental footwork, police procedures and regulations, national criminal legislation, and the foundations of inquiry in addition to physical training (Quah, 2006). The training should also address topics like integrity and corruption, as well as moral principles and departmental anti-corruption procedures. The training should be designed to alter the officers' perspectives about dishonesty, respect for the law, and corruption. In this regard, a lot of work should go into finding mentors and resources who are suitable and qualified. The training should be continuing so that police are taught not only anti-corruption strategies but also cutting-edge technologies and abilities that will improve their ability to fight crime.

4.3 Strong leadership

According to many experts, effective police corruption prevention begins with strong leadership that prioritizes vision and honesty at the top (Punch, 2000; Quah, 2006). In order to successfully fight corruption, a country needs strong leadership and a top-notch police force. For the officers to follow, the leadership of the government and the police force must be excellent. The police

department will reflect the leadership's dishonesty and corruption. Less police corruption is a result of effective leadership that values honesty. Effective leadership had a favorable impact on corruption levels in Singapore and South Africa, according to a research on police corruption in those nations (Quah, 2006; Newham & Faull, 2011).

4.4 Engaging the community

People need to be informed that the police are there to protect them and that they are not need to bribe them in order to receive the services to which they are legally entitled as law-abiding and tax-paying citizens. Also, they should be pushed to use regular letters, emails, phone calls, SMS, and other forms of communication to notify the appropriate authorities of any police misconduct. Also, the police department has to establish up 24-hour hotlines where concerned citizens can call to report police misconduct or corruption. In order to encourage the public to report police corruption and criminal conduct, the system for doing so should be simple and easy to use. It is also crucial for police spokespeople to regularly meet with local community leaders in person to share information and brainstorm solutions to security issues in general and police misconduct in particular. Therefore, it is important to support media initiatives that highlight civic obligations and rights while simultaneously exposing corrupt practices within the police force. To help kids understand the police's duties and responsibilities, schoolchildren should be taught about the police's role in protecting the community with honor and respect from an early age. Also, it is important to let the public know that they are not required to pay the police in order to receive the services to which they are legally entitled. They should be informed that paying a police officer is illegal and could lead to legal action at the same time. Flyers, the internet, radio, television, and other media are all possible ways to disseminate this kind of information. Because ICT increases service delivery efficiency and decreases face-to-face interactions, which lowers the risk of corruption, it can also significantly diminish corruption (Oye, 2012).

4.5 Using the stick-and-carrot approach

Police pay is relatively low, especially in developing nations, as compared to other public organizations, which is one of the causes of police corruption. Police officers are encouraged to ask for bribes because of the low pay in the force, which helps them pay for their family's personal costs like their kids' school fees. Some police officers use bribe-seeking and even criminal activity as a means of supplementing their meager pay. As was already mentioned, poor pay not only encourages corruption but also poses a significant barrier to enlisting qualified personnel in the force or service. Implementing fair and competitive pay scales, along with demands that the police force adopt strict and severe policy measures against individuals involved in corruption and firmly enforce the relevant laws, would be one way to address this issue. In the majority of developing countries, good policies are frequently formulated and enacted, but they are seldom put into practice because of institutional inefficiencies and corruption. It is crucial to use a thorough and institutional strategy when addressing the issue of corruption in the police force. In order to monitor police officer behavior and look into claims of corruption and improper behavior among police officers, it is crucial to develop an independent, transparent, and accountable internal affairs and anti-corruption unit. Similarly, high-performing officers should be acknowledged for their outstanding performance and promoted accordingly.

Chapter 5

Policing Ethics Context in Bangladesh

5.1 Ethics

The terms "policing ethics" are made up of the words "policing" and "ethics." I'll talk about ethics first, and then the police, after that. Yet Philosophy has a division called Ethics. Systematizing, defending, and advising principles of appropriate and inappropriate behavior are all part of ethics. In its investigation of "what is the best way for people to live" and "what behaviors are right or immoral in given circumstances," ethics is a subfield of philosophy. By defining terms like good and evil, right and wrong, virtue and vice, justice and crime, and so on, ethics aims to answer concerns about human morality in practice. Bioethicist Larry Churchill has written: "Ethics, understood as the capacity to think critically about moral values and direct our actions in terms of such values, is a generic human capacity"⁵. "Joe has strange ethics." Lillie an author said about nature of ethics-"We may define ethics as a normative science of the conduct of human beings living in societies- a science which judges this conduct to be right or wrong, to be good or bad, or in same similar way".

5.2 Policing Ethics

To effectively instill the values in the decision-making processes of police officers, a practical investigation of police ethics is required. Though they are put in a utilitarian perspective, this does not imply that philosophical questions should be disregarded. Schmallegger defines police ethics as the unique responsibility for upholding moral obligations and duties that are ingrained in police work. The categorical imperative was created in the 1700s by German philosopher Immanuel Kant. Categorical in this context refers to unconditional. He said that one should establish moral standards that are beneficial to both the individual and society at large. The evolution of policing ethics has drawn on Kant's concepts. Police uphold law and order and safeguard residents' lives and property, which might be viewed as universal principles. The "Greatest Happiness Principle," as it was known by English philosopher J.S. Mill in the 1800s, defined ethical behavior as activity that benefits society as a whole. The end justifies the means of Machiavelli and the golden mean of Aristotle are valid according to utilitarianism only if they serve the interests of the largest number of people. According to the utilitarian concept,

happiness is good, whereas misery is bad. American philosopher John Rawls believes that regardless of one's social or economic standing, everyone should be treated equally. He must treat everyone equally, including the wealthy and the less well-off, as well as celebrities and commoners. We could better grasp the idea of "policing ethics" if we took these philosophical issues into account.

5.3 Duty of Police

Every organization needs clear intentions, pledges, ambitions, and objectives. They are mentioned in the organization's mission statement. The following is the police's mandate:

1. Crime detection and prevention
2. Preservation of residents' lives and property by upholding the law
3. Maintenance of safety, law, and order
4. Compliance with rules and regulations
5. Protection of constitutional rights
6. Looking into issues and incidents
7. Improving residents' quality of life by encouraging a sense of security in both groups and individuals

Without community participation in setting policy priorities, the police cannot fulfill their mission. Involvement of the community is ensured by community policing, which also fosters a collaborative culture between the police and the community.

The following guidelines were provided by Robert Peel as the foundation for the police force:

1. Preventing crime and disruption is the police's primary responsibility.
2. Public support and the police's capacity to win and keep the public's respect are necessary for them to be able to carry out their duties.
3. Public regard and approval also refer to the public's eager collaboration.
4. The police must win and keep the public's trust by acting impartially toward the public and the law rather than by pursuing criminal activity. The police should make an effort to preserve a relationship with the populace that conveys the idea that the populace and the police are one and the same.

Crime and disorder-free areas are the true indicators of police effectiveness, not their outward presence. In order to regulate and prevent crime and disturbance, Peel's ideas placed a strong

emphasis on the relationship between the people and the police. Furthermore, Peel believed that the only way for the police to be effective in their work was for them to receive public support and cooperation without using violence or harsh legal penalties. It is now true that law enforcement cannot control crime and disturbance without the help and voluntarily provided cooperation of the public.

5.4 What do the law and ethics say and what Police done?

To successfully implement the criminal justice system, police must play the most important role. Police must be morally upright, sociable, and compassionate while carrying out their duties. The cops are accused of being corrupt and cruel frequently. Laws grant the police authority to carry weapons, use force, make arrests, hold people in custody, and search for people, objects, and vehicles. The police, like other state agencies, may be accountable for violations of human rights while carrying out their duty. When making an arrest, police officers frequently use physical force as authorized by the Code of Criminal Procedure (CPC). For instance, Section 46 of the CPC describes how to secure an arrest by using physical force, while Section 48 of the CPC describes how to break a door or window to make an escape while being arrested (Section.49). During making an arrest, using too much force is prohibited (sec 50). Sections 51, 52 and 53 give you the authority to search your body and confiscate your weapons. Section 51 also allows for warrantless arrest (section 54). In accordance with Sections 55, 58, 62, and so forth, police are required to report any arrests of vagrants made by officers. Inside national borders, though, there is debate on the role of the police in relation to immoral activity. The constitution that the nation established regulates various facets of interpersonal relationships. The right to live, work, own property, exercise one's freedom of speech, receive equal treatment under the law, be represented in court proceedings, and be produced in open court are all protected by the constitution of Bangladesh, which has taken due care to do so. These articles are found in clauses 27, 31, 32, 33, 34, 35, 37, and 43. When arrested within a day, among other things, have been added. Via a number of institutions and methods, the state has guaranteed to its citizens all those legal rights. In addition to section 24 of the Evidence Act of 1872, the police Regulation of Bengal (PRB), 1943 rule no. 280, rules 102, 103, 163, and 166 of the Code of Criminal Procedure (CrPC), 1898, also guarantee the right of the public. A confession made by an accused individual under duress or threat is not relevant, according to Section 24 of the aforementioned Act. Take a look at how

the general people views the police. It was the researcher who carried out the study. It was 2019 when this survey was carried out. The population between the ages of 15 and 79 comprised the study's target group, with the exception of the districts of Noakhali, Barishal, Feni, Dhaka, and Chittagong. For the study, almost 1000 participants were interviewed. The sample was created via quota sampling, with the quotas being the age, sex, regional, and municipal distribution of the target group. Using a computer-aided personal interview system, face-to-face interviews were done in 25 Bangladeshi communities (CAPI). The interviews took place from October 19 until November 8, 2019. On a 95% confidence level, the average margin of error for the entire set of results is 2.5 percentage units. According to the inclusion criteria, 45 distinct studies with 251 cases were included. According to data from 21 surveys, 65% of respondents believe that police brutality occurs because of a lack of morality and that officers harass innocent people in an unethical manner. Results from 75 studies showed that police do not carry out their duties correctly. If the cops are moral, crime will decrease by 75% nationwide. 52% of respondents thought political parties have influence over the police. Statistics from 13 studies showed that 8 out of 100 police are ethical, and a survey across a wide range of BD and transport/ industries revealed that 82% of drivers are required to pay fines to police on a weekly or monthly basis in order to avoid harassment from the police. Due to some police officers' unethical actions, even if they are leading multiple operations at the risk of their lives, the police force has an image crisis with the public. Yet, the general public has a negative opinion of the police. There are numerous causes. The primary cause of this unfavorable reputation is the practice of unethical, skewed, and amateur actions. Yet, due to a lack of morals, the police have engaged in numerous immoral, unsociable, and amateurish practices. Some of these information are available for public knowledge since they are printed in numerous newspapers, while others are kept secret. We may infer how biased and immoral the police are in the absence of morals from the news that has been disseminated. For instance, Transparency International claimed that Bangladesh's Police are the country's most crooked organization. According to Voice of America, charges against Bangladeshi police go back a long way. These include claims of extrajudicial killings, forced disappearances, kidnappings, and other atrocities. 12 . According to the BBC's source, the Bangla Daily Newspaper Jajaidin, "There is no crime in which the police are not implicated." I've compiled a list of some of the unethical police actions below with the aid of various reports from Bangladesh's daily mediaThe murder of Nusrat, which was proven to have been the catalyst

for the assassination of Sonagazi Moazzem Hossain, was a hot topic in 2019 across the nation. According to The Daily Sun, the inquiry supported the claims made against OC Moazzem. Specifically, they report After recording Nusrat's statement at Sonagazi Model Police Station, the former OC of that station was sued for posting a video of it online. Moazzem questioned Nusrat about the incident in a degrading and aggressive manner. He posted the footage on social media later. The principal of Nusrat's madrasa was arrested and then suspended on April 6 after she accused him of sexually harassing her in Sonagazi Upazila of the Feni region, according to reports. After this, he was allegedly supported by individuals at an examination facility where Nusrat was set ablaze. According to The Daily Protham Alo's story from June 12th, the police have filed a charge sheet in the name of the deceased person. The court judge expressed his surprise at the incident by remarking that it wouldn't be a huge deal in every country. The police have been accused of many things in the daily Jugantor article "Get the money," which was published on August 24, 2014. I'll only highlight one of the many incidents that were included. Badal Khan, a native of Saudi Arabia, was detained on January 3 by Sub Inspector (SI) Mashiur Rahman when he was conversing with a companion on the street in South Bishal of Darussalam police station. SI was first informed of Badal's complaint. After his arrest, Mashiur made a demand for cash. If you don't pay the money, Yaba and the money laundering case risk being exposed. Seven police officers, including two officers-in-charge of two police stations in Chattogram, were sued Wednesday for stealing Tk 23 lakh from a businessman by "threatening to murder him in crossfire." Yasin, 55, the owner of M/S Yasin Company in Chattogram City, filed a case with the court of Additional Chief Metropolitan Magistrate Mohiuddin Murad. The Daily Star, the best English-language daily in Bangladesh, reported on 24th October that a video depicting on-duty police officers harassing a young woman at a checkpoint in the capital has caused fury on social media. The woman was traveling alone and asked to have her handbag checked when at least two police officers were seen stopping a three-wheeled auto-rickshaw carrying her. A fight between the woman and the officers developed when the policemen began to use derogatory words. She was traveling late at night when she overheard police officers implying that she was a prostitute (you just left a hotel). She urged the police to remove the torch and inspect her handbag as they kept shining it in her face. She was still being intimidated by the policemen. One of the officers threatened to take the woman away when she objected to their immoral actions. The same newspaper adds that Paltan Police Station Officer-in-Charge

Mahmudul Haque has been suspended following rape charges. This is only one example of the immoral behavior of police officials. After promising to marry her and provide her a respectable job, he allegedly raped a woman. A police policeman was beaten up by locals, according to another English newspaper, the New Age, for allegedly pestering women. After detaining the woman on suspicion of cell phone theft, five railway police officers allegedly sexually assaulted her. The next day, police presented her to a court, proving her to have been arrested with five bottles of illegal Phensidyl syrup. I can provide other information as proof of the police's unethical and unlawful activities that is comparable to the aforementioned. For instance, 45-year-old Abu Bakkar Siddique, an accused in a case brought under the Data Security Act, passed away while in the care of the Tejgaon Industrial Area police station. A 10-month-old toddler was the subject of a police report. In order to intimidate witnesses and gain access to documents, highway police routinely accept bribes and other forms of extortion. Police are accused of extortion. Police in the capital were forced to pay a million taka in extortion. Threatening the case Police are charged with embezzling money from merchants.

Chapter 6

Milestone Cases and Directions

6.1 *BLAST and Others v. Bangladesh*

A 24-year-old university student perished on July 23, 1998, at the hands of the Detective Branch. He was allegedly tortured to death while being held under Criminal Procedure Section 54. The government was forced to address the problem of incarceration violence as a result of the tremendous public indignation it caused. The government creates a judicial investigative commission headed by Justice Habibur Rahman Khan to look into the incident. The commission altered Section 54 of the Code of Criminal Procedure. Yet, the issue was barely impacted by this. Within a few months, more people suffered torture, rape, and death while being held by the police. Following that, BLAST filed a Writ Petition in the Supreme Court's High Court Division contesting the arbitrariness of section 54 as well as remand and torture under section 167 of the Criminal Process Code. BLAST did this in conjunction with other concerned persons and groups. On April 7, 2003, a high court panel made up of Justice Md. Hamidul Haque and Ms. Justice Salma Masud Choedhury gave instructions to law enforcement about the detention of suspects, including their arrest, detention, and treatment. The directives were broken down into 15 points. In order to avoid arbitrary arrests and fatalities in custody, the court further recommended that changes be made to the procedural laws relevant to Sections 54 and 167. The court also demanded that the government implement the decision as quickly as possible.

Police abuse of power goes beyond merely placing someone in custody without a warrant due to suspicion or under the pretense of preventive detention. With a detention order issued by the Magistrate in accordance with Section 3 of the Special Powers Act, 1974, it is permissible to ask for remand or to place the arrested individual in police custody for questioning. Even though the law only permits the arrestee to be kept in police custody for a short period of time. In contravention of Article 35 of the Constitution, most police officers employ physical force and brutality when an investigation cannot be completed in 24 hours, ostensibly to elicit information or coerce a confession from the arrested person.

Following the troubling and depressing situation in Bangladesh, as well as the public outcry over rising police abuses and custodial violence, including the deaths of Rubel, Shima, Chowdhury,

and Arun Chakroborti, BLAST filed a writ petition before the Supreme Court of Bangladesh with the assistance of other rights organizations. The High Court then issued fifteen instructions concerning the arrest, custody, remand, and treatment of detainees to be carried out by law enforcement authorities and magistrates on April 7, 2003, in the case of BLAST v. Bangladesh.

6.2 *Saifuzzaman v. State & others*¹¹

In the petitions, it is said that the detainees MD Rafiqul Islam Kotwal and Liakat Sikder are both students at Dhaka University and that Sikder is the president and vice president of the Bangladesh Chattra League. They have a long history in politics and take an active part in Bangladesh Chattra League politics. They have contributed significantly to all movements, championing the causes of liberty and democracy, and in achieving these goals, they have loyally served their party. On February 25, 2002, as the detuns and other Bangladesh Chattra League activists were leaving Sudha Sadan, Dhanmondi police detained them in accordance with Section 54 of the Code of Criminal Procedure in relation to DB office GD. The inmates were delivered to the Chief Metropolitan Magistrate, who placed them on police remand for a week and recommended their imprisonment under the Special Powers Act of 1974.

The High Court Division makes the following recommendations that will greatly lessen harassment of citizens in conformity with sections 54, 60, 61, and 167 of the Code and Article 33 of the Constitution. The advice offered in light of this circumstance is as follows:

1. Each police officer who makes an arrest must immediately draft a memorandum of the incident, get the suspect to sign it, and record the date and time of the arrest.
2. As soon as feasible but no later than 6 hours after the arrest, the arresting police officer must inform the person's closest relative and, in the absence of a relative, a friend designated by the arrestee, of the time and place of the arrest and the location of the detention facility.
3. The reason for the arrest, the name and address of the person who reported the crime to the police or filed the complaint, as well as the names and information about the friend or relative to whom the news of the arrest was given, as applicable, must all be recorded in the diary, along with the information about the police officer who is holding the arrestee.

¹¹ 56(2003), DLR, 342.

4. When the arrestee is brought before the magistrate for the purpose of issuing the magistrate's order under Section 167 of the Code, copies of all documents, including the arrest memorandum, a copy of the information or complaint relating to the commission of a cognizable offense, and a copy of the diary entries, should be sent to the magistrate.
5. If the person who was arrested is put on police remand, he or she must be brought before the magistrate when the time of the remand expires. If the term of the remand has already expired, the person cannot be transferred to judicial custody without first appearing before the magistrate. Before requesting the arrestee's detention in either police or judicial custody, pursuant to Section 167(2) of the Code, a case against the individual must first be registered.
6. If a person is brought before a magistrate with a petition for his detention in any custody but fails to produce a copy of the diary entries described in item No. (iv) above, the magistrate must release him in accordance with section 169 of the Code after collecting bail from him.
7. The Magistrate will not agree if a police officer requests that an arrested individual who is already in custody be shown arrested in a particular case.
8. If the police forwarding report indicates that the arrest was made with the intent to place the arrestee in preventative detention, the magistrate may not impose a detention order for the person in judicial custody.
9. Before issuing any orders pertaining to the accused under Section 167 of the Code, the Magistrate before whom the accused is summoned must make sure that these requirements have been completed. These regulations are meant to lessen police abuse and harassment of those who have been detained.

If an application is made in this Court by the aggrieved party, and the police officers and magistrates fail to meet the aforementioned requirements within the time range listed below, they will be punished for contempt of court. In order to prevent harassment and any violations of a person's fundamental rights as protected by Part III of the Constitution, police personnel and magistrates must strictly uphold the regulations.

6.3 Moinul Haque (Md.) and others vs. State

Due to their status in the social order and economic circumstances, women and children are among the most vulnerable members of society. Women are impacted by torture in different ways. There is no doubt that women experience many different types of discrimination and exploitation. Cultural norms and pervasive discriminatory actions support gender-based violence against women. Gender-based violence is being recognized as cruel. The media has made the public aware of the serious problem of rape and death in custody. The stigma attached to rape and other forms of sexual harassment deters many women from reporting crimes to the authorities. Violence in institutions against children does occur from time to time. No child shall be charged or convicted for any offence concurrently with an adult, according to Section 6 of the Children Act of 1974. If a child is charged with committing a crime alongside an adult, the case is divided and sent to the juvenile court or a court that is qualified to perform the duties of a juvenile court. Contrary to the prohibitions of the 1974 Children Act, kids are regularly kept in cells with adults and regular criminals. Infractions such as violence against women and children are addressed under the Prevention of Occupation of Women and Children Act of 2000. It is maybe the only piece of legislation with a separate penal section specifically for crimes committed while an individual is in custody and with vicarious criminal culpability when a person is raped while an individual is an individual. Unexpectedly, there isn't a specific clause that addresses abuse of children in custody. The offences 27 under this legislation are heard by a Special Tribunal. It is significant that this Legislation acknowledges the authorities' responsibility for the lady in custody through vicarious liability. In *Moinul Haque (Md.) and others v. 28 State*, the Special Tribunal established by this Act convicted and condemned to death three police officers who were charged with raping and killing Yasmin Akter. High Court Division and later the Appellate Division of the Supreme Court both upheld the Special Tribunal's decision. Shima Chowdhury, an 18-year-old who was the claimed victim of a rape and was in police custody in October 1996, passed away at the Chittagong Prison in February 1997 while she was being held in "protective custody" while an investigation. Four police personnel were cleared of all charges in a trial court in Chittagong in July 1997 rape of Shima Chowdhury. According to reports, the judge criticized the prosecution for making a weak case. To lessen the suffering of young offenders, the court has recently been heavily involved. In case 30 of *State vs. Md. Roushan Mondal elias Hashem*, the upper judiciary was horrified by the way the subordinate

courts handled juvenile offenders. The higher court highlighted the need to keep juvenile offenders separate from adult offenders at all times, from the time of their arrest through their trial and imprisonment. The court came to the conclusion that the International Declaration, Rules, Covenants, and other relevant international instruments are geared toward the reformation and rehabilitation of young criminals, as well as the establishment of facilities for proper education and upbringing of youth, after reviewing pertinent international instruments on child rights and juvenile justice. The objective is to provide a child-friendly legal system if a child or adolescent does come into conflict with the law. Article 40 of the 1989 Convention on the Rights of the Child must be applied when dealing with minors who are thought to have broken the law or violated criminal statutes. The juvenile justice system must take into account the requirement to both safeguard the child's rights and promote the child's reintegration into society. The court noted that although the Children Act of 1974 is a progressive piece of law, it does not meet the standards set by pertinent international agreements like the CRC. The court ruled that because Bangladesh joined the Convention in 1990, it is required to incorporate its provisions into national laws and, as a result, must create new legislation in conformity with the Convention's guidelines. a CRC. The High Court Division of the case *State v. Metropolitan Police Commissioner, Khulna and others* gave the following instructions in 2008:

- The best interests of the child must always come first and foremost in all matters pertaining to that child, and this Court, along with all other courts and state departments, functionaries, and agencies dealing with children, are required to keep this in mind.
- As quickly as possible, the parents of children who are taken before the police while being detained or in some other situation, must be informed. To report to the Court on matters pertaining to children, an immediate probation officer appointment is required. Bail should be regarded as the norm, and custody or incarceration should only be used as a last resort in unavoidable situations.
- It is important to take into account the viewpoints of the child, their parents, guardians, other family members, and social welfare organizations when making decisions about the child's custody, care, protection, and well-being.
- Considering the child's age and gender, detention and jail should only be used as a last resort when dealing with children, and only for the shortest amount of time.

- At all times, efforts should be made to reintegrate the child into the family and prepare him or her to contribute positively to society. On April 24, 2008, the Court took action on its own after reading an article in the daily Star titled "8-year-old sued, sentenced to prison for drug trafficking."

Because to the detrimental effects of corporal punishment on a child's mental and physical state, as well as their stature, the High Court Division has forbidden it at educational institutions in Bangladesh. The Court ruled that laws permitting corporal punishment, including whipping, under the Penal Code, Code of Criminal Procedure, Railways Act, Cantonment Pure Food Act, Whipping Act, Suppression of Immoral Traffic Act, Children Rules, 1976, and any other law permitting whipping or caning of children or other individuals should be immediately repealed by appropriate legislation as it violates the fundamental rights guarantee and is a cruel and degrading punishment.

6.4 *Aftabur Rahman v. State*

The aforementioned case was opened at the request of one Md. Abdul Halim Khan SI of police on a FIR with the officer in charge, based on the allegation that there was an exchange of fire between two rival groups of students from Surju Sen Hall and Jasimuddin Hall from 13.10 hours to 14.00 hours; as a result, one unidentified person, approximately 30 years old, was shot and killed at the entrance gate of Surju Sen Hall, one Ali Hossain student of MA

At Kotwali PS, the accused petitioner was held and falsely accused. Without even bringing the petitioner before the magistrate, the police withheld all relevant information submitted and the motion for the accused petitioner to be detained for seven days at Kotwali police station. Without providing a reason, the Chief Metropolitan Magistrate authorized the accused petitioner's one-day detention in police custody. Until the accused is brought before the magistrate, who then issues the remand order Even if the criminal is not presented before the magistrate, he has the authority to issue the remand order. Before a detention order is issued, the accused must be brought before the Magistrate, regardless of whether they are in police or court custody. However, if a request to that effect is made and it is taken into consideration in the interest of the investigation, the magistrate may issue the necessary order against the accused

upon his or her presentation to him by the police as well as a new order of remand in accordance with the law and in light of the observation made earlier.

6.5 *State v. Wazir Khan*

The eight respondents in the case were accused of taking part in Dr. Muhammad Iqbal's kidnapping, according to the claims. After receiving a letter from one Pirzada Abdul Qadir Shah to the Deputy Superintendent of Police Tank stating that four people were engaged in the kidnapping of Dr. Muhammad Iqbal, the local police questioned the eight respondents. The eight respondents are improperly connected to the evader Ajab Khan. The eight emergency personnel were detained and are remain in custody without being granted bail. The following issues were decided by the Supreme Court:

1. Which police officer was detained?
2. Who issued, on what grounds, and how many remands were issued?
3. How long was the accused's remand in police custody, if at all?
4. If the respondents submitted a bail application, why was it rejected?
5. What were the prosecution branch's suggestions if the matter was forwarded to them?
6. Is there any legal proof in the court file indicating that the respondents—or any of them—were involved in criminal activity?
7. If the case against the respondents is still pending, the District Magistrate may evaluate and review the record in accordance with section 435 of the Criminal Procedure Code 1898 and issue any directives he or she considers appropriate.

Immediately provide the District Magistrate the police report and a copy of the order. No greater harm could be envisioned than the sense of injustice and unease that the erroneous arrest of a person and his incarceration on unjustifiable remands inflict on the public. A magistrate is functioning as a judge when he or she orders someone to be held in police custody. The entire purpose of section 167 of the Criminal Procedure Code of 1898 would be defeated if magistrates were permitted to issue remand orders in police stations where the accused admittedly did not have access to a lawyer or their relatives. This would amount to a feigned performance of crucial legal obligations affecting the citizen's freedom. It would be an abuse of the judicial system for an accused person to fail to appear before a magistrate who is unaware of the charges against

him, and for the magistrate to then order his remand in custody while he is out of the country and unable to communicate freely, without his subsequent appearance in court.

Chapter 7

CONCLUDING REMARKS

7.1 Findings

The Police Act of 1861, an antiquated law more adapted to colonial administration than to policing in a contemporary, democratic nation, should be repealed by the government of Bangladesh. In the absence of a new police statute, inappropriate meddling in police affairs will persist, according to almost unanimous agreement among the police, military, pertinent facets of civil society, and funders. The Police Ordinance of 2007 should be brought before parliament for discussion and review even though it is not perfect and does not completely replace the existing law.

If a new law is not implemented, it is nearly guaranteed that the police will continue to be a harsh and dishonest institution and incompetent at handling even the most elementary law and order issues. The military will have more room to participate in political decision-making as a result. No matter what happens to the Police Ordinance of 2007, if there is enough willingness and ability, some required reforms can be made regardless of the current legal framework.

7.2 Recommendations

In light of the debate just had, specifically the urgent actions, mid-term activities, and long-term activities that need to be carried out:

1. Without a doubt, our police force lacks the most recent technology for conducting investigations, but criminals use this technology to hide their previous illegal activity. In developed nations, police are better equipped than criminals.
2. The government must take action to amend the law to comply with directives and orders from the Supreme Court. Regardless of whether a judgement by the Supreme Court exercising writ jurisdiction can change procedural law, it is better for the government to acknowledge the need to make necessary changes in the long-standing legislation while

taking the actual situation into account. To ensure police openness and accountability, a national committee comprised of representatives from civil society, registered rights groups, professionals, and journalists should be formed to monitor police actions and the execution of Supreme Court directives.

3. As was already mentioned, it is simpler to say than to do to follow the directions. In the absence of a well-thought-out plan and preparation with participation from all parties involved, implementing Supreme Court directions and guidelines will be all but impossible.
4. The public's understanding of fundamental human rights and the proper police conduct for detained individuals and the general public must be improved. This requires the involvement of government institutions, rights organizations, and electronic and print media.
5. Creating private jails, particularly for young people, women, and other criminals convicted of misdemeanor offenses: Private prisons are a well-known concept. Many countries now have private prison systems in place.
6. The police, inferior courts, and the executive branch of government are all accused of corruption. Without the assistance of the administration and judiciary, police cannot continue to commit corrupt crimes.
7. The police must not be utilized for political ends: The administration must refrain from using the police for political ends. If the government keeps acting in this way, it won't be able to control the police, it'll become reliant on them, and people will keep getting hurt by their protector.
8. Modifying police and government mindsets. Bringing the culprits to justice is the police's and the state's grave duty and obligation, and both parties will be held accountable for any mistakes made in carrying out this duty.
9. The public release of Supreme Court directives and instructions, as required by the court in *BLASTY and others v. Bangladesh*, where the government was required to put the directives into action within six months. In addition to distributing the guidelines, the minister of home affairs and chief metropolitan magistrates are responsible for verifying that each police officer and magistrate is properly adhering to them.

10. Planning magistrate and police training. In the D. K. Busies case, the Supreme Court of India stressed the importance of police training and orientation to uphold and not violate people's human rights.
11. To establish observational cells in various districts to look for police misuse of power.
12. To establish observation stations in various districts to check for police abuse of section 54 and 167 of the CRPC.
13. In order to reduce corruption, police benefits like pay, rations, and burns should be significantly enhanced.

7.3 Conclusion

In a society where the rule of law is upheld, no one can escape the law. Everyone is required to follow the law's restrictions. Cops are not any different. The role of the police is to provide a sense of security among common citizens and to protect lives and property when those of citizens are in danger. According to national legislation, the police are accountable if they don't carry out this duty. In Bangladesh, the police are held accountable by both internal and external methods. Internal methods for holding specific police officers accountable for their actions are outlined in the Police Act of 1861. External instruments for upholding police accountability include the judiciary, the Human Rights Commission, human rights Groups, and the media. Authorities must be mindful of the fact that the law prohibits the use of torture and other cruel or inhumane treatment of detainees when interviewing them and looking into a crime when using this legal prerogative. The public's trust in the police, however, must be rebuilt in order to address the pervasive violations of sections 54 and 167 of the Code of Criminal Procedure. When an arrestee is in their custody, police have a duty to defend their right to life and personal liberty because they do not have the authority to kill anyone, not even a murderer. The state must control its employees and hold accountable anyone who abuses the basic rights of persons who have been arrested by torturing them or physically abusing them or subjecting them to violence while in custody. Authorities must be mindful of the law's prohibitions on the use of torture and harsh or inhumane treatment of detainees when exercising this legal power and questioning suspects in criminal cases. Acting within the boundaries of the law and adopting a balanced stance are easier said than done. All of the orders and suggestions made by the Bangladesh Supreme Court in the cases of BLAST and others v. Bangladesh and Saifuzzaman v. State are

meant to strike the previously described balance. Nonetheless, no matter how carefully written judicial instructions are, they are insufficient to deal with this problem. Everyone concerned will need to work together and develop a well-thought-out plan in order to make the Supreme Court's instruction and recommendations a reality.

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