

Laws Relating to Arrest without a Warrant in Bangladesh, India and Pakistan: A Comparative Analysis

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Abstract

For decades, across the world, there has been a question regarding the legitimacy of preventive arrest or arrest without warrant by the law enforcement authorities. The preventive arrest is basically done to prevent an individual from committing a cognizable offence in future. An arrest of a person means temporary deprivation of human rights and if an arrest is made without a warrant, it may be arbitrary which violates the fundamental human rights. Unlike the Constitutions of India and Pakistan, the Constitution of Bangladesh did not initially guarantee the exercise of the power of preventive detention under any situation. However, on 22 September 1973, the Constitution of Bangladesh was amended thereby empowering the national assembly to enact laws relating to preventive detention, without stipulating the safeguards essential for extenuating the severity of such laws. Furthermore, the 1973 Constitutional Amendment neither confines the power of preventive detention to formally declared periods of emergency nor specifies a maximum time-frame for keeping an individual in preventive custody. Based on the review of the relevant legal documents, the paper discusses some aspects of arrest without warrant and argues that: a) human rights of citizens must be protected, safeguarded, and ensured in any situation; b) weakness of the constitutional and other provisions concerning preventive detention has facilitated the excessive and unjust use of preventive detention in Bangladesh, India and Pakistan. The study suggests that the rule of law should be adhered to not only in any judicial process but also in any administrative process following Dicey's theory.

Keywords: Arrest without warrant, human rights, detention, police officer

Introduction

The expression 'arrest' is not defined in the Code of Criminal Procedure, 1898 or any other law for the time being in force in Bangladesh. In ordinary sense, an arrest is a moderation of the freedom of an individual. The expression 'warrant' is an array addressed to a definite individual directing him to detain an accused and to produce him before the court. The laws concerning the arrest of persons without warrant in Bangladesh are contained under section 54 of the Code of Criminal Procedure, 1898. This section gives police an unfettered power to arrest anyone without warrant (Faruque, 2013). "The arrest of a person means depriving him of his liberty and incapacitating him to exercise various rights under different laws while in captivity (*BLAST v Bangladesh, 2003*)". "The

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breach of this right by administrative authorities, mainly by law enforcing authorities is a common fact in Bangladesh” (Akkas, 2011). It is always acceptable and logical to arrest a person convicted but before any sort of conviction by a competent court, nobody should be detained. But in extraordinary circumstances, police may be given the power to detain with sufficient safeguards so that they cannot, in any way, violate the rights of the arrested person. In Bangladesh it has been found that this power has been misused quite frequently with impunity by the law enforcement authorities. This happens mainly because of ambiguity in the wordings of section 54 of the Code of Criminal Procedure, 1898. In India, the provisions of arrest without warrant are contained in sections 41, 41A, 41B of the Code of Criminal Procedure, 1973. The amended provisions on the arrest without warrant in India provide better protection to citizens from the arbitrary arrest by arbitrary application of law than those of Pakistan and Bangladesh. In Pakistan, the same old colonial law about arrest is applied which is similar to that of Bangladesh. The citizens of Pakistan and Bangladesh have been suffering enormously because of the arbitrary application of the law which gives the law enforcing agencies unfettered power to arrest a person without warrant. The members of the law enforcement agencies must not abuse the power given to them by law and must not use the power in an arbitrary manner. Rule of law only in judicial process cannot prevent the arbitrary use of law; rather, rule of law in administrative process is prerequisite to prevent the abuse. The law which gives unfettered power to police to arrest anybody without warrant must be updated with better safeguard to the rights of the citizens in India, Bangladesh and Pakistan.

Conceptualizing arrest without a warrant

In view of the fact that the recognition of the Universal Declaration of Human Rights by the General Assembly of the United Nations on 10 December 1948, human rights have been a very striking subject matter of dialogue in the global. The human rights organizations have been functioning all throughout the globe to be firm on human rights in diverse countries. Human rights are not cramped to any particular country. “The human rights day is observed wide-reaching regularly and the whole human being is at liberty to have the benefit of these rights without any moderation irrespective of color, sex, race, language, political, religion or other view, state or communal origin, material goods, birth or other position” (Hamid, 1994). These rights ought to be cosseted from being abused by repressive rulers and people. Jacques Maritain says,

“The human person possesses rights because of the very fact that it is a person, a whole, a master of itself and its acts and which consequently is not merely a means to an end but an end which must be treated as such.....these are things which are owed to man because of the very fact that he is a man” (Sarkar, 1973).

Although there found arrest without warrant associated laws unswervingly or circuitously in all the countries of the globe, nevertheless there is no common meaning of arrest without warrant due to the dissimilarity in the application of law. “The British colonized Indian sub-continent after their victory at the Battle of Plassey” (Sarkar, 1973). “In order to consolidate their power they included, for the first time, the provision of preventive detention in the East India Company Act, 1784”. In *R. vs. Halliday*, “the expression ‘preventive detention’ was used for the first time in Britain”. The word ‘preventive’ means “restraining a probable or possible activity, which is apprehended from a would-be detune on grounds of his past activities” (Smith, 1994). The word ‘detention’ means “keeping in confinement” (*Sunil Kumar Samaddar vs. Superintendent, Hooghly Jail, 75 Cal WN 51*). The governments of Bangladesh, India and Pakistan have passed laws concerning preventive detention in their parliaments in different times. The term ‘preventive detention’ implies confinement with the sake of obstructing an individual from doing something which is to be expected to jeopardize public tranquility or security or cause public chaos (*Alamgir vs. the State, AIR 1957 Pat 285*). In *A. K. Gopalan vs. State of Madras*, it was held that “there is no authoritative definition of the term ‘preventive detention’.... It is not a punitive but a precautionary measure”.

“Preventive detention is an unusual gauge whereby the executive is permitted to impress curb upon the freedom of an individual who may not have committed a offense but who, it is apprehended, is about to commit acts that are prejudicial to public safety” (AIR 1950). “Preventive power permits detention of a person only on suspicion in the mind of an executive authority without trial and without conviction by a court. Preventive detention is not to punish an individual for any wrong done by him but to prevent him from acting in a manner prejudicial to the state” (Patel, 1993). It is a pre-trial captivity. Preventive detention is a grim violation upon the individual freedom of an individual, for the plain grounds that, unlike usual arrest or custody, preventive detention is carried out devoid of any examination or following due process of law (Frankowski, 1992).

Preventive detention is an unusual mechanism of arrest without any sagacity because it imposes boundaries on the freedom of a national to the level that an individual who has not committed any offence may be alleged that he is about to commit an offence, which has been defined as prejudicial. As David H. Bayley said, “A law of preventive detention sanctions the confinement of individuals in order to prevent them from engaging in forms of activity considered injurious to the community and the likelihood of which is indicated by their past actions” (Hassan Arif, 1997). The power of arrest without warrant implies that deterrence is the mainly efficient loom to manage offense. The purpose of section 54 Cr PC, 1898 is to provide the widest powers (or, unlimited power) to the law enforcing agencies in cognizable cases subject to the restriction that the powers have to be used realistically and carefully. “The words ‘may arrest’ imply that the powers of arrest is unrestricted” (Bayley, 1964). In this view police exploit the power of section 54 and arrest by being politically provoked and apply a manacle normally which is the breach of human rights. In the guise of preventive detention law and

section 54 of the Code of Criminal Procedure, 1898 the executive authority applies unrestricted power concerning arrest and detention. This research will judge the legal foundation of preventive detention laws and study the level to which human rights are violated owing to arbitrary and capricious application of preventive detention laws and will as a final point put essential recommendations to prevent the exploitation of the laws.

Preventive Detention Laws in Bangladesh, India and Pakistan

Preventive detention laws are quite similar in Bangladesh, India and Pakistan with different mode of application. “The laws relating to arrest without warrant were first implanted in Indian sub-continent in 1818 by the Bengal State Prisoners Registration iii. The presidencies of Madras and Bombay made similar regulations in 1819 and 1827. The Government of India Act, 1935 and Defense of India Ordinance provided for scope of preventive detention” (Devi, 2012). “Afterward it was made the Defense of India Act 1939 and continued until the time of World War II. The Defense Act, 1915 also provided the scope of preventive detention. The Indian Constitution empowers the parliament to legislate on preventive subject to the limitation laid down by Article 22” (Akkas, 2009). In India the preventive detention law was passed in 1950 in the name Preventive Detention Act, 1950. Later, it was amended and replaced by the Maintenance of Internal Security Act, (MISA) 1971. Preventive detention laws were also inserted in the legal history of Indian sub- continent by Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) 1974, National Security Act 1980, Essential Services Maintenance Act (EMS) 1981, and finally by the adoption of Terrorist and Disruptive Activities (Prevention) Act, 1985. “In Pakistan preventive detention laws were introduced under the covers of various Ordinances/Acts such as Public Safety Act, (Amendment)1950, Public Safety Ordinance, 1952 and lastly the Security of Pakistan Act, 1952 (Halim, 1998). The Constitutions of Pakistan of 1956, 1962 and 1973 empowered the parliament of Pakistan to enact preventive detention laws” (Halim, 1998).

Initially there was no provision for preventive detention or provisions relating to arrest without warrant in the Constitution of Bangladesh. Article 33 was substituted by section 3 of the Constitution (Second Amendment) Act, 1973 (Act No. XXIV of 1973) which at present deals amid the rights of an arrested person. It provides three constitutional rights upon a person arrested. “Sub articles (1) and (2) of the Constitution deal with (a) he or she cannot be detained in custody without being informed, as soon as may be, of the grounds of his or her arrest, (b) he or she has the right to be produced before the nearest magistrate within 24 hours and cannot be detained in custody beyond the period of 24 hours without the authority of the magistrate, (c) he or she has the rights to consult and be defended by a legal practitioner of his or her choice” (Article 33, The Constitution of the People’s Republic of Bangladesh). “Sub articles (3), (4), (5), (6) deal with three constitutional safeguards for detention. They are: (a) review by an Advisory Board, (b) right to communication of grounds of detention and

(c) right of representation against the detention order” (Article 33, The Constitution of the People’s Republic of Bangladesh).

Article 33(5) of Bangladesh Constitution, article 22(5) of Indian Constitution and article 22(5) of Pakistan Constitution provides that “the detaining authority must communicate, as soon as possible, to the detenu about the grounds of detention”. Here ‘as soon as’ means a reasonable period of time. According to section 8 sub section 2 of the Special Powers Act, 1974 of Bangladesh, “the grounds of detention order must be communicated within 15 days from the date of detention” (*Nazir Ali vs. Secretary Home Affairs*, 1990). “Where the person arrested is illiterate, the grounds may be communicated to him verbally” (*Mrs. Samirannasa vs. Govt. of Bangladesh and others*, 1994 p.206). “Where he is literate, they are to be made in the language, which the detenu can understand. It is the right of the arrested person to engage counsel who will help the person to defend him.” Article 33(1) of the Bangladesh Constitution provides:

“the detaining authority must afford the detenu the earliest opportunity of making representation against his detention. The person arrested has a right to have purposeful interview with a legal practitioner out of the hearing of the police or jail staff though it may be within their presence” (*Juma Khan vs. Govt. of Pakistan*, 1957).

The main procedural law relating to criminal procedure in Bangladesh is the Code of Criminal Procedure, 1898 which comprehensively contains the provisions of arrest without warrant. Section 54 of the code contains nine grounds in which a police may arrest without warrant. Accordingly,

“any police-officer may, without an order from a magistrate and without a warrant, arrest - firstly, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned; secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house breaking; thirdly, any person who has been proclaimed as an offender either under this code or by order of the Government; fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; fifthly, any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; sixthly, any person reasonably suspected of being a deserter from the armed forces of

Bangladesh; seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in Bangladesh; eighthly, any released convict committing a breach of any rule made under section 565, subsection (3); ninthly, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.” (Section.54, CrPC, 1898)

The simple reading of section 54 transpires that the police power to arrest without warrant is abused under section 54 of the Code of Criminal Procedure, 1898 on the ground that it empowers police to arrest on ‘suspicion’ where, it is usually established, the accused is subjected to make suffer for eliciting declaration of guilt and information about his accomplices and other offences. The judgment in *BLAST vs Bangladesh*, as mentioned before, was the first foremost inspection of the police power under these sections. The judgment also presented course of action popularly known as guidelines for the police to follow and these were projected to trim down the extent and prospect of the abuse and maltreatment of police-power.

The Abuse of the Legal Process in Bangladesh

The grounds of arrest of a person without warrant under section 54 are the most controversial as the various terms used in the section have not been defined. The grounds include: (a) any person who has been concerned in any cognizable offence, (b) against whom a reasonable complaint has been made, (c) credible information has been received, (d) a reasonable suspicion exists of his having been so concerned. If any person is involved in any cognizable offence, he can be arrested without warrant and there is no safeguard as such in this ground. As far as the phrase ‘reasonable complaint’ is concerned, there remains a huge ambiguity as to which complaint can be termed as reasonable. There comes the discretion of the officer in charge of the police station to determine the reasonableness of a complaint and where the provision is being abused. The same applies to the reasonable suspicion and credible information as these phrases have not been defined in the code. It is learnt from the experience that police are very lenient in considering every complaint as reasonable and every information as credible information.

The wording of the section 54 is tentative and the police officers use this as an opportunity to arbitrarily arrest people and deny their right against unlawful arrest. It is experienced that police arrest persons without warrant and place them under a police remand and subjected them to torture which eventually may cause death. This arbitrary and whimsical arrest violates the fundamental rights enshrined in the constitution and various other rights under International Law.

Rulings of the Superior Courts for the Application of Sections 54 and 167 of CrPC in Bangladesh

BLAST, Ain o Salish Kendra, Shonmilito Shamajik Andolon and a number of persons filed a writ petition in the High Court Division of the Supreme Court of Bangladesh challenging the ill-treatment of police powers to arrest without warrant under section 54 of the Code of Criminal Procedure (CrCP) and the mistreatment of powers concerning captivating the accused into remand popularly known as police custody under section 167 of the CrPC. “The petitioners referred incidents of gross mistreatment of power, including allegations of custodial death, torture and inhuman treatment, especially the killing of a young student, Rubel, in remand after arrest under Section 54 of the CrPC” (www.blast.org.bd). “The petitioners argued that law enforcing agencies regularly misuse the powers granted under sections 54 and 167 of the CrPC, and further that these provisions suffer from elusiveness and allow for arbitrary exercise of power” (www.blast.org.bd). The petitioners contended that the court should utter safeguards to avert or restrict police mistreatment of powers and capricious measures by Magistrates, which amount to violations of fundamental rights of citizens’, i.e. “rights to life and liberty” (Art.32 of the Constitution of Bangladesh), “to equal protection of law” (Art.33 of the Constitution of Bangladesh), “to be treated in accordance with law (Art.33 of the Constitution of Bangladesh) and to be free from cruel, inhuman and degrading treatment and punishment (Art.35 of the Constitution of Bangladesh). “The High Court primarily issued a *Rule Nisi*, and upon full hearing delivered judgment on 07.04.2003, observing that Sections 54 and 167 of the CrPC are not fully consistent with constitutionally guaranteed freedoms and safeguards. The Court laid down a comprehensive set of recommendations regarding necessary amendments to both sections of the CrPC, along with the Police Act, the Penal Code and the Evidence Act, and directed that these should be acted upon within six months. It also laid down a set of fifteen guidelines with regard to exercise of powers of arrest and remand” (www.blast.org.bd). The guidelines are as follows:

- “No Police officer shall arrest anyone under section 54 for the purpose of detention under Section 3 of the Special Powers Act, 1974.
- A police officer shall disclose his/her identity and show his/her ID Card on demand to the person arrested or those present at the time of arrest.

- A record of reasons of arrest and other particulars shall be maintained in a separate register till a special diary is prescribed.
- The concerned officer shall record reasons for marks of injury, if any, on the person arrested and take him/her to nearest hospital or government doctor.
- The person arrested shall be furnished with reasons of arrest within three hours of bringing him/her to the Police Station.
- If the person is not arrested from his/her residence or place of business, the relatives should be informed over the phone or through messenger within one hour of bringing him/her to Police Station.
- The person concerned must be allowed to consult a lawyer of choice or meet nearest relations.
- While producing the detained person before the Magistrate under Section 61 of the CrPC, the police officer must forward reasons in a forwarding letter under Section 167 (1) of the CrPC as to why the investigation could not be completed within twenty four hours and why s/he considers the accusation and information to be well founded.
- On perusal of the forwarding letter, if the Magistrate satisfies him/herself that the accusation and information are well founded and materials in the case diary are sufficient for detaining the person in custody, the Magistrate shall pass an order of detention and if not, release him/her forthwith.
- Where a person is released on the aforesaid grounds, the Magistrate shall proceed under 190(1)(c) of the CrPC against the officer concerned under section 220 of the Penal Code.
- Where the Magistrate orders detention of the person, the officer shall interrogate the accused in a room in a jail until a room with glass wall or grille on one side within sight of lawyer or relations is constructed.
- In any application for taking accused in custody for interrogation, reasons should be mentioned as recommended.
- The Magistrate while authorizing detention in police custody shall follow the recommendations laid down in the judgment.
- The police officer arresting under section 54, or the Investigating Officer taking a person to custody or the jailor must inform the nearest Magistrate about the death of any person in custody in compliance with these recommendations.
- The Magistrate shall inquire into the death of any person in police custody or jail as per the recommendations.”

The Government had filed an appeal (Civil Appeal No. 53/2004) against impugned judgement of the High Court Division setting forth fifteen guidelines with regard to exercise of powers of arrest and remand. The Appellate Division of the Supreme Court of Bangladesh in its appellate judgement after a break of 12 years also reiterated the same proposition that the sections 54 and 167 of the CrPC are inconsistent with the provision of the constitution. The Appellate Division of the Supreme Court of Bangladesh also issued some guidelines to be followed by police officer while making an arrest under section 54 of the Code of Criminal Procedure, 1898 and these guidelines are very much essential to reduce the excesses of section 54. The guidelines for the law enforcement agencies are as follows:

- “A law enforcement officer making the arrest of any person shall prepare a memorandum of arrest immediately after the arrest and such officer shall obtain the signature of the arrestee with the date and time of arrest in the said memorandum.
- A law enforcement officer who arrests a person must intimate to a nearest relative of the arrestee and in the absence of his relative, to a friend to be suggested by the arrestee, as soon as practicable but not later than 12(twelve) hours of such arrest notifying the time and place of arrest and the place in custody.
- An entry must be made in the diary as to the ground of arrest and name of the person who informed the law enforcing officer to arrest the person or made the complaint along with his address and shall also disclose the names and particulars of the relative or the friend, as the case may be, to whom information is given about the arrest and the particulars of the law enforcing officer in whose custody the arrestee is staying.
- Registration of a case against the arrested person is *sine-qua-non* for seeking the detention of the arrestee either to the law enforcing officer’s custody or in the judicial custody under section 167(2) of the Code.
- No law enforcing officer shall arrest a person under section 54 of the Code for the purpose of detaining him under section 3 of the Special Powers Act, 1974.
- A law enforcing officer shall disclose his identity and if demanded, shall show his identity card to the person arrested and to the persons present at the time of arrest.
- If the law enforcing officer finds any marks of injury on the person arrested, he shall record the reasons for such injury and shall take the person to the nearest hospital for treatment and shall obtain a certificate from the attending doctor.

- If the person is not arrested from his residence or place of business, the law enforcing officer shall inform the nearest relative of the person in writing within 12 (twelve) hours of bringing the arrestee to the police station.
- The law enforcing officer shall allow the person arrested to consult a lawyer of his choice if he so desires or to meet any of his nearest relation.
- When any person is produced before the nearest magistrate under section 61 of the Code, the law enforcing officer shall state in his forwarding letter under section 167(1) of the Code as to why the investigation cannot be completed within twenty-four hours, why he considers that the accusation or the information against that person is well founded. He shall also transmit copy of the relevant entries in the case diary B. P. from 38 to the Magistrate.”

The superior courts in Bangladesh in this landmark judgement upheld the sanctity of the human rights and fundamental freedoms of the people while setting forth the guidelines which the law enforcement agencies must observe. Now, it is the paramount duty of the legislature to amend the provisions of these laws in accordance with the rulings of the superior courts and advance the cause of justice, human rights and fundamental freedoms.

Legal Provisions of Arrest without Warrant in India

Like the Constitution of Bangladesh, clause (1) of Article 22 of the Indian Constitution which is one of the fundamental rights in Part III, declares that “no person who is arrested shall be detained in custody without having informed, as soon as maybe, on the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice.” Clause (2) of Article 22 states that every person arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest excluding of course the time necessary for the journey from the place of arrest to the court of magistrate. The clause further declares that no such person shall be detained in custody beyond the said period without the authority of a magistrate.

The main adjective law relating to criminal procedure in India is the Code of Criminal Procedure, 1973 which broadly contains the provisions of arrest without warrant. The provision of arrest without warrant is dealt with under sections 41, 41A, 41B of the Code. The terms used in the provision of arrest without warrant is very clear and leaves no room for police officer to abuse it. Section 41 of the code contains nine grounds in which a police may arrest without warrant which are as follows-

Sub-section 1 section 41 of the code states that

“any police officer may without an order from a Magistrate, and without a warrant, arrest any person- (a) who commits, in the

presence of a police officer, a cognizable offence; (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, if the following conditions are satisfied, namely:-

(i) The police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) The police officer is satisfied that such arrest is necessary-

(a) to prevent such person from committing further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the police officer; or

(e) as unless such person is arrested, his presence in the court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing provided that a police officer shall, in all cases where the arrest of a person is not required under the provision of the sub-section, record the reasons in writing for not making the arrest.

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with fine or without fine or with death sentence and the police officer has reason to believe the information that such person has committed the said offence. (c) who has been proclaimed as an offender either under this Code or by order of the State Government; or (d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or (e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or (f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or (g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been

punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or (h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or (i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.”

As per sub-section 2 of section 41 of the code:

“no person concerned in any non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exist of his having been so concerned, shall be arrested except under a warrant or order of a Magistrate.”

As per section 41A of the Code of Criminal Procedure, 1973:

“the Police officer shall, in all cases where the arrest of the person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such place as may be specified in the notice.”

As per sub-section 2, “where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.”

As per sub-section 3:

“where such person complies, and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the said notice unless, for reasons to be recorded in writing, the police officer is of the opinion that he ought to be arrested.”

As per sub-section 4:

“where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such order as may have been passed be a

competent court on this behalf, arrest him for the offence mentioned in the notice.”

As per section 41B of the Code of Criminal Procedure, 1973:

“every police officer while making an arrest shall bear an accurate, visible and clear identification of his name which will facilitate easy identification; prepare a memorandum of arrest which shall be-

- (i) attested at least by one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;
- (ii) countersigned by the person arrested.

In addition every police officer while making an arrest shall also have to Inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.”

A close scrutiny of the above provisions reveals that the provisions of law authorizing the law enforcement agencies to arrest without warrant in India is updated with the latest amendment being in 2010. The latest amendment to these provisions in India is timely and upholds the principles of justice and human rights. In India, a police officer cannot arrest a person whimsically because Provision of Section 41 safeguards against such arrest. A police officer before arresting any person without warrant has to satisfy that he believes that the complaint, information and suspicion are true and other conditions such as arrest is necessary to prevent him from further committing the offence, to prevent him from tempering with the evidence and also preventing him from intimidating other witnesses of the case. These conditions are framed with a supreme intention which is to dissuade the police officers from colorable exercise of power.

Legal Provisions of Arrest without Warrant in Pakistan

The provisions of arrest without warrant in Pakistan are similar to that of Bangladesh since the Code of Criminal Procedure of Pakistan is the same colonial law that exists in Bangladesh. The Code of Criminal Procedure, 1898 of Pakistan in section 54 contains the provision of arrest without warrant which is identical to that of Bangladeshi law. Section 54 of the code contains nine grounds in which a police may arrest without warrant. Accordingly,

“any police officer may, without an order from a magistrate and without a warrant, arrest—firstly, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned; secondly, any person having in his possession

without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; thirdly, any person who has been proclaimed as an offender either under this Code or by order of the provincial government; fourthly, any person in whose possession anything is found which may reasonably be suspected to be a stolen property and who may reasonably be suspected of having committed an offence with reference to such things ; fifthly, any person who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ; sixthly, any person reasonably suspected of being a deserter from the armed forces of Pakistan; seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Pakistan which, if committed in Pakistan, would have been punishable as an offence; and for which he is, under any law relating to extradition or otherwise, liable to be apprehended or detained in custody in Pakistan; eighthly, any released convict committing a breach of any rule made under section 565, sub-section (3); ninthly, any person for whose arrest a requisition has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears that the person might lawfully be arrested without a warrant by the officer who issued the requisition.”

Though India has amended its criminal procedure code so as to safeguard the rights of citizens from arbitrary arrest but in Bangladesh and Pakistan the law is still the same as it was in 1898. In Pakistan, the British colonial law on arrest without warrant is still enforced jeopardizing the rights and freedoms of citizens. These un-amended provisions of law on arrest without a warrant in Pakistan are hindrances to building a society where human rights and freedoms are respected and protected.

Conclusion

There are significant differences between the safeguards against arrests without warrant in India, Bangladesh and Pakistan. In India, the law regarding arrest without warrant protects and safeguards the rights of the arrestee in a better and more effective manner than that of Bangladesh and Pakistan. The provisions of arrest without warrant in Bangladesh and Pakistan need to provide better protection to the rights of the citizens. The corruption of the Bangladeshi police is sometimes experienced by ordinary people in the country. It is sometimes not the law but money that is behind arrests and illegal detentions. The guilty may escape

through payments to the police with the innocent substituted in their place. According to Dicey, the rule of law is a must both in judicial and administrative processes of applying and enforcing laws. For example, if a man is wrongfully arrested by police, he can file a suit for damages against the concerned members of the police force as if they were private individuals. The rule of law is very important in administrative process of enforcing law. The law enforcement agencies must provide training to its members so that the law is applied not in an arbitrary manner but in a sound and reasonable manner. The judiciary must be vigilant to inquire about the persons arrested without warrant by police officers and take actions if anybody is arrested arbitrarily. Laws should be enacted where the accountability of the members of the law enforcement agencies are ensured so that people feel safe that they will not be subjected to arbitrary application of laws.

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