

CONSTITUTIONAL RIGHTS AGAINST ARBITRARY ARREST AND DETENTION: THE CASE OF BANGLADESH

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ABSTRACT

Right against arbitrary arrest and detention is one of the important elements of human rights emphasized by numerous international human rights instruments. It is an important aspect of personal liberty of individuals and therefore, every democratic state has accepted the principle of the right against arbitrary arrest and detention and its acceptance is found in the specific provisions of the written constitutions of different countries of the world. Like the constitutions of other democratic countries, the Constitution of Bangladesh has guaranteed the right against arbitrary arrest and detention as a fundamental right. Nevertheless, the violation of this right by the executive authorities, particularly by the law enforcing agencies is a common phenomenon in Bangladesh. In violation of this right the power of arrest without warrant granted by the Code of Criminal Procedure is frequently misused.

This paper analyses the constitutional safeguards as to arrest and detention as well as the provisions of the Code of Criminal Procedure taking into account the interpretations of the Supreme Court of Bangladesh in numerous cases. It also concentrates on the relevant provisions of international human rights instruments and case laws from the Indian jurisdiction.

INTRODUCTION

The word 'arrest' when used in its ordinary and natural sense means the apprehension or restraint or the deprivation of one's personal liberty to go where he or she pleases. When used in the legal sense in the procedure connected with criminal offences, an arrest consists of taking into custody of another person under the authority empowered by law, for the purpose of holding or detaining him or her to answer to a

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criminal charge and preventing the commission of a criminal offence.¹ In other words, 'arrest' means restraining the liberty of a person so as to compel obedience to the order of a court of law, or to prevent the commission of crime, or to ensure that a person charged with or suspected of a crime may be forthcoming to answer to it.²

Arrest is in fact an essential aspect of criminal justice system and it has a great bearing on the law and order situation of a country. It is beyond doubt that police is under a legal duty and has legitimate right to arrest a criminal and to interrogate him or her during the investigation of an offence with a view to solve the crime.³ The protection of individuals from oppression and abuse by the police and other law enforcing officers is indeed a major interest in a free society.⁴ In the case of *Nanadini Satpathy v Dhaani* (1978)⁵, quoting Lewis Mayers, the Supreme Court of India stated:

*To strike the balance between needs of law enforcement, on the one hand, and the protection of the citizen from oppression and injustice at the hands of law-enforcement machinery, on the other, is a perennial problem of statecraft. The pendulum over the years has swung to the right. Even as long ago as the opening of the twentieth century, Justice Homes declared that 'at the present time in this country there is more danger that criminals will escape justice than that they will be subject to tyranny'. As the century has unfolded, the danger has increased.*⁶

In fact, arbitrary arrest is always a matter of great concern in any society and therefore the 'importance of limiting the power of governments to deal with citizens in an arbitrary manner is a common thread running through the history of political and legal thought'.⁷ In England this idea was given the concrete form through the Magna Carta of 1215 which states:

¹ RatanLal & Dhirajlal., *The Code of Criminal Procedure*, Y V Chandrachud ed, 15th edn, Wadhwa and Company, Nagpur, 1997 (reprint 2000)), at p. 57.

² Wharton's *Law Lexicon* as cited in A C Sen (ed), *Mitra's Legal and Commercial Dictionary*, Eastern Law House, Kolkata, 1979, p.77.

³ *Saifuzzaman v State* (2004) 56 DLR 324 at p. 330.

⁴ *In Re Fried* 161F 2d 453, 465 (2d Cir 1947).

⁵ *Nandini Satpathy v Dhaani* (1978) AIR (SC) 1025.

⁶ See also *Saifuzzaman v State* (2004) 56 DLR 324 at p. 331.

⁷ P, Bullock., *Constitutional Limits on Arbitrary Arrest and Detention*, Honours Dissertation for the Bachelor of Laws, University of Adelaide, Australia, 2005, at p. 2.

*No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.*⁸

In the eighteenth century, the French Declaration of the Rights of Man and of the Citizen states:

*No person shall be accused, arrested, or imprisoned except in the cases and according to the forms prescribed by law. Any one soliciting, transmitting, executing, or causing to be executed, any arbitrary order, shall be punished.*⁹

Both the historical documents recognised the notion that there should be a right against arbitrary arrest and imprisonment or detention. In 1948 the right against arbitrary arrest and detention has been recognised by the *Universal Declaration of Human Rights* which states that '[n]o one shall be subjected to arbitrary arrest, detention or exile'.¹⁰ Thereafter, *International Covenant on Civil and Political Rights* 1966 (ICCPR), declares:

*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*¹¹

Given the adverse impact of arbitrary arrest on the personal liberty of persons the right against arbitrary arrest and detention has been guaranteed by the written constitutions of different democratic countries around the world.

In Bangladesh, the right against arbitrary arrest and detention has been emphatically recognised by the Constitution in Art 33(1) & (2), which declares:

- (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

⁸ *Magna Carta* 1215, Clause 39, at <http://www.bl.uk/treasures/magnacarta/translation/mc_trans.html> (last visited on March 16, 2011).

⁹ *Declaration of the Rights of Men and of the Citizen*, 1789, Art 7 at <<http://www.hrcr.org/docs/frenchdec.html>> (last visited on March 16, 2011).

¹⁰ *Universal Declaration of Human Rights* 1948, Art 9.

¹¹ *International Covenant on Civil and Political Rights* 1966, Art 9(1).