Amendment of Sections 54 & 167 of Cr PC is necessary to protect Human Rights.

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For decades, successive governments in Bangladesh have failed to curb serious human rights violations arising from the use of legislation and widespread practices in the law-enforcement and justice system which violate international human rights standards. These violations include torture, deaths in custody; arbitrary detention of government opponents and others; excessive use of force leading at times to extra-judicial executions; the death penalty; sporadic attacks against members of minority groups; and acts of violence against women. According to Amnesty International "Death in custody, torture, arbitrary arrest and other human rights violations routinely ignored by government"

In this Article I would like to highlight the torture and deaths in custody and the misuse of provisions of section 54 & 167 of Cr PC and how we can relive from it.

Provisions for Arrest
Safeguards may be suggested for ensuring the liberty of the citizen and enforcement of the fundamental rights as guaranteed in the Constitution.

In section 54 of Criminal Procedure Code it is found that Police can exercise the power abusively. There is nothing in this section which provides that the accused be furnished with the grounds for his arrest. It is the basic human right that whenever a person is arrested he must know the reasons for his arrest. There is a contradiction between Constitution and the provision of Cr PC. Section 54 states a police officer is not required to disclose the reasons for the arrest to the person whom he has arrested but Clause (1) of Article 33 of the Constitution provides that the person who is arrested shall be informed of the grounds for such arrest.

No time limit has been mentioned in the Article 33 of Constitution but the expression "as soon as may be" is used. This expression "as soon as may be" does not mean that furnishing of grounds may be delayed for an indefinite period.

Unfortunately the police officers do not follow the provision of Constitution. Constitution is the supreme law of the country and shall prevail over any other law. It is the duty of every one in the country to adhere to the provisions of the Constitution.

Role of High Court
These issues were come into question in a reputed writ petition, [55DLR 363(HC) BLAST and others Vs Bangladesh and others; 23BLD 115(HC) 1] where it was mentioned by the learned Justices that Compensation can be obtained for torture or death in the police custody.

While the learned Justices were discussing the fact of the case, they suggested the Govt. to amend the provisions of Sec 54 & 167 of Cr PC and thus they gave some directions to the Govt. from which some important directions are mentioned below:

Directions

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

2) A police officer shall disclose his identity and if demanded, shall show his identity card to the person arrested and to the persons present at the time of arrest.

3) He shall record the reasons for the arrest and other particulars as mentioned in recommendation A (3) (b) in a separate register till a special diary is prescribed.

4) If he finds, any marks of injury on the person arrested, he shall record the reasons for such injury and shall take the person to the nearest hospital or Government doctor for treatment and shall obtain a certificate from the attending doctor.

5) He shall furnish the reasons for arrest to the person arrested within three hours of bringing him in the police station.

6) If the person is not arrested from his residence or place of business, he shall inform the nearest relation of the person over phone, if any or through a messenger within one hour of bringing him in the police station.

7) He shall allow the person arrested to consult a lawyer of his choice if he so desires or to meet any of his nearest relation.

8) When such person is produced before the nearest Magistrate under section 61, the police officer shall state in his forwarding letter under section 167 (1) of the Code as to why the investigation could not be completed within twenty four hours, why he considers that the accusation or the information against that person is well-founded. He shall also transmit copy of the relevant entries in the case diary B.P Form 38 to the same Magistrate.

9) If the Magistrate is satisfied on consideration of the reasons stated in the forwarding letter as to whether the accusation or the information is well-founded and that there are materials in the case diary for detaining the person in custody, the Magistrate shall pass on order for further detention in jail. Otherwise, he shall release the person forthwith.

10) If the Magistrate release a person on the ground that the accusation or the information against the person produced before him is not well-founded and there are no materials in the case diary against that person, he shall proceed under section 190 (1) (c) of the Code against that police officer who arrested the person without warrant for committing offence under section 220 of the Penal Code.

11) If the Magistrate passes an order for further detention in jail, the Investigating officer shall interrogate the accused if necessary for the purpose of investigation in a room in the jail till the room as mentioned in recommendation B (2) (b)* is constructed.

12) In the application for taking the accused in police custody for interrogation, the Investigating officer shall state reasons as mentioned in recommendation B (2)(c)*.

13) If the Magistrate authorizes detention in police custody, he shall follow the recommendations contained in recommendation B (2)(c)(d)* and B(3) (b) (c)(d)*.

14) The police officer of the police station who arrests a person under section 54 or the Investigating officer who takes a person in police custody or the jailor of the jail, as the case may be, shall at once inform the nearest Magistrate as recommended in recommendation B (3)(e)* of the death of any person who dies in custody.

15) A Magistrate shall inquire into the death of a person in police custody or in jail as recommended in recommendation C (1)* immediately after receiving information of such death.
Amnesty International's Report on Bangladesh '2003
Amnesty International highlighted the provisions of section 54 of Cr PC and drew the
attention on the ruling of High Court Division of Bangladesh Supreme Court regarding the
section and it gave a suggestion to the Govt. of Bangladesh in the Amnesty International's

High Court ruling for safeguards against torture
On 7 April 2003, the High Court announced its judgment on a writ petition in public
interest filed before the court in November 1998 by three Bangladeshi human rights
organizations and five concerned individuals following the death of a man in police
custody in July 1998. The petition sought mandatory guidelines to prevent torture in
custody after arrest under Section 54. The judgment restricts arbitrary use of administrative
detention law including the Special Powers Act. It makes it mandatory for the police to
inform the family members of anyone arrested; for the accused to be interrogated by an
investigation officer in prison instead of police interrogation cell, and behind a glass screen
so that his/her family members and lawyers can observe whether or not he or she is being
tortured; and for the detainee to receive medical examination before and after remand into
custody. It empowers the courts to take action against the investigating officer on any
complaint of torture if it is confirmed by medical examination. It directs the government to
amend relevant laws, including Section 54, within six months to provide safeguards against
their abuse, and recommends raising prison terms for wrongful confinement and malicious
prosecution.

Concerning the use of Section 54
Establish clear and enforceable safeguards against abuse of Sections 54 of the Code of
Criminal Procedure and other administrative detention procedures resulting in torture.
Ensure that the magistrates do not ignore safeguards against unlawful detention when
ordering a prisoner's remand into police custody; to that effect, ensure that the prisoners
are physically produced before the magistrates when police request a prisoner's remand
into custody, and ensure that the magistrates actively take steps to ascertain whether or not
the detainee has been tortured, taking care not to prejudice the detainee's safety, for
example, by asking questions in the presence of the detaining police officers.
Investigate every allegation of torture through an impartial and independent inquiry to
identify perpetrators of torture according to international standards.
Ensure that all perpetrators of torture and those whose negligence has facilitated torture
are brought to justice without delay.
Make public all reports of previous commissions of inquiry into allegations of torture and
any such future reports.
Provide compensation to torture victims or their families.
Invite the Special Reporters of the United Nations Commission on Human Rights on Torture
to visit Bangladesh.
Amend Bangladeshi law to reflect the provisions of the international human rights
instruments to which Bangladesh is a party.
Implement the Principles on the Effective Investigation and Documentation of Torture and
Other Cruel, Inhuman or Degrading Treatment or Punishment
Implement the recommendations of the UN Special Reporters on torture to the General
Concluding Remark
The implementation of these recommendations would be a decisive and welcome step towards the fulfillment of Bangladesh’s human rights obligations under international human rights treaties to which Bangladesh is a state party. These include the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women.

Reference:
*The Constitution of the People Republic of Bangladesh.
*The Code of Criminal Procedure, 1898 (Act No. V of 1898)
*55DLR 363(HC)
*23BLD 115(HC) 1
*Amnesty International's Report on Bangladesh '2003