

Remedy Against Unlawful Arrest and Detention: A Legal Analysis

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Received 12-03-2022	Abstract: Arbitrary arrest and detention by law enforcing agencies has remained a persistent feature of our criminal justice system. This practice creates a great problem. It is contrary to the right of freedom and liberty of a person who is being arrested and detained unlawfully. Where the police are the protectors of the people, their misuse of power by unlawful arrest and detention introduces a dark chapter. It's a misery for innocent people who are the victims of this abusive practice. It's a shame for an independent country and an obstruction for ideal democracy as well as rule of law. Under the threshold of the government, the law enforcing agencies entertain this abusive practice. They pretend to act legally but these arrests are illegal which are done by them in the guise of legal formula. The main theme of Preventive detention is to prevent anti-social and subversive elements from imperiling the existence and welfare of states and now it is abused in every time by law enforcing authority. The independence of judiciary is also vitiated by these when an unlawful arrest is done by the executive. The unlawful arrest is a black hole not only to judiciary but also for a government to sustain and to rule successfully. The role of National Human Rights Commission (NHRC), protest against illegal arrest and detention, suspension of corrupted lawful authority can be combined to our legal system for its effective implementation.	Keywords: Arbitrary, Arrest, Detention, Democracy, Abusive, National Human Right Commission (NHRC), Implementation.
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INTRODUCTION

"Our hopes for a more, just, safe and peaceful world can only be achieved when there is universal respect for the inherent dignity and equal rights of all members of the human family."

Phumzile Mlambo-Ngcuka

(UN Women Executive Director)

Human rights are inherent in nature and it can be claimed by any person for the very reason that he is a human being and without any none can live as human being. By birth a man confers these rights irrespective of their race, color, sex, language or political or other opinion. Personal liberty is the fundamental right of every human being and it can be curtailed for the interest and security of the state and nation. However such right is curtailed by unlawful arrest and detention. Since it is based upon presumption, the power is misused by the law enforcing agencies and it is a violation of human right. This practice spreads throughout the world and the 3rd World countries like-Bangladesh, Sri-Lanka, India exercise this abusive practice indiscriminately which is a threat for the liberty of the common people. The economic and social right of a person is being violated by unlawful arrest. To stay in custody for a long time under preventive detention without any trial has become a common practice in Bangladesh and the innocent people has become the victim of these unlawful activities by the authority.

Background

As a democratic country our government fails to provide constitutional right to the people

and it's a shame where the police holds a vast power and these power is misused by them. The worst situation arises when an innocent person is being arrested unlawfully. From the social perspective, the general people in the society look down upon on him whether he was in custody lawfully or unlawfully. For an innocent man it becomes tough to being stable under this social condition and it is quite impossible to give back his previous condition. As a citizen he has the constitutional right to live in society with proper dignity .To prevent the abuse of the process of the court our government should take proper steps against the biased and corrupted authority who destroyed the life of an innocent under the guise of legal implication.

Aims and Objectives

- To know the scope and limitations of the police authority in respect of arrest and detention.
- Identifying the abusive exercise of police authority in respect of arrest and detention.
- To show how this unlawful practice vitiates the life of an innocent and how human right is being violated by it.
- To determine Legal remedy against these abusive exercise.
- To show the role of judiciary against these abusive practice and to establish effective mechanisms for these.

Research Questions

- How an unlawful arrest affects the life of an innocent person?

- Whether the provisional requirements followed by the police in arrest without warrant or not? What are the drawbacks?
- Is it possible to punish those people in law enforcing agencies who misuse the power by unlawful arrest?
- What are the remedies against these unlawful arrest and detention? Whether it is sufficient or not?
- Whether Judiciary has inactive role to solve the problem or not? How their role can be effective to find out the difficulties and to solve the problem?

RESEARCH METHODOLOGY

Research Approach

Though the study is primarily qualitative in nature, both qualitative and quantitative approaches will be used for validity and reliability. In order to propose a standard "Remedy against Unlawful Arrest and Detention" a qualitative study of laws and practices will be held. An overview of Bangladeshi laws practices will be made and compares with International standards. I will employ quantitative approach to collect primary information regarding the research problem and to access the real need of the remedy of these innocent people in Bangladesh.

Sources of Data

Necessary data will be collected from both primary and secondary sources. The secondary data will be collected from relevant books, journals, articles, research reports, official publications, thesis, dissertations etc. Primary data will be collected from legislations.

RESULTS

The research is a reflection to show the critical analysis of abusive practice by our law enforcing agencies from socio-legal perspective. It's the duty of any lawful authority to act within limitation and with reasonable care. But this has been totally abused by unlawful arrest and detention. It has a severe effect in a person's life and makes the life miserable. It's the shame for the state and a barrier to exercise a peaceful democracy.

DISCUSSION

In this research, I want to discuss the power of the police and its limitation in the view of arrest under National law as well as International application. Case analysis are important here to show the abusive exercise of

power. Also the impact of unlawful arrest and the violation of human rights are observed here. And in the last phase, I want to describe the role of Judiciary as an effective mechanism to reduce this abusive power as well as to indicate other mechanism for its effective implementation.

Scope and Limitation of Arrest and Detention:

"The power to arrest –to deprive a citizen of liberty– must be used fairly, responsibly, and without bias." **Loretta Lynch**

Basically, by way of arrest right of a citizen is being curtailed and infringed. In everywhere of the world, there is provision of arrest so that, the fundamental right of a person must not be curtailed wholly. In Bangladesh there are provisional requirements for arrest in The Code of Criminal Procedure, 1898 as well the Constitution to protect the right of the citizen. Arrest has also International obligation to protect human rights.

Arrest

The term arrest means seize someone by legal authority and take him into custody. An arrest is a procedure in criminal justice system. It seems-the restraining and seizure of a person whether or not by physical force by someone acting under authority (as a police officer) in connection with a crime in such a manner that there is reasonable under the circumstances for the person to believe that he or she is not free to leave. The term **Reasonable grounds** is being misused everywhere.

Detention of Arrest

The word 'Detention' is synonymous to custody, imprisonment, confinement etc. Especially for political reason, when a person is arrested and put it into prison it means detention. Usually it is a short period of confinement. When it seems that a person has a possibility to do crime or there is a reasonable apprehension of being associated with any crime, then the police arrests him in suspicion and keeps him into custody for a shorter period-it also seems preventive detention. But it becomes unlawful when a person is being kept into custody without any trial for a long time. In most cases, an innocent person becomes the victim of these unlawful preventive detention.

Difference between Arrest and Detention

The main difference lies between these two whether a person is charged with crime or not.

When a person is charged for a crime, then he can be arrested. Within next 24 hours he has to be produced before a magistrate. In case of arrest, a person can seek bail.

However, a person is detained under reasonable suspicion though a crime may or may not be committed by him. He may be questioned or investigated by police authorities in custody during the time. After this procedure he would be released. So, it is usually for short time and bail is not applied here.

Detention is generally seen as a lesser than Arrest.

The National Practice

Most of the countries in the world has its own legislation of criminal law. Arrest is the most common feature here. Arrest is being made when there is fear or apprehension of violation of peace and tranquility and security of a society. But the procedure must be followed to arrest a person. So, the legislation indicates the manner, the scope and limitation of arrest.

Arrest under Warrant and its Limitation

Section-46 to 53 of the Code of Criminal Procedure, 1898 determines it.

A person can be arrested by police officer or other person by touch or confine the body. When a person forcibly resists or attempts to evade the authority can take necessary steps so that he can't escape.

But, there is no right to cause death of a person who is not accused of an offence punishable with death or with transportation for life.

This is an effective weapon here to curtail the abusive power of the police. When it is necessary to give barrier the authority must use their power in a reasonable way. This limitation protects the right of a man.

When the police attacked without warning, they can't get defense. A famous case *Suarez de Guerrero vs Columbia*, shows the limitation of the police. In this case, 7 persons lost their lives as a result of the deliberate action of the police which was intentional. Moreover, the police was apparently taken without warning to the victims and without giving them any opportunity

to surrender to the police petrol or to offer any explanation of their presence or intentions. No evidence showed that action taken by police was necessary in their own defense or to prevent the escape of the persons concerned.

The limited use of force is also the criteria in arrest generally.

The person who is to be arrested has entered into a place or resides in a place necessary facilities must be given to him to ingress there for searching.

The lawful authority has given power to break the entrance where there is an apprehension of escaping the person to be arrested.

But condition lies here in case of **Breaking open zanana**. When the owner of the house is a pardanseen lady(according to custom), before breaking open the apartment, reasonable facilities need to be given to her through notice that she is at liberty to withdraw.

The police or lawful person has power to break open doors and windows for his liberty if he would be obstructed at the time of his duty to arrest.

There is a condition that forbids the authority to exercise unnecessary restraint. The reasonable barrier needs to be applied to him so that he can't escape.

In case of search of arrested person it must be done by lawful authority and the things that would be found from him must be kept in safe place.

When the lawful authority searches a woman, it must be done with strict regard to decency and obviously by another woman.

There is a provision that directs to seize explosive weapons from the arrested person and must deliver it in proper authority.

It is observed from the discussion that, the police have obviously power to arrest that is criminal but the power must be applied properly by maintaining the provision. To arrest any person it must be kept in mind that, he is also a human being like them.

The Scope and Limitation of Arrest without Warrant

Section-54 of the Code of Criminal Procedure describes the power of the police to arrest without warrant and its limitation. This provision is misused abruptly.

Under nine situation arrest without warrant can be made:

- When there is reasonable suspicion that a person may commit that act or any credible information has been received against him.
- When any house breaking elements were found on him without any lawful excuse.
- When a person is declared as an offender by the government.
- When a person is reasonably suspected to commit an offence by getting stolen property from him.
- When any person obstructs a police officer while in execution of his duty or he has escaped or attempt to escape from lawful custody.
- When any person reasonably suspected of being deserter from the armed forces of Bangladesh.
- When a person had done any acts in any foreign country that seems a crime in Bangladesh or there is any reasonable suspicion that he was associated with that offence.
- When any released convict committing a breach of any rule made under section-565(3).
- When any requisition has been received from another police-officer for arresting any person and when the reason for arrest is lawfully specified.

Where there is provision for arrest without warrant the authority cannot go beyond these. These nine requirements show that, without these criteria arrest is unlawful without warrant. So, these procedure must be followed by the authority with lawful manner and with due care.

Preventive Detention and Its Constitutional Safeguards

Preventive detention means the detention the aim of which is to prevent a person from doing something which is likely to endanger the public peace or safety or causing public disorder. Preventive detention is a pre-trial process. It is not to punish any person rather it is to prevent him from any prejudicial acts. To prevent the abuse of the process of the authority our constitution takes

steps here by imposing Article-33. It deals with the right of an arrested person. The requirements are given below-

Sub article- (1) and (2) deals with-

- A person can't be detained without informing him the grounds of arrest.
- The authority must produce him before the magistrate within 24 hours and he can't be detained in custody more than 24 hours without the authority of the magistrate.
- He must be given opportunity to consult with legal practitioner according to his own choice.

Sub Article (3), (4), (5), (6) deals with these constitutional safeguards-

- Review by advisory board
- Right to communicate with the grounds of detention.
- Right to take measure against this detention.

Constitution is the protector of the people and its duty is to provide the fundamental right if the people as well as to protest the oppression against any unlawful process.

International Practice

It is a common phenomenon that in national level, law and practices are misused by the law enforcing agencies. Many International organizations, agencies and associations are very much aware of it. Where the human right is violated they raised their voice against the unlawful practice against all countries. Some provisions are really appreciated for taking initiatives against unlawful arrest and detention.

Provision Regarding Arrest

Under the provision of Arrest, **Convention for the Protection of Human Rights and Fundamental Freedom (ECHR), 1950** indicates some measures.

Article-5 indicates-

- The grounds of his arrest must be informed with the language that he can understand.
- The person who is arrested or detained must be brought before the judge in accordance with law with reasonable time.
- The unlawful arrest or detention curtails liberty so fair and speedy trial must be given to him and release him if the detention is unlawful.

- The reasonable compensation must be provided to him when an innocent becomes the victim of unlawful detention.

Again **International Covenant on Civil and Political Right (ICCPR), 1966** has indicated the procedure.

Article-9 describes about it-

- No person shall be arrested or detained arbitrarily without reasonable grounds in accordance to law.
- At the time of arrest, the grounds must be informed to him properly.
- The person must be produced before the judge immediately by lawful process.
- The court must be decided without any delay and if he is innocent, he must be released.
- For unlawful detention compensation must be given to him.

Right to Defense Counsel

Under Article-6 of ECHR-

- He must be given opportunity to consult with lawyer according to his own choice.
- For the interest of the justice, sufficient money may be given to him.

Under Article-14 of ICCPR-

- Adequate facilities and time must be provided to him for the preparation of his defense.
- He has given the right to consult with lawyer for legal assistance. The monetary problem must be taken into consideration.

Again **Article-9** of UDHR declares that- No one shall be subjected to arbitrary arrest, detention or exile.

Not only national practice but also International obligation protects the right against arbitrary arrest and detention.

So, it is clear that, these issues are very much connected with human being and international communities are also careful about that. As a human being every man has right to be treated equally. All facilities should be given to him from humanitarian perspective.

Abuse Exercise of Power

"The hope of a secure and livable world lies with disciplined nonconformists who are dedicated to justice, peace and brotherhood." **Martin Luther King, Jr**

It is not possible to progress of a state where the law enforcing authority is highly corrupted and the power is misused by them. Every day, a lot of people is arrested or detained wrongfully and the procedure is stopped here because of taking initiatives from Judiciary.

Misuse of Power By Police

Police are those protectors of a state, who are responsible for the prevention and detection of crime and the maintenance of public order. Their duty is to protect liberty, lives and possessions of the citizen, and to prevent crime and civil disorder. The power of police includes- power of arrest and uses it in a legitimate way. And the power to arrest is misused by way of force it creates lot of controversy. And it is the failure of a government when it fails to protect it's people from the oppression of these public guard. Some cases are discussed below to show the abusive power of police authority-

Saifuzzaman vs State & Others

The victim was arrested and was given remand. After the completion of remand, he would not be produced before the magistrate and new charge sheet was made against him and as a result new order of remand was given at the time previous remand.

"Reasonable suspicion" misused here and he was arrested on a mere vague surmise. Some definite fact must be found before arresting a person. So that the arrest is unlawful and power is abused by the police.

State vs DC Satkhira

Under apprehension a 12 years boy was arrested by police and he was kept in custody for 12 years without any trial. The detention was illegal because he was child at that time under The Children Act. And children must not be treated like an adult but he was kept in jail which is totally contradictory to the provision.

It is a requirement of arrest that suspension must be reasonable. But in this case, the arrest of a boy of 12 years old under suspicion is unlawful because before arresting a child under suspicion it needs to be proved that there is the maximum probability of committing the act by him. This criterion is absent here. So the arrest is unlawful.

Roushan Mondal vs State

A girl Rikta khatun was raped and killed by anonymous person in night. The FIR was filed by victim's father without mentioning any name. But in the investigation process, the police arrested Roushan Mondal. He confessed to the crime and it was recorded by magistrate. And it was proved that the confession was given under influence. Judgment was also given without any jurisdiction.

Where the victim's father did not mention any name, Rowshan was arrested by way of suspicion. At that time he was a boy of 14 years and he was a child according to Children Act, 1974. Under suspicion arrest of a child is seriously inhumane and unlawful in nature. It was totally the lacking of the authority that they did not consider his condition.

Photographer Shahidul Alam's Incident

Shahidul Alam raised his voice for the public demand of road safety which turned out to be a Social Movement. He was arrested because of critiquing government over the road safety movement. And later a case was filed against him under Section-57 of ICT Act 2006.

In response to Shahidul Alam's release **Saad Hammadi** said-"Shahidul Alam is a bold representation of Bangladesh through his lens. He should not have been detained in the first place".

It is the duty of a photographer to capture the real incident what happened to his state. Any statement against state is violation of law. But fair criticism against government or to protest by capturing the scenario is obviously not the violation. So the arrest of Shahidul Alam was unlawful. After staying 107 days in jail, he was released in 21st November, 2018.

Bangladesh Jatiyo Ainjibi Samity vs Bangladesh

The convicted woman Moyna Begum was wrongly arrested by the police by way of treating her as the absconding convict Kohinoor and was kept in jail for 3 years. Because of these wrongful convictions the right of the victim was violated and she lost 3 years from her life.

Ain o Salish Kendro(ASK) vs Bangladesh

Shaibal Saha Partha was apprehended by plain clothes police. He was produced at police station after 4 days. On two times he was taken into remand but no confession could be recorded from him. This process is totally unlawful.

Misuse of Power by the Executive under Special Powers Act:

The Special Powers Act also a black law in our country where a vast power is given to the executive that vitiates the independence of judiciary. The huge power of an executive sometimes creates problem when the process is totally unlawful. In case of preventive detention under Section-3 is totally depend upon subjective satisfaction and the power is misused by them abruptly.

When the District Magistrate or Additional District Magistrate satisfied that, there is apprehension of doing any prejudicial act by a person; they can order detaining him to prevent from prejudicial act.

These criteria of satisfaction create controversy when an innocent person is detained. There are no specific criteria. These situations are observed from following analysis-

Mahmood vs Bangladesh

It is the duty of the state to concern about maintenance of law and order and public safety. When there is possibility of hampering the public safety detention order can be given. But M Mahmood was detained with a vague reason that there was mere capability to create problems by him which hampered public safety.

The authority can never justify any order of preventive detention by merely saying that the action was taken in the interest of public safety and public order. So the detention was illegal.

Dr Dhiman Chowdhury vs State:

Some materials were found upon Dr. Dhiman that has created suspicion. Because of that he was detained.

Yes, it is a good ground for arrest when any material has created suspicion. But it is also true that- mere availability of sufficient materials will not make the detention ipso facto lawful. There must be reasonable ground behind that. The requirements of detention did not comply with the Act. So the detention was unlawful.

Mahmudul Huq vs Bangladesh:

An incident occurred by him in 1993. Mahmudul Haq was detained in 2001 because of his past incident in 1993.

There must be a valid ground for detention. Past incident cannot be a valid ground because it has already happened before 8 years ago. Detention after 8 years because of past incident indicates there must be political reason or other reason. And the detention is obviously based upon mental satisfaction. So the detention is unlawful.

Azaduddin's Incident (1996)

Azaduddin was the chairman of number 7 Char-Alexander Union Parishad. He was also a freedom fighter of Rangamati Laxmipur district. He was arrested and detained twice under this act in 1996. He was arrested for political reason by the deputy commissioner of Laxmipur. He was arrested for political jealousy and rivalry. The ground was unreasonable, so the detention was also unlawful.

Unlawful Practice of Preventive Detention: A Miscarriage of Justice

Detention is of two types under Constitutional law- (1) punitive detention and (2) preventive detention. Punitive detention is imposed by a court of law where preventive detention is imposed by executive authority

Preventive Detention is a black hole of Judiciary where defense is taken by police by using the term "Reasonable Suspicion". When a person is detained without trial and conviction by court by a merely suspicion of executive is preventive detention. It is a violation of human right.

In **Rex vs Holiday** the expression preventive detention was used first time in Britain. **Lord Finley** said here that, "It is not punitive but precautionary measure. It is a measure adopted by the executive for the greater interest of the state."

Later we found preventive detention in a famous case- **Liversidge vs Anderson** that dictates-Under suspicion Liversidge was arrested by the order of Sir John Anderson. He was kept in jail for 3 years without any trial or charge.

And defense was given as- Reasonable cause to believe which was totally unlawful. Later he was released and introduced a new dimension of Reasonable suspicion by the historical judgment of **Lord Atkin**.

By passing the draconian law of Preventive Detention Bangladesh has also introduced a black chapter and established an oppressive weapon that violates the freedom, liberty of the citizen.

Causes for the Abusive Practice:

The term 'abuse of power' indicates all the ways by which power is misused for own sake. Most of the cases police abuse their position by taking advantage of the very people they have to pledge to serve and protect. For personal desire they do it. It includes-

- The use of excessive force.
- Confining a citizen under false arrest.
- Arrest without warrant.
- Assault and torture upon person.

It is the bitter truth that nowadays polices and robbers are conceptual couple. It is for gaining personal interest. Many innocent people become the victim of it. Social, political and cultural conditions are the variable of the misuse of power by police.

Some reasons are given below-

- **Higher Authorities Order:** In some cases police mentioned strict orders from superior's authorities not to disclose the reason why the persons were picked up on suspicion. However, more than 90% incidents police do not inform the family members of the detained individuals of the arrest.
- **Political Pressure:** The power of politics has been spread in a way that binds the police officials to do illegal acts. Sometimes, they are bound to hear because of pressure. 64% arrest of many innocent people has been done by political pressure to save their own party's people.
- **Corruption:** Corruption is a misconduct in which a judicial officer uses the official capacity for unlawful personal benefit. There is a high rank of corruption in Bangladeshi police. Because of corruption, many innocent people are arrested. When they denied paying interest, power is abused by the police. Extortion, bribery, theft, fixing, direct criminal activities are various ways of corruption.
- **Personal Gain:** Police abuse their power for personal interest. To associate with political party to give facilities to their man is only to secure their position, to hold vast power and to earn a lot of money that cannot be earned honestly.

Other Reasons like- Fear and apprehension of death by threat, easy acceptance, Arrest because of personal conflict, lack of resources etc. are also liable for that. Sometimes judicial magistrates have become subservient to police. Remand has also been given abruptly.

Unlawful Arrest, Detention and Human Rights

The success of a state depends on the acts of the protectors of law. But it is vitiated when the power is abused by them and the innocent people became the victim of these. The constitutional promise to a citizen is also vitiated. This abuse of the process is clearly a violation of right. It is the failure of a state as well as the government when innocent person would become the victim because of the negligence or abusive exercise by lawful authority.

Violation of Right: A Deviation from Human Right As Well As Constitutional Right

Under false presumption a person may be detained by the way of preventive detention. The Subjective Satisfaction overrides the Objective Satisfaction and every stage the objective criteria are absent. Being based on this vague presumption, an innocent person became the victim of these detentions. It violates his freedom when he remained in custody without any trial.

The justification of preventive detention is to protect the greater interest of people as well as national security.

Justifying these Lord Atkinson said in **R v Holiday** that-

“Where preventive justice is put in force some sufferings and inconveniences may be caused to the suspected persons. This is inevitable. But the suffering is inflicted for something much more important than his liberty or convenience, namely for securing the public safety and the defense of the realm.”

By showing these type justifications in a way to prevent the crime, it violates the following rights-

- Everyone has the right to life, liberty and security. No one shall be deprived of life or personal liberty:

Article-32(BDC, 1972); Article-3 of UDHR, 1948 and Article-3 of ICCPR, 1966.

- No one shall be subjected to arbitrary arrest, detention or exile:

Article-33(1), (2), (3) (BDC, 1972); Article-9 of UDHR 1948; Article-9 of ICCPR, 1966.

- Right to a fair trial:

Article-35(3) of BDC, 1972; Article-10 of UDHR, 1948; Article-10 of ICCPR, 1966.

- No person shall be subjected to torture, or to cruel, inhumane or degrading punishment or treatment:

Article-35(5) of BDC, 1972; Article-5 of UDHR, 1948; Article-5 of ICCPR, 1966.

Other Drawbacks of Preventive Detention

In the 3rd world countries like Bangladesh, preventive detention is used as a tool of oppression.

- Most of the democratic countries used preventive detention only in emergency. Ex-USA. Without any specific reason they don't use it. But there is no specification for Bangladesh when it can be used or not. In both peace and emergency it is used.
- The time specified for detainee in remaining without trial is 6 month which is so long where in India and Pakistan it is 3 month.
- There is no specified period for detention in constitution as well as The Special Powers Act, 1974.
- In our country a large number of political workers are detained without any trial under Special Powers Act. This type of detention is not found in western countries.
- Even there is no chance of question against the decision of Advisory Board and their opinion would be kept confidential.
- Under general law a person must be produced before magistrate within 24 hours but under Special Powers Act there is no specified time, so a person can be put in jail month after month without producing him before the magistrate.
- When a person is wrongly confined who is not a criminal it becomes tough for him to come outside if he is poor.

Arrest How Impact Upon A Person

In a common sense, unlawful arrest and detention is a violation of personal liberty. It is the right of a person is to move freely but this barrier prevents him to do these. This unlawful arrest also creates a bad impact upon a person. We always

trust upon our laws and believe that a person must be guilty when he is declared guilty by lawful authority. But when it is wrong it destroyed the life of an innocent person. It has become tough to believe others that- where there is crime everywhere, there can be wrongful conviction also. One study found that, "4.1% of defendants who are sentenced to death in the USA, are later shown to be innocent.

Where a development country like USA is not free from these unlawful process, it is insane to think that a developing country like Bangladesh is free from these. The abusive exercise by police and others agency create a bad impact on person socially as well as psychologically.

Societal Effect

In a 3rd world country like Bangladesh the condition of society is that kind of distressed that nothing can be taken so easily. The people's illiteracy, reasoning capacity is too poor to take easily a victim of unlawful arrest. Whether he was really associated with crime or not, they never think about it. Their ill and subconscious mind always provokes them to say- 'Why was he in jail if he was not a criminal?' They look down upon on him and sometimes ostracize his family members. In most cases he lost his job and no one recruits him as he is identified as a criminal. Then the condition of his family would become more miserable. Even, his child and family members are also being humiliated everywhere. Sometimes, these unreasonable thinking would bind him to leave the society as well as his rights to property. The unreasonable thought of society is very perfect to make the position of a person very low and he would become a sufferer of these abuses of the process of law.

A recent incident shows that, the victim was a prison guard who was falsely confined in jail for a rape case for five years. It hampers the condition of his family. There was separation between his father and mother. Even the family was forced to re-mortgage their house to pay for \$3000000 legal bill. These incident shows that how a family becomes the sufferer of wrongful conviction.

However the women are the worst sufferer of wrongful arrest. Without doing any unlawful act when a woman is wrongfully convicted, she faces miseries that cannot be described. Not only society but also her family

insults and hurts her all the time. If she is married she would have to be separated because of social stigma.

Psychological Effect

A stressful psychological trauma is observed in the person who is the victims of false and unlawful arrest. In a research it is found that- these trauma is life threatening event where the person can't adjust himself with the environment after a long time imprisonment.

Human mind has impact on human brain and it also runs the body also. When an innocent person would be a victim of unlawful arrest it would become tough for him to be stable. Sometimes he can't take that trauma easily and that will turn him mentally disable. A study shows that- the patients who are mentally ill, among them 68.8% are suffering from adjustment disorder, 52.1% for major depression, and 35.4% for generalized anxiety disorders. Unlawful arrest and longtime detention are also the causes of this psychological disorder. Even, a normal person becomes ill after returning his family because it becomes tough for him to cope with the environment. The situations also ruin his life and make him ill mentally.

So, trauma has the worst impact that disturbs his mental condition as well as obstructs his life to lead easily.

Mechanism against Unlawful Practice

It's become very tough to control them. But judicial control and effective mechanisms can be a way to solve the problem of people where arbitrary arrest and detention destroyed their life.

There are two ways that can be a good measure against these unlawful practices-

- Judicial Mechanisms
- Administrative Mechanisms

Judicial Mechanisms

Judiciary is the organ of a state that interprets and applies law. It can be thought as the mechanism for the resolution of dispute. There are so many steps to get justice-

Writ of Habeas Corpus

It is a Latin term that that means- to have the body before the court. It is such type of judicial remedy when abuse of the process of the court is found. Under Article-102(b)(1), the person illegally

detained can file a writ of habeas corpus. Under following grounds HCD can relax the detenu-

- Government's unlawful authority in ordering detention.
- Failure to inform the detenu about his right to representation.
- Failure to state the grounds.
- Not to produce him before advisory board within specified time.
- Mixing good grounds with bad grounds.
- Restorative issuance of orders.
- Failure to submit essential documents before the court in proper time.

If the grounds are found true, the court will immediately order to release the detenu. At the time of emergency this way is exercised under Section-491 of the Code of Criminal Procedure. It can be marked that-“ though it is stated that Special Power Act there is no chance of filing a Habeas Corpus writ but people can because Special Power Act is a general law but Article 44 & 102 gives the power to High Court Division to exercise habeas corpus writ which is a constitutional law strong than general law.”

Suo Motu Rule

The rule can be exercised by High Court Division with its own motion. When any unlawful or inhumane matter happens HCD can exercise this rule through knowledge from newspaper or other source. This power can be exercised by constitutional power or by way of criminal procedure.

Judicial Decisions

Judicial decisions can be an effective remedy against unlawful arrest and detention their directives or guidelines can be good initiative.

The directions given in *BLAST vs Bangladesh* broadly cover three important aspects of criminal proceedings:

Arrest without warrant

- No police officer shall arrest a person under Section 54 of the Cr. P.C. for the purpose of detaining him under Section 3 of the Special Powers Act, 1974.
- 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.

- He shall record the reasons for the arrest and other particulars in a separate register till a special diary is prescribed.
- A police officer shall furnish reasons of arrest to the detained person within three hours of bringing him to the police station.
- An arrested person should be allowed to consult a lawyer of his choice or meet his relatives.
- If a police 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 or Government doctor for treatment and shall obtain a certificate from the attending doctor.
- If the person is not arrested from his residence or place of business he shall inform a relation of the person over the phone, or through a messenger, within one hour of bringing him to the police station.

The court observed difficulties upon 'Reasonable Suspicion' and in '*Saifuzzaman vs State*' Supreme Court held that-

“The 'reasonable suspicion' and 'credible information' must relate to definite averments, which must be considered by the police officer himself before he arrests a person under this provision. What is a 'reasonable suspicion' must depend upon the circumstances of each particular case, but it should be at least founded on some definite fact tending to throw suspicion on the person arrested and not on a mere vague surmise.

So the role of judiciary in giving any decision for the victim can be effective to decrease the abusive practice.

Compensation for the Victim

The International Covenant on Civil and Political Rights, 1966 lays down in Article 9(5):

“Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation.” Compensation can be a good way at least to minimize some problems of the victim. It can be great initiative against unlawful arrest and detention when it is sought to the lawful authority.

Administrative Mechanism

Judicial role is not enough to stop he unlawful process. Rather the role of administration

must be strong besides judiciary. The law enforcing agencies have given a vast power which is abused by them. Proper steps or taking initiative against them can be an effective way to prevent them from this abusive process.

Accountability on Police Officers

Police are the protectors of the citizen as well as the guard of a state. But sometimes their action against the citizen became so inhuman that it is really tough to tolerate. They are given a vast power by the government. Some measures should be taken to control them in the right way.

The Torture and Custodial Death (prevention) Act, 2013 is an effective mechanism to protect a person from inhumane torture. In case of unlawful arrest and detention this act needs to be implemented properly to save the citizen. Also through this act, the police officers can be taken under supervision so that they cannot do any illegal act. The people who are detained unlawfully they can get protection through it.

So the role of the administrative authority is much more important to make the police officers accountable to their conduct. The Special Powers Act, 1974 has also given vast power to the executive. A check and balance need to be implemented here to protect the citizen.

Others Mechanisms

To solve the problem of illegal process of law enforcing agencies only two or three mechanisms are not the way. Rather, there can be many ways that can be much more effective than the codified or systematic process. Some other ways are given below-

The Role of National Human Rights Commission (NHRC)

Human Rights Commission has played a great role to hold the interest of the citizen against the oppression of the government as well other governmental agencies. When the law enforcing agencies failed to oblige their duty, NHRC came here to build a bridge between the citizen and state. To protect the right of the people it can review the existing laws, policy and practices.

Human right, freedom and liberty, right of the citizen are seen as a broader perspective by NHRC. It holds surveys regarding perception about human rights and complains against abuses of the process of law. In this condition the role of

NHRC is much more important to ensure effective justice in our country.

The Role of Civil Society

A state cannot run peacefully without its citizen. To ensure the fundamental right of the citizen is the basic requirement of a civil and standard society. When his right is violated and his life is in a critical situation, he must be raised his voice against it. An unlawful arrest cannot be a way to stop his mouth or to raise voice against government. Even, citizens may resist unlawful arrest to the point of taking an arresting officers life if necessary

The Role of NGO

Besides the judiciary and NHRC many NGO and other institution work for the people to protect their right. Where people cannot protest or cannot claim because of their lacking these organizations work for them. Ain o Salish Kendra (ASK), BLAST, Bangladesh Jatiyo Ainjibi Somiti etc. have done a lot of work for the people. Their contributions are praiseworthy.

The Role of Media

Media is the powerful weapon of a state to show the people every act of the state. Because of media now people are much more careful about their life by observing all incidents.

With the advent of technology, people can observe directly by way of media. To prevent unlawful arrest the workers of the media have played a great role to present news before everyone in country as well as outside. To spread news among everyone media has become more powerful against any unlawful arrest and detention.

Concluding Remedy: Way out

It can be understood how much severe the unlawful arrest could be. It can destroy the life of a person under lawful shield. The following recommendations can be a way to get rid of these-

- A free, fair, impartial and corruption free judicial system need to be ensured for everyone.
- A judicial review need to be introduced for the people who are arrested under preventive detention law.
- For an effective justice system the decision of executive need to be overview again by the judiciary.

- Necessary facilities must be given to the detenu and he must not be kept with regular convicts.
- Proper implementation of judicial guidelines must be ensured.
- All the procedure of provision must be followed and speedy trial must be ensured for the detenu.
- To ensure a fair system the political pressure must be set aside and take action against that bias officer who led their life under the shield of politics.
- If any complain comes before the authority against any police officer it should be taken seriously and investigation must be required here.
- Since media has played an effective role, to support their work and to stand beside them can be a good way to find out the true news.
- After a long trial the condition of the detenu may be worst in most of the cases. Proper compensation and rehabilitation must be ensured for him.
- There is no provision of mental counseling for the people who became victim of unlawful arrest and detention. After his release a friendly attitude from everyone is the basic criteria to smooth his life. Mental counseling from specialized doctor can give him a new life. So, it needs to be ensured if it is necessary.

For ideal democracy rule of law is the fundamental need that establishes a bridge between the people and the government. Unlawful arrest and detention is totally contrary to rule of law that vitiates the life of an innocent. Justice must be ensured for him.

CONCLUSION

When some people are happy to believe that, judiciary is totally separated and frees from others interference; some are the worst sufferer of unlawful arrest and detention because of internal politics. Corruption, political pressure, abusive exercise of power may block the way of separation of power and vitiate fair judicial system. Arbitrary arrest and detention violates the constitutional provision that is contrary to rule of law. A person cannot be said criminal until it is proved but our socio-legal system has introduced the provision of saying a person criminal whether he may be a criminal or not. The word 'Criminal' can change the life of an innocent not only socially but also psychologically.

Success of a state depends on how much fair its judicial administration is and how much care is taken for its citizen. It is shame for a state when it is failed to protect its citizen from the oppressors who act under the government. It creates displacement of trust among the citizens and increases the number of crimes. In international arena, it has also created a bad image of a state and makes a way of criticism. Besides this, the role of Human Right Commission, cautiousness of people and the role of media need to be combined to make our justice system comparatively better and effective for the people.

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