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Press Release

Supreme Court of Bangladesh dismisses the Government's appeal and upholds guidelines on ensuring that police powers of arrest without warrant and magistrate's powers on remand are consistent with constitutional safeguards on arrest and the prohibition on torture: Full judgment published on 10 November 2016

The Appellate Division of the Supreme Court on 24 May 2016, dismissed Government's appeal and upholds guidelines ensuring that police powers to arrest without warrant and magistrate's power on remand are consistent with constitutional safeguards on arrest and the prohibition on torture; Today, on 10 November 2016 Appellate Division released the full text of its verdict.

The Appellate Division of the Supreme Court of Bangladesh issued 10 point guidelines to the law enforcement agencies and 9 point guidelines to the Magistrates, Judges and Tribunals having power to take cognizance of an offence.

These guidelines are as follows:

Guide lines for the Law Enforcement Agencies

- (i) A member 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.
- (ii) A member 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.
- (iii) 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.
- (iv) 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.
- (v) 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.



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- (vi) 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.
- (vii) If the law enforcing officer find, 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.
- (viii) If the person is not arrested from his residence or place of business, the law enforcing officer shall inform the nearest relation of the person in writing within 12 (twelve) hours of bringing the arrestee in the police station.
- (ix) 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.
- (x) 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. Form 38 to the Magistrate.

Guidelines to the Magistrates, Judges and Tribunals having power to take cognizance of an offence:

- (a) If a person is produced by the law enforcing agency with a prayer for his detention in any custody, without producing a copy of the entries in the diary as per section 167(2) of the Code, the Magistrate or the Court, Tribunal, as the case may be, shall release him in accordance with section 169 of the Code on taking a bond from him.
- (b) If a law enforcing officer seeks an arrested person to be shown arrested in a particular case, who is already in custody, such Magistrate or Judge or Tribunal shall not allow such prayer unless the accused/arrestee is produced before him with a copy of the entries in the diary relating to such case and if that the prayer for shown arrested is not well founded and baseless, he shall reject the prayer.
- (c) On the fulfillment of the above conditions, if the investigation of the case cannot be concluded within 15 days of the detention of the arrested person as required under section 167(2) and if the case is exclusively triable by a court of Sessions or Tribunal, the Magistrate may send such accused person on remand under section 344 of the Code for a term not exceeding 15 days at a time.
- (d) If the Magistrate is satisfied on consideration of the reasons stated in the forwarding letter and the case diary that 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 an order for further detention in such custody as he deems fit and proper, until legislative measure is taken as mentioned above.



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- (e) The Magistrate shall not make an order of detention of a person in the judicial custody if the police forwarding report disclose that the arrest has been made for the purpose of putting the arrestee in the preventive detention.
- (f) It shall be the duty of the Magistrate/Tribunal, before whom the accused person is produced, to satisfy that these requirements have been complied with before making any order relating to such accused person under section 167 of the Code.
- (g) If the Magistrate has reason to believe that any member of law enforcing agency or any officer who has legal authority to commit a person in confinement has acted contrary to law the Magistrate shall proceed against such officer under section 220 of the Penal Code.
- (h) Whenever a law enforcing officer takes an accused person in his custody on remand, it is his responsibility to produce such accused person in court upon expiry of the period of remand and if it is found from the police report or otherwise that the arrested person is dead, the Magistrate shall direct for the examination of the victim by a medical board, and in the event of burial of the victim, he shall direct exhumation of the dead body for fresh medical examination by a medical board, and if the report of the board reveals that the death is homicidal in nature, he shall take cognizance of the offence punishable under section 15 of Hefajate Mrittu(Nibaran) Ain, 2013 against such officer and the officer in-charge of the respective police station or commanding officer of such officer in whose custody the death of the accused person took place.
- (i) If there are materials or information to a Magistrate that a person has been subjected to 'Nirjatan' or died in custody within the meaning of section 2 of the Nirjatan and Hefajate Mrittu (Nibaran) Ain, 2013, shall refer the victim to the nearest doctor in case of 'Nirjatan' and to a medical board in case of death for ascertaining the injury or the cause of death, as the case may be, and if the medical evidence reveals that the person detained has been tortured or died due to torture, the Magistrate shall take cognizance of the offence *suo-moto* under section 190(1)(c) of the Code without awaiting the filing of a case under sections 4 and 5 and proceed in accordance with law.

Senior Advocate Dr. **Kamal Hossain** said "The judgment elaborates on the safeguards which the Constitution has provided to protect personal freedom, in particular against arbitrary arrest and action against arrested person which derogate from the protection provided against inhuman and degrading treatment and torture. The importance of the protection cannot be underestimated given the actual experience over several decades. It is expected that the long awaited police reforms and a new law for regulating work of police will reflect and incorporate these safeguards."

Advocate Idrisur Rahman said, "After a long time we received the judgment to materialize people's right. With this Judgment the law enforcement agencies will be bound to ensure people's right ensured by the constitution."



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The Appellate Divisions' judgment has upheld the 15 point guideline given by the High Court regarding arrest and remand". Dr. Shahdeen Malik, former Advisor to BLAST, commented, "This case started in 1998 - when a young student, Rubel, was brutally tortured to death by the police. Our target was to ensure that such incidents would not recur, and that no-one else would lose their life like Rubel. Torture by the police has increased recently. But we hope this judgment will help to reduce such incidents and help us to move forward to build a civilized society."

It is pertinent to mention here that, the Appellate Division of the Supreme Court of Bangladesh dismissed an appeal by the Government against High Court guidelines aimed to prevent abuse of sections 54 and 167 of the Code of Criminal Procedure 1898. The High Court Division had issued a 15 point guideline in 2003 to prevent torture or ill-treatment of individuals arrested without warrant on suspicion of committing an offence or taken into police remand for interrogation, under sections 54 and 167 of the Code respectively. The Appellate Division today stated that it would uphold these guidelines subject to some modifications, to ensure that these two legal provisions are consistent with constitutional guarantees of fundamental rights. A four member bench led by Hon'ble Chief Justice S.K. Sinha, and including Justice SM Hossain, Justice Hasan Foyez Siddique, and Justice Mirza Hossain Haider, gave the judgment. The petitioners had argued that arbitrary arrests following abuse of the section 54 of the Code resulted in violations of Articles 27, 31, 32, 33 and 35(5) of the Constitution, and also violated the state's obligations to protect human rights, under the International Convention on the Prohibition of Torture 1984 and the International Convention on Civil and Political Rights 1966. Dr. Kamal Hossain and Barrister Amir-Ul- Islam, Senior Advocates, appeared for the writ petitioners (and respondents in the appeal), BLAST, ASK and Shomilito Shamajik Andolon (United Social Movement). with Advocate Idrisur Rahman, Barrister Sara Hossain, Mr Rezaul Karim, Mr Abdul Mannan Khan, Mr Samiul Alam Sarkar and Ms Sharmin Akhter, Advocates. The Attorney General, Mr Mahbubey Alam and the Additional Attorney General Mr Murad Reza, appeared for the Government of Bangladesh (the appellants).

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