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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

Today, after 13 years, 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).

Senior Advocate Dr. Kamal Hossain said *"This is a landmark judgment. The Court has made it clear that laws regarding powers of arrest and police remand must be applied consistently with our constitutional guarantees of fundamental rights. This judgment will help to end the legacy of 19th century practices which we continue to suffer today, including arbitrary arrests, ill-treatment and torture during interrogation, and contribute to building a legal culture which is compatible with our constitution and appropriate for the 21st century."*

The Vice Chairman of BLAST, Justice Md. Awlad Ali, commented *"This is a landmark judgment. It will ensure protection of fundamental human rights protected by our constitution to personal liberty, to safeguards on arrest and to freedom from torture."*

Senior Advocate Barrister Amir-Ul-Islam, who also appeared for the writ petitioners in the hearing, said, *"When the Constitution was adopted on 16th December, 1972, it declared that all laws incompatible with h fundamental rights will be considered void According to that declaration, sections 54 and 167 of the Code of Criminal Procedure remain valid only to the extent that they are compatible with constitutionally guaranteed fundamental rights. Even today those colonial laws have not been*



revised to ensure consistency with the Constitution. As the guardian of the Constitution, it is the responsibility of the Hon'ble Supreme Court to uphold the Constitution and the rule of law. The Court's dismissal of the state's appeal today has created a new opportunity for of the Application of the state there is a High possibility to amendment the direction of high court and Appeal division. Our neighboring country India has brought a lot of changes in its law judgments and the Court of India has declared that, all law enforcement organizations must follow the directions of Supreme Court, until the law is amended by the High Court."

Advocate Idrisur Rahman, who filed the writ petition in 1998 that resulted in today's judgment, said, *"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."*

Lawyer Sara Hossain said, *"Today we remember Rubel, Shima, Arun Chakrabarty, Kalpana Chakma, and many others, whose deaths in custody, abduction and rape shocked the national and judicial conscience and catalyzed the actions that resulted in today's judgment. The Supreme Court has issued a timely and urgently needed reminder to the law enforcing agencies that every citizen, and every individual within Bangladesh, has a fundamental right to protection against arbitrary arrest and torture. We believe this judgment will be a crucial tool for us in preventing and punishing torture and ill-treatment in custody, and bringing to account those responsible for such violations of human rights."*

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