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Legal Safeguards and Preventive Detention: An Evaluation of Bangladesh's 2026 Code of Criminal Procedure Reforms in Light of Human Rights Standards

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ABSTRACT

Preventive detention remains a legally sanctioned yet highly contentious tool due to its potential to undermine fundamental human rights. In Bangladesh, concerns over arbitrary arrest, prolonged detention, and weak procedural compliance have historically shaped the discourse on preventive detention. The Code of Criminal Procedure (Amendment) Act, 2026 introduces a range of legal safeguards aimed at enhancing transparency, accountability and judicial control over arrest and detention practices. This study evaluates the effectiveness of these reforms in light of constitutional guarantees and international human rights standards. Adopting a qualitative doctrinal methodology, the research analyzes statutory provisions, constitutional principles and relevant judicial decisions to assess whether the amended framework adequately protects detainees from abuse. The findings suggest that while the reforms strengthen procedural safeguards, particularly in areas such as arrest documentation, access to legal counsel and notification requirements - their practical impact is constrained by persistent structural challenges, including broad preventive detention laws, limited judicial intervention, and weak enforcement mechanisms. The study concludes that although the 2026 amendments mark a significant step toward aligning domestic law with human rights standards, their effectiveness in preventing human rights violations is partial and contingent upon rigorous implementation, judicial activism, stronger institutional accountability and broader reform of preventive detention laws in Bangladesh.

Keywords: Preventive detention; Legal safeguards; Human rights; Bangladesh; Code of Criminal Procedure (Amendment) Act, 2026; Judicial oversight; Arbitrary detention; Criminal justice reform

1.1 Introduction

The tension between state security and individual liberty is a central theme in the legal history of Bangladesh. At the heart of this conflict lies the practice of preventive detention. The power of preventive detention permits the state to detain individuals not for crimes already committed but for anticipated future conduct considered harmful to public order or national security. In Bangladesh, preventive detention has historically been justified on grounds of state necessity, political stability, and public safety. However, critics argue that such powers have repeatedly facilitated arbitrary arrest, political repression, custodial torture and denial of fair trial rights. Preventive detention laws in Bangladesh frequently conflict with constitutional protections and international human rights norms. In response to longstanding criticism from courts, civil society organizations, and international human rights bodies, Bangladesh enacted the Code of Criminal Procedure (Amendment) Act, 2026. The

amendment introduced extensive procedural safeguards governing arrest, police custody, medical examination, detention review, investigation timelines, and judicial oversight. It is needed to examine whether these reforms meaningfully limit arbitrary detention and align Bangladesh's criminal procedure with human rights standards.

1.2 Preventive Detention and Human Rights in Bangladesh

Since the adoption of The Universal Declaration of Human Rights by the General Assembly of the United Nations on 10, December, 1948, humanities have been a very significant theme of discussion. The Human Rights Organizations have been working through the world to enforce human rights in different countries. Human Rights should be free from clutches of despotic ruler or cruel man. Although there exist preventive detention laws directly or indirectly in all the countries of the world, yet there is no universal definition of the term preventive detention due to the difference in the application of the law. Preventive detention is the act of imprisoning a person without a trial or judicial sentence. Preventive detention differs fundamentally from punitive detention. Punitive detention follows conviction for an offence, whereas preventive detention is based on suspicion or anticipated conduct.Preventive detention is inherently vulnerable to abuse because individuals may be deprived of liberty without formal trial or adequate evidence.

For decades, preventive detention in Bangladesh was synonymous with the suspension of fundamental rights. Under the original 1972 Constitution, preventive detention was not permitted, but the 2nd Amendment in 1973 introduced Article 33, providing a constitutional basis for such laws. The Constitution of Bangladesh recognizes personal liberty as a fundamental right under Articles 31 and 32. However, Article 33(3)(b) excludes preventive detainees from ordinary procedural protections, including immediate production before a magistrate. Consequently, executive authorities historically enjoyed broad discretionary power.

The Special Powers Act, 1974 further institutionalized preventive detention by allowing detention for vaguely defined "prejudicial acts."

Human rights concerns surrounding preventive detention include: Arbitrary arrest; Detention without trial; Torture in police custody; Denial of legal representation; Lack of transparency; Political misuse of police powers.

These practices directly conflict with international standards established under:

- United Nations Universal Declaration of Human Rights (UDHR);
- United Nations International Covenant on Civil and Political Rights (ICCPR).

1.3 Historical Abuse of Section 54 of The Code of Criminal Procedure, 1898

Prior to the 2026 amendment, section 54 of the Code of Criminal Procedure allowed police to arrest individuals without warrant based on "reasonable suspicion." Critics argued that the vague language enabled arbitrary arrests and preventive detention in practice.

The Rubel Killing Case (BLAST v. Bangladesh, 55 DLR 363):

In 1998, Shamim Reza Rubel, a BBA student at Independent University, was arrested under Section 54 on mere suspicion. While in police custody, he was subjected to brutal torture and subsequently died. This tragic event sparked massive public outcry and led to the Bangladesh Legal Aid and Services Trust (BLAST) filing a Public Interest Litigation (PIL). The High Court's 2003 judgment in this case remains the most critical legal check on Section 54, providing 15 directives to prevent arbitrary arrest and custodial torture.

The Fazlu Miah Case:
Fazlu Miah, a 55-year-old man, was arrested in Sylhet in July 1993 under Section 54. He was later unfairly charged under the Lunacy Act and spent 22 years in jail without ever being convicted of a crime. He was finally released in 2015 after his case gained legal attention, highlighting how Section 54 can be used to keep marginalized or vulnerable individuals in indefinite detention.

Despite judicial intervention, enforcement remained weak. Police frequently:

- arrested individuals without sufficient evidence;
- used “shown arrest” practices;
- detained political opponents;
- subjected detainees to torture during remand;
- delayed access to lawyers and family members.

2.1 Major Safeguards Introduced by the 2026 CrPC Amendment
The landmark case of BLAST v Bangladesh, where the High Court issued guidelines intended to curb abuse under section 54 and custodial torture during remand. The 2026 Amendment Act introduces rigorous procedural requirements intended to curb the "unfettered power" previously enjoyed by law enforcement.

2.2 Arrest Memorandum and Identification Requirements
The amendment inserted sections 46A - 46E into the CrPC.Section 46A now requires: visible identification of arresting officers; disclosure of police identity; preparation of a memorandum of arrest; witness attestation; countersignature or thumb impression of the arrested person.This reform directly addresses earlier criticisms regarding secret arrests and disappearancelike practices.The newly introduced “Memorandum of Arrest” requires documentation of: reasons for arrest; place and time of arrest; physical condition of the accused; injury records; notification to relatives.These safeguards significantly improve procedural transparency.

2.3 Right to Inform Family and Access Counsel
Section 46A(d) requires police to inform a family member, friend or relative within twenty-four hours of arrest. Section 46A(f) further allows detainees to consult lawyers and meet relatives preferably within twelve hours.These provisions are important because denial of communication has historically facilitated torture and enforced disappearance.The reforms align closely with Article 9 of the ICCPR, which guarantees protection against arbitrary detention and ensures access to legal safeguards.

2.4 Medical Examination and Torture Prevention
The amendment introduces mandatory medical examination provisions under sections 46E and 167(2A).Police must: arrange medical examination of injured detainees; provide first aid treatment; record causes of injury; furnish medical reports to detainees.Furthermore, magistrates must order medical examination if detainees allege torture during police custody.These provisions represent a major institutional safeguard against custodial torture, which the earlier paper identified as a persistent human rights problem.

2.5 Restricting Arrest for Preventive Detention Purposes
One of the most important reforms appears in section 54(2), which explicitly states: “No police-officer shall arrest a person under this section for the purpose of detaining him under any law providing for preventive detention.” Additionally, section 167A (2) prohibits

magistrates from authorizing detention where arrest was made for preventive detention purposes. These provisions are historically significant because they attempt to separate ordinary criminal procedure from executive preventive detention mechanisms.

2.6 Judicial Oversight and Accountability

Section 67A empowers magistrates to examine whether arrest procedures were properly followed and to initiate action against officers violating procedural requirements. Similarly, section 167A authorizes magistrates to proceed against officers acting contrary to law under section 220 of the Penal Code. This strengthens judicial oversight and partially addresses earlier concerns regarding unchecked executive power.

2.7 Time Limits on Investigation

Section 173B introduces a sixty-working-day investigation deadline. Investigating officers must: justify delays; seek judicial extension; face disciplinary consequences for negligence or misconduct. The earlier article criticized prolonged detention without trial as a major abuse associated with preventive detention practices. The new timeline provisions attempt to reduce unnecessary delay and prolonged incarceration.

3.1 Compatibility with International Human Rights Standards

The 2026 amendment substantially improves Bangladesh's compliance with international human rights norms.

3.2 Universal Declaration of Human Rights (UDHR)

Article 9 of the UDHR prohibits arbitrary arrest and detention. The new procedural safeguards especially arrest memoranda, judicial review, and notification rights, help operationalize this principle.

Article 5 prohibits torture and cruel treatment. Mandatory medical examination provisions strengthen safeguards against custodial abuse.

3.3 International Covenant on Civil and Political Rights (ICCPR)

Article 9 of the ICCPR requires: lawful arrest; prompt communication of charges; judicial supervision; ability to challenge detention.

The amendment significantly advances these requirements by: requiring written reasons for arrest; mandating production before magistrates; documenting custody procedures; enabling legal consultation. The reforms also support fair trial rights under Article 14 ICCPR.

4.1 Gaps in the CrPC Amendment Framework

Section 46A does not clearly state: what happens if police violate these duties, whether evidence becomes invalid or whether officers face automatic punishment. So, the compliance may become paperwork only.

Section 46B states police stations must record arrest information. But there is no independent digital monitoring authority. Police themselves maintain the records, creating risk of manipulation or delayed entry.

Section 46C states that the arrested person's relatives or friends must be informed. The law says notification should occur "as soon as practicable," which is vague and may allow delay.

Section 46D introduced procedural protections during remand or interrogation. But this section does not guarantee: lawyer presence throughout interrogation, audio or video recording of questioning, or independent medical supervision. Human rights lawyers say custodial torture can still continue unofficially.

Section 46E requires medical examination of injured detainees. The examination often depends on government doctors and police coordination, raising concerns about impartiality.

Section 54 was amended to limit arbitrary arrest powers. Police still retain broad authority under terms like: “reasonable suspicion,” “credible information.” These phrases are not precisely defined, allowing possible misuse in political or preventive arrests.

Section 54A added safeguards after arrest. But no strict timeline or automatic judicial sanction exists for violations by investigating officers.

Section 67A allows electronic service. But the law lacks detailed cybersecurity and authentication rules: fake delivery claims, privacy breaches, digital manipulation could become issues.

Under section 167 and Section 167A changes were introduced regarding remand procedures. Critics argue magistrates may still mechanically approve remand requests because: courts are overloaded, police reports dominate proceedings, judicial scrutiny is weak in practice.

Section 173A allows early discharge of accused persons if interim investigation finds no evidence. But influential accused may benefit disproportionately, possibility of corruption during interim reporting, discharged accused can later be re-added to the case, creating legal uncertainty.

Section 345 expanded compounding provisions. There is concern that powerful accused persons may pressure victims into settlements outside court supervision.

Even though many procedural sections were added, the amendment did not create: an independent police complaints commission, civilian oversight authority, or external detention monitoring system. This is considered one of the biggest structural weaknesses.

Overall, the amendment improves procedural safeguards but many loopholes remain because enforcement mechanisms and independent oversight are still weak.

4.2 Remaining Challenges and Limitations

Despite important reforms, several structural concerns remain unresolved.

4.3 Preventive Detention Laws Still Exist

The amendment regulates police powers under ordinary criminal procedure but does not repeal the Special Powers Act, 1974. Preventive detention as an executive mechanism therefore remains constitutionally and legally available. The core problem lies not merely in arrest procedure but in the existence of broad executive detention powers themselves. The Special Powers Act,1974 allows the state to detain individuals to prevent acts prejudicial to the sovereignty or security of the state. However, the term "prejudicial act" is notoriously vague, allowing the executive to bypass the standard protections of the criminal justice system.

4.4 Weak Enforcement Culture
Bangladesh has historically suffered from weak institutional accountability. Although magistrates now possess greater oversight authority, implementation may remain inconsistent without: judicial independence, police reform, independent investigation mechanisms, protection for detainees and lawyers. The safeguards risk becoming procedural formalities rather than effective protections.

4.5 Custodial Torture Risks Persist
Medical examination provisions are important but may not fully prevent torture if: doctors are influenced by police, detainees fear retaliation, investigations into torture remain ineffective. Bangladesh still lacks sufficiently strong independent custodial oversight institutions.

4.6 Political Misuse of Criminal Procedure
Preventive detention in Bangladesh has frequently been used against political opponents. Although the amendment narrows arbitrary arrest powers, politically motivated cases and selective enforcement may continue unless broader democratic reforms are implemented. A study of 15 police stations in Dhaka found that out of 1,585 people arrested under Section 54, only 189 were eventually prosecuted for specific allegations. This indicates that 88% of those arrested were held without concrete evidence of criminal activity. Organizations like Amnesty International have historically noted that Section 54 is often invoked as a "catch-all" to detain political activists and NGO leaders without warrants.

5.1 Recommendations
To effectively implement the 202 amendments and ensure they truly prevent custodial torture and political arrests, experts and the Police Reform Commission (PRC) have proposed several critical recommendations. These focus on shifting from a culture of "suspicion-based" policing to one of accountability and transparency.

5.2Institutional and Legal Recommendations
Establish an Independent Police Commission: The Police Reform Commission (PRC) suggests creating a dedicated, non-partisan body to handle complaints against police officers, ensuring that misuse of Section 54 is investigated outside the police.

Mandatory Judicial Review of Detention: Experts recommend that the higher judiciary activate Monitoring Committees for subordinate courts to scrutinize every arrest made under Section 54, ensuring magistrates do not grant remand.
Digital Arrest Registry: Implement a centralized, publicly accessible digital database at the police headquarters. This would allow family members and lawyers to verify an arrest in real-time, preventing "disappearances" or unrecorded detentions.

5.3 Procedural Accountability
"Glass-Wall" Interrogation Rooms: A key unaddressed guideline from the original BLAST case is the requirement for interrogation rooms to have glass walls. This allows lawyers or relatives to observe the process (without hearing it) to deter physical torture.

Independent Inquiry Officers: For highprofile or politically sensitive cases, courts should be empowered to appoint qualified advocates or public prosecutors as independent commissioners to oversee investigations where police neutrality is in doubt.

Separation of Investigation and Law Order: Personnel in criminal investigation units should be barred from being transferred to regular police stations. This specialization helps build a professional force less susceptible to political pressure.

5.4 Judicial Checks

Heavy Penalties for False Cases: Enforce the new provision for mandatory fines (up to 1 lakh taka) and punishment for complainants or officers who file demonstrably false or malicious cases.

Affidavit of Good Faith: Require complainants to sign an affidavit accepting legal consequences if their case is later found to be malicious, ensuring Section 54 isn't used as a tool for personal or political vendettas.

Immediate Medical Documentation: Strict adherence to mandatory medical exams before and after custody is essential. Any marks of injury must be documented by a government medical officer to hold the specific arresting unit accountable.

5.6 Reforming existing Acts

- **The Special Powers Act, 1974 (SPA):**
  The SPA is often called a "black law" because it allows the state to detain individuals indefinitely without formal charges to prevent "prejudicial acts." Many human rights groups and the Constitutional Reform Commission have recently recommended abolishing the SPA entirely to align with international standards. Courts have historically declared over 80% of SPA cases illegal because they were based on weak or non-existent evidence. Detention orders should be made subject to immediate judicial review rather than waiting for an executiveled Advisory.

- **Article 33 of the Constitution:**
  The power of preventive detention was not in the original 1972 Constitution; it was added via the Second Amendment. Reformers argue for returning to the original 1972 text, which strictly limited detention without trial.Unlike India (where preventive detention is capped), Bangladesh's law has no fixed maximum period. Amendments are proposed to set a strict time limit (e.g., 30–60 days) after which a person must be charged or released. Advocates want to remove the restriction in Clause (3) that denies detainees under preventive laws the right to a lawyer of their choice.

5.5 Public Watchdogs

Civil society has called for the formation of all-party watchdog committees at every police station to act as observers against corruption and arbitrary arrests.

6.1 Conclusion

The Code of Criminal Procedure (Amendment) Act, 2026 represents one of the most significant criminal procedure reforms in Bangladesh in recent decades. The amendment introduces substantial safeguards relating to arrest, detention, medical examination, legal access, judicial oversight, and investigation accountability. In particular, the amendment seeks to reduce arbitrary arrest, custodial torture, and misuse of police powers historically associated with preventive detention practices.However, while the reforms improve procedural justice, they do not eliminate the broader structural problem posed by preventive detention laws themselves. The continued existence of the Special Powers Act, 1974 and executive detention mechanisms means that risks of arbitrary deprivation of liberty

remain.Therefore, the 2026 amendment should be viewed as an important but incomplete step toward harmonizing Bangladesh's criminal justice system with constitutional guarantees and international human rights standards. Sustainable reform ultimately requires stronger judicial independence, institutional accountabilityand reconsideration of preventive detention as a governing mechanism in a democratic constitutional order.

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