Constitutional Rights and Criminal Justice Outcomes: Balancing Liberty and Security in Bangladesh

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ABSTRACT

Bangladesh's Constitution guarantees a set of fundamental rights that sit at the heart of criminal justice: equality before law, protection of law, personal liberty, safeguards against arbitrary arrest and detention, fair trial protections, and freedoms of expression and association. At the same time, the State carries constitutional and international obligations to protect public order and security, prevent crime, and respond to emerging threats such as cybercrime and violent extremism. This paper examines how Bangladesh's criminal justice practices shape real-world outcomes when liberty and security collide. Focusing on arrest and remand powers under the Code of Criminal Procedure, 1898 (notably sections 54 and 167), custodial safeguards, and newer digital security frameworks (including the Cyber Security Act, 2023), the study evaluates whether current legal and institutional arrangements achieve a constitutionally defensible balance. Using a doctrinal and policy-analysis approach, the paper maps constitutional standards to procedural rules, highlights persistent risk points (arbitrary arrest, coercive interrogation, weak judicial scrutiny, and overbroad speech-related offences), and proposes reforms aimed at improving both public safety and rights compliance. The paper argues that security and liberty are not a zero-sum trade: stronger legality, better oversight, and evidence-based policing can simultaneously reduce rights violations and improve criminal justice performance, including trust, cooperation, conviction integrity, and prevention.

Keywords: Bangladesh Constitution; fundamental rights; criminal procedure; arrest; remand

1. Introduction

The liberty–security dilemma lies at the heart of every constitutional democracy. Modern states are entrusted with the responsibility to maintain public order, prevent crime, and protect citizens from violence and insecurity. At the same time, they are bound by constitutional commitments to individual liberty, due process, and the rule of law (Walker, n.d.). This tension is neither accidental nor temporary; it is a structural feature of democratic governance. The challenge, therefore, is not to eliminate the dilemma but to manage it through legal restraints, institutional accountability, and judicial oversight. Nowhere is this challenge more visible than in the administration of criminal justice, where the coercive power of the state directly confronts the bodily liberty, dignity, and autonomy of individuals (Barber, n.d.).

In Bangladesh, the liberty–security tension is particularly pronounced. The country's constitutional framework strongly affirms fundamental rights, including equality before law, protection of law, safeguards against arbitrary arrest and detention, and freedoms of expression and association (Bari & Dey, n.d.). These rights, enshrined in Part III of the Constitution, are intended to function as enforceable leg/M al standards rather than aspirational ideals. Yet, in practice, criminal justice administration has long been marked by allegations of abuse of power most notably arbitrary arrests, custodial violence, coercive interrogation practices, prolonged pre-trial detention, and the use of criminal law to regulate political speech and dissent. This persistent gap between constitutional promise and administrative reality raises critical questions about how liberty and security are balanced in Bangladesh's legal order (Alomran et al., n.d.).

The problem becomes especially acute at the level of policing and investigation. Criminal justice begins not in the courtroom but on the street—through arrest, detention, and interrogation. These early stages are often decisive in shaping outcomes, yet they are also the least transparent and most vulnerable to abuse. In Bangladesh, the Code of Criminal Procedure, 1898 (CrPC), a colonial-era statute still in force, provides the primary legal framework governing arrest, remand, and investigation (Sarker et al., 2025). Section 54 of the CrPC authorizes police officers to arrest individuals without a warrant in a range of circumstances, including on suspicion of involvement in cognizable offences. Complementary provisions allow courts to authorize remand for interrogation during the investigation phase. While these powers are formally justified as necessary tools for crime prevention and investigation, they have generated sustained concern among jurists, human rights advocates, and civil society actors. Allegations of misuse of Section 54 arrests, extraction of confessions through physical or psychological coercion, and the normalization of remand as an investigative shortcut have been recurrent features of public discourse (Ahmed, 2020).

The judiciary in Bangladesh has repeatedly acknowledged the dangers inherent in unchecked arrest and detention powers. Landmark judicial decisions have emphasized that constitutional guarantees against arbitrary arrest are not merely formal protections but substantive restraints on state power. Courts have issued guidelines intended to regulate

arrests without warrant, require justification for remand, and prevent custodial abuse (Joya & Mannan, 2025b). However, the persistence of allegations suggests a structural problem that extends beyond doctrinal clarification. Enforcement gaps, institutional incentives within policing, and weak accountability mechanisms continue to undermine constitutional safeguards. Beyond conventional policing, the liberty–security dilemma has expanded into new domains with the rise of digital technologies (Joya & Mannan, 2025c, 2025b).

Like many states, Bangladesh has sought to address cybercrime, online fraud, misinformation, and threats to digital infrastructure through specialized legislation (Joya & Mannan, 2025a). The enactment of the Cyber Security Act, 2023, which repealed the earlier Digital Security Act, 2018, represents the latest attempt to modernize the legal framework governing cyberspace (Joya & Mannan, 2025b). Officially, the new law aims to balance national security concerns with the need to protect digital rights in an increasingly networked society. Yet, the transition from the Digital Security Act to the Cyber Security Act has been met with skepticism. Critics argue that despite changes in terminology and structure, the core logic of expansive state control over digital expression remains largely intact (Bottoms & Tankebe, n.d.).

Provisions criminalizing online speech, granting broad investigative powers, and enabling arrest for vaguely defined offences have fueled concerns about chilling effects on freedom of expression. For journalists, activists, and political opponents, digital security legislation has become emblematic of how security rationales can be used to legitimize restrictions on civil liberties (Rathi, n.d.).

This convergence of traditional criminal procedure powers and modern cyber security laws highlights a broader pattern in Bangladesh's governance: the steady expansion of security-oriented legal instruments without a corresponding strengthening of rights-protective institutions. The constitutional text continues to affirm liberty, but administrative practice increasingly prioritizes control, surveillance, and preventive intervention. This imbalance raises normative questions about the meaning of constitutionalism in contexts where emergency-style reasoning becomes normalized in everyday governance. From a theoretical perspective, the Bangladeshi experience reflects a classic dilemma in constitutional theory. Liberal constitutionalism presumes that security and liberty are not mutually exclusive but mutually reinforcing when properly regulated. Security achieved through arbitrary power ultimately undermines legitimacy and public trust, while liberty without effective law enforcement can lead to disorder and insecurity.

The task of constitutional law, therefore, is to create institutional arrangements that discipline coercive power while enabling effective governance. When these arrangements fail, constitutional rights risk becoming symbolic rather than operative. This study situates Bangladesh's criminal justice system within this broader theoretical debate. It treats the liberty–security dilemma not as an abstract philosophical problem but as a lived legal reality shaped by statutes, judicial decisions, policing practices, and political context. By examining arrest without warrant under the CrPC, remand and interrogation practices, and the evolution of digital security legislation, the study seeks to assess whether Bangladesh's legal framework achieves a constitutionally acceptable balance between security imperatives and individual rights.

The central argument advanced in this paper is that Bangladesh's criminal justice administration remains structurally tilted toward security at the expense of liberty, despite constitutional guarantees and judicial interventions. This imbalance is not solely the result of flawed laws; rather, it reflects deeper institutional and cultural factors, including colonial legal legacies, executive dominance over policing, limited accountability mechanisms, and a political climate that frames dissent as a security threat. Without addressing these underlying dynamics, legal reforms whether through new statutes or judicial guidelines are unlikely to produce lasting change. By focusing on the interaction between constitutional principles and everyday criminal justice practices, this study contributes to ongoing debates about rule of law, democratic governance, and human rights in Bangladesh. It also offers insights relevant to other post-colonial democracies facing similar tensions between security and liberty in an era of technological transformation and political polarization.

2. Research Problem and Objectives

Despite formal constitutional safeguards, practice-level tensions persist in Bangladesh's criminal justice system. Arrest and detention powers can be used aggressively in ways that risk violating liberty guarantees, while the security justification (public order, crime prevention, cyber risks) is often invoked broadly. The core research problem is the gap between constitutional protections and criminal justice outcomes.

The objectives are to:

(1) identify the constitutional rights most directly implicated by criminal justice processes; (2) analyze how key procedural laws and security statutes operationalize—or undermine—those rights; (3) assess the impacts on outcomes such as lawful policing, fairness, trust, and case integrity; and (4) propose practical reforms that improve both rights protection and security effectiveness.

3. Conceptual and Theoretical Framework

A useful way to understand liberty security conflict is through constitutionalism and rule-of-law theory. Under constitutionalism, State power is legitimate only when exercised within legal limits and with institutional accountability. Rule-of-law frameworks emphasize

predictability, equality, legality, and constraints on discretion especially discretion exercised by police and investigators. In criminal justice, rights constraints are not "extra"; they define lawful state action (Alomran et al., n.d.).

A second lens is proportionality and reasonableness, commonly used in rights-based systems to test whether restrictions on rights are justified by a legitimate aim, are rationally connected to that aim, impair rights as little as possible, and maintain a fair balance. Even where Bangladesh's jurisprudence does not consistently articulate proportionality in the same structured way as some jurisdictions, the underlying logic appears in constitutional interpretation and in debates about "reasonable restrictions" (for example, in expression-related contexts). The key point is that security measures must be tailored, evidence-based, and subject to checks.

4. Methodology

This study adopts a doctrinal and policy-oriented analytical methodology to examine the liberty–security dilemma within Bangladesh's criminal justice system. The research is primarily grounded in doctrinal legal analysis, focusing on authoritative legal texts that structure state power and individual rights. These include constitutional provisions relating to fundamental rights and due process, the Code of Criminal Procedure, 1898—particularly provisions governing arrest, detention, remand, and investigation—and relevant substantive and procedural statutes, including contemporary security-related legislation. Doctrinal analysis is employed to identify the normative standards embedded within these legal instruments, especially those concerning legality, proportionality, procedural fairness, and accountability. This allows the study to clarify what the law formally requires of state authorities when exercising coercive powers in the name of security.

In addition to primary legal sources, the study draws extensively on secondary materials, including scholarly legal literature, policy analyses, human rights reports, and critiques produced by domestic and international organizations. These sources are used not merely as descriptive accounts but as interpretive tools to contextualize legal rules within their social, political, and institutional environments. Secondary literature helps illuminate patterns of implementation, enforcement gaps, and systemic concerns that are not always visible from statutory texts or judicial pronouncements alone. By integrating these materials, the study bridges the gap between law "on the books" and law "in action," which is essential for assessing the real-world implications of criminal justice powers.

Where available, the analysis incorporates case-based discussion derived from reported judgments, credible case summaries, and authoritative legal commentary. Rather than conducting an exhaustive empirical case survey, the study uses selected judicial decisions illustratively, focusing on how courts have interpreted constitutional protections, regulated police discretion, and articulated limits on state power. This case-oriented approach allows the research to assess the judiciary's role as a constitutional guardian and to evaluate the effectiveness and limitations of judicial oversight in practice. Attention is given not only to the outcomes of cases but also to the reasoning adopted by courts, particularly in relation to necessity, reasonableness, and procedural safeguards.

Methodologically, the core analytical strategy of the paper is to map normative constitutional standards onto specific procedural mechanisms within the criminal justice system and then examine how these mechanisms shape legal and institutional outcomes. This involves tracing how abstract constitutional guarantees—such as protection against arbitrary arrest, the right to personal liberty, and freedom of expression—are operationalized through procedural rules governing arrest without warrant, detention, remand, investigation, and prosecution. The study then evaluates whether these mechanisms, as designed and applied, effectively minimize risks of arbitrariness, ensure meaningful oversight, promote fairness, and sustain public trust in legal institutions. This mapping exercise enables a structured assessment of whether security-oriented legal powers remain constitutionally bounded or whether they drift toward unchecked discretion.

The doctrinal and policy-based approach adopted in this study is particularly appropriate because the liberty–security dilemma is fundamentally a question of legal design and institutional restraint rather than one of individual misconduct alone. The research does not seek to measure crime rates or enforcement efficiency quantitatively; instead, it interrogates how the architecture of law distributes power, constrains authority, and protects rights. By focusing on legality, structure, and normative coherence, the methodology allows for a principled evaluation of criminal justice governance in Bangladesh and provides a framework for identifying reform priorities consistent with constitutionalism and the rule of law.power.

5. Constitutional Rights Most Engaged by Criminal Justice

Criminal justice administration in Bangladesh engages several core constitutional rights that collectively define the limits of lawful state coercion. Foremost among these is the right to equality before law and equal protection of law, which requires that arrest, detention, and prosecution powers be exercised without discrimination, arbitrariness, or political bias. Closely connected is the right to protection of law and personal liberty, which safeguards individuals against arbitrary arrest and detention and mandates that any deprivation of liberty follow procedures established by law that are fair, reasonable, and just. Procedural guarantees relating to arrest, detention, and trial—such as the right to be informed of grounds of arrest, the right to consult and be

defended by a legal practitioner, and the right to be produced before a magistrate within a prescribed time—are central to preventing abuse at the earliest stages of criminal process. Freedom of expression is also increasingly implicated, particularly where criminal law and security legislation are used to regulate speech, dissent, and digital communication, raising concerns about chilling effects and over-criminalization. Together, these rights form an integrated constitutional framework intended to discipline state power in the criminal justice system, ensuring that security objectives are pursued through lawful means that respect human dignity, due process, and public trust in legal institutions.

5.1 Equality before law and protection of law

The constitutional guarantees of equality before law and protection of law require that criminal justice powers be exercised consistently, impartially, and according to formally prescribed legal procedures rather than discretionary or informal authority. In the context of criminal justice administration, these rights impose a duty on the State to ensure that arrest, detention, investigation, and prosecution are not influenced by a person's political affiliation, social status, profession, or personal connections. Equality before law demands that individuals in similar factual and legal circumstances be treated alike, while protection of law obliges state authorities to act strictly within the bounds of legally defined powers and safeguards. When arrests are carried out selectively, when similarly placed individuals face unequal treatment, or when informal practices replace statutory procedures, these constitutional guarantees are undermined. In practice, violations of equality and protection of law often occur not through explicit legal discrimination but through uneven enforcement, unchecked discretion, and the normalization of extra-legal practices. As a result, these rights function as foundational standards against which the legitimacy of criminal justice action must be assessed, ensuring that the coercive power of the State remains rule-bound rather than personality-driven or politically contingent.

5.2 Protection of personal liberty and safeguards in arrest/detention

Constitutional protections relating to personal liberty are designed to place substantive and procedural limits on the State's power to arrest and detain individuals, ensuring that coercive authority is exercised only in accordance with law, necessity, and fairness. These guarantees seek to prevent arbitrary deprivation of liberty by requiring that arrests be grounded in lawful justification, that detainees are informed of the reasons for their arrest, and that continued detention is subject to timely judicial scrutiny. Within the criminal justice system, these protections are tested most sharply at the arrest and remand stages, where state power is at its most intrusive and the individual is at their most vulnerable. Arrest without warrant and custodial interrogation create heightened risks of abuse, particularly where discretion is broad and oversight mechanisms are weak or delayed.

The remand stage, in particular, represents a critical pressure point, as judicial authorization of detention often determines whether investigation proceeds within constitutional bounds or slides into coercive practice. When safeguards function effectively, they operate as a constitutional brake on executive power; when they are treated as procedural formalities, the promise of personal liberty is reduced to a legal fiction. Accordingly, the protection of personal liberty in arrest and detention is not merely a matter of formal compliance with procedural steps but a measure of the criminal justice system's overall commitment to constitutional restraint and human dignity.

5.3 Fair trial and due process protections

The Constitution embeds fair trial and due process protections as essential components of a lawful criminal justice system, ensuring that individuals accused of offences are treated as rights-bearing persons rather than as objects of state control. These safeguards support foundational principles such as the presumption of innocence, the requirement that criminal liability and punishment be based on pre-existing law, and the obligation that legal procedures be transparent, impartial, and reasonable. Due process protections extend beyond the trial itself to encompass the entire criminal process, including investigation, charging decisions, evidentiary standards, and sentencing. When procedural fairness is compromised at earlier stages—through coerced confessions, prolonged pre-trial detention, or unequal access to legal representation—the integrity of the trial is inevitably weakened. Fair trial guarantees therefore function both as an independent constitutional right and as a corrective mechanism for earlier abuses of power. By insisting on legality, reasoned adjudication, and judicial independence, due process protections seek to prevent wrongful convictions, arbitrary punishment, and the instrumental use of criminal law for political or administrative convenience. In this way, fair trial and due process rights serve as a final constitutional safeguard, reinforcing the legitimacy of criminal justice outcomes and sustaining public confidence in the rule of law.

5.4 Freedom of expression and security-era legislation

Freedom of expression assumes particular constitutional significance when security-oriented legislation extends criminal liability to speech, publication, or online activity. In Bangladesh, debates surrounding digital and security laws have centered on whether broadly framed offences—often justified in the name of public order, national security, or cyber safety—risk chilling legitimate expression and civic participation. When statutory language is vague or overinclusive, individuals may self-censor to avoid legal exposure, even where their speech falls within the core of constitutional protection. This chilling effect is amplified by enforcement practices that rely on arrest and detention at the

investigative stage, where procedural safeguards may be weakest and the reputational and psychological costs of prosecution are immediate. Constitutional standards require that any restriction on expression be lawful, necessary, proportionate, and accompanied by meaningful safeguards against abuse. The critical issue, therefore, is not only the formal compatibility of security-era legislation with constitutional text but also whether its design and application reflect restraint, clarity, and accountability. Where enforcement prioritizes control over constitutional balance, freedom of expression risks being transformed from a protected right into a conditional privilege, undermining democratic discourse and public trust in the legal system.

6. Criminal Procedure as the Main "Balance Engine"

The practical balance between liberty and security in Bangladesh is shaped less by constitutional rhetoric or policy declarations and more by the everyday operation of criminal procedure. It is within police stations, during arrest and interrogation, and in remand hearings before magistrate courts that the State's coercive power is most directly exercised and individual rights are most immediately at risk. Criminal procedure functions as the primary "balance engine" because it translates abstract constitutional guarantees into operational rules governing who may be arrested, how long a person may be detained, under what conditions interrogation may occur, and when judicial oversight must intervene. When procedural safeguards are robustly applied, they serve as effective constraints on arbitrary power, ensuring that security objectives are pursued within lawful and proportionate limits. Conversely, when procedural rules are treated as technical formalities or are routinely bypassed, the balance tilts decisively toward security, rendering constitutional protections fragile in practice. The legitimacy of the criminal justice system therefore depends not only on the content of constitutional rights but on the integrity and consistency with which criminal procedure enforces those rights at the ground level of law enforcement and adjudication.

6.1 Arrest without warrant and discretion risks (CrPC section 54)

Section 54 of the Code of Criminal Procedure, 1898 authorizes police officers to arrest individuals without a warrant in specified circumstances, reflecting a form of preventive and investigative discretion that exists in many criminal justice systems. In principle, such powers are justified on grounds of urgency, enabling law enforcement to act swiftly where obtaining prior judicial authorization is impracticable. However, the constitutional risk arises not from the existence of warrantless arrest powers themselves but from the breadth and vagueness of the standards governing their use. When the threshold for "reasonable suspicion" is loosely defined, when arrests are insufficiently documented, and when judicial scrutiny occurs after the fact as a routine procedural step rather than a substantive review, discretion can easily slide into arbitrariness.

In Bangladesh's constitutional and human rights discourse, Section 54 has been persistently criticized for facilitating arrests based on low-quality or unarticulated suspicion, allowing the power to be deployed for purposes beyond genuine investigation. Allegations of arrest being used for harassment, intimidation, political pressure, or informal preventive detention illustrate how discretionary authority can be repurposed as a tool of control rather than law enforcement. Such practices undermine the constitutional protection of personal liberty by normalizing deprivation of freedom without transparent justification or immediate accountability. Moreover, the routine use of arrest as a "management" strategy—aimed at signaling authority, suppressing dissent, or extracting compliance—produces counterproductive security outcomes. It erodes public trust in policing, discourages cooperation with law enforcement, and fosters community resistance, thereby weakening the very security objectives the power is meant to serve. In this sense, unchecked discretion under Section 54 represents not only a liberty concern but also a structural failure of security governance itself.

6.2 Remand and interrogation (CrPC section 167) and coercion concerns

Remand and custodial interrogation under Section 167 of the Code of Criminal Procedure, 1898 represent one of the most constitutionally sensitive stages of the criminal process, as this is the point at which the State's investigative urgency intersects with the suspect's highest level of vulnerability. During remand, the individual is already deprived of liberty, often isolated from legal counsel and family, and subject to intensive questioning aimed at rapid evidence collection. This structural imbalance of power creates predictable risks of coercion, particularly where investigative success is measured by confessional outcomes rather than evidentiary integrity. As a result, remand practices have long occupied a central place in critiques of criminal justice administration, with concerns focusing on physical abuse, psychological pressure, and degrading treatment during custodial interrogation.

Bangladesh's enactment of the Torture and Custodial Death (Prevention) Act, 2013 reflects a formal legal acknowledgment of these risks and establishes a clear statutory prohibition against torture and custodial abuse. The Act criminalizes torture and custodial death, affirms the non-derogable nature of bodily integrity and human dignity, and aligns domestic law with international human rights standards. However, the continued allegations surrounding remand practices suggest a persistent gap between legal prohibition and institutional behavior. Where remand is treated as an investigative entitlement rather than an exceptional and carefully justified measure, judicial oversight risks becoming procedural rather than substantive, weakening the preventive function of the law. The use of custodial

coercion to extract confessions has consequences that extend beyond individual rights violations. Coerced confessions undermine the reliability of evidence, contaminate investigations, and increase the likelihood of false admissions, wrongful prosecutions, and miscarriages of justice. From a security perspective, such practices are counterproductive: they divert investigative resources away from genuine fact-finding, allow actual perpetrators to evade accountability, and erode public confidence in law enforcement and the courts. In this sense, torture and coercive interrogation are not only unconstitutional but also fundamentally anti-security, as they weaken both the legitimacy and effectiveness of the criminal justice system.

6.3 Judicial oversight as a "hinge" point

Judicial oversight, particularly at the magistrate level, operates as a critical hinge point in the liberty–security balance within the criminal justice system. In constitutional theory, the requirement that arrests and continued detention be placed under judicial supervision is intended to interrupt unchecked executive power and to ensure that coercive measures remain lawful, necessary, and proportionate. Magistrate courts are thus positioned as the first institutional checkpoint between the individual and the State, with the authority to question police action, demand justification, and enforce procedural safeguards.

In practice, however, the effectiveness of this safeguard depends heavily on the quality and rigor of judicial engagement. Where remand applications are treated as routine administrative matters and granted without meaningful scrutiny, judicial oversight becomes symbolic rather than substantive, and constitutional protections are correspondingly weakened. Conversely, where magistrates insist on clear and specific grounds for arrest and remand, verify compliance with legal requirements, ensure access to legal counsel, and assess the necessity and duration of detention, judicial oversight functions as an active constraint on abuse. Such scrutiny not only strengthens the protection of individual rights but also improves investigative quality by discouraging reliance on coercion and encouraging evidence-based policing. Judicial oversight therefore does not represent a barrier to security; rather, when exercised effectively, it aligns constitutional rights with more credible, reliable, and legitimate law enforcement outcomes.

7. Security Statutes and the Digital Turn

7.1 Cyber Security Act, 2023 and the liberty–security trade

Bangladesh's Cyber Security Act, 2023 was enacted to modernize the legal framework governing cyber security and offences committed through digital and electronic means, expressly repealing the earlier Digital Security Act, 2018. The State's security rationale is clear and not inherently illegitimate: cybercrime, online fraud, identity theft, coordinated disinformation, and digital incitement can generate tangible harms to individuals, institutions, and public order. In an increasingly digitized society, the absence of legal tools to address such threats would itself constitute a governance failure. From a constitutional perspective, the core issue is therefore not whether cyber security legislation is necessary, but how its powers are defined, limited, and enforced. Serious liberty concerns arise, however, when cyber laws incorporate broadly framed speech-related offences, enable arrest and detention at the pre-trial stage with limited safeguards, or are enforced in ways that disproportionately affect journalists, activists, and political critics.

Critics argue that vague offence definitions expand discretionary power and create chilling effects on lawful expression, particularly where individuals cannot reasonably predict what forms of online speech may trigger criminal liability. Enforcement practices that prioritize rapid arrest over careful investigation further intensify these concerns, as the immediate deprivation of liberty and reputational harm can function as punishment even in the absence of conviction. Human rights organizations, including Amnesty International, have contended that the replacement of the Digital Security Act with the Cyber Security Act did not meaningfully resolve the structural free-expression problems of the earlier regime, calling instead for repeal or substantial revision. Transparency-focused civil society critiques similarly characterize the DSA–CSA model as disproportionately restrictive, arguing that it reflects a security-first legislative design insufficiently anchored in constitutional standards of necessity, proportionality, and procedural restraint.

In this framing, the Cyber Security Act exemplifies how the liberty–security trade-off can become unbalanced when legal reform prioritizes control over constitutional equilibrium.

7.2 What "balance" should look like in digital enforcement

A constitutionally defensible approach to cyber security enforcement requires that security objectives be pursued through narrowly tailored, rights-respecting legal design and practice. At a minimum, this entails clear and precise offence definitions so that ordinary political, journalistic, or critical expression is not swept into the ambit of criminal liability. Procedural safeguards must be strong at the investigative stage, particularly in relation to arrest, search, and seizure, where digital evidence can be expansive and intrusive. For non-violent, speech-related allegations, enforcement should presumptively favor summons and notice-based procedures over custodial arrest, reserving deprivation of liberty for situations of demonstrable necessity. Pre-trial detention should be subject to high evidentiary thresholds and individualized judicial reasoning, with prompt and meaningful scrutiny to prevent detention from operating as a form of punishment in advance of conviction.

These design choices are not merely abstract constitutional preferences; they directly shape governance outcomes. When citizens fear that online expression may trigger arrest or

prolonged legal entanglement, self-censorship becomes rational behavior, and civic trust in legal institutions deteriorates. That erosion of trust is itself a security cost. Effective cyber security, like effective policing more broadly, depends on public cooperation, voluntary compliance, and confidence that law enforcement acts fairly and predictably. When digital enforcement is perceived as arbitrary or punitive, it weakens both digital governance and physical law enforcement by alienating the very communities whose trust and participation are essential to sustainable security..

8. Criminal Justice Outcomes: How Rights Violations Harm Security

Rights violations in criminal justice do not only harm individuals; they also damage the State's ability to deliver real, durable security. When arrests are perceived as arbitrary, selective, or politically motivated, communities become less willing to cooperate with law enforcement, witnesses hesitate to come forward, and everyday policing turns into a relationship of fear rather than partnership. Coercive interrogation and custodial abuse can produce unreliable "evidence," including false confessions, which contaminates investigations and increases the risk of wrongful convictions while allowing actual offenders to remain free. Prolonged pre-trial detention, especially where bail is difficult and case backlogs are common, can turn the process itself into punishment, undermining the legitimacy of courts and strengthening the belief that justice is inaccessible or biased. In the digital sphere, broad speech-related offences and arrest-heavy enforcement can chill lawful expression and civic participation, shrinking the space for accountability and constructive criticism that helps institutions correct mistakes before they become crises. Over time, these patterns erode public trust—the single most valuable asset any criminal justice system needs to prevent crime, gather intelligence, and maintain order. In that sense, constitutional rights are not a "soft" constraint on security; they are part of the infrastructure of security itself, because lawful, fair, and accountable enforcement produces cooperation, credibility, and more reliable justice outcomes.

9. Reform Proposals: Achieving "Security Through Legality"

Bangladesh can strengthen both security and liberty by pursuing reforms that make criminal justice more evidence-driven, transparent, and accountable, rather than more coercive. "Security through legality" means designing and enforcing rules so that arrests, detention, interrogation, and digital investigations are guided by clear standards, documented reasoning, and meaningful judicial control. Targeted reforms should prioritize narrowing discretionary space where abuse is predictable, strengthening safeguards at the earliest stages of criminal process, and building investigative capacity that reduces dependence on confessions and remand. When police performance is measured by case quality and conviction reliability—supported by forensic methods, lawful digital evidence collection, and professional investigation—rights protections become aligned with better security outcomes. At the same time, effective legality requires stronger oversight institutions: magistrate courts must function as real constitutional gatekeepers, internal police accountability must be credible, and complaint and prosecution mechanisms for custodial abuse must be usable in practice. In the digital sphere, security-oriented laws should be paired with precise offence definitions, restraint in arrest for speech-related allegations, and high thresholds for pre-trial detention and intrusive searches. Together, these reforms would not weaken the State's ability to respond to crime and cyber threats; they would make enforcement more legitimate, more accurate, and more trusted—creating a criminal justice system that produces security gains without sacrificing constitutional dignity and rights.

9.1 Arrest reform and documentation requirements

Warrantless arrest should be paired with strict documentation: written reasons, a clear factual threshold, prompt notification of grounds, and mandatory recording of time, place, and officer identity. These steps reduce arbitrary power without preventing necessary policing.

9.2 Remand safeguards and anti-torture enforcement

The Torture and Custodial Death (Prevention) Act, 2013 establishes a clear legal prohibition against custodial abuse. The key gap tends to be enforcement. Strengthening medical examinations, ensuring access to counsel, limiting remand duration, and requiring reasoned judicial orders can reduce coercion and improve evidence quality.

9.3 Cyber law narrowing and enforcement restraint

The Cyber Security Act, 2023 is the current statutory basis for cyber offences. To better align with constitutional expression principles, Bangladesh can narrow vague speech crimes, create public-interest defenses for journalism, increase bail availability for non-violent allegations, and strengthen judicial scrutiny for search and arrest powers. Rights organizations' criticisms provide a roadmap for what areas are perceived as most liberty-threatening.

9.4 Institutional capacity building

Institutional capacity building is essential for achieving "security through legality" because rights-respecting criminal justice depends on competent institutions, not only on better rules. When police investigations rely heavily on remand or confessions, it often reflects weak forensic capacity, limited training in evidence handling, poor case management, and inadequate resources for modern investigative work. Strengthening capacity therefore means investing in practical skills and systems that reduce reliance on coercion and increase the quality and credibility of prosecutions. This includes training investigators in lawful arrest decision-making, interview techniques that do not depend on

pressure, crime-scene management, chain-of-custody standards, and digital forensics for cyber-related cases. It also requires modernizing recordkeeping through standardized forms, case tracking, and auditable custody logs, so that oversight bodies and courts can verify what happened and when.

Prosecutorial capacity must be strengthened alongside policing, including early case screening, guidance on evidence sufficiency, and coordination that prevents weak cases from being "kept alive" through repeated remand. Judicial capacity also matters: magistrates and trial judges need continuing education on constitutional safeguards, remand standards, and the assessment of detention necessity, supported by court management reforms that reduce delay and make bail and review hearings meaningful. Finally, accountability institutions—internal affairs units, complaint mechanisms, and bodies empowered to investigate custodial abuse—must be resourced and protected so that illegality carries predictable consequences. In combination, these capacity reforms shift the system away from coercive shortcuts and toward professional, evidence-based enforcement that improves both public trust and public safety.

9.5 Independent oversight and complaint mechanisms

Independent oversight and credible complaint mechanisms are central to sustaining legality in criminal justice and preventing the normalization of abuse. When allegations of arbitrary arrest, custodial ill-treatment, or misuse of security laws are reviewed by bodies that are institutionally separate from operational command structures, accountability becomes more than a formal promise. Effective oversight deters misconduct by increasing the likelihood that unlawful actions will be detected, documented, and sanctioned, while also protecting law enforcement officers who act within the law by distinguishing professional conduct from abuse. For oversight to be meaningful, complaint mechanisms must be accessible, safe for complainants, and capable of initiating impartial investigations without political or institutional interference. Transparent procedures, reasoned outcomes, and follow-up on disciplinary or prosecutorial action are essential to building public confidence. Over time, such systems strengthen legitimacy by demonstrating that the criminal justice system is willing to correct itself, reinforcing trust between communities and law enforcement and supporting more effective, cooperative, and rights-compliant security outcomes.

10. Conclusion

Bangladesh's constitutional framework places liberty, legality, and equal protection at the core of governance, while the State's security responsibility demands effective prevention and enforcement. The tension is real, but it is not unsolvable. The strongest claim of this paper is that security policy succeeds best when it is built on constitutional legality. Arrest and remand practices are the critical pressure points, because they concentrate coercive power and create the highest risk of rights violations. Digital-era security laws add new challenges, especially where broad offences or aggressive enforcement can chill expression. A sustainable balance requires a shift from discretion-heavy policing toward documentation, oversight, evidence quality, and enforceable safeguards. That shift improves rights compliance and also improves criminal justice outcomes: public trust rises, investigations become stronger, and "security" becomes legitimate rather than feared.

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