

# Remand-A Tool for Torturing the Arrestee in Bangladesh

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# Remand-A Tool for Torturing the Arrestee in Bangladesh

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## Abstract

Remand is a criminal justice system process in Bangladesh. This process has been misused because of the abuse of the power by law enforcement agencies. Torture is the most extreme form of human rights violation in Bangladesh. Although the law prescribes remand for assisting fair justice, law enforcement agencies use it to torture innocent people in their custody. There are many legal safeguards against torture under remand in Bangladesh, including constitutional and special laws. Bangladesh has also ratified some international instruments that are strongly against torture while in police custody. However, in reality, torture remains and is not proscribed in Bangladesh. Many human rights organizations have expressed concerns regarding torture in remand in Bangladesh. There are some previous studies regarding torture while in police custody in Bangladesh, most of which have focused on the loopholes of old laws and judicial development. This paper emphasizes the torture under remand and ineffectiveness of the newly enacted law regarding the prevention of torture and ratification of the Optional Protocol of the Torture Convention (United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

## Keyword

Remand, Torture, Human Rights, Criminal Process.

## バングラディシュにおける逮捕後の再拘束と拷問

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## 要旨

再拘束は、バングラディシュの刑事司法制度の手続きの1つである。この手続きはバングラディシュにおいて濫用されてきた。国内の手続法が警察などの法執行機関に大きな権限を与えているからである。拷問は、バングラディシュにおいてもっとも悲惨な人権侵害である。法は再拘束の手続きを公平な司法の実現のために定めているが、実際には、法執行機関により、無実の人を拘束し拷問を加えるために利用されている。バングラディシュの憲法やその他の法律には、再拘束における拷問を制限する条文がある。またいくつかの国際条約は警察の拘束下における拷問を禁止しており、バングラディシュも批准しているが、十分に機能せず、拷問が行われている。多く

の人権団体は、バングラディシュにおける再拘束による拷問を問題視している。本論文では拷問がおこる要因と、現行法の問題点を検討し、再拘束に関する問題に取り組むための提言を行う。

#### キーワード

Remand, Torture, Human Rights, Criminal Process.

## I. Introduction

Torture, physical or psychological, is a common problem all over the world. International organizations have been concerned seriously with the problems since the World War II. The right against torture and the importance of prohibition of torture in any occasion are well recognized in different international instruments, such as the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and so on. This fact clearly shows that the right against torture is one of the most important human rights, and the party countries have obligation to handle the problem. However, torture remains serious problems of human rights and it occurs almost every day in criminal justice system in Bangladesh.

This article analyzes current laws, practices and safeguards regarding remand in Bangladesh. The main purpose of granting remand is to complete the investigation which the investigation authority could not complete within their prescribed time. But in practice, remand is granted to torture the arrested person. One of the functions of the police is to protect the human rights of the citizen in the country, but if the police itself violate such human rights, then where the innocent citizen will go? Since the arrested person is not guilty

until he or she is convicted by the court of law, torturing such person obviously is the violation of human rights. In this modern era, torturing the arrestee based on just mere allegation should be strictly prohibited. But torturing the arrestee is one of the most happening incidents committed by the police in Bangladesh. The trend to torture the innocent people is not new, and torture upon the arrestees has been prevailed since the independence of Bangladesh.

Bangladesh has ratified the "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984" which provides some obligations to its state parties to prevent the act of torture. In 2013, Bangladesh enacted an Act named the Torture and Custodial Death (Prevention) Act in 2013, but the Act has failed to reflect the provisions of the Torture Convention. Besides this, the Supreme Court of Bangladesh provided for some effective guidelines regarding remand but those are not followed in practice. Torturing under police custody occurs due to various reasons such as political influence, personal anger of police member, theoretical error of law etc.

In this article, Chapter II explains the meaning and procedures of remand in Bangladesh along with reasons behind remand for being controversial. Chapter III illustrates the legal development for prohibiting torture in remand. Chapter IV examines the existing legal and practical problems and provides probable

solutions for them.

## II. The Laws of Remand

### 1. Definition and the development of remand in Bangladesh

One of the main objects of the Criminal Law is the prevention of offences through the example of punishment, and the intention of the code of procedure is to ensure this. However, the system made by the human being is not ultimately perfect, and in some cases, that imperfect system permits the form to defeat the substance of the law. Due to such imperfection, sometimes the law cannot fulfill its main purpose, an innocent person gets punishment, and a real criminal gets acquittal because of any defect of form in the prosecution.

The main laws and procedure of Bangladesh related to crimes were enacted during the British period (1757–1947) by the direct control of British government. It is often argued that the law-making process in colonial Bengal was erratic and norms were often enacted randomly.<sup>1</sup> The fact is that the legal system of Bangladesh, a complex hybrid of pre-colonial indigenous legal cultures, Anglo-Indian legal tradition, and post-independence developments, is pluralistic in its nature.<sup>2</sup> Bangladesh has enacted many special laws after its independence. But the major laws such as the Penal Code and the Code of Criminal Procedure (CrPC) were enacted in British period, and those are still in force. The colonial legacy of power-facilitative, command-based and top-down law making continues to haunt the country's legislative history, thereby marginalizing the people's participation in law making and their chance of getting better justice.<sup>3</sup>

The general meaning of the term 'remand'

is to return or send back. In the Common law countries, this word is used in the criminal law. In the legal arena, the term has two different meanings: the one is to send back the accused in custody of the competent authority; the other is to send back the cases to the lower court from the appellate court.

Here, I deal with the first one, which is also known as the pre-trial detention. It refers to the process of keeping the accused in custody before the judicial trial is processed. Generally, it is sought in case of serious crimes like murder, rape etc. where the accused can be held in remand in custody till his or her trial. The main object behind this detention is to keep the accused away from the society and for the further investigation of the case. After the arrest, the authority gets very short time for investigation that's why when the court is of the opinion that the required investigation cannot be completed in that given time and if there is a reasonable ground to believe the involvement of the arrested person in the offense, the court grants remand.

According to the Oxford Dictionary of Law, remand means to commit an accused person to custody or release him on bail during an adjournment. After an arrest being made, the suspect is normally detained at the police station until he or she is brought before the magistrates. If the offence with which he is charged is triable summarily or is an indictable offence that is being tried summarily, the court may adjourn the case and remand the accused to the police station. If the offence is being tried on indictment, the court may likewise adjourn the case and remand the accused before inquiring into the offence as examining justices.<sup>4</sup>

The trend of torturing the arrestee is not a new phenomenon in the context of

Bangladesh. It has taken the attention of the scholars, NGOs, newspapers and other human rights organizations since the independence of Bangladesh. Many famous scholars and NGOs have shown their serious concern toward this issue, following is the concern of one of the famous scholars of Bangladesh:

In his article "Arrest and Remand: Towards a Rights Paradigm"<sup>5</sup>, a renowned scholar, Shahdeen Malik analyzed the existing legal provision of arrest and remand in the light of Constitutional provisions. The author argued in the article that when an arrested person is brought back to the police station, police tries to extort information or confession from such arrested person through physical or mental torture, and such torture sometimes causes death. This is totally contradicted to the Constitution provision because Article 35 of the Constitution says that no one can be tortured or subjected to cruel or inhuman or degrading punishment or even treatment. The author lastly highly recommended for the amendment of those black laws which facilitate the law enforcing agencies to misuse their arbitrary powers.

## 2. Procedures of Remand in Bangladesh

Criminal process is consisted of various stages, and investigation is one of the vital stages of this process. In Bangladesh, criminal investigation is carried out by the police. Such investigation includes searches, interviews, evidence collection and preservation, interrogations and other methods of investigation. All of these procedures have specific rule provided by law.

The remand process mainly is provided in Section 167 of the Code of Criminal Procedure of 1898 which authorizes interrogation of the accused in the police custody. There are two

types of arrest, one of which is made pursuant to the First Information Report, and the other is the arrest made by police officer without warrant. After the arrest is made, the arrestee shall be brought to a magistrate court within 24 hours in order for the magistrate judge to determine whether further detention is necessary or not. As Prof. Shahdeen Malik explains, "It is a common knowledge that Magistrates routinely allow this request for remand".<sup>6</sup>

According to the Section 167 of the Code of Criminal Procedure, 1898,

(1) "Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or send it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that no Magistrate of the third class, and no Magistrate of the second class

not specially empowered in this behalf by the Government shall authorize detention in the custody of the police.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, he shall forward a copy of his order, with his reasons for making it to the Chief Metropolitan Magistrate or to the Chief Judicial Magistrate to whom he is subordinate.

(4A) If such order is given by a Chief Metropolitan Magistrate or a Chief Judicial Magistrate, he shall forward a copy of his order, with reasons for making it to the Chief Metropolitan Sessions Judge or to the Sessions Judge to whom he is subordinate.

(5) If the investigation is not concluded within one hundred and twenty days from the date of receipt of the information relating to the commission of the offence or the order of the Magistrate for such investigation-

(a) the Magistrate empowered to take cognizance of such offence or making the order for investigation may, if the offence to which the investigation relates is not punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such Magistrate; and

(b) the Court of Session may, if the offence to which the investigation relates is punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such Court:

Provided that if an accused is not released on bail under this sub-section, the Magistrate or, as the case may be, the Court of Session shall record the reasons for it:

Provided further that in cases in which sanction of appropriate authority is required to be obtained under the provisions of the relevant law for prosecution of the accused, the time taken for obtaining such sanction shall be excluded from the period specified in this sub-section.

Explanation-The time taken for obtaining sanction shall commence from the day the case, with all necessary documents, is submitted for consideration of the appropriate authority and be deemed to end on the day of the receipt of the sanction order of the authority.”<sup>7</sup>

### **3. The Presumption of Innocence and the International Conventions**

The term ‘presumption of innocence’ is a legal principle which means to consider the accused to be innocent until proved guilty. In other words, the term means not to punish the accused until he is proved guilty. The principle is well recognized by the Universal Declaration of Human Rights. According to the UDHR, everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.<sup>8</sup> Article 14(2) of the International Covenant on Civil and Political Rights has described the presumption of innocence in the same words as the UDHR. According to the Article 48 of the Charter of Fundamental Rights of the European Union, everyone who has been charged shall be presumed innocent until proved guilty according to law.

As a State party of the International Covenant on Civil and Political Rights, Bangladesh is legally bound to uphold the provisions of the Covenant.

#### 4. Why Remand Matters?

Despite of constitutional safeguards and the protection provided by a special Act<sup>9</sup> regarding the torture, inhuman, cruel and degrading punishment, both physical and psychological torture by law enforcing agencies is often reported in Bangladesh. Almost every day the incidents of torture by law enforcing agencies are reported in dailies and human rights journal. Followings are some incidents of torture committed in recent times.

On 4th July 2020, Jisa Moni, a 14 years old girl, a garment worker, went missing in Narayangonj. On August 8, her father filed the case with Narayangonj Sadar Police Station. In this case, a Sub Inspector (Shamim Mohammad) arrested three persons and those men were tortured and were forced to confess before the court that they had raped and killed the girl and then thrown her body in a river. But, a relative of Jisa Moni brought her to the police station alive on August 23rd. The father of one of the arrested persons said that the Sub Inspector took Tk. 6000 from him promising that he would not torture the arrestees in remand. However, the Sub Inspector tortured those arrested persons during remand, and forced them to confess in the court.<sup>10</sup>

On 5th July 2020, the police of Chapainawabganj Sadar Model Police Station arrested a man named Afsar Ali. Later, he was brought to a magistrate. Police sought remand for the arrested person, which was granted by the magistrate for the period of one day. Police tortured him inhumanly, as a result, he fell sick. When police brought him to the hospital, the doctor announced him dead.<sup>11</sup>

On April 9th 2018, Rashed Khan, a student of Dhaka University, was arrested for spreading defamatory speech and inciting violence and

unrest through Facebook. Later, he was placed on five days police remand. When he was brought to the court from the police custody after the remand, the signs of physical torture were seen in his body including bleeding on his face. He looked very weak due to suspected torture.<sup>12</sup>

Table 1: Statistics of Alleged Custodial Torture by Law Enforcement Agencies: 2004–2019<sup>13</sup>

Alleged Torture by Law Enforcement Agencies (Police and RAB) : 2004 - 2019			
Year (s)	Alive	Dead	Total
2019	5	6	11
2018	13	6	19
2017	16	11	27
2016	13	11	24
2015	20	08	28
2014	22	10	32
2013	18	11	29
2012	63	5	68
2011	29	15	44
2010	45	22	67
2009	56	14	70
2008	31	11	42
2007	12	19	31
2006		27	27
2005		26	26
2004		39	39

Several national and international human rights organizations have shown their concern regarding torture under police custody in Bangladesh. On 26 August 2019, the Committee against Torture (CAT) published Concluding observations on the situation of torture in Bangladesh. In the clause of Principal subjects of concern, the Committee discussed the allegations of widespread use of torture, ill-treatment, and inadequate investigation of

complaints of torture. The Committee also showed their serious concern about remand detention and fundamental legal safeguards.

### **5. Practical Reasons behind the torture in police custody**

There are some practical reasons which work for committing torture under police custody. Firstly, the Criminal Procedure law of Bangladesh empowers police a vast power regarding the arrest without warrant. The most misused provision of the code is the provision of arrest without warrant; it empowers the police to arrest any person on suspicion without warrant but does not provide any safeguard regarding such arrest. The code also provides the power of investigation of the crime to the police. Besides the code of criminal procedure, some others special laws also provide enormous powers to the police such as section 316 of the Police Regulation of Bengal, 1943, giving the same power of section 54 of the CrPC for arresting a person without warrant. Another provision of law, section 27 of the Evidence Act of 1872, enhances the accountability for accepting the statement made by the accused under the police custody. Secondly, bribery which is one of the most effective reasons for not ensuring human right and fundamental right. Almost all the lawful authorities take bribe for doing some immoral acts within their duties. According to a survey report of Transparency International Bangladesh (TIB), Law enforcement agencies were the most corrupt among 18 departments and sectors in providing services to households in 2017. According to the report, 60.7 percent of the households surveyed fell victim to bribery in the service-oriented sectors.<sup>14</sup> Thirdly, political influence which is a long tradition

in Bangladesh that the government uses the police force to oppress the opposite party. Due to influence of the ruling party, many innocent people get arrested and become victims of the torture. It is often the case in Bangladesh not to take the complaint formally by the police in spite of having gotten enough information on an offence by the victim because of political influence. Fourthly, there is no proper monitoring authority on the activities of the law enforcement agency in Bangladesh. As a result, the violation of human rights by the police is often overlooked in many cases. In some countries, there is an independent authority which monitors the conduct of the law enforcing agency e.g. The Independent Police Complaints Commission (IPCC) in England and Wales, The Independent Police Conduct Authority (IPCA) in New Zealand, Police Complaints Authority (PCA) in India. Fifthly, most of the employees of police services are not aware about the fundamental right of an arrested person. Sometimes, they only follow the immoral decision made by the superior authority. Sixthly, there is no independent investigation authority in Bangladesh for the human rights violations by the police themselves. The allegations of human rights violations committed by the police are also investigated by the police of the same department. In most of the cases, the investigating police officer could be influenced by the alleged police. In the consequence, the victim does not get the proper justice. Seventhly, there is a significant gap between the police and general people; they remain separated from the society. Police have rare interaction with the common people. As a result, the distance creates hatred and mistrust which could contribute to the occurrence of custodial torture. Lastly, the field level police



personnel get less training on human rights knowledge comparing to the police personnel of headquarters.

“In Bangladesh, there is no such institute for police where international standard education and training for improving overall human rights knowledge and capability of the police officers and training focusing on human security issues of the poor, woman and children can be imparted. As a result, of absence and ignorance, protecting and promoting the universal norms of human rights, police itself, become the perpetrators and human rights, violators.”<sup>15</sup>

### III. Legal Safeguards and its development

#### 1. Constitutional Safeguards against Torture

The Constitution, which is the supreme law of the country, provides safeguards regarding the torture and other ill treatment. It says, no action shall be taken which is detrimental to the life, liberty, body, reputation or property of any person except in accordance with law.<sup>16</sup> Any person shall not be deprived of life or personal liberty save in accordance with law.<sup>17</sup> In the title of ‘Safeguards as to arrest and detention’, the constitution provides express safeguards regarding the arrest and detention. Article 33 provides that an arrestee shall not be detained in custody without being informed the ground of such arrest. He must get the right to consult with a lawyer of his choice. The arrested person shall also be produced before the nearest magistrate within a period of twenty four hours of such arrest.<sup>18</sup> Another Article says that no person accused of any offence shall be compelled to be a witness against himself.<sup>19</sup> The same article says that no person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.<sup>20</sup> And Article 7 of

the Constitution declares about the supremacy of itself, which says the Constitution is the supreme law of the country and if any other law becomes inconsistent with this constitution shall be void.<sup>21</sup>

#### 2. International instruments against Torture

Besides the domestic safeguards, there are some regional and international safeguards which preserve the rights of the accused regarding torture, inhuman and ill treatment.

According to the Article 5 of the Universal Declaration of Human Rights (UDHR), “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Article 7 of the International Covenant on Civil and Political Rights (ICCPR) 1966 deals with the rights of the accused expressing the same language as of article 5 of UDHR. Article XXV of American Declaration of the Rights and Duties of Man (ADRDM), 1948 states that every individual who has been deprived of his liberty has the right to human treatment during the time he is in custody. Article 5 of the African Charter on Human and Peoples’ Rights, 1986 says that all forms of exploitations and degradation of man, particularly torture, cruel, inhuman or degrading punishment or treatment shall be prohibited.

One of the most influential international instruments is the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter, the UN Torture Convention). The UN Torture Convention is solely dedicated to prevent the torture and other ill treatment. As of June, 2021, it is one of the most widely ratified conventions with 171 state parties.<sup>22</sup> On October 5, 1998, Bangladesh acceded to this Convention. So, this convention is one of the

shields for the citizen of Bangladesh against the torture. The state party of the Convention is legally bound to obey the rules and regulations of the Convention.

The provisions of the Convention are divided into three parts. Part 1, which includes Articles 1–16, provides the substantive rights against the torture and other ill treatment, part 2 says about the implementation machinery which are included in Articles 17–24, and the final part deals with the clauses relating to ratification, amendments, etc. which is incorporated in Articles 25–32. The following articles of the Convention specially deals with the substantive rights against the torture:

Article 1 of the convention defines the term ‘torture’ describing it as an act which causes severe pain or suffering, whether physical or mental. It also says that such intentional torture is committed for the purpose of obtaining information or a confession regarding a crime. And such torture is committed directly by a public official or with his consent or at his instigation or acquiescence.<sup>23</sup> Where Article 2 recommend the State Party to take effective legislative, administrative, judicial or other measures for the prevention of torture under its jurisdiction.<sup>24</sup>

It is the duty of the state party not to expel, return or extradite a person to another state where such person may be victim of torture.<sup>25</sup> All the state parties will turn all acts of torture or an attempt to commit torture into a criminal offense by making it illegal.<sup>26</sup> It is also the duty of the State party to establish jurisdiction over acts of torture.<sup>27</sup>

The education and information regarding the prohibition shall be included by the State party in the training of law enforcement personnel, civil or military, medical personnel, public

officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.<sup>28</sup> The interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction shall be kept under review by the State party.<sup>29</sup>

Investigation will be done promptly and impartially, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction of any State party.<sup>30</sup> If any individual alleges that he has been subjected to torture in any territory under the jurisdiction of any State party, it is the duty of that State party to ensure the right of that person to complain to, and to have the case promptly and impartially examined by, the competent authority.<sup>31</sup> State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.<sup>32</sup>

It is the duty of the State party to ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.<sup>33</sup> Besides the definition of torture mentioned in Article 1 of the Convention, it is the duty of the State party to prevent other acts of cruel, inhuman or degrading treatment or punishment committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.<sup>34</sup>

As the State Party of the UN Torture Convention,

Bangladesh needs to comply with the provisions of the Convention.

### **3. Guidelines and directives by the Supreme Court on Remand**

Following some incidents of abuse of power, including allegations of custodial death, inhuman treatment<sup>35</sup> and torture<sup>36</sup>, Bangladesh Legal Aid and Services Trust (BLAST), a non-governmental organization with other human rights organizations brought a writ petition before the Supreme Court of Bangladesh. In that writ petition, the issues were the abuse of powers by police in respect of arrest without warrant which is provided in section 54 of the CrPC and the remand under police custody under Section 167 of the CrPC. The main argument by the petitioners in that writ petition was that the law enforcement agencies routinely abused the powers regarding arrest without warrant and remand given by the CrPC. They also argued that the two provisions were vague in some extent and allowed the law enforcement agencies to exercise the power arbitrarily. The petitioners argued that some important constitutional rights were ignored by the police through the exercise of powers regarding arrest without warrant and remand. Those infringed rights were the ones to life and liberty, to equal protection of law, to be treated in accordance with law and to be free from cruel, inhuman and degrading treatment and punishment given by articles 32, 27, 31, 33 and 35 of the Constitution of Bangladesh.

In the judgment, the High Court Division of the Supreme Court held that the provisions of the sections 54 and 167 of the Code of Criminal Procedure of 1898, were inconsistent to some extent with the provisions of Article 27, 30, 31, 32, 33 and 35 of the Constitution of Bangladesh.

The Division of the Supreme Court provided clear guidelines and directives on arrest, detention, remand and treatment of arrested person by the law enforcement agencies and magistrates. Furthermore, in *Saifuzzaman v. State and others*<sup>37</sup>, another bench of the High Court division issued guidelines for the government, magistrates and police in respect of arbitrary arrest, detention, remand investigation and treatment of suspects. In *Saifuzzaman v. State and others* case, it was concerned of arrest without warrant of some student political leaders, under section 54 of the CrPC of 1898 and about their subsequent detention for judicial remand under the Special Powers Act, 1974. Here, the court observed the severe violation of fundamental rights of the citizen by police. In both cases, the High Court Division has provided guidelines regarding remand and detention.

According to those decisions, an arrestee must be presented before the nearest magistrate within 24 hours of his/her arrest. But, if the concerned police officer thinks that he/she needs more time for completing the investigation, he may seek the extension of the detention period of the arrested person. In this case, the police officer must forward reasons in a forwarding letter to the concerned magistrate and in that forwarding letter, he/she must explain the reasons as to why the investigation could not be completed within the prescribed time (24 hours) and why such police officer considers the accusation and information to be well founded. The court has also held that only the forwarding letter is not enough for taking the permission of the detention extension. In addition, for making the order of the Magistrate under section 167 of the CrPC, the police officer shall present the forward letter as well as a memorandum of

arrest, a copy of information and complaint and a copy of diary. If the concerned magistrate thinks that the reasons stated in the forwarding letter regarding the accusation or information against the arrested persons are sufficient for the extension of detention period, the magistrate shall grant an order for further detention. Otherwise, the Magistrate shall release that arrested person.

After releasing the arrested person, the magistrate shall take action under section 220<sup>38</sup> of the Penal Code of Bangladesh against the police officer who arrested that person without warrant.

If the Magistrate orders for further detention of such arrested person, the concerned police officer shall interrogate the arrested person in a room with glass wall or grille on one side within sight of lawyer. And the magistrate ordering for further detention shall record reasons of granting interrogation.

If any death of the person arrested without warrant occurred in the police custody during the time of investigation or interrogation, the concerned police officer must inform the nearest magistrate as soon as possible. Then the magistrate shall inquire into the death of such person in police custody or jail immediately after receiving the information of such death. If the extended period of remand expires without any occurrence of death, the concerned police officer shall produce the arrested person before the magistrate. And if the police officer cannot complete the investigation within 15 days (first extended period of detention) under section 167 (2) of the Code, the Magistrate can send the accused on remand under section 344 of the Code for a term not exceeding 15 days for one time.

#### **4. The Torture and Custodial Death (Prevention) Act, 2013**

The Constitutional guarantees and the Supreme Court's directives and guidelines regarding the torture and other ill treatment are not regularly followed and, therefore, left largely ineffective. The incidents of torture and death in the police custody are taking place in regular manner. To address these violations, the human rights organizations and civil society members have demanded the enactment of a comprehensive law. The demand of enacting a law criminalizing all acts of torture has also been expressed by the Committee Against Torture (CAT) as Bangladesh's obligation. Subsequently, the parliament of Bangladesh enacted the Torture and Custodial Death (Prevention) Act, 2013 on 27 October 2013.

The Act 2013 provides definition of "torture" and "custodial death" and sets the process for making a complaint, the investigation, and sentencing provisions as well. According to section 2 (6) of the Act, "Torture" means any physical or psychological torture that hurts. It has also provided some other specific criteria of "torture" like extorting any information or confession, punishing or intimidating any suspected person or offender, or any work done on a discrimination basis etc.<sup>39</sup> According to section 2 (7), "Custodial death" means the death of a person in the custody of a public officer. Custodial death will also mean any death of any person during an illegal detention, or a death during an arrest or interrogation.<sup>40</sup>

According to section 5 (5) of the Act, the investigation will be conducted by a police officer appointed by the court whose rank is not less than that of the person accused.<sup>41</sup> If any aggrieved party, such as the victim of the torture argues that it would be impossible for

the police to conduct a proper investigation due to neutrality concern, then under section 5 (2) of the Act, the court can order judicial investigation.<sup>42</sup> Regarding the punishment, the Act has several provisions. If any offence of torture is committed, the punishment is five years rigorous imprisonment<sup>43</sup> or a monetary penalty of minimum fifty thousand Taka or both, if any offence of custodial death is occurred, the punishment is rigorous imprisonment of minimum life term or a monetary penalty of minimum one hundred thousand Taka or both. In both cases, the convicted person will pay additional minimum twenty-five thousand and two hundred thousand Taka respectively to the victim/aggrieved person.<sup>44</sup>

#### IV. Legal and Practical Issues and Solutions

The current Code of Criminal Procedure was enacted in 1898 during British period, and it provided for vast power to the law enforcing agencies regarding arrest, detention and remand. Until 2003, there was no judicial intervention to check abuse or misuse of the power given by the CrPC. In 2003, the High Court division provided some guidelines and directives regarding arrest, detention and remand. But in practice, most of the guidelines and directives are not followed by the law enforcing agencies. Unfortunately, the law enforcing agencies are more interested in the exercise of special laws than the Constitution because of the powers given to them by the special laws. As a result, they violate the constitutional provisions.<sup>45</sup>

Section 54 of the CrPC provides for the widest power to the police regarding arrest without warrant. Though it is expected that the powers of arrest must be used reasonably and

cautiously, in practice, the powers are misused by the law enforcing agencies very often. The Code made the power of arrest discretionary by adding the term 'may arrest'. In this context, the police officers arrest the person, at his own will, even the person who loves peace in the country (Akkas, 2016). According to Section 54 of the CrPC, a police officer may arrest a person without warrant on eight conditions. The most relevant part among them is the first condition. The first condition contains four conditions, and the words used in those four conditions are:

Any police officer may, without a warrant, arrest –

- a. any person who has been concerned in any cognizable offence;
- b. against whom a reasonable complaint has been made;
- c. against whom a credible information has been received;
- d. against whom a reasonable suspicion exists of his having been so concerned in any cognizable offence.

In the *BLAST v. State* case<sup>46</sup>, the word 'concerned' has been stated as a vague word which gives unhindered power to a police officer to arrest any person stating that the person arrested by him is concerned in a cognizable offence.

Section 61 of the CrPC has been another provision which is abused by the law enforcing agencies. According to the section, if a magistrate does not make an order of extension of detention under section 167 of the code, the police officer cannot detain the arrestee in the police custody for more than 24 hours. But in practice, most of the arrestees are detained by the police for more than 24 hours. Even, in some cases, the police don't acknowledge about the arrested person from month to months.<sup>47</sup> Special

Powers Act, 1974 is another special law which provides police a vast arbitrary power. This Act allows arbitrary detention without bringing any charge. The most misused provision of the Act is the provision of preventive detention. According to the Act, a person can be detained without trial as long as 120 days.

Police also misuses the power during investigation, interrogation, and submission of report. They are empowered to investigate the facts and circumstances of the offences and to take measures for the search. But, in practice, many times they submit the false investigation report against the arrested person being biased by the opposite party of the case.

These human rights violations are mostly due to weak enforcement of section 167 of the CrPC. According to the provision, if the concerned police officer thinks that the investigation cannot be completed within 24 hours, he/she may apply to the magistrate for the extension of detention period under police custody for the purpose of extort information. But, in practice, the extension is almost automatically granted and the arrested person is taken on remand for the purpose of interrogation or for extorting information from him through applying torture or ill treatment.<sup>48</sup>

In short, these provisions are causes of the human rights violations in criminal justice system in Bangladesh, these were supposed to protect the human rights of the arrestees, though. In the excuse of protecting public interests and ensuring public safety, government enacts and uses such oppressive laws. All the political parties criticize the use of such oppressive laws when they become victims of misuse of power and they promise to repeal such provisions of law if they are elected. But, if they are in power, they do nothing with such repressive provisions

of law, rather they use it for oppressing the opposite parties.

### 1. Findings

Bangladesh has taken some actions to prevent torture under remand but still there are many theoretical and procedural errors. In spite of many safeguards (international and domestic), the violation of human rights in the police custody remain the same. It arguably is a common understanding among the Bangladesh people that if anyone become arrested, that person must be subjected to torture under police custody.

This article finds out that responding to demand by the civil society citizen, different NGOs and the Committee against Torture, Bangladesh has enacted a law (The Torture and Custodial Death (Prohibition) Act 2013) making the acts of torture illegal. Though the Act is a good initiative to prevent the acts of torture, but there are many defects. As to the definition of torture, the Act has not incorporated the elements of torture which has been described in Article 1 of the Torture Convention.<sup>49</sup> The Act has defined 'torture' as mental or psychological torture, but it has not defined those words. The Act also does not provide enough protection to the victim or victim's family. It has empowered the police to register the complaint and to investigate the case. The Act provides less punishment for the same offence than the Penal Code. According to the Penal Code of 1860, the maximum punishment for the offence of murder is death penalty, whereas the Torture and Custodial Death (Prohibition) Act 2013 provides life imprisonment as maximum punishment for the offence of custodial death. The Act also is not implemented properly; total 18 cases have been filed since the enactment of the Act. The

police have submitted Final Report<sup>50</sup> for 14 of such case citing 'factual errors' in the cases.<sup>51</sup>

Bangladesh has failed to follow the recommendations on the situation of torture made by the UN Committee against Torture and the Human Rights Committee. Bangladesh has not ratified the Optional Protocol to the Convention against Torture which provides some effective mechanisms to prevent the torture. There are two most effective recommendations under the Optional Protocol; one is to establish an independent National Preventive Mechanism (NPM) for conducting inspections of detention places, the other one is to allow international inspection of such detention places by the United Nations Subcommittee on the Prevention of Torture (SPT).

Bangladesh has got independent in 1971 but has retained the Code of Criminal Procedure of 1898 which was enacted in British period. So, Bangladesh has not enacted the CrPC following the fundamental human rights guaranteed by its Constitution. One of the intentions of enactment of various legal policies was to rule over the people of Indian subcontinent that's why those policies were against the will and welfare of the people of India. It also introduced positivistic and predictable laws and repressive and discriminatory measures, including force to control the natives and prevent anti-British agitation, protests, and armed uprisings in India.<sup>52</sup>

The Supreme Court of Bangladesh has declared some provisions of the CrPC inconsistent with the Constitution<sup>53</sup>, and has given some recommendations for the amendment of such provisions. It also, according to the article 7 of the Constitution, those inconsistent provisions must be void. But, in practice, government has not taken any action to amend those provisions.

## 2. Recommendations

Bangladesh as a developing country is struggling not only with socio-economic security but also with legal security. One of the most important factors behind the present unrest law and discipline situation is not having the application of rule of law. Violation of human rights through torture is a disease which needs to be cured as soon as possible; otherwise it may destroy the whole society. There are many effective ways by which the violation of human rights under the police custody may be prevented.

Ensuring the rule of law in the country is a key factor for preventing the violation of human rights. It is the duty of the government to ensure the rule of law. The present Act of torture is mostly ineffective in theory and practice. Its need to incorporate more protection the victim or aggrieved person. Punishment for the act of torture should be the same as of Penal Code of 1860. The definition given by the Torture and Custodial Death (Prohibition) Act 2013 also needs to be amended reflecting the definition of torture given by the Torture Convention. It is also the duty of the government to ensure the public access to the statistics of the cases of torture.

The government of Bangladesh needs to ratify the Optional Protocol of the Torture Convention and to follow the obligations given by the Optional Protocol. Though Bangladesh is a State party of the UN Convention against Torture, but it does not comply with the recommendations given by the Committee against Torture and the Human Rights Committee. So, the country needs to comply with those recommendations and to submit its report regularly.

It is a crying need to establish an independent authority to deal with the cases regarding the act of torture. The power of police such as



registering or investigating the case should be transferred to that independent authority. The police should not be the officials of such authority. It also establishing a monitoring authority to monitor the activities of the police may be another effective step to prevent the violation of human rights committed by the police.

The government also needs to amend section 54 and section 167 of the CrPC of 1898 in the light of directions given by the Supreme Court of Bangladesh. It also needs to amend all the black laws such as the Special Powers Act, 1974. There are many special laws which provide vast discretionary power to the law enforcing agencies and those become misused frequently. So, reducing the discretionary power of police and magistrate is another option to reduce the human rights violations committed under police custody.

Almost field level police personnel have a little knowledge about the human rights. So, providing training on human rights for the members of law enforcing agencies is essential to stop such violation of human rights. Sometimes, police cannot perform their vested duties due to political influences. Making the law enforcing agencies free from political influences is also vital to ensure the human rights.

The media or NGOs cannot report the act of torture freely. They don't have enough freedom to report all the acts of torture which facilitate the violator to violate the human rights widely. Lastly but not least, it is the duty of the State to ensure all the guidelines given by the Supreme Court of Bangladesh regarding remand.

strongly contradicted concepts. As the citizen of a democratic country, the citizen of Bangladesh does not deserve the unlawful torture. Torturing under police custody is a frequent discussed topic in Bangladesh. Though it is illegal in Bangladesh, but the victim of torture has no proper remedy or protection. Several international and national human rights organizations, civil society citizen, the Committee against Torture have thrown their concern to this matter, but there has not been seen any effective means or measures to prevent the act of torture. The government of Bangladesh has politicized the judiciary and the law enforcing agencies. That's why the national mechanisms to prevent the act of torture do not work properly. The functions of the criminal justice system need to be independent from political influence for fulfilling its main purposes. The main purposes of the judicial administration and law enforcing agencies are to uphold the rule of law and human rights, but the government uses them for its own purposes.

A strong legal framework cannot prevent the act of torture alone. The mechanism to enforce the law is a key component to the prevention of such human rights violation. The most important thing is the mindset of the government; if the government does not want to stop these human right violations then it is very hard for others to stop it. The government can show their positive mindset through amending the existing laws regarding remand, following the judicial guidelines, implementing the obligations of international instruments ratifying the Optional Protocol of Convention against Torture.

## V. Conclusion

Democracy and violation of human rights are



## Notes

- <sup>1</sup> Malik, Shahdeen (1994) p.2 "The Transformation of Colonial Perceptions into Legal Norms: Legislating for Crime and Punishment in Bengal, 1790s to 1820s." PhD Thesis, School of Oriental and African Studies, University of London. Dr. Shahdeen Malik is a renowned professor of law in Bangladesh. He was educated at Dhaka, Moscow, Boston and London Universities.
- <sup>2</sup> Hoque (2011), p.99.
- <sup>3</sup> Hoque (2011), p.100.
- <sup>4</sup> <https://www.oxfordreference.com/view/10.1093/acref/9780199551248.001.0001/acref-9780199551248-e-3331?rskey=zhxVYW&result=3501> (26.01.2021).
- <sup>5</sup> Malik, Shahdeen (2007) 'Arrest and Remand: Towards a Rights Paradigm', Special Issue, Bangladesh Journal of Law 289.
- <sup>6</sup> Malik (2007)
- <sup>7</sup> See s. 167 of Code of Criminal Procedure, 1898.
- <sup>8</sup> Article 11 of the Universal Declaration of Human Rights.
- <sup>9</sup> The Torture and Custodial Death (Prevention) Act, 2013.
- <sup>10</sup> <https://epaper.prothomalo.com/?mod=1&pgnum=6&edcode=71&page>.
- <sup>11</sup> <https://www.jugantor.com/todays-paper/last-page/323744>.
- <sup>12</sup> <https://www.thedailystar.net/star-weekend/spotlight/beating-suspects-not-crimes-1608055>.
- <sup>13</sup> <http://odhikar.org/statistics/torture-by-law-enforcement-agencies/>.
- <sup>14</sup> [https://www.ti-bangladesh.org/beta3/images/2020/annual\\_report/TIB-Annual-Report-2018-19.pdf](https://www.ti-bangladesh.org/beta3/images/2020/annual_report/TIB-Annual-Report-2018-19.pdf)
- <sup>15</sup> Momtaz, S. 2013.
- <sup>16</sup> See Article 31 of the Constitution of the People's Republic of Bangladesh.
- <sup>17</sup> Article 32 of the Constitution of the People's Republic of Bangladesh.
- <sup>18</sup> Article 33 of the Constitution of the People's Republic of Bangladesh.
- <sup>19</sup> Article 35 (4) of the Constitution of the People's Republic of Bangladesh.
- <sup>20</sup> Article 35 (5) of the Constitution of the People's Republic of Bangladesh.
- <sup>21</sup> Article 7 of the Constitution of the People's Republic of Bangladesh.
- <sup>22</sup> <https://indicators.ohchr.org/> (accessed on 18th June, 2021).
- <sup>23</sup> See Article 1 of UN Torture Convention.
- <sup>24</sup> Article 2 of UN Torture Convention.
- <sup>25</sup> Article 3 of UN Torture Convention.
- <sup>26</sup> Article 4 of UN Torture Convention.
- <sup>27</sup> Article 5 of UN Torture Convention.
- <sup>28</sup> Article 10 of UN Torture Convention.
- <sup>29</sup> Article 11 of UN Torture Convention.
- <sup>30</sup> Article 12 of UN Torture Convention.
- <sup>31</sup> Article 13 of UN Torture Convention.
- <sup>32</sup> Article 14 of UN Torture Convention.
- <sup>33</sup> Article 15 of UN Torture Convention.
- <sup>34</sup> Article 16 of UN Torture Convention.
- <sup>35</sup> In October 1996, Shima Chowdhury, a young woman, was picked up by the police and raped at Raojan Police Station in Chitta-gong. Four policemen were accused of the case, but due to the weak evidence and witnesses, they got acquitted by a trial court on 14 July, 1997. (<https://www.amnesty.org/download/Documents/160000/asa130041997en.pdf>).
- <sup>36</sup> On 23rd July 1998, Shamim Reza Rubel, was picked up by the Detective Branch (DB) of Police in front of his house at 4:30 pm and beaten severely. On the same day, he was pronounced dead by the doctors at 9:45 pm. The case caused public outcry and got huge media coverage and the police started investigation. After the post-mortem and investigation charges were brought against the accused under section 302 of the Penal Code of Bangladesh. After the trial, the accused policeman was convicted and sentenced to imprisonment for life.
- <sup>37</sup> 56 DLR (HCD) 2004 324.
- <sup>38</sup> Section 220 of the Penal Code of Bangladesh provided that if any person holds any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or confinement, or

keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

<sup>39</sup> See section 2 (6) of the Torture and Custodial Death (Prevention) Act, 2013.

<sup>40</sup> See section 2 (7) of the Torture and Custodial Death (Prevention) Act, 2013.

<sup>41</sup> See section 5 (5) of the Torture and Custodial Death (Prevention) Act, 2013.

<sup>42</sup> See section 5 (2) of the Torture and Custodial Death (Prevention) Act, 2013.

<sup>43</sup> Rigorous imprisonment means imprisonment with labor.

<sup>44</sup> See section 15 of the Torture and Custodial Death (Prevention) Act, 2013.

<sup>45</sup> BLAST v. Bangladesh, 55 DLR HCD 363 (2003).

<sup>46</sup> BLAST v. Bangladesh, 55 DLR HCD 363 (2003).

<sup>47</sup> Saifuzzaman v. State, 56 DLR HCD 324 (2004).

<sup>48</sup> BLAST v. Bangladesh 55DLR 363, 2003.

<sup>49</sup> See the full definition of torture given by the Convention,

<https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

<sup>50</sup> Final Report is a police report in which an accused is recommended not to be proceeded to the trial.

<sup>51</sup> The daily Prothom Alo, 10 September 2020; <https://epaper.prothomalo.com/?pagedate=2020-9-10&edcode=71&subcode=71&mod=1&pgnum=1&type=a>

<sup>52</sup> Rahman, Aziz; Ali, Mohsin; and Kahn, Saad (2018) "The British Art of Colonialism in India: Subjugation and Division," Peace and Conflict Studies: Vol. 25 : No. 1, Article 5.

<sup>53</sup> BLAST v. Bangladesh 55DLR 363, 2003.

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