

Doctoral Degree Thesis

When the Protectors Turn into the Violators: Some Analysis on the Criminal Justice System in Bangladesh

**Division of Law and Politics
Kanazawa University Graduate School of
Human and Socio-Environmental Studies**

Student ID	1821082012
Name	Shaikh Md Mamun
Primary Supervisor	Prof. Koji Higashikawa

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Chapter I

INTRODUCTION

1.1 Introduction

In most democratic nations, human rights are enshrined within the Constitution, and legal systems are instituted to safeguard these rights. The Constitution of Bangladesh recognizes a variety of legal rights as the fundamental rights of the citizen. The Constitution also provided for the legal system to protect these fundamental human rights, and the law enforcing agency was thought to act as an assistant of the judicial system to protect those fundamental human rights of criminal accused, as well as to bring justice to victims of crimes.

However, the concern has not been on the crimes committed by criminals in Bangladesh. In fact, the concern has been on the law enforcing agency themselves, who were supposed to safeguard fundamental human rights of the accused rather than to infringe those rights through many ways. Those violation of fundamental human rights of the accused, including torturing or torturing to death of the accused sometimes, have almost turned into the norm rather than the exceptions in Bangladesh.

How does the law enforcing agency commit those terrible fundamental human rights violation? The law enforcing agency mainly abuses the power given by the provisions of the Code of Criminal Procedure of 1898. The Code of Criminal Procedure of 1898 is the most important criminal procedural law of the country, setting forth how the criminal process shall proceed. The original intent of the Code was, of course, to maintain of the integrity of the criminal process as a whole and to protect the fundamental human rights of the accused from possible illegal, arbitrary, and malicious use of the police power, while the Code provides some discretionary power with the law enforcing agency to defend public safety. Arrest without warrant and the process of remand were incorporated in the Code for such purpose.

According to the original intent of the Code, two provisions of the Code of Criminal Procedure empower law enforcing agency to make arrest without warrant in specific circumstances such as arrest at the time of committing a crime or the law enforcing personnel believing that a person is involved in a cognizable offence, meaning a serious crime. It is always quite easy and burdenless for the law enforcing agency to make arrest without warrant. The arrestee normally is subject to the process of remand. The remand happens, upon the motion by the law enforcing agency, when the police cannot complete the investigation of the case within the period of twenty-four hours stipulated by the law. If a Magistrate judge approves the motion, the police may hold the accused 14 more days for the purpose of investigation. Most of the tortures upon the accused take place during the period of remand. In other words, police's plan to torture a person starts with the arrest without warrant and such plan becomes implemented through the remand.

1.2 A Remarkable Case of Torture

A notable case of torture is the case of writer Mushtaq Ahmed in 2021. In 2020, Mushtaq Ahmed was taken into custody because of his critical comment on social media regarding the government's response to the COVID-19 pandemic. The Digital Security Act of 2018, which forbids the distribution of false information and the publication of content that disturbs social harmony, led to charges against him on February 4, 2021. As a result, he was held in pre-trial detention for nine months where he was tortured severely and did not receive proper medical care. Since the arrest and detention of Mushtaq Ahmed, he repeatedly requested bail, but those requests were consistently denied. He was not given the same privileges that other people accused of crimes would normally receive. Sadly, he passed away on February 25, 2021, while he was in the custody of the law enforcement agency.

Why did this tragedy happen? Such tragedies often occur when someone speaks out against the government in power. In this sense, this tragedy happened because the protection of the right to free speech, as outlined in Article 39 of the Constitution of Bangladesh, was not adequately upheld. However, we can raise a more critical question from this tragedy: Even if a defendant is suspected of committing a criminal offense, why do so many of them experience torture or even lose their lives during the investigation process?

The primary objective of making an arrest without a warrant is to allow law enforcement agency to respond to situations quickly where taking immediate action is required to capture a suspect. Whereas the main goal of remand is to reach to the conclusion within the stipulated time. Unfortunately, both the processes are often used to abuse the accused under police custody, rather than for the intended purpose. The law enforcing agency entrusted with safeguarding the human rights of the citizen of the country. But a fundamental contradiction is created when the law enforcing agency themselves violate the human rights. The contrast between the law enforcement agency's intended role and the actual situation of police power abuse raises concerns about the efficacy of the nation's legal system.

Such kind of incidents are not new in the context of Bangladesh, the incident of torture has a very long history as it has been observed immediately after the independence of Bangladesh. So, the severity of torture could not fail to take the attention of the national and international human rights activists. As a result, some NGOs including Bangladesh Legal Aid and Services Trust (BLAST) along with some other advocates including experienced and prominent practicing lawyers filed a writ petition challenging the constitutionality of the abusive exercise of power of the provision of arrest without warrant and remand provided by the Code of Criminal Procedure of 1898.¹ In this response, the

¹ A writ petition is a special request for the protection of the fundamental rights guaranteed by the Constitution. The petition shall be filed by anyone who is concerned with wrongdoings by government bodies or individual government officials. Even third-party-organizations, or legal entities which have no direct involvement with the case can file the petition. NGOs often engage in public interest litigation and may file this writ petitions on behalf of individuals or communities whose fundamental rights have been violated. The court will assess the merits of the case, including the standing of the NGO, before

Supreme Court of Bangladesh declared some part of the provision of arrest and remand are inconsistent with the provision of the Constitution and provided some guidelines regarding arrest and remand. Following this writ petition, there was another writ petition in 2004 which took the matter of misuse of power under arrest and remand provision seriously, the Supreme Court of Bangladesh provides some more guidelines here also. Unfortunately, in spite of the theoretical perfectness, those guidelines become ineffective.

1.3 The Purpose of the Dissertation

This dissertation makes a critical analysis of the loopholes of current laws, practices and other safeguards regarding remand and arrest without warrant in Bangladesh, as well as the development made by the Supreme Court of Bangladesh. The dissertation also highlights the disparities in current legal frameworks between the 1984 Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and a Bangladesh law, which is the Torture and Custodial Death (Prevention) Act of 2013.

Torture under police custody happens due to various reasons such as legal loopholes, political influence and the personal prejudice of the law enforcing officials. The analysis of this dissertation contends that violation of the human rights of the accused in Bangladesh is not a new phenomenon, it has been rooted with the pre-independence history of Bangladesh.

Though this dissertation acknowledges the Bangladesh's commitment to international conventions, but it asserts that merely passing law is not enough to fulfill the goals of the international conventions regarding the rights of the accused. Actions like strict enforcement, alignment with the international standard and reformation of the attitude of the law enforcing agency personnel are very much imperative to address this urgent issue of human rights violation.

The dissertation concludes through finding out the actual causes of continuous violation of the human rights by the law enforcing agencies. It also provides the possible solutions through wide explanations of the effectiveness.

deciding to hear the petition. Also Article 102 of the Constitution provides that the High Court Division of the Supreme Court shall have an original jurisdiction to try and hear the writ petition. Therefore in Bangladesh, anyone including any type of organization can seek remedies for constitutional violation by directly applying to the High Court Division of the Supreme Court of Bangladesh.

Chapter II TORTURE AND BANGLADESH

2.1 What Is Torture?

Generally, torture refers to physical or mental sufferings. More specifically, torture is an intentional act of causing physical or psychological pain to someone for the purpose of compelling to do something or getting information or confession of an offence. Though the term ‘torture’ has been defined in different international laws and cases, but the main concept is almost similar in all definitions.

For example, according to article 1 of the United Nations Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment of 1984, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person. The torture is inflicted for purposes of obtaining information or a confession, punishing, or intimidating the victim, or for any reason based on discrimination of any kind. Furthermore, the article emphasizes that such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.²

The Rome Statute of the International Criminal Court of 1998, an international treaty providing how an international criminal offence should be processed in the International Criminal Court, says that ‘[t]orture’ means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused.³

So, torture refers to the intentional infliction of physical or mental pain and suffering upon someone by a person who works under the government capacity or by someone who works under the authority of the government officials. The purpose of committing such infliction of pain or suffering can vary from case to case. But in most cases, such purposes include obtaining information or a confession from the victim or a third person, punishing for an act which has been committed by such torture victim or someone else, coercing or intimidating such person or someone else, or engaging in discrimination for any reason.

Importantly, the term ‘torture’ does not mean any physical or mental pain or suffering which arise by lawful sanctions, for example legal penalties imposed through judicial system. Thus, the term ‘torture’ has been defined to exclude any pain and suffering imposed in accordance with the due process of law, but to protect individual from cruel and inhuman treatment by the government.

² Article 1 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984. Available on : <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading> (Accessed on 17th May, 2024).

³ Article 7(2)(e) of the 1998 Rome Statute of the International Criminal Court (ICC). Available on- <https://www.icc-cpi.int/sites/default/files/Publications/Rome-Statute.pdf> (Accessed on 17th May, 2024).

2.2 Torture History in Bangladesh

The territory which is known as Bangladesh was a part of the Indian sub-continent. The territory has been ruled by different ruler in different times. In 1947, the Indian sub-continent was divided into two parts, one of which is India and the other is Pakistan. Bangladesh, what we would call now, was included in the part of Pakistan. Bangladesh got independence from Pakistan in 1971, and in the course of getting independence, the general people of Bangladesh were subjected to severe infliction of torture by the law enforcing agency. So, Bangladesh has an prolonged history in respect of torture to its citizen.

2.2.1 Pre-Independence Era

Following the fall of the Mughal Empire, the British took control of India and worked to strengthen the English-based legal system. But severe and cruel penalties were common rather than exceptional during their rule, particularly when people were being held by the police. Under the guise of maintaining public order, the British administration in India mistreated the masses, denied them civil liberties, and tortured and discriminated against them.

Throughout the period of British rule (1857–1947), torture and other forms of abuse in custody were prevalent. There was no fundamental law protecting the subjects' rights and freedoms. Custodial violence was accepted as a means of control because the police's primary goal was to defend the British rulers.

During the Indian independence movement, the voice against the custodial violence grew strong. The British decided to address custodial violence problems in response to those claims to relieve the pressure for the independence of India. However, claims of human rights violations against police forces persisted even after independence because the new Indian police officers took over the loathsome legacy of brutality. Those police brutality was unfortunately left to Pakistan which was divided from India. And the horrible “tradition” was carried over when Bangladesh got independent from Pakistan in 1971.

2.2.2 After the Independence of Bangladesh

Since the early days of Bangladesh's independence, there have been lots of documented reports of torture by public officials, and this practice has continued even in 21st century. Torture appears to have been institutionalized and is practiced regardless of the ruling government. The problem of torture persists regardless of its potential variations in the type and extent of these practices. Many international monitoring organizations, including the UN Special Rapporteur on Torture, have taken notice of Bangladesh's high rate of torture.

Together with the Special Rapporteur on extrajudicial, summary, or arbitrary executions, this concern has been brought up in a few cases. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 was ratified by Bangladesh in 1998, but

reports of a sharp rise in torture cases⁴ suggest that little has changed in the country.

One significant incident that serves as an example of the problem took place in October 2002 during the 'Operation Clean Heart' criminal crackdowns.⁵ In a seemingly legitimate purpose of maintaining public order, the government of Bangladesh tolerated and even encouraged the excessive use of force, torture, and beatings during interrogations in this operation. Not only this deaths in 'Operation Clean Heart', there have been a large number of reported cases of custodial death, and most of such death are suspected as a tragic result of torture during the detention. In Bangladesh, there have been grave concerns about human rights due to this persistent pattern of torture.

2.3 The Criminal Justice System in Bangladesh

Before moving on the analysis of relationship between the legal system and torture or custodial death in Bangladesh, it would be helpful for readers to outline the criminal process in Bangladesh, pointing out some significant elements which would not be seen in Japan.

2.3.1 Starting the Process: FIR and Complaint

Generally, a criminal case in Bangladesh can be initiated through two ways, one is to file a First

⁴ There are many reasons behind this sharp rise of torture. See the chapter III.

⁵ The government of Bangladesh issued an executive order towards the end of 2002 with the intention of capturing "wanted criminals" and seizing "illegal arms." Operation Clean Heart was an initiative that brought together border security personnel, police, military personnel, and village defense force, which is a kind of vigilante group voluntarily organized by the people in the community. The operation was conducted from October 16, 2002, to January 9, 2003 as a countermeasure to increasing numbers of murder, extortion, kidnapping, and crimes against women that were being attributed to illegal criminal organizations that were purportedly connected to major opposing political parties.

Authorities reported 58 deaths in custody during the 86-day operation, all of which were officially attributed to "heart attacks", but it was suspected that those deaths were direct result of torture by law enforcement officers. Approximately 8,000 of the more than 11,000 people detained had no past criminal convictions. Even with efforts to apprehend "wanted criminals," a number of those wanted criminals were successfully able to avoid arrest during the operation. Main purpose of the operation was to find out the people who were supporting or connected to the opposing party rather than to make arrest of those criminals and bring the justice. Unfazed, the government produced falsified data to assert that Operation Clean Heart was a success. But the operation left a great number of common people traumatized and living in fear; some even reportedly passed away from actual fear of military vehicles or boots approaching.

The government acted proactively to protect about 50,000 individuals involved in the operation from prosecution after victims filed criminal complaints in an attempt to obtain justice. Article 46 of the constitution was used to enact the Joint Drive Indemnity Ordinance 2003, an indemnity law, on February 24, 2003. Anybody whose rights were violated during the 86-day period, including those who lost their lives, was not allowed to pursue legal action under this law. There is no record of any state officer facing criminal punishment for any deaths, serious injuries, or other offences during those 86 days, despite legal challenges. (Available on <http://www.humanrights.asia/resources/journals-magazines/article2/0504-2/fighting-lawlessness-with-lawlessness-or-the-rise-rise-of-the-rapid-action-battalion/>).

Information Report (FIR) and another one is to make a complaint to a Magistrate. In this section, I will explain what FIR is and by whom it shall be sent.

FIR is the very first report submitted to the police regarding the complaint of a cognizable offence. The definition of a cognizable offence is found at Section 4(f) of the Code of Criminal Procedure of 1898, which is basically a case brought to police officers by arrest without warrant.⁶ While an arrest without warrant is exceptional in Japanese law,⁷ it has been common in common law countries. In Bangladesh, arrest without warrant has been the normal course taken in case of felony. An offender who committed a serious crime could easily run away at large, and even flee to neighbor countries such as India or Myanmar. To prevent such flight to other countries where the Bangladesh police may not do their investigation at their initiative, arrest without warrant has been justified in Bangladesh since its birth of the country.

FIR is also recorded when an officer-in-charge receives information about any cognizable offence from four sources, which are prescribed in the Code of Criminal Procedure of 1898.⁸ First one is any individual person who is related with the occurrence of the alleged crime. Typical informants include victims, the relevance of the victims of the crime, or witnesses who actually saw the crime happened. Second one is any other source come through phone calls or an individual who gives hearsay information on the crime or the police themselves.

Other two sources involve a Magistrate, or a lower court judge. Sometimes a police officer declines to record information on a FIR for any reason. An informant, a victim of alleged crime in most cases, may file a complaint to a Magistrate judge in a court. When the Magistrate determines the complaint is probable, he or she sends the complaint to the police station and directs the officers to do investigation and to send the report back to the Magistrate. The result of the investigation shall be recorded as FIR.

⁶ Section 4(f) of the Code of Criminal Procedure of 1898 provides: "cognizable offence" means an offence for, and "cognizable case" means a case in, which a Police-officer, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant. Original text of the Code is found at <http://bdlaws.minlaw.gov.bd/act-75/section-26048.html> (accessed on March 1st, 2024).

⁷ According to Article 33 of the Constitution of Japan, no arrest shall be made except upon warrant issued by a judge, unless the offender is caught on the spot of the crime. Paragraph 2 of Article 212 of the Code of Criminal Procedure allows arrest without warrant in case of a flagrant offender, but generally speaking, it is safe to say that arrest without warrant has been exceptional in Japan.

⁸ According to the Section 154 of the Code of Criminal Procedure, 1898, Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Government may prescribe in this behalf.

The last one is also from a Magistrate who accepted a complaint but is not convinced that there is a probable cause for directing police officers to do investigations. In that case, the Magistrate may send the complaint to the police station for further inquiry including collecting more information about the alleged crime, and direct them to send back a report. When the Magistrate determines based on the report that the complaint does show a probable cause, the Magistrate shall file a FIR.

2.3.2 Role of Magistrates

When the Magistrate determines that the complaint does not show a probable cause or lacks the element of the crime, he or she dismisses the complaint. Therefore, these two cases where a Magistrate involve with the FIR are for the Magistrate to make sure whether the police officers properly respond to a complaint from a citizen on a potential crime. As I mentioned earlier, sometimes police officers fail to start necessary investigations in attempt to benefit a possible offender who is politically or financially powerful. In that sense, Magistrate judges in Bangladesh are supposed to oversee the process of police investigation in general and are expected to take an active role in terms of administration of policing business.

Any individual can make a complaint to a Magistrate regarding any non-cognizable offence as well as any cognizable offence.⁹ A non-cognizable offence is defined as an offense the maximum sentence of which is less than six months.¹⁰ Readers might have assumption that a serious crime needs warrant while a misdemeanor does not. But in Bangladesh it is quite the opposite. As I explained before, a serious crime does not need arrest warrant in the interest of swift and smooth arrest. However, a misdemeanor, which is defined as a non-cognizable offence, does need a warrant issued by a Magistrate. In case of a non-cognizable offence, a police officer may not start a criminal investigation by his initiative. In that situation the police officer can be a source to make a complaint to a Magistrate through forwarding the information of the General Diary (GD), which is a written record for a misdemeanor. After receiving such information, the Magistrate must examine the complainant on oath. Following such examination, the Magistrate shall either take the cognizance of the case, or dismiss the complaint, or make an order for the inquiry of such matter.

2.3.3 Review by Magistrates

The second step of a criminal case begins through sending of the original copy of the FIR from police station to the Magistrate. After receiving the FIR, such case will be registered as a General Registered case. In case of complaint to Magistrate, if the Magistrate immediately takes the cognizance, which means the Magistrate are convinced that there is a probable cause for arrest, the case will be registered

⁹ In Bangladesh, a cognizable offence is a serious crime and a police officer may arrest the offender without warrant. This might be opposite to reader's assumption that

¹⁰ According to Section 4 (1) (n) of the Code of Criminal Procedure of 1898, "non-cognizable offence" means an offence for which a police-officer, may not arrest without warrant.

as a Complaint Registered case. But if the Magistrate does not take the cognizance immediately and make an order for inquiry or investigation, then the Magistrate will take further action on the basis of the report of such inquiry or investigation. If the Magistrate sees a reason for proceeding on the basis of the report of such inquiry or investigation, then he or she can take the offence in cognizance, as a result, such case will be registered as a Complaint Registered case. Thus, a criminal case is initiated.

2.3.4 Investigation by the Police Officers

The next step proceeds with the investigation of a case. Generally, the investigation by police officers takes place in FIR case and complaints case where the Magistrate takes the cognizance immediately. In other words, the police officers require the "Order of a Magistrate" to investigate in a non-cognizable offence, while they do not need such order in a cognizable offence for the investigation. During the investigation, the investigation officer¹¹ must follow some rules such as maintaining a case diary¹² and forwarding the arrested person if anyone becomes arrested during investigation to the Magistrate within the period of 24 hours of such arrest.¹³ After such forwarding, when the police officers think that they need more time to complete their investigation, they may seek remand of such arrested person for further interrogation. As we will discuss later, this remand process has been really problematic, and has been criticized as the root cause of tragedy of tortures by police officers.

The final stage of the pre-trial proceeding is to submit either Final Report or Charge Sheet. If the investigating officer finds no case of offence upon investigation, he will submit Final Report to the Magistrate, informing him that there was no criminal offense. Upon receiving such Final Report, there shall be two choices for the Magistrate to take.

If the Magistrate accepts such Final Report, the accused (if arrested) will get released or discharge on bail as no case of offence has been found against him. Such acceptance of Final Report would be a good news to the innocent accused. On the other hand, the aggrieved person, typically the victim or the family members of the victim, would get frustrated by the ruling by the Magistrate. In this case, the aggrieved person may file a Protest Petition. The Protest Petition is a petition in which the aggrieved person claims the police officers are not doing the investigation properly and informing false

¹¹ According to section 4(l) of the Code of Criminal Procedure of 1898, a police officer or any person (other than a Magistrate) authorized by a Magistrate in this behalf can play the role of investigation officer. But, when the case falls under the Special Powers Act of 1974, the investigation officer must be a police officer who is not below the rank of sub-inspector in the police force.

¹² It is a diary where the daily updates of an investigation are written down. From the starting to the finishing, everything like the date and place visited as part of the investigation are mentioned in such diary.

¹³ According to Article 33 (2) of the Constitution of Bangladesh, Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

information to the Magistrate. Upon examining such petition, the Magistrate will take further action according to law. But, if the Magistrate rejects such final report, then he may order for further investigation or inquiry.

If the investigation officer finds strong case of offense, then the police will submit Charge Sheet by mentioning the names of the alleged persons they have found as offender. After submitting such Charge Sheet, the formal trial of a case is started. When the Magistrate believes the police arrested the wrong person, the Magistrate may reject the Charge Sheet submitted by the police officers upon the proof that the police has arrested a wrong person, and then directs the police for further investigation of the case. If the Magistrate lets the case stand, and actually vast majority of the cases do, then the case proceeds to the trial phase.

2.3.5 Formal Charge and the Trial

The trial of a criminal case starts with the opening statement by the public prosecutor. At this stage, the prosecutor explains their own charges that the prosecutor set against the accused, and shows the evidence before the court that the prosecutor is going to present to prove the guiltiness of the accused. It should be duly noted that the formal charge is not formally placed against the accused by a prosecutor. Not like in Japan, the United States, or other democratic countries, the formal charge against the accused, the name of which would be normally 起訴 in Japanese, or as indictment or charge in the U.S. jurisdiction, shall be placed by a judge, rather than a prosecutor in Bangladesh.

After such opening statement, if the judge thinks that there is no sufficient ground to proceed the case, then the judge may discharge the accused, but, before such discharge, the judge must examine all documents by the prosecutor and even put the accused in the witness stand and examine him or her. If the judge finds sufficient grounds to proceed against the accused, the judge will then set the formal charge against the accused. Before setting the charge, the judge must hear both parties and examine all documents and records. Those documents include the Charge Sheet, and some other written documents prepared by the prosecutors, the defense lawyers, and the person involved in the case if necessary.

The fact that the formal charge shall be set by a Magistrate or other a higher judge rather than prosecutors in Bangladesh does not mean that a Magistrate or other a higher judge is partial to the government. In Bangladesh, prosecutors are lawyers representing the government, and are usually not full-time job. Their power is generally limited, and they are usually devoted to represent government interests. It is the prosecutor who is to make the government case, just like the prosecutors in other countries do in their criminal cases. In other words, the Magistrate or other a higher judge is more like a final gatekeeper who could prevent an innocent person from being sent to a criminal court.

After setting the charges, these will be read and explained properly to the accused, and it will be asked to the accused whether he/she pleads guilty or not. If the accused pleads guilty, the court proceeds to

the sentencing, the trial shall not be held. But, before determining the sentence, the judge shall ask the accused a series of question like whether the accused is aware of the charge against him, whether the accused has discussed his plea with his attorney, whether he has got any force or coercion to plead guilty, whether the accused is pleading guilty of his own free will etc.¹⁴ So, this phase is exactly the same as the arraignment in the US jurisdiction, which is not seen in Japan. After these procedures, the court determines the sentence and records it in the court records. The accused hears the sentence properly and sign it. When the court determines the sentence to the defendant, the judge considers various factors such as the severity of the crime, the criminal history of the accused and any mitigating or aggravating circumstances.

Where the accused does not plead guilty, on the other hand, the case goes to a trial. The judge shall fix a date for the examination of the witnesses. If the witness does not want to appear before the court, the court may force him to be appeared. The court will examine all the evidence and witnesses before the accused. But, if the court consider it to be necessary, the judge may examine the evidence and witness in the absence of the accused. It has been understood that hiding those witnesses out of the accused would be necessary to protect the safety of the witnesses and to prevent non-verbal pressure against the witness by the accused. But the accused's lawyer must be present in this case. In normal cases, the witnesses would be cross-examined at this stage.¹⁵ The judge will give final decision after examining the accused and hearing the statement given by the prosecution.

2.4 Some Cases of Torture

Despite of having safeguards provided by the Constitution as well as by the other statutes of the country, the incidents of torture by the law enforcing agency are often reported in the dailies and human rights journal. Followings are some incidents of torture committed in recent times.

The well-known cartoonist from Bangladesh, Ahmed Kabir Kishore, 46, and a Bangladeshi writer Mushtaq Ahmed, 53, were arrested by the state security forces on May 5, 2020. The arrest was made under the Digital Security Act of Bangladesh accused of posting on Facebook humorous cartoons and critical remarks about political party leaders and the government's handling of the COVID-19 outbreak. The formal government record showed that they were arrested on May 5, but according to the story that they told Amnesty International, the Unit 3 of the Rapid Action Battalion (RAB-3) had subjected them to severe torture between May 2 and May 5, 2020, before their detention was formally recorded. The two had been denied bail at least six times since May 2020, during the nine months they spent in pretrial prison. Ahmed Kabir Kishore, who has diabetes and is dependent on insulin, experienced severe blood sugar swings between 18 and 30 millimoles per liter while he was being held. He lost his hearing in his right ear as a result of bleeding from that ear during the torment. In addition, he can

¹⁴ See Subparagraph 2 of section 364 of Code of Criminal Procedure.

¹⁵ In limited cases, the judge may deny the request of the cross-examination by the defendant for some reasons. That denial is within the judge's discretionary power. See Section 265G (2) of Code of Criminal Procedure.

barely walk due to excruciating pain in his left ankle and knee.¹⁶

The story is of Mohammad Mostakim, a 22-year-old college student who had been facing the challenges since his father's death. He had taken care of his sick mother, who needed dialysis, and his physically challenged 10-year-old sister. Despite these difficulties, Mostakim never lost his hope, and actively participated in local efforts against Covid19. Mostakim was taking part in a protest over the rising costs of dialysis and lower subsidies to patients with kidney disease. When the protestors blocked the road near the Chattogram Medical College and Hospital on the fifth day of the protest, the police used force to disperse them. Later, police charged the protestors, including Mostakim, with "obstruction of government work and attacking police." In the course of this incident, Mostakim and 50 to 60 others were arrested. It was reported that Mostakim was beaten in custody as a punishment for showing disrespect to the local police station's officer-in-charge.¹⁷

The next case highlighted not just the suspected torture in police custody that led to the victim's death, but also exposed how law enforcement officials allegedly created false stories to hide their wrongdoing. On January 17, in the evening, the police informed Nupur that her husband Rabiul had died in a road accident after being released from custody. Earlier, Rabiul and three others were taken by two assistant sub-inspectors from the local police station on gambling charges. Rabiul, 45, was kept under arrest while the rest of them were released. The police wanted T 35,000 for his release, and Nupur delivered it to them. They asked for an additional sum of Tk 5 million instead of letting him go. All of these demand by the police was not justified in any way, and classic example of bribe after all. They agreed to let him go if Nupur would sign an empty document, which she did. The police informed Nupur that Rabiul was involved in a traffic accident and transferred to Dhaka Medical College Hospital (DMCH). The family found Rabiul's dead body when they arrived at DMCH. The local community and Rabiul's family disagree with the police's version of events, believing that he was tortured to death.¹⁸

¹⁶ Available on <https://www.amnesty.org.uk/urgent-actions/cartoonist-tortured-writer-dies-jail> (accessed on 30/10/2023).

¹⁷ Available on <https://www.thedailystar.net/opinion/views/the-shores-injustice/news/ordinary-citizens-vulnerability-custodial-torture-3227991> (accessed on 30/10/2023).

¹⁸ Available on <https://www.thedailystar.net/news/bangladesh/crime-justice/news/gazipur-trader-dies-cops-torture-him-custody-3224776> (accessed on 30/10/2023).

Table 1: Statistics of Alleged Custodial Torture by Law Enforcement Agencies: 2004-2022.¹⁹

Alleged Torture by Law Enforcement Agencies (Police and RAB): 2004 - 2022			
Year(s)	Alive	Dead	Total
2022		10	10
2021		08	08
2020		19	19
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

Note: The statistics on torture have been collected from human rights reports of a Non-governmental Organization named Odhikar. The NGO has not published any data regarding the number of injured persons from 2020 to 2022. But, it does not mean that there were not incidents of torture which makes the victim injured only.

¹⁹ Available on <http://odhikar.org/statistics/torture-by-law-enforcement-agencies/> (accessed on 18/03/2024). This link gives information until 2019. And the number as to during 2020-2022 are taken from the websites of Odhikar, an NGO in Bangladesh. The numbers are available at <https://odhikar.org/bangladesh-annual-human-rights-report-2022-2/> (accessed on 18/03/2024).

Chapter III

PRACTICAL AND THEORETICAL REASONS BEHIND TORTURE

In the context of Bangladesh, there are many reasons behind incidents of torture occurring within the authority of police custody. These reasons are based on a range of factors contributing to this serious problem. In this chapter, I would like to give short analysis on the torture problems in Bangladesh under three perspectives, which are society and institutions (practical reasons), and legislation (theoretical reason).

3.1 Practical Reasons behind Torture

In respect of practical reasons, the first and most important factor is the corruption. There is a widespread problem of bribery within Bangladesh's law enforcement agencies. The law enforcement agencies of Bangladesh, including police and the RAB, are perceived to be the most corrupted government agencies according to a study carried out by Transparency International Bangladesh, an anti-corruption watchdog. The survey titled "Service sector corruption: National Household Survey 2021," a significant 74.4% of respondents reported that they had been involved in corruption by law enforcement agencies.²⁰ As a result, the law enforcement sector has been among the worst corrupted service sectors in the country. The commitment to the respect of fundamental rights and rule of law has been impaired severely because of persistent and even increased bribery.

3.1.1 Two Patterns of Torture: Police Officers and Politicians

The bribery is usually used in two different ways in context of torture. The first and bigger reason of bribery is to be requested by the police officers themselves. They would say like we would torture you (or your husband, your family, friends, or whoever) if you do not give us bribery enough.²¹ And the second is motivated by some politicians in the government who wish to physically and politically attack the victim of the torture, saying like I will give some money and would like you to torture him or her on behalf of me, by which hinder that political enemy's activity, and silence those protesters.

²⁰ Available on <https://www.ti-bangladesh.org/images/2022/nhs/2021/extended-executive-summary-english.pdf> (accessed on 04/12/2023).

²¹ Taking bribe from the accused is a common misdeed of the law enforcing agency in Bangladesh. There are many cases where police take bribe from the accused. One of cases here to mention is the case of Jisa moni, a 15 years old girl, who suddenly went missing from her local area. After that her father file a case in a police station accusing two young boys. Subsequently, police arrested them and torture them inhumanly for taking confession from them. Due to the fear of torture, they confessed falsely before the court that they raped and killed the victim. In the meantime, the investigating police officer took bribe from the parents of the accused and promised to them that the accused would not be tortured. The police in fact tortured the accused and took false confession. But, after one and half year later the girl came back home, and it was revealed that the accused of the case were not involved with the incidents of her missing. The case is found here- <https://www.tbsnews.net/bangladesh/crime/i-raped-and-killed-her-story-forced-confession-157696> (accessed on 21/03/2024).

People's perceptions of the police in Bangladesh have changed over time. In 1996, 49% of them said they trusted the police; in 2002, that number rose to 53%. However, trust fell sharply to 37% in 2008 and to its lowest point ever, 16%, in 2009. 2011 saw improvements, and a survey found that trust had increased to 55% once more.

All of this information came from multiple studies, including SDSA II (State of Democracy in South Asia-II) and PPG (Public Policy and Governance). Trust stood at 37% in 2014 and slightly increased to 43% in 2015. This data allows us to compare public opinion of the police across time²².

An intriguing observation is that citizens generally view the police force as unreliable during periods of political instability in the country. However, in a stable and calm environment, people have greater faith in the police. This indicates that public opinion of the police is influenced by political situation of the country.

3.1.2 Combined Reasons of Torture: Police Meets Politicians

In Bangladesh's law enforcement there is a deep concern about the influence of politics. It is not uncommon for the ruling party to exert pressure on the police force, leading to politically motivated arrests. This phenomenon not only undermines the integrity of investigations but also results in the wrongful arrest and potential torture of innocent individuals. The advocates for human rights are particularly concerned by the undue influence of politics on law enforcement.

In Bangladesh, political interference in law enforcement is a major problem. Sometimes the ruling party in Bangladesh compels the police to make arrests for political purposes even though there would be no legitimate and reasonable cause to make arrests. This causes problems because it taints proper process of investigations, leading to the possibility of innocent people being detained and mistreated. That innocent people often get entangled in mistreatments that was politically motivated, and this has been a serious concern since the birth of Bangladesh. Politics-related arrests increase the likelihood that individuals will be mistreated and charged without cause, and that severely hurts the integrity of the criminal process. Not to mention that innocent people could be injured and even killed by torture during those politically motivated investigations.

Human rights advocates believe that all people should have access to the justice system as a part of fundamental human rights which are clearly provided in the Constitution of Bangladesh. And they have been particularly worried about the arbitrary interference by the ruling party with any criminal prosecution, tainting the proper process of law enforcement business as a whole. They contend that excessive political involvement endangers people's fundamental human rights and dignity in addition

²² Hossain, A and Rahman, M 2017. 'Exploring the Factors that Affect Citizens' Trust in Bangladesh Police'. Retrieved from https://www.researchgate.net/publication/322677197_Exploring_the_Factors_that_Affect_Citizens'_Trust_in_Bangladesh_Police (accessed on 04/12/ 2023).

to going against what is just. This has had negative impact on how everyone views justice and the law. In addition, there are significant deficiencies in the lack of a separate monitoring authority. There are independent bodies operating to supervise the law enforcement activities across a wide range of countries. On the other hand, these monitoring mechanisms do not exist in Bangladesh. As a result, the police themselves carry out investigations into human rights infringements which raise concerns of impartiality and accountability.

In addition, one noteworthy issue in Bangladesh is the lack of an impartial oversight body supervising law enforcement operations. In other countries, transparency and accountability of government business are ensured by distinct government authorities that are not the police itself. The Independent Office for Police Conduct (IOPC), for instance, looks into complaints and accusations made against the police in nations like the United Kingdom. Comparably, in the US, civilian oversight boards and agencies are in charge of examining police actions at both the state and federal levels. These instances demonstrate how independent supervision is crucial to preserving the credibility of law enforcement on a global scale.

However, Bangladesh does not have any such monitoring systems. It is the police itself in Bangladesh that do supervise their job process, and investigate any mistakes or illegal acts, unlike in nations with formal oversight organizations. The independence and responsibility of these investigations have been seriously questioned in light of the absence of an outside and independent oversight body. The reliance on the police to conduct their own investigations in the absence of such outside oversight could lead to conflicts of interest and compromise the objectivity of investigations into possible violations of human rights in Bangladesh. These issues might be resolved by establishing an impartial monitoring body, which would promote increased accountability, equity, and transparency in the supervision of law enforcement operations.

The main cause of the problem is a lack of knowledge among police officers on basic rights for those under arrest. In order to make law enforcement personnel more able to comply with the mandate by the Constitution of Bangladesh and the Code of Criminal Procedure as well and protect these rights it is necessary to provide them with appropriate training in the field of Human Rights, Legal Procedures and Ethical Conduct. Unfortunately, this kind of training is often not available and its failure could lead to infringements in respect of rights.

Furthermore, there is a deep mistrust between law enforcement and the general public. The police frequently have limited interaction with the community they serve, leading to mistrust and even animosity. Not like in Japan or other developed countries, police officers in Bangladesh do not show up to, for example, public schools to do some community service including education on street safety or so. It is not exaggerating that the occasion where people in Bangladesh see or meet police officers would be typically crime scene. This generates among the people the understanding that police officers live in a different part of our society and they are the ones that we meet when we are involved in a

serious crime. This divide can contribute to the occurrence of custodial torture as it creates an environment where abuses can go unchecked.

3.2. Theoretical Reasons behind Torture

There are many theoretical factors which contribute to the commission of the torture in Bangladesh. Here, I am going to discuss the most important factors which facilitate mainly to commit the act of torture by the law enforcing agency.

One of the most important law is the law of arrest without warrant. Though the Constitution of Bangladesh proudly prohibits the torture in article 35 (5), but the other laws in Bangladesh do not prevent the torture effectively. Even some other laws do leave some loopholes by which police officers could easily commit this terrible human rights violation. One of such loopholes is the arrest without warrant, as I will introduce later of this chapter, arrest without warrant is provided in the section 54 of the Code of Criminal Procedure, and it has been widely used and even normal way of making arrest, it was designed to be an exceptional, though. The section 54 confers considerable powers on the police. Such powers are of vital importance for the enforcement of law, although they do not provide adequate checks and balances, which resulted in the misuse of the power. This provision allows the police to arrest individuals on mere suspicion, leaving individuals vulnerable to arbitrary detention and the risk of torture. Taking advantage of discretionary power allowed in case of arrest without warrant, the police officers could torture the suspect without or with nominal overseeing by the judiciary. And the police officers try to get confessions of the crimes during the investigation with torture. With the confession of the crime, given voluntarily or coerced, the police officer could easily process the cases. In addition, the Code of Criminal Procedure also confers on the police jurisdiction to carry out investigations. But this authority can be vulnerable to abuse if it does not have adequate supervision.

Furthermore, the Code of Criminal Procedure has been used as, sort of mother law by which provides instances where police officers do arrest without warrant. For example, section 316 of the Bengal Police Regulation of 1943²³, provide the wider categories where the police may do arrest without a warrant, expressly referring to the section 54 of the Code of Criminal Procedure. There have been so many instances of misuse of discretionary power reported. And its cumulative effect of incidents of human rights violations has had strongly negative impact of people's understanding what the due process is.

The law of remand is another most important factor which plays a significant role in the commission of the act of torture. Section 167 of the Code of Criminal Procedure provides the provision for remand. The provision of this law does not make any restrictions to grant remand, rather it describes how to

²³ The Bengal police regulation of 1943 sets out guidelines for how the police institution should be run and organized, as well as their obligations to uphold law and order. The regulation addresses several issues, such as hiring and educating police officers, managing investigations, and the interaction between the police and the public.

acquire remand through the court of law easily. This easiness of acquiring remand is another vital factor to torture.

3.3 Impunity System in Bangladesh

Generally, impunity means exemption from the accountability. In legal arena, impunity refers to the exemption from the legal consequences of offense or from the punishment of offense. It means that the offender can avoid the accountability of the offense when he/she gets impunity. Torture is a big problem in Bangladesh. One reason that torture has not been stopped is that the police and other law enforcers often don't get punished for violating the human rights. They think torture can help them achieve their goals, even though it's against the law. Also, the way the justice system works is broken. This leads to investigations and trials taking a long time. The government doesn't share information about how many government officials have been punished for torture or violating human rights.

After Bangladesh became independent, its government made several laws that let security forces, police, intelligence units, government workers, and even private companies avoid accountability for offense. They amended some laws to take away or weaken the rules that used to make people responsible for their actions.

Article 46 of the Constitution of Bangladesh says that parliament may by law make provision for indemnifying any person in the service of the republic or any other person in respect of any act done by him in connection with the national liberation struggle or the maintenance or restoration of order in any area in Bangladesh or validate any sentence passed, punishment inflicted, forfeiture ordered, or other act done in any such area. Though this article was added to protect the freedom fighters, but the law enforcing agencies take the advantages of this article.

Section 197 of the Code of Criminal Procedure, 1898 requires prior government sanction to prosecute public servants for certain offenses committed during the discharge of their official duties. Critics argue that this provision could be misused to protect individuals from prosecution.

Section 132 of the Penal Code, 1860 provides legal protection to judges, public servants, and individuals acting in good faith under the authority of the law. While this is intended to safeguard genuine actions, there have been concerns about its misuse to shield wrongdoings.

In practice, the law enforcing agencies enjoy wide range of impunity by the ruling party because the agencies help the government to control the protest of opposite party. This impunity helps to increase the number of torture case in Bangladesh.

3.4 Arrest without Warrant and Remand Process

Law enforcement frequently engages in the improper exercise of their power in relation to arrest and remand, as delineated in sections 54 and 167 of the Code of Criminal Procedure of 1898. There are

two distinct modalities of arrest: the first involves arrest pursuant to a formal warrant, while the second pertains to arrest conducted absent such warrant. Notably, it is the latter mode of warrantless arrest that has garnered significant attention due to its extensive misapplication by law enforcement agencies. Section 54 of the Code enumerates nine circumstances where a police officer is authorized to arrest a person without a warrant. Amongst these nine scenarios, the initial circumstance is characterized by a broad scope, which becomes misused often, while the remaining circumstances are characterized by particularity and specificity. The section 54 of the Code is as follows.

3.4.1 The Process of Arrest without Warrant

A police officer may arrest someone without needing a judge's order or a warrant in various situations. Firstly, if the person is connected to a serious crime, or if there's a reasonable complaint, credible information, or a reasonable suspicion that they are involved. Secondly, if a person has tools for breaking into houses and can't give a good reason for having them. Thirdly, if a person has been officially declared a criminal by the law or the government. Fourthly, if something is found with a person that seems to be stolen, and it looks like they might have taken it. Fifthly, if a person obstructs a police officer's work or tries to run away after being told they're being arrested. Sixthly, if there's a good reason to believe a person has left the armed forces without permission. Seventhly, if a person was part of a crime outside Bangladesh that would also be a crime here, and they can be arrested under laws about bringing them back. Eighthly, if someone was previously in jail but breaks a rule listed in section 565, sub-section (3). Lastly, if another police officer asks for a person to be arrested, and their request explains who the person is, what they did, and it seems like the officer making the request could have arrested the person without a warrant.

Here, the words 'may arrest' provide discretionary power to the police which refers that it is the wishes of the police to arrest someone. It also the words 'credible information' and 'reasonable suspicion' have not been defined properly by the Code. These two words are the main tools to misuse the power by police.

Over the years, somewhat surprisingly, the contents or meaning or threshold-requirements of "credible information" or "reasonable suspicion" had not been elaborated or interpreted in any authoritative judgment. There are certain concerns that haven't been thoroughly examined by the courts. For instance, what factors would determine if information were "credible" based on its content, source, accuracy, and reliability, or what would make a suspicion "reasonable."

Equally important is the fact that if it's later found that the information wasn't credible or the suspicion wasn't reasonable, there haven't been any negative outcomes for the police officers who made the arrest. Because of this, the authority of the police to arrest people under section 54 has been both extensively used and sometimes abused.²⁴

²⁴ Malik, Shahdeen (2007) 'Arrest and Remand: Judicial Interpretation and Police Practice', Special Issue, Bangladesh

3.4.2 The Process of Granting Remand

There are three ways that someone can be kept in custody while waiting for their legal process: remand on bail, remand in police custody, and remand in prison custody (jail). The type of remand that is most concerned in Bangladesh is when someone is kept in police custody. In these cases, the police often use illegal methods to get information from the person. Unfortunately, in Bangladesh, being in police custody often means being subjected to violent torture, humiliating treatment, and harsh punishment. This has led to many cases of people dying while in custody of police in Bangladesh.

As per the law, the police are required to bring the person they have arrested to the closest Magistrate within 24 hours of the arrest. Once presented, if the investigation can not be finished within the initial 24 hours, the police can ask for more time to keep the arrested person in their custody for further investigation. As Prof. Shahdeen Malik explains, “It is a common knowledge that Magistrates routinely allow this request for remand”.²⁵ Section 167 of the Code of Criminal Procedure of 1898 provides provisions for granting remand, which says-

- (1) When a person is arrested and held in custody, and it's evident that the investigation can't be completed within twenty-four hours fixed by law, and there's a reasonable belief that the accusation or information is well-founded, the officer in charge of the police-station or the investigating police officer must promptly send a copy of the case's diary²⁶ entries to the nearest Judicial Magistrate. Simultaneously, they should present the accused person before that Magistrate.
- (2) The Magistrate to whom the accused person is presented under this section can, regardless of whether they can try the case or not, give permission for the accused person to be detained in a suitable custody for a total duration of no more than fifteen days. If the Magistrate lacks jurisdiction to try the case or send it for trial, and they find keeping the accused person detained longer is unnecessary, they can order the accused person to be sent to a Magistrate with proper jurisdiction. However, it's important to note that no Magistrate of the third class and no Magistrate of the second class (unless specifically authorized by the Government) can allow detention in police custody.
- (3) If a Magistrate grants permission under this section for detention in police custody, they must

Journal of Law 266.

²⁵ Malik (2007) .

²⁶ According to section 172 of the Code of Criminal Procedure of 1898, each police officer conducting an investigation under this Chapter is required to diligently record their daily activities related to the investigation in a diary. This diary should include details such as the time when the relevant information came to their attention, the precise starting and concluding times of their investigation, the locations they visited, and a comprehensive account of the circumstances they discovered during the course of their investigation.

explain their reasons for doing so.

- (4) If such an order is given by a Magistrate other than the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, they should send a copy of their order, along with the reasons behind it, to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom they report.

(4A) If the Chief Metropolitan Magistrate or the Chief Judicial Magistrate grants such an order, they should send a copy of the order, along with their reasons for granting it, to the Chief Metropolitan Sessions Judge or the Sessions Judge to whom they report.

- (5) If the investigation isn't concluded within one hundred and twenty days from the date the information about the offense was received or the Magistrate's order for investigation was made:
 - (a) The Magistrate who has the power to take up the case or issued the order for investigation, if the offense isn't punishable by death, life imprisonment, or imprisonment exceeding ten years, can release the accused person on bail to their satisfaction.
 - (b) The Court of Session, if the offense is punishable by death, life imprisonment, or imprisonment exceeding ten years, can release the accused person on bail to their satisfaction.

However, if the accused person isn't released on bail under this subsection, the Magistrate or the Court of Session should provide reasons for their decision. If obtaining official permission is needed for prosecuting the accused under the applicable law, the time taken to get this permission won't be counted within the specified period in this subsection²⁷.

The main goal of this section is to gather information about the crime by asking the person who is accused of it. In reality, the police ask these questions in a private room without anyone else there. Unfortunately, often the police use harmful methods, like torture, that are against the law, to get this information.

Even though there are specific rules that a Magistrate must follow when recording a confession to ensure that the confessions are given willingly, situations have arisen where individuals who have been held in police custody for a few days have confessed due to the use of torture. The matter of whether these confessions were truly given voluntarily has been a concern in many legal cases. It's important

²⁷ Section 167 of the Code of Criminal Procedure of 1898.

to note that an accused person only confesses in front of a Magistrate within the court premises and not to the police during their custody while awaiting trial. The period of custody is sometimes used as an opportunity to “encourage” the accused to confess to the Magistrate.²⁸

²⁸ Malik, Shahdeen (2007) ‘Arrest and Remand: Judicial Interpretation and Police Practice’, Special Issue, Bangladesh Journal of Law 270.

Chapter IV

LEGAL SAFEGUARDS

Torture is a significant concern in both local and global legal contexts. The international community has worked extensively to prevent instances of torture worldwide by creating various international laws. Similarly, the laws within Bangladesh also consider torture as a grave matter and offer constitutional protections against it.

4.1 The Constitutional Safeguards

The Constitution of the People's Republic of Bangladesh provides various provisions regarding the rights of the accused in the criminal case in Bangladesh. Notably, those rights have been provided under the title of fundamental rights of the citizens in Part III. This categorization of the rights means that they confer on an individual the right to bring a lawsuit against the government because of any alleged infringement of the fundamental rights, while the constitutional fundamental principles of state policy in Part II is simply the statements of constitutional principles that are to be followed by the government, and does not give a cause of action for any alleged violation for them. The fundamental rights protection in Part III ensures that citizens can exercise their rights and seek justice in the court of law.

4.1.1 Right to Protection of Law

Article 31 of the Constitution sets forth that the right to be protected by law is inherent in all Bangladesh citizens and persons being within the jurisdiction. This principle ensures that all persons, including defendants, are treated fairly by the legal system of the country. That means that, in the light of criminal proceedings, all defendants have a right to be treated fairly and impartially within the law without discrimination.

The Article also says that the government should avoid taking measures which would have a negative effect on an individual's life, liberty, body, reputation or wealth in any way unless it is allowed by law. As such, it safeguards the rights of accused persons to be free from any kind of unlawful arrest, detention or forcible treatment. With due process of law, the accused may not be harmed or punished improperly.

Due process is also represented by the phrase "in accordance with law" of the article. In criminal cases, this means that the accused person has a right of fair and impartial proceedings, legal representation, presumption of innocence until his or her guilt is proved, as well as protection against all improper actions. These rights ensure that the accused have a fair opportunity to defend themselves by a qualified and competent lawyer and that their guilt needs to be proved in a court of law beyond a reasonable doubt.

4.1.2 Protection of Right to Life and Personal Liberty

The Bangladeshi Constitution's Article 32 states that no one can be deprived of their life or freedom unless it is done legally. All citizens of Bangladesh are guaranteed the right to life and to live in freedom under this article. This right applies prior to and in the course of a trial. The accused has to be informed of the crime they are charged with prior to being deprived of life or liberty. They have the right of appeal against that decision when the accused lose, and may submit reasons for such appeals. It is not necessary for the accused person to know all details of a crime, but they must be provided with enough information by which would allow them to assess the accusation against themselves.²⁹ The right shall extend to the trial and subsequent phases as well. If they are not sentenced to death by the competent court, accused persons shall have a right of life. In line with the laws of Bangladesh, this protection ensures that any person irrespective of citizenship status is able to enjoy these basic rights.

4.1.3 Safeguards as to Arrest and Detention

Article 33 of the Constitution of Bangladesh provides provisions regarding the arrest and detention. It says that people who are arrested must be told immediately why they are being arrested. This is crucial so that the person understands what they are being accused of. It ensures fairness and prevents illegal or improper arrests.

It also says anyone who's arrested has a right to be assisted with their cases by a qualified and competent lawyer. It is important that people are encouraged to consult legal experts on their rights, so as to be able to build a proper defense. This ensures that each one of them has a fair chance to defend himself properly regardless of the seriousness of the charge against the arrestee. The arrested person also must be brought to a judge or magistrate within 24 hours³⁰ if they are arrested. This is to ensure the legality and justification of an arrest. If no valid reason exists for the person's detention, they are not to be kept in custody.³¹

²⁹ Rowshan Bijaya S. Ali Khan vs. East Pakistan [1965] 17 DLR 1. In the case, Shawkat Ali Khan, a practicing barrister and an active politician, was arrested and detained on 20th September, 1964, under section 41 of the East Pakistan Public Safety Ordinance, 1958. His wife brought the case to the High Court of East Pakistan, alleging that the detention order was issued but not based on the proper ground for the arrest and not serviced to him either, and the Shawkat Ali Khan was not informed of the ground of the detention. In addition, on 26 September 1964 a further order of detention was issued. The High Court has been called to hear the two orders that led to a pair of cases. The court held that (1) service of the grounds of detention on the detainee was mandatory and nonservice would vitiate detention; (2) a detention which had been considered illegal cannot be validated by a fresh order; and lastly, (3) detention could not be upheld if the grounds of detentions written ambiguously and indefinitely. The detainee was ordered to be released.

³⁰ According to Article 33 (2) of the Constitution of the People's Republic of Bangladesh of 1972, every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the magistrate.

³¹ However, if the judge or Magistrate believes that the arrestee is violent enough to harm innocent people when he or she goes free, the judge or Magistrate still may legitimately detain the arrestee for the prevention of potential crime. See the

4.1.4 Protection against Trial and Punishment

Article 35 of the Constitution is one of the most important articles of the Constitution in terms of the rights of criminal defendant. It deals with various provisions regarding trial and punishment of the accused that would be normally provided in separate articles in the constitutions in other countries. According to the Article, if a person is found to have committed a criminal act, they could not be convicted unless he had done so in violation of an existing law. Furthermore, they may not be punished more harshly or in a manner otherwise than those which were laid down by law at the time of offence.³² This guarantees that individuals will not be liable to penalties for activities which have been lawful at the time of their occurrence.³³

For the same offence, no one else can be tried and punished more than once. This principle is called the protection against double jeopardy,³⁴ which means that a person can't be forced to go through court proceedings twice or more. In other words, once the defendant found not guilty, the government may not place the same charge against him or her in order to make the defendant guilty and thus avoid possible harassment or unjust punishment.³⁵

People who are accused of a crime have a right to a speedy and public trial.³⁶ By enabling the general public to observe court proceedings, encouraging accountability, and upholding fairness in the judicial system, this guarantees that justice is administered promptly and transparently.³⁷

Chapter V of the Code of Criminal Procedure.

³² This principle is called '*ex post facto* law' which is an internationally recognized principle. The United States Constitution provides the prohibition of *ex post facto* laws by Article 1, Section 9, Clause 3 which says that no bill of *ex post facto* laws shall be passed. Article 39 of the Constitution of the Japan also prohibits *ex post facto* laws which says that no person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted.

³³ According to Article 35 (1) of the Constitution, no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence.

³⁴ The provision of the protection against double jeopardy is also a well-recognized legal provision all over the world. The Constitution of Japan as well as the Constitution of the United States of America recognize this provision. Article 39 of the Constitution of Japan says that no person shall be placed in double jeopardy. The Fifth Amendment to the United States Constitution says that no person shall be subject for the same offence to be twice put in jeopardy of life or limb.

³⁵ According to Article 35 (2) of the Constitution, no person shall be prosecuted and punished for the same offence more than once.

³⁶ Sixth Amendment of the Constitution of the United States recognizes this principle, which says that the accused shall enjoy the right to a speedy and public trial. Article 37 of the Constitution of Japan also addresses the principle of speedy and public trial which says that in all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

³⁷ According to Article 35 (3) of the Constitution, every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial Court or tribunal established by law.

It is not possible to force the arrestees who are charged with a crime to testify against themselves. That right shall protect individuals from being forced to submit evidence which can be used against them. In order to safeguard the integrity of the court process, it should be ensured that individuals are not required to admit guilt.³⁸ This principle is called right against self-incrimination.³⁹

Torture, cruel, inhuman or degrading treatment⁴⁰ shall also be prohibited under this Article. This principle makes it clear that no individual is to be subjected to such treatment under any circumstances. It is an expression of a global commitment to the protection of human dignity and the protection of individuals from all forms of physical or mental harm, regardless of their background or legal status.⁴¹

In essence, these principles lay the foundations of a just legal system by protecting individuals from arbitrary punishment, ensuring fairness in court proceedings and respecting the dignity and rights of every human being within the framework of law.

Significantly, the supremacy of the Constitution itself is established in Article 7 of the Constitution. It states that the Constitution is the supreme legal instrument in this country, and any law which goes against its principles shall be null and void. It is clear from this statement that the Constitution plays a very important role in shaping our laws. The promise to protect and respect the Constitution's rules and safeguards is also highlighted.

4.2 The Rights of the Accused Protected by the Code of Criminal Procedure and Other Statutes of Bangladesh

Along with the Constitution, some other specific statutes also provide safeguards to the accused of the criminal case, and those rights are supposed to be protected at the various stages including the pre-trial stage of a criminal case.

³⁸ According to Article 35 (4) of the Constitution, no person accused of any offence shall be compelled to be a witness against himself.

³⁹ Fifth Amendment of the Constitution of the United States provides protection against self-incrimination which says that no person shall be compelled in any criminal case to be a witness against himself. The Article 38 of the Constitution of Japan also provides this right, which says that no person shall be compelled to testify against himself.

⁴⁰ This is also an internationally recognized rights of an accused. The Eighth Amendment to the United States Constitution provides this right which says that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. The right against torture and cruel punishment also provided in Article 36 of the Constitution of Japan which says that the infliction of torture by public officer and cruel punishment are absolutely forbidden. It indicates that the Constitution of Japan has given more emphasized on the prohibition of torture through making it absolutely forbidden.

⁴¹ According to Article 35 (4) of the Constitution, no person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.

4.2.1 The Rights to Defense, and to Legal Assistance

It is the fundamental rights of the accused to consult and be defended by a lawyer at the time of arrest.⁴² Section 340 of the Code of Criminal Procedure of 1898 reaffirms this right by saying that any accused of any criminal offence shall have right to be defended by a lawyer before the court.⁴³ This right may give rise to two questions : the first one is whether the accused has right to have legal assistance at the state expense when he cannot afford to have a lawyer by his own expense; the other is what is the impact of the violation of this right?

The answers of those two questions have been provided by the court in Babu Khan v. State case, where the High Court Division held that it is the ‘inalienable’ and ‘fundamental’ right of the accused person to be defended by counsel in a case which is punishable with capital punishment. The non-compliance with this provision makes the trial, judgment and conviction unlawful.⁴⁴

However, in practice, the violation of this provision does not result in acquittal, but it leads to the re-trial of the case. Practically, it happens often that the Appellate courts often send back cases to the lower court for re-trial on the basis of fault that the trial court did not appoint a defense counsel.⁴⁵

However, if the Appellate court finds that there is too much injustice to the accused which cannot be ignored, the Appellate court may acquit such accused rather than send the case back to a lower court. A good example of this bold remedial power of the Appellate court is Abu Bakkar Siddiqui and Others v. State, where an innocent person was subsequently convicted for murder charge which was not made against him in the proceeding.⁴⁶ The accused was originally brought to a police station as a witness of a crime when police officers demanded him to come for some interviews. However, the police officers somehow believed that the witness was the one who did that crime that they were investigating, and sent the witness as the defendant of the case without setting the formal charge of the crime against him. The witness realized that he was turned into the criminal defendant of the crime that he was never involved and even informed of the charge against himself. He did not have any chance to be counseled by a lawyer, of course, and subsequently was founded as guilty as charged. Fortunate enough, the High Court Division on appeal acquitted the accused.⁴⁷

⁴² Article 33 (1) of the Constitution of the People’s Republic of Bangladesh: No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

⁴³ Section 340 (1) of the Code of Criminal Procedure: Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.

⁴⁴ Babu Khan v. State, (2003), 55 DLR HCD 549.

⁴⁵ Hoque, Ridwanul (2007). Criminal Law and the Constitution: The Relationship Revisited. Bangladesh Institute of Law and International Affairs (BILIA). Special Issue, p. 35.

⁴⁶ Abu Bakkar Siddiqui and Others v. State, (2004) 9 BLC HCD 250.

⁴⁷ See Hoque, *supra* note 25, at 35-36.

4.2.2 Right to Get Bail in Bailable Offence

The right to bail is one of the important rights of the accused at the pre-trial stage. In case of bailable offence,⁴⁸ it is the right of the accused of a criminal case to get a bail upon his or her request. Not only allowing bail, the court may discharge the accused in a bailable offence if the judge before him or her finds it to be necessary or appropriate.⁴⁹ On the other hand, in case of non-bailable offence, the accused does not get bail without the exceptional justification such as the accused's pregnancy or being elder. It is by the discretionary power of the judge that the court could grant bail to the accused in such cases.⁵⁰

4.2.3 Right to Interpretation of Evidence

Another important right provided by the law is to get the interpretation of the evidence. When the evidence is presented in a language which is not understood by the accused of the case, such evidence shall be presented in a language which is understood by the accused.⁵¹ The official language in Bangladesh is Bengali. However, substantial number of the people speak and write in English, as well as Bengali, and actually the text of some old laws has been in English. And some people in rural areas, including some aboriginal people, speak different languages other than Bengali. Therefore, the right to interpretation of evidence has been important to the accused who has difficulty in understanding his or her situation due to the language barrier, and has been ensured that the accused fully understand the case brought against him or her.

4.2.4 Torture and Custodial Death (Prevention) Act of 2013

This Act has provided more specific remedy for the victim of torture and custodial death. Usually, injury or harms upon a citizen would not be cured if the injury or harm was caused by government officials including the law enforcing agency. This act was enacted to provide special remedy to the victims by illegal or ill-treatment by the law enforcing agency, considering the gravity of injury or harms upon the victim.

This is the first special law regarding the rights of the criminal accused in Bangladesh. It has been created to comply with the provision of ICCPR and to fulfill the demand of the civil society to make

⁴⁸ According to the Section 4 (b) of the Code of Criminal Procedure, 'bailable offence' means an offence which has been shown in the second schedule of the Code of Criminal Procedure and such offence which is made bailable by any other law. In case of bailable offence, it is the right of the accused person to get the bail whenever he wishes.

⁴⁹ Section 496 of the Code of Criminal Procedure: When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance.

⁵⁰ Section 497 of the Code of Criminal Procedure of 1898.

⁵¹ Section 361 of the Code of Criminal Procedure of 1898.

a progress towards the victims of torture and ill-treatment by the law enforcing agency. Though this law has made a significant progress to the safeguards of the criminal accused, but it has still many theoretical and practical loopholes, which will be discussed in the later part of this dissertation.

4.2.5 The Children Act of 2013

Bangladesh laws have recognized to provide special treatment for juvenile offenders, and the Children Act, originally enacted in 1974, has played important role for that purpose. According to the recent amendment to this Act, child offenders will be sentenced to the prison only in serious cases. And child offenders must be kept separated from the adults in the detention center. This separation was newly added to the act in fear of those children being harassed, tortured, or even sexually abused by other adult detainees. At a trial phase, another protection shall apply. The idea of the protection is to have a fair and impartial trial free from any inappropriate influence, as well as to endure the safety of the child accused. In *Md. Nasir Ahmed v. the State*,⁵² the Supreme Court held that it is forbidden to make a trial of child accused along with the adult accused in the same crime, by which the court could prevent a potential influence by the adult accused toward the child accused by having an eye-contact or so.⁵³

4.3 Some International Instruments against Torture

In addition to the protections provided by domestic laws, there are also safeguards on a larger scale, both in the region and internationally, which ensure that the rights of those accused of crimes are respected, especially concerning torture and mistreatment. Before moving on the introduction of the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment to which Bangladesh acceded, I would like to mention briefly some examples of international conventions dealing with torture issues.

The Universal Declaration of Human Rights (UDHR) has been one of the most important declarations in the field of the human rights protection, and in article 5 of the Declaration, it clearly states that no one should be treated with torture or any form of harsh, cruel, or humiliating punishment. This clear message is repeated in a similar convention, which is the International Covenant on Civil and Political Rights (ICCPR) of 1966. In the first sentence of article 7 of the Covenant, it manifests strong determination that no torture and other improper treatment are allowed, using the same words as article 5 of the UDHR.

The American Declaration of the Rights and Duties of Man (ADRDM) of 1948 is an example of regional effort to human rights protection. In article XXV of the Declaration, it provides that anyone who has been taken away from their freedom has the right to be treated fairly while they are being held. Additionally, article 5 of the African Charter on Human and Peoples' Rights of 1986 makes it

⁵² *Md. Nasir Ahmed v. The State*, (1990) 42 DLR 89.

⁵³ According to the Section 3 of The Majority Act, 1875, any person domiciled in Bangladesh shall be treated as an adult when he or she has completed his/her age of eighteen.

clear that all forms of mistreatment and hurting people, especially things like torture or very harsh, cruel, or humiliating punishments, shall be prohibited.

Article 3 of the European Convention on the Human Rights also strictly prohibits torture. It says that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. The Council of Europe has given more emphasis on the matter of torture through the enactment of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. This Convention provides directions to form a committee like the Committee against Torture to ensure the Article 3 of the European Convention on the Human Rights as well as it provides the functions of the committee. This Convention also provides some duties to the State party to cooperate the committee to confirm that no one is being tortured in their own territory.

These declarations or international instruments are originally enacted to address the human rights protection as a whole, and the prohibition of torture and other improper treatment is provided as a narrow issue in a broader agenda. It does not necessarily mean that the international community has thought that the torture is always a “one of them” and relatively small problem that the Community need to be concerned. However, facing the growing concerns over the torture problem, the United Nation found it to be necessary to enact additional convention exclusively focusing on the torture problem.

4.4 United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

This convention is specifically designed to stop torture and other types of mistreatments. As of June 2021, it's been agreed to by 173 countries, making it one of the conventions with the most countries involved.⁵⁴ On October 5, 1998, Bangladesh acceded to this Convention. This means that the Convention helps to protect the people of Bangladesh from torture. When a country becomes a part of the Convention, it has to follow the rules and laws in the Convention.

4.4.1 Background of the Convention

Following the observations on rapid growth of torture, the United Nations felt the enactment of a special instrument regarding torture. On December 1975, the United Nations adopt a declaration named the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Torture Declaration”). The declaration merely was not good enough as it has no mandatory obligations to the states to prevent the act of torture. Hence, the United Nations started to make a convention which is legally binding on the states party to take actions against the act of torture. In the consequences, in 1977, the General Assembly requested the Commission on Human Rights to draw up a draft convention against torture and other

⁵⁴ Available on: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=en
(Accessed on 11th November, 2023).

cruel, inhuman or degrading treatment or punishment, in the light of the principles embodied in the Torture Declaration. Lastly, the General Assembly adopted the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter, the UN Torture Convention) on 10 December 1984 to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world.

4.4.2 Contents of the Convention

The Convention is divided into three parts. Part 1, which covers Articles 1 to 16, talks about the rights against torture and mistreatment. Part 2, which includes Articles 17 to 24, explains how to put the Convention into action. The last part, with Articles 25 to 32, deals with things like agreeing to the Convention and making changes to it.

Here are some specific parts of the Convention that deal with the rights against 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.⁵⁵ Where Article 2 recommend the State Party to take effective legislative, administrative, judicial or other measures for the prevention of torture under its jurisdiction.⁵⁶

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.⁵⁷ All the state parties will turn all acts of torture or an attempt to commit torture into a criminal offense by making it illegal.⁵⁸ It is also the duty of the State party to establish jurisdiction over acts of torture.⁵⁹

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.⁶⁰ 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.⁶¹

⁵⁵ See Article 1 of UN Torture Convention.

⁵⁶ Article 2 of UN Torture Convention.

⁵⁷ Article 3 of UN Torture Convention.

⁵⁸ Article 4 of UN Torture Convention.

⁵⁹ Article 5 of UN Torture Convention.

⁶⁰ Article 10 of UN Torture Convention.

⁶¹ Article 11 of UN Torture Convention.

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.⁶² 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.⁶³ 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.⁶⁴

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.⁶⁵ 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.⁶⁶

To the point, this Convention takes various actions against torture. It has defined torture as a serious crime and recognized that torture can never be justified in any way. It has also emphasized that torture may never be used to obtain information or confessions, or to compel someone to do or to perform any act, or to cause any discrimination. The right to compensation and the rehabilitation for the victims of torture have been guaranteed by the Convention. Besides this, the legal aid, medical care and mental health services for the victims of the torture have been recommended through this Convention.

The Convention calls for various measures to prevent torture including enacting laws, raising awareness about torture, and providing training to prevent torture. The Convention also requires the states party to investigate the allegations of the torture and to bring those accused of torture under justice. The right of victim of torture has also been guaranteed through this Convention. After all, this Convention plays an important role to prevent torture as well as to protect the victims of torture.

4.4.3 Responses of Bangladesh to the Convention

Bangladesh ratified this Convention on 5th October 1998. As the State Party of the Convention, Bangladesh needs to comply with the provisions. In reality, however, Bangladesh had failed to comply with lots of provisions. According to Article 19 of the Convention, for example, a State party of this Convention is obliged to submit its initial report within one year after the entry into force of the Convention for the State Party concerned. As a result, Bangladesh was obliged to submit its initial

⁶² Article 12 of UN Torture Convention.

⁶³ Article 13 of UN Torture Convention.

⁶⁴ Article 14 of UN Torture Convention.

⁶⁵ Article 15 of UN Torture Convention.

⁶⁶ Article 16 of UN Torture Convention.

report by 4th November 1999. But, Bangladesh failed to submit the initial report timely partly because of the change of ruling party in the government, and partly because of its reluctance, of course. Due to the failure, the Committee Against Torture included Bangladesh in the list of states parties with overdue initial report. The Committee reminded Bangladesh on 10th December 2018 about the overdue of its initial report and about the possibility to proceed with a review in the absence of such a report. Bangladesh replied to the Committee on 16th January of 2019 that it would prepare and send its initial report soon. Finally, Bangladesh sent its initial report after 20 years of due date and it was received by the Committee 23rd July, 2019. Reviewed the report from Bangladesh, the Committee published its concluding observations on the initial report of Bangladesh. In that observation by the Committee, they welcomed some positive actions taken by Bangladesh, while they showed concern on some issues. For example, the Committee has welcomed the Bangladesh's enactment of the Torture and Custodial Death (Prevention) Act 2013, where as it has showed grievous concern on ineffectiveness of the Act. The Committee has also showed concern on the various loopholes⁶⁷ of the Act.⁶⁸

4.5 Concluding Observations on the Initial Report of Bangladesh

The Committee against torture has praised some of the initiatives taken by the Bangladesh regarding torture, which includes the accession and ratification of the International Covenant on Civil and Political Rights in 2000 (ICCPR) and the Rome Statute of International Criminal Court. The former is the updated version of the ICCPR of 1966, which brought more stringent approach in the problems of torture, and the latter is an enforcement act by which the International Criminal Court properly deal with cases of torture.

At the same time, the Committee has also expressed its concern on the following matters and provided some suggestions in the respected matters.

4.5.1 Allegations of Widespread Use of Torture and Ill-Treatment

The Committee has shown deep concern regarding the steps taken by the State party to forestall torture and inhuman treatment. Though the Committee has praised the State party's constitutional protection against torture and the enactment of the Torture and Custodial Deaths (Prevention) Act, 2013, but it has also received many reports of allegations of torture and inhuman treatment by law enforcement officials. These allegations mostly concern using torture to coerce confessions or bribes. The State party reported that 17 cases have been filed under the Act. However, the police officers simply did nothing and resisted to process those complaints, and no details of the cases and even the remedy sought by victims have been provide, either.

⁶⁷ The theoretical and practical loopholes of the Torture and Custodial Death (Prevention) Act 2013 has been discussed in Chapter III.

⁶⁸ Available on : <https://www.ohchr.org/en/documents/concluding-observations/concluding-observations-initial-report-bangladesh-1> (Accessed on 22nd January of 2024).

In addition, the police and other authorities have consistently asked that the Act be amended or repealed in order to protect the law enforcement officials from legal action or to limit the scope of conduct prohibited by the Act. Though the Committee has praised the comments made by the prime minister of Bangladesh that “no innocent person should be subjected to torture or harassment”, but the Committee is extremely concerned about the fact that law enforcement officials continue to attempt to avoid any criticism upon them with regard to torture and inhumane treatment, and that some police officers believe that doing torture is a part of their job. Furthermore, the Committee is also worried that the Torture and Custodial Death (Prevention) Act 2013 is not being effectively implemented.

In view of this, the Committee suggests that the Government publicly declare at the highest level that it is urgent to combat the problems of torture and inhumane treatment and it will not be tolerated under any circumstances. Furthermore, it must be ensured that the Torture and Custodial Death (Prevention) Act shall not be limited to any police officer, and that any government official who engages in torture or acts associated with it will be held criminally accountable on a personal level. The suggestion by the Committee also demanded the Bangladesh government make sure that officials, including those with higher or commanding authority, who engage in acts of torture and cruel treatment are prosecuted and punished with penalties appropriate to the crime of torture and to ensure training in forensic and non-coercive investigative methods.

Lastly, the Report suggested that it’s crucial for the government to gather data on the national application of the Torture and Custodial Death (Prevention) Act and for the court not to accept confessions obtained through torture as evidence. The data compiled by the government will contain details regarding claims of torture or other cruel treatment, as well as information about inquiries, prosecutions, trials, sentencing, and measures for compensation and rehabilitation.

4.5.2 Inadequate Investigation of Complaints of Torture

The Committee is extremely concerned about the shortcomings in the investigation of allegations of torture and inhumane treatment by States parties. The Committee has received report that the police frequently decline to file complaints about torture or disappearances and victims of torture or their families are often subjected to harassment, threats and reprisals. The Committee is worried that there is no independent agency to investigate allegations of torture, and that official investigations are carried out by members of the same unit or hierarchy, which leads to conflicts of interest and impedes accurate investigations.

The Committee expresses regret that the delegation did not provide any information on the results of investigations into 77 allegations of torture which were received by the Bangladesh National Human Rights Commission between 2012 and 2019. In 2017, law enforcement officials faced disciplinary actions, but the most severe penalties were dismissal and demotion, which are not appropriate punishments for serious crimes such as torture and inhumane treatment.

The Report also pointed out that filing system are not properly working as designed. Under the Torture and Custodial Deaths (Prevention) Act, complainants can file complaints either in a nearby police station or in court directly, but this approach is not effective in practice. When filing it in a police station, it is quite easy for the police officers to quash the complaints. However if the victim chooses to file it in court directly, the court is usually located in a distant place from victims house, and sometimes police officer could influence the judge's business taking advantage of such police stations often are located near the courthouse. And most importantly, most of the victims do not know much about their rights and what kind of remedy could be sought.

The Committee suggests the State party to make sure that every claim of torture and inhumane treatment is promptly, impartially and effectively investigated. To address this, an independent investigative system should be established. In addition, the Victim and Witness Protection Act should be passed quickly and a monitoring body should be established to keep an eye on the status of inquiries into allegations of torture and make sure that deadlines are fulfilled. Furthermore, medical professionals' training should be increased, and medical examinations mandated to evaluate allegations of torture should be ensured in accordance with the Istanbul Protocol.

Chapter V

LEGAL REVOLUTION REGARDING TORTURE

5.1 Two Major Cases from the Judiciary

Though it is the duty of the law enforcing agency to ensure the public safety and human rights, but due to the misuse of power, their role is very much questionable in Bangladesh. There are lots of allegations against the law enforcing agency in Bangladesh. Their main weapon to abuse the power is section 54 and section 167 of the Code of Criminal Procedure of 1898. Through the misuse of these section, arresting without warrant and torturing at police custody happen often. As a result, many peoples have lost their lives.

In response to these abuse of power, Bangladesh had two major cases with regard to prevention of torture by the law enforcing agencies. The Supreme Court of Bangladesh held in these two cases that the torture by the law enforcing agencies should be regulated, and delivered guidelines to be followed. In this chapter, I will examine two major cases by the Supreme Court of Bangladesh.

5.2.1 BLAST v. Bangladesh⁶⁹

On 23rd July 1998, an university student named Rubel was arrested without warrant and became tortured at police custody, in the consequence of torture he died on the same day. In 1997, a girl named Shima Chowdhury died after getting raped at the police custody. In those times, another person named Arun Chakrobarati died at the police custody. On the basis of these incidents, Bangladesh Legal Aid and Services Trust (BLAST), Ain O Salish Kendro, Sommilito Samajik Andolon and some other peoples filed a writ petition in the High Court Division of the Supreme Court.⁷⁰ In this writ petition, the legality of arrest without warrant on suspicion and torturing at the time of remand which occurs death got challenged in the view of the Constitution.

The petitioners alleged that the police, through the misuse of power given by the Section 54 of the Code, have been restricting the freedom of the citizens. They also alleged that the police have been violating the fundamental rights guaranteed by the Constitution through misuse and abuse of powers given by the section 167 of the Code regarding police custody.⁷¹ This petition was filed making 5 persons defendant including the Ministry of Law, Ministry of Home Affairs, Inspector General of Police, Sub-Inspector General of Police and a Sub-Superintendent of Police. In the writ petition, it is requested that the existing laws and constitutional provisions (Articles 27, 31, 32, 33 and 35) relating

⁶⁹ Bangladesh Legal Aid and Services Trust (BLAST) and others v. Bangladesh and others, 55 DLR (Dhaka Law Reports) (2003) 363 (*hereinafter* BLAST of 2003).

⁷⁰ These facts are not reported in the BLAST of 2003, but are introduced in a case from the Appellate Division of the Supreme Court, which will be introduced in later part of this chapter. These facts are from Bangladesh and others v. Bangladesh Legal Aid and Services Trust (BLAST) and others, 69 DLR (AD) (2017) 63, 89.

⁷¹ BLAST of 2003, 55 DLR at 365.

to arrest and investigation be duly followed and that the accused be given access to a lawyer immediately after arrest. Subsequently, the High Court 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.

In the *BLAST v. Bangladesh* case (2003), the High Court Division of the Supreme Court said 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.⁷² In this case, the High Court Division has provided guidelines⁷³ regarding arrest, remand and detention, which are as follows:

A police officer is prohibited from arresting a person under section 54 of the Code for the purpose of detaining such person under section 3 of the Special Powers Act, 1974, which is the arrest for the preventive detention.⁷⁴ At the time of arrest, a police officer shall disclose his identity to the person arrested and to the persons who are present at the place of arrest, if they request to show the identity.⁷⁵ After the arrest, a record containing the reasons for the arrest and other relevant details shall be kept in a distinct register till a special diary is prescribed.⁷⁶

The arrested person shall be furnished the reasons for the arrest within three hours of bringing him in the police station. Before this directive, the police officers were not required to tell the reason of arrest at the time and place of arrest, and it was often the case that the arrested person did not know why he or she was arrested for a long time.

If any person is not arrested at their residence or place of business, the arresting police officer shall notify any immediate family members or relatives of the arrested person through a phone call, if available, or by sending a messenger within one hour of bringing the arrested person to the police station.⁷⁷ After the arrest, the arrested person shall get the opportunity to consult with a lawyer or to meet any of his nearest relation of his choice, if he desires so.⁷⁸

After the arrest, if the police officers discover any marks or injury on the body of the arrested person, such police officer shall record the reasons for such injury. After that, he will take the arrested person to the nearest hospital or Government doctor for treatment and shall obtain a

⁷² *BLAST* of 2003, 55 DLR at 372.

⁷³ *BLAST* of 2003, 55 DLR at 399.

⁷⁴ *BLAST* of 2003, 55 DLR at 398.

⁷⁵ *Ibid.*

⁷⁶ *BLAST* of 2003, 55 DLR at 399.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

certificate from the attending doctor. This is for making easy for the Magistrate judge to distinguish the scars which had been on the arrestee before the arrest and the ones which would be suspected to be left after the arrest and during the possible tortures.⁷⁹

If the concerned police officer seeks the extension of the detention period of the arrested person, he must forward reasons in a forwarding letter to the concerned Magistrate 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.⁸⁰ If the reasons stated in the forwarding letter as to the accusation or information against the arrested persons are sufficient for detaining the person in custody, the Magistrate shall pass an order for further detention. Otherwise, the Magistrate shall release that arrested person.⁸¹ After releasing the arrested person, the Magistrate shall take an action under section 220⁸² of the Penal Code of Bangladesh against the police officer who arrested that person without warrant.⁸³ 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.⁸⁴ If any investigating officer makes an application for taking the accused in police custody for interrogation, such investigating officer shall state the reasons as mentioned in the recommendations⁸⁵ of the judgment for such application. If the Magistrate authorizes the detention of police custody, such Magistrate shall follow the recommendations⁸⁶ laid down in the judgment. If any death of the

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² According to the Section 220 of the Penal Code of 1860, whoever, being in 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.

⁸³ BLAST of 2003, 55 DLR at 399.

⁸⁴ BLAST of 2003, 55 DLR at 400.

⁸⁵ According to the recommendation B(2)(c) of the Judgement, if the Investigating officer files any application for taking any accused to custody for interrogation, he shall state in detail the grounds for taking the accused in custody and shall produce the case diary for consideration of the Magistrate.

⁸⁶ According to the recommendation B(2)(c)(d) of the Judgement, if the Magistrate is satisfied that the accused be sent back to police custody for a period not exceeded three days, after recording reasons, he may authorize detention in police custody for that period. Before passing such order the Magistrate shall ascertain whether the grounds for the arrest was furnished to the accused and the accused was given opportunity to consult lawyer of his choice. The Magistrate shall also hear the accused or his lawyer. According to the recommendation B(3)(b)(c)(d), if the order of the Magistrate is approved properly, the accused, before he is taken custody of the Investigating Officer, shall be examined by a doctor designated or by a Medical Board constituted for the purpose and the report shall be submitted to the Magistrate concerned. After taking the accused into

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.⁸⁷ The Magistrate shall inquire into the death of such person in police custody or jail immediately after receiving the information of such death.⁸⁸

For the first time, the issue of abuse of power of arrest and remand significantly got attention of the Supreme Court of Bangladesh. It is obviously a milestone for the protection of the rights of the accused in Bangladesh. The judgement discussed the matter of arrest and remand elaboratively and observed that the existing legal provisions of arrest and remand are to some extent inconsistent with the provision of the Constitution of Bangladesh. As a result, the judgement has recommended to amend such inconsistent provisions as well as the judgement has given some directions to be followed until such amendments take place. Those directives are very much protective and comprehensive regarding the protection of the rights of the accused. Those directives mainly focused on the physical injury of the accused. In the meantime, it has left some gaps regarding the immediate rights of the accused after arrest as well as the rights during the approval procedures of remand.

5.2.2 Saifuzzaman v. State⁸⁹

Liakat Sikder and Md. Rafiqul Islam, the president and vice president of Bangladesh Chhatra League⁹⁰, were arrested on February 25, 2002 along with other activists. They were arrested under the provisions of section 54 of the Code of Criminal Procedure, when they were leaving the residence called 'Sudha Sadan', which belonged to Sheikh Hasina, the president of Bangladesh Awami League. After the arrest, they were sent to the police station and detained.

A petition of Habeas-corpus was filed on their behalf, asking for locating the victims and reviewing of their detention. The High Court Division ruled that their detention order was not legally justified. But

custody, only the Investigating officer shall be entitled to interrogate the accused and after expiry of the period, the investigating officer shall produce him before the Magistrate. If the accused makes any allegation of any torture, the Magistrate shall at once send the accused to the same doctor or Medical Board for examination. If the Magistrate finds from the report of the doctor or Medical Board that the accused sustained injury during the period under police custody, he shall proceed under section 190(1)(c) of the Code against the Investigating Officer for committing offence under section 330 of the Penal Code without filing of any petition of any petition of complaint by the accused.

⁸⁷ BLAST of 2003, 55 DLR at 400.

⁸⁸ Ibid.

⁸⁹ Saifuzzaman v. State and others, 56 DLR (2004), 324.

⁹⁰ Bangladesh Chhatra League is the student wing or student organization affiliated with the Bangladesh Awami League, which is a major political party in Bangladesh. Chhatra League is primarily composed of students from various educational institutions and universities in Bangladesh. Its main objectives include political and social activism, and it often plays a significant role in student-related issues and political activities within the country.

the police officers never stopped bringing accusations against them, and successfully dredged up past alleged wrongdoings or even made-up false charges. Subsequently, they were arrested in connection with 12 different cases, one after another, each time they were released on bail for a specific case by Magistrate court orders. This pattern continued, preventing their release from jail for a significant period due to their successive involvement in these cases.

With no other options available, the victims pursued another legal petition in the High Court Division using the habeas corpus process, contending that all the repeated and prolonged detentions were based on the fabricated, or even no evidences. Also, they challenged the way the police officers make arrest and detain under the sections 54 and 167 of the Code of Criminal Procedure, alleging the police officers misused their power to make arrest without warrant based on the mere suspicions upon the suspects, which make the section unconstitutional in violation of the due process of law.

The High Court Division observed that the individuals who were targeted as victims had been declared as arrested without being presented before the competent Magistrate. Additionally, it was noted that the Magistrates were issuing detention orders in a routine manner as instructed by the police officers. Upon careful examination of sections 54, 60, 61, 167, 344 of the Code of Criminal Procedure of 1898 and articles 27, 31, 32, and 33 of the Constitution of Bangladesh, the High Court Division invalidated all ongoing legal processes. The High Court Division said that though the BLAST case has given some directions in regard to arrest and remand, but some further directions are required for protecting liberty of the citizens from police excesses. In the consequences, the High Court Division provided the following instructions:

- (i) the police officer making the arrest of any person shall prepare a memorandum of arrest immediately after the arrest and such officer shall obtain the signature of the arrestee with the date and time of arrest in the said memorandum.
- (ii) The police officer who arrested the person must intimate to a nearest relative of the arrestee and in the absence of the relative, to a friend to be suggested by the arrestee, as soon as practicable but not later than 6(six) hours of such arrest notifying the time and place of arrest and the place of custody.
- (iii) An entry must be made in the diary as to the ground of arrest and name of the person who informed the police to arrest the person or made the complaint along with his address and shall also disclose the names and particulars of the relative or the friend, as the case may be, to whom information is given about the arrest and the particulars of the police officer in whose custody the arrestee is staying.
- (iv) Copies of all the documents including the memorandum of arrest, a copy of the

information or complaint relating to the commission of cognizable offence and a copy of the entries in the diary should be sent to the Magistrate at the time of production of the arrestee for making the order of the Magistrate under section 167 of the Code.

- (v) If the arrested person is taken on police remand, he must be produced before the Magistrate after the expiry of the period of such remand and in no case he shall be sent to the judicial custody after the period of such remand without producing him before the Magistrate.
- (vi) Registration of a case against the arrested person is sine-qua-non for seeking the detention of the arrestee either to the police custody or in the judicial custody under section 167(2) of the Code.
- (vii) If a person is produced before a Magistrate with a prayer for his detention in any custody, without producing a copy of the entries in the diary as per item no.(iv) above, the Magistrate shall release him in accordance with section 169 of the Code on taking a bond from him.
- (viii) If a police officer seeks an arrested person to be shown arrested in a particular case who is already in custody, the Magistrate shall not allow such prayer unless the accused/arrestee is produced before him with a copy of the entries in the diary relating to such case.
- (ix) On the fulfillments of the above conditions, if the investigation of the case cannot be concluded within 15 days of the detention of the accused under section 167(2), the Magistrate having jurisdiction to take cognizance of the case or with the prior permission of the Judge or Tribunal having such power can send such accused person on remand under section 344 of the Code for a term not exceeding 15 days at a time.
- (x) The Magistrate shall not make an order of detention of a person in the judicial custody if the police forwarding report discloses that the arrest has been made for the purpose of putting the arrestee in the preventive detention.
- (xi) It shall be the duty of the Magistrate, before whom the accused person is produced, to satisfy that these requirements have been complied with before making any order relating to such accused under section 167 of the Code.

5.3 Comparison between Two Cases

The BLAST vs Bangladesh case (hereinafter, the Blast case) has provided a set of guidelines related to the procedure for arresting individuals by police officers. The Saifuzzaman vs State case (hereinafter, the Saifuzzaman case) has provided the guidelines for arresting individuals, but it is more concise and straightforward in its presentation. Followings are the analysis of what the Blast case missed and what the Saifuzzaman case added regarding arrest:

5.3.1 Guidelines for Arrest

First thing to be mentioned is the importance of memorandum. Before the Blast case, all the official record on the arrest was the diary, which included basic information of the investigation rather than of the arrestees. The diary showed the reason and the place of the arrest, but did not who the arrestee was, and how long the arrestee was detained in the police station. In the Blast case, the High Court Division emphasized the importance of having the name and address of the arrestee, the reason of the arrest and the circumstances when the police officer got him under arrest. However, the Blast case did not explicitly mention the need for a memorandum of arrest to be prepared immediately after the arrest and signed by the arrestee. With such a memorandum, we could ensure if the arrestee was agreed to the arrest, the arrestee had understanding of the criminal process. Saifuzzaman case emphasized the importance of preparing a memorandum of arrest immediately after the arrest, including obtaining the arrestee's signature, date, and time. With that information, we could know whether the police officer followed the standardized process, including the notice of the reason of arrest, and how long and where the arrestee has been detained.

Secondly, the Blast case did not provide clear guidelines about notifying relatives or friends of the arrestee. The Blast case did recognize the benefit to notify the fact of arrest to the arrestee's family or relatives when they asked the information of the arrestee, but it did not include the notice requirement in their suggestions. Saifuzzaman case explicitly mentioned the requirement to notify the nearest relative or a friend suggested by the arrestee about the arrest. This ensures that someone close to the arrestee is informed promptly, and they could do something for the arrestee, including meeting with the arrestee in the police station or sending a lawyer to help the arrestee.

Third thing is about the diary. Unlike a memorandum which shall be made as the record of who the arrestee is and how long the arrestee is detained, the diary entry shall be made as the record of the police investigation. Blast case emphasized that lots of information should be included in the diary entry, but did not provide comprehensive list that should be needed to satisfy the due process requirement. Saifuzzaman case included information such as the ground of arrest, informant's details, and notified relative/friend as the required content of the diary.

Fourthly, the Blast case does not emphasize the need to send to the Magistrate judge the diary, memorandum and other information showing that the arrestee is involved with the alleged crime. But, the Saifuzzaman case adds this step for ensuring proper justice.

The last thing is about the pro-remand process. Blast case did recognized that some illegal and inhumane investigation could happen in the remand process, and did recognized the importance of supervising the remand process. But the High Court Division did not tell what the police officer should do when the remand period expired.

Lastly, the Blast case does not mention the requirement for the arrested person on police remand to be produced before a Magistrate after the remand period. On the other hand, the Saifuzzaman case includes this aspect to prevent undue custody without legal review.

5.3.2 Guidelines for Remand

Regarding police custody or remand, both the cases have given some guidelines to be followed. Those guidelines are not same, they complement each other.

Firstly, the Blast case did not address the situation where a police officer sought to make second or more arrest against the person who was already in custody based on the original crime. Under Blast case, it was still possible for police officers to extend the remand period on the already-custody arrestee by making another arrest on him, and in that situation, there would be no Magistrates judge's check because the arrestee was already in custody. Saifuzzaman case introduced a provision for the guideline that requires an already-in-custody arrestee to be re-produced before the Magistrate with relevant diary entries before being shown arrested based on another crime.

With this new provision now the Magistrate can make sure whether the arrestee has been properly investigated in the police station. When the Magistrate believes that the diary is not good enough or even fabricated, he does not allow the second arrest. And when he is not convinced that the arrestee has not been in good condition after the remand, he can deny the request of extension of the remand. In that case, the police officers are to be ordered to release the arrestee when the remand period expires. Moreover, the Magistrate judge may direct the arrestee to be moved to the judicial custody rather than police custody which is considered to be relatively safe in terms of compliance of legal or judicial rules.

Secondly, the Blast case does not provide any provision for judicial remand. Under the Blast guideline, it was not clear what would happen when the remand period expires. Using that vagueness, the police officers normally kept the arrestee in the police station, as long as the police officers think they need to investigate on the arrestee. Section 167 of the Code of Criminal Procedure provided that the longest time period for the investigation is 120 days for a single charge. By making the second arrest, even though the case was very weak, the police officers could restart the time clock for another 120 days. Saifuzzaman case added a provision for judicial remand allowing the Magistrate to extend detention in cases where investigations cannot be concluded within the initial 15-day period of police remand. In other words, the arrestee is to be moved to judicial facilities rather than the police station if the police officers still want to detain him.

Thirdly, the Blast case does not specify that the Magistrate must not order detention in judicial custody if the arrest was made for preventive detention purposes. Whereas the Saifuzzaman case explicitly states that the Magistrate should not order detention in judicial custody if the police forwarding report discloses that the arrest has been made for the purpose of preventive detention. It prevents misuse of custody for preventive purposes. Fourthly, the Blast case doesn't explicitly provides the conditions that need to be fulfilled before the Magistrate makes any order relating to the remand. But, the Saifuzzaman case emphasizes that the Magistrate must ensure specific conditions are met before making any order relating to the remand.

In summary, the Saifuzzaman case adds provisions for showing the arrest of already-custody arrestees, introduces the concept of remand, prevents detention for preventive purposes, and emphasizes the importance of meeting conditions before Magistrate's orders. These additions address some of the potential gaps in the Blast case, creating a more comprehensive set of guidelines for the arrest and remand procedures.

5.4 Judgement of the Appellate Division on BLAST Case

The government filed an appeal being aggrieved with this judgment passed by the High Court Division of the Supreme Court. The Appellate Division of the Supreme Court dismissed this appeal and uphold the guidelines provided by the High Court Division. However, the Appellate Division issued some guidelines⁹¹ to the law enforcing agency as well as to the Magistrate, Judges and Tribunals having power to take cognizance of an offence. Which are as follows:

Guidelines for the Law Enforcement Agencies- Immediately after the arrest, the member of law enforcing agency making arrest shall prepare a memorandum of such arrest and shall obtain the signature of the arrested person with the date and time of arrest in the said memorandum.⁹² When a member of the law enforcement agency makes an arrest, they are required to notify the arrested person's closest relative and, if such relative is not available, a friend that the arrested person has recommended, as soon as possible but not later than 12(twelve) hours of such arrest notifying the time and place of arrest and the place in custody.⁹³

An entry must be made in the diary as to the ground of arrest and name of the person who informed the law enforcing officer to arrest the person or made the complaint along with his address and shall also disclose the names and particulars of the relative or the friend, as the case may be, to whom information is given about the arrest and the particulars of the law enforcing officer in whose custody

⁹¹ Bangladesh and others v. Bangladesh Legal Aid and Services Trust (BLAST) and others, 69 DLR (AD) (2017) 63 (*hereinafter* BLAST of 2017).

⁹² BLAST of 2017, 69 DLR at 184.

⁹³ BLAST of 2017, 69 DLR at 185.

the arrestee is staying.⁹⁴

In order to make a request for a remand under section 167(2) of the Code of Criminal Procedure, either in police custody or judicial custody, a case against the arrested person must be registered.⁹⁵ A police officer is prohibited from arresting a person under section 54 of the Code for the purpose of detaining such person under section 3 of the Special Powers Act, 1974, which is the arrest for the preventive detention.⁹⁶ At the time of arrest, a police officer shall disclose his identity to the person arrested and to the persons who are present at the place of arrest, if they request to show the identity.⁹⁷

After the arrest, if the police officers discover any marks or injury on the body of the arrested person, such police officer shall record the reasons for such injury.⁹⁸ After that, he will take the arrested person to the nearest hospital or Government doctor for treatment and shall obtain a certificate from the attending doctor.⁹⁹ If the person is not arrested from his residence or place of business, the law enforcing officer shall inform the nearest relation of the person in writing within 12 (twelve) hours of bringing the arrestee in the police station.¹⁰⁰

The law enforcing officer shall allow the person arrested to consult a lawyer of his choice if he so desires or to meet any of his nearest relation.¹⁰¹ If the concerned police officer seeks the extension of the detention period of the arrested person, he must forward reasons in a forwarding letter to the concerned Magistrate 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. He shall also transmit copy of the relevant entries in the case diary B.P. Form 38 to the Magistrate.¹⁰²

Guidelines to the Magistrates, Judges and Tribunals having power to take cognizance of an offence:
If a person is produced by the law enforcing agency with a prayer for remand, without producing a copy of the entries in the diary as per section 167(2) of the Code, the Magistrate or the Court, Tribunal, as the case may be, shall release him in accordance with section 169¹⁰³ of the Code on taking a bond

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ According to the Section 169 of the Code of Criminal Procedure of 1898, if, upon an investigation under this Chapter, it appears to the officer in charge of the police-station or to the police-officer making the investigation that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such

from him.¹⁰⁴ If a law enforcing officer seeks an arrested person to be shown arrested in a particular case, who is already in custody, such Magistrate or Judge or Tribunal shall not allow such prayer unless the accused/arrestee is produced before him with a copy of the entries in the diary relating to such case and if that the prayer for shown arrested is not well founded and baseless, he shall reject the prayer.¹⁰⁵

On the fulfillment of the above conditions, if the investigation of the case cannot be concluded within 15 days of the detention of the arrested person as required under section 167(2) and if the case is exclusively triable by a court of Sessions or Tribunal, the Magistrate may send such accused person on remand under section 344 of the Code for a term not exceeding 15 days at a time.¹⁰⁶ If the Magistrate is satisfied on consideration of the reasons stated in the forwarding letter and the case diary that the accusation or the information is well founded and that there are materials in the case diary for detaining the person in custody, the Magistrate shall pass an order for further detention in such custody as he deems fit and proper, until legislative measure is taken as mentioned above.¹⁰⁷ The Magistrate shall not make an order of detention of a person in the judicial custody if the police forwarding report disclose that the arrest has been made for the purpose of putting the arrestee in the preventive detention. It shall be the duty of the Magistrate/Tribunal, before whom the accused person is produced, to satisfy that these requirements have been complied with before making any order relating to such accused person under section 167 of the Code.¹⁰⁸

If the Magistrate has reason to believe that any member of law enforcing agency or any officer who has legal authority to commit a person in confinement has acted contrary to law the Magistrate shall proceed against such officer under section 220 of the Penal Code.¹⁰⁹ Whenever a law enforcing officer takes an accused person in his custody on remand, it is his responsibility to produce such accused person in court upon expiry of the period of remand and if it is found from the police report or otherwise that the arrested person is dead, the Magistrate shall direct for the examination of the victim by a medical board, and in the event of burial of the victim, he shall direct exhumation of the dead body for fresh medical examination by a medical board, and if the report of the board reveals that the death is homicidal in nature, he shall take cognizance of the offence punishable under section 15 of Hefajate Mrittu (Nibaran) Ain, 2013 against such officer and the officer in-charge of the respective police station

person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or send him for trial.

¹⁰⁴ BLAST of 2017, 69 DLR at 186.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ BLAST of 2017, 69 DLR at 187.

¹⁰⁹ Ibid.

or commanding officer of such officer in whose custody the death of the accused person took place.¹¹⁰ If there are materials or information to a Magistrate that a person has been subjected to ‘Nirjatan’ or died in custody within the meaning of section 2 of the Nirjatan and Hefajate Mrittu (Nibaran) Ain, 2013, shall refer the victim to the nearest doctor in case of ‘Nirjatan’ and to a medical board in case of death for ascertaining the injury or the cause of death, as the case may be, and if the medical evidence reveals that the person detained has been tortured or died due to torture, the Magistrate shall take cognizance of the offence suo-moto under section 190(1)(c) of the Code without awaiting the filing of a case under sections 4 and 5 and proceed in accordance with law.¹¹¹

Though the guidelines provided by the High Court Division and the Appellate Division are almost same, but the Appellate Division has given the guidelines under the changed circumstances e.g. it has given guidelines following the Torture and Custodial Death Prevention of Act of 2013. The Appellate Division has also considered the significant number of guidelines provided by the Saifuzzaman case. In summary, the Appellate Division has provided more comprehensive for handling arrests and detentions by law enforcement officers and other government officials like Magistrate, Judge etc.

5.5 Reasons for Non-Implementation of Supreme Court’s Guidelines on Remand and Arrest

The government was given six months at the time of passing the judgment of BLAST vs Bangladesh case by the High Court Division of the Supreme Court to amend all the relevant sections of the Code of Criminal Procedure of 1898. Though, it has been long time since the judgement has been passed and many governments have passed their regimes, but no one has taken proper action to implement those directives. The government which was in power at the time of passing the judgment challenged the verdict by filing an appeal at the Appellate Division of Supreme Court. After that government has passed their regime, the successor government also continued that appeal, and the Appellate Division of Supreme Court has given its judgement in 2016 upholding the directives of the High Court Division. Though the Appellate Division has upheld the judgment of the High Court Division, still those directives have not been implemented properly, because the government invest their total time and efforts to find out a way to go to power for next regime. There are various factors which hampered the progress of the implementation of the guidelines provided by the Supreme Court in the Blast case as well as in the Saifuzzaman case.

All the political parties hardly take any attempt while they are in power to strengthen the bases of democracy, as a result the sense of democracy is being used in limited sense in Bangladesh¹¹². The law enforcing agencies help the government in various ways to stay in power stably that’s why the government turns a blind eye on the activities of the law enforcing agencies. Sometimes, law enforcing

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Javaid Rehman, International Rights Law- A practical Approach, New Warsi Book Corporation, Dhaka, 2013, 2nd Edition, p.34.

agency violates the human rights on the direction of the superior authority. Both the law enforcing agency and the government want to make satisfied each other through the violation of law and rights.

The police has often ignored the directions of the Supreme Court and has acted on their own interpretation with regard to how they should arrest and remand, if necessary, the suspect. The reason for this non-compliance by the police is that they feel that the directives of the High Court department would substantially deprive the discretionary power and consequently hinder their work. The government did not take necessary steps to implement the directives of the Supreme Court, either. In some aspect, the government needs the cooperation by the police officers to maintain their political control against the opposing party.¹¹³ Therefore, the government usually do not welcome any law, policy, or even guideline by the Supreme Court not favoring the police. Due to this non-compliance by the police and the government as a group, it becomes difficult to implement the guidelines of the Supreme Court.

There has been some weakness in the side of the Law Enforcement Agency. For instance, the limited manpower has interrupted the enforcement of the directions. Given the number of law enforcement agency personnel, the number of criminal accused is overwhelming. The government has had very limited resource in terms of the number of the police officers. It has not been an exceptional but a normal part that one police officer deal with several cases simultaneously, and the detention facilities have been full of suspects. The efficient processing of cases has always trampled the necessity of following the directions from the Supreme Court. It also the police have internal infrastructural¹¹⁴ and technological¹¹⁵ weakness which cause interruptions on the implementation of the Supreme Court's guidelines.

¹¹³ Guideline number 5 of the Appellate Division.

¹¹⁴ It has been often the case that some senior police officer misuse their power on subordinate police officers for their own personal, political, or even monetary interests, and even that those senior police officer would give illegal order to them. The ignorance of such illegal orders can cost the subordinate police very badly that's why those subordinate police generally follow the order of the superior police. For example, if the subordinate police officer fails to follow the order of his senior, such subordinate officer may be victim of physical assault by the senior police. Unfortunately, there have been so many cases reported. One recent example is found here: <https://en.prothomalo.com/bangladesh/city/viral-video-shows-adc-harun-slapping-constable> (accessed on 02/02/2024).

¹¹⁵ Bangladesh police has faced grievous technological problem in dealing with criminal suspects since its birth of the country. They do not have enough number of and updated technological equipment, such as body cameras, fingerprint scanners and modern transportation vehicles. The police usually takes longer time to bring an arrestee to the police station which hinder the progress of the implementation of the guidelines. The police lacks not only the technological equipment but also the technical training to keep up with the development of modern technology mainly due to the limited budget spent for the policing business. This limited budget could be counted as one big reason that their way of investigation has not been updated and even obsolete.

Ignorance of the general people interrupts the implementation of the directions of the Supreme Court on arrest and remand. Common people are not well educated with regard to the government or court system, and often ignorant of their legal rights. They do not know what the Constitution of Bangladesh gives the people to protect themselves, and do not know what the police officers may legitimately do in their investigation. So, they cannot tell proper orders from illegal orders, and simply accept illegal orders from the police.¹¹⁶ Common people are often afraid of becoming victims of corruption; thus, they accept illegal orders from the police.

Corruption in law enforcement agencies is a major obstacle in implementing the High Court's directives on arrests and remands in Bangladesh. The police often arrest innocent people and take bribe from them in return of the release or beneficial treatment on the arrestee. The police often remand innocent people and torture them to extract confessions. The police often take bribe at the time of investigation and submit false information to the court. The police often take bribe while settling the case. This corruption makes it difficult for the police to implement the number 9 of directions of the Appellate Division on arrest and remand.¹¹⁷

Political influence on law enforcement agencies is another major obstacle in implementing the Supreme Court's directives on arrest and remand in Bangladesh. Political parties often intervene in every phase of the criminal process. They prevent the arrest and remand of their members, discourage the investigation of cases against their members, and inhibit the settlement of cases against their members. On the other hand, the political party gives pressure on the police to do injustices when members of opposing parties are involved with the case.¹¹⁸

Local political influence on the police can be seen most clearly through the relationships between members of national parliament or local assemblies and “thana”, which is a unit of police station, particularly at the level of the head of the police station, commonly referred to OC (Officer in Charge). As researchers argue, members of parliament or local assemblies and OCs have operate as a ‘nexus’ interdependent, and with each advancing economic and political interests through the relationship.¹¹⁹

The lengthy process of law enforcement agencies is another factor to interrupt the enforcement of the directives of the Supreme Court on arrest and remand in Bangladesh. Police often remand innocent people for long periods of time after arrest, torture innocent people while on remand, prolong the investigation of cases and delay the disposal of cases.

¹¹⁶ Guidelines number 9 of the Appellate Division.

¹¹⁷ Guidelines number 3 of the Appellate Division.

¹¹⁸ Guidelines 8 of HC directives on Blast.

¹¹⁹ David Jackman & Mathilde Maitrot (2022) The Party-Police Nexus in Bangladesh, *The Journal of Development Studies*, 58:8, 1516-1530, (Available on : <https://doi.org/10.1080/00220388.2022.2055463>).

Law enforcement agencies often take lengthy remands and arrests, making it difficult for innocent people to get justice. This procrastination of law enforcement agencies is due to their inefficiency, negligence and corruption. This long process by the law enforcement agencies makes it difficult to implement the directions of the Supreme Court.

Not only the executive organ, but also the judicial organ itself does not follow properly its own directives. The Appellate Division of the Supreme Court has given nine guidelines to the Magistrate, Judge and Tribunals as I introduced in Chapter V. In practice, it has been the frequent case that some Magistrates, Judges and Tribunals ignore the guidelines in spite of their lower status compared to the Supreme Court. Of course, the Supreme Court can properly overrule the misapplication or outright ignorance of the guideline¹²⁰. But it is a case only when an unsatisfactory party appeal to the Supreme Court alleging the violation by the Magistrate or other judges. And if the losing party just gives up appealing, those wrong ruling by the Magistrate or other judges will remain. Even when the losing party made properly appeal, the Supreme Court would not do anything if the losing party is a member or supporter of opposing parties in the government.

Though the government enacted an Act criminalizing all acts of torture named The Torture and Custodial Death (Prevention) Act of 2013, but it has so many loopholes that's why this Act has been failed to fulfil the aims of the directives of the High Court Division. During the hearing on an appeal on the issue of arrest and remand the Appellate Division of the Supreme Court said —Thirteen years back, the High Court had given some specific directives on the detention of any person and subsequent dealings with the detainees on remand. But the government did not implement any of them.¹²¹ A prominent writer Md. Abdul Halim said that the government does not want to implement the directives of the High Court Division because the government also use those undue force as a brutal weapon to suppress anti-government movement, sometimes democratic movement and to perpetuate rule.¹²²

¹²⁰ Available on : <https://www.newagebd.net/article/151128/magistrates-violate-sc-guidelines-on-remand-hc> (accessed on 13th February, 2024).

¹²¹ Power abuse by police: SC irked as HC directives unheeded, No action by government in 13 years, The Daily Star, pp.1-2, May 18, 2016.

¹²² Md. Abdul Halim, Constitution, Constitutional Law and Politics: Bangladesh Perspective, CCB Foundation, Dhaka, March, 2008, 4th Edition, p.298.

Chapter VI

TORTURE AND CUSTODIAL DEATH (PREVENTION) ACT OF 2013

6.1 New Act for Torture Problem

In two major cases, the Supreme Court of Bangladesh took significant step with regard to the prevention of torture. However, the guidelines that the Supreme Court gave have not properly followed, and even ignored for some reasons, which were explained in previous chapter. Nevertheless, partly because of growing concerns among the some progressive legislative members and the pressures from international community, Bangladesh had a new act for the torture problem in 2013. In this chapter, I will explain the new act which was newly enacted in 2013.

6.2 The Torture and Custodial Death (Prevention) Act of 2013

The Torture and Custodial Death (Prevention) Act of 2013 is one of the milestone actions of Bangladesh regarding the protection of the criminal accused. It was enacted to fulfill the obligation under the Convention against Torture and other Cruel, Inhumane or Degrading treatment or Punishment, and to give effect to the Constitutional provision of Bangladesh regarding torture. The Act provides some rights as well as some protections to the victims of torture. The Act has also described the process of registration and investigation of the torture case. Though the Act has many loopholes, but it is undoubtedly a great progress in the legal system of the country.

6.3 Background of the Act

As I have explained in earlier chapters, torture has been the most serious form of violating basic rights in Bangladesh. The law enforcement agency personnel are supposed to protect people from cruel treatment by offenders and to bring victims justice. In Bangladesh, however, it has been the police officers who have committed this crime.

6.3.1 New Constitution, Old Penal Code

Torture is prohibited by the Constitution of 1972 from its beginning. Article 35(5) of the Constitution forbids torture or any form of cruel, inhuman, degrading treatment or punishment. This article, along with articles 31 and 32, safeguards the people of Bangladesh from arbitrary exercise of power and ensures they receive proper legal protection.

The Constitution of Bangladesh is the supreme law of the country.¹²³ But the Constitution was inaugurated in 1972. Significantly, the prohibition of torture was first recognized in the Penal Code of 1860. According to Section 330 of the Penal Code, whoever voluntarily causes physical injury to extract a confession or any information from the sufferer or any person interested in the sufferer, shall

¹²³ Article 7 of the Constitution provides: The Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void.

be punished with imprisonment up to seven years and fine. Also Section 348 of the Code prohibits wrongfully confining someone for the purpose of extracting a confession or information, which is punishable by imprisonment of up to three years and a fine. So in Bangladesh, the Penal Code came first in context of torture prevention generally and the Constitution provided the mandate on the way the government treat criminal suspects or accused in process of criminal investigation.

6.3.2 Pressures from International Community

Not only domestic laws including the Constitution of Bangladesh, but international laws also set the standard under which the signatory country shall treat criminal suspects or accused and give the country affirmative duty to establish new laws for the enforcement of the articles of the laws. The United Nations took the matter of torture seriously through the enactment of the International Covenant on Civil and Political Rights (ICCPR) of 1966 and Bangladesh is the signatory party of this covenant. Article 7 of the ICCPR prohibits torture, which says that no person should be subjected to torture or any form of cruel, inhuman, degrading treatment or punishment.¹²⁴

The United Nations took another meaningful step in 1984, which specifically focus on the torture problem through the adaptation of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the UN Torture Convention) on December 10, 1984. As I have explained in Chapter 4, this convention provides comprehensive provisions regarding prohibition against torture and other cruel, inhuman, degrading treatment or punishment. Bangladesh acceded this convention on October 5th of 1998 and Bangladesh was the first country in the subcontinent to accede this convention. Article 2(1) of the UN Torture Convention provides that each State Party shall take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction.¹²⁵ Article 4 has given more explicit obligation on the State Party, which says that every State Party must ensure that all instances of torture are considered as criminal acts according to its own laws. This understating of torture as a criminal act also applies to any attempts to commit torture and to acts of complicity or participation in torture by any individual. Additionally, each State Party is required to establish suitable penalties for these offenses, taking into consideration their serious nature.¹²⁶ So, it was the obligation by the UN Torture Convention to make a new law regarding the prohibition of torture with appropriate punishments.

Though the Constitution forbids torture or any form of cruel, inhuman, degrading treatment or punishment, but the citizen of Bangladesh reportedly experiences such violences in regular manner. The law enforcing agency mainly abuse their powers given by sections 54 and 167 of the Code of Criminal Procedure of 1898. Due to some gruesome incidents committed by the law enforcing agency, the matter of torture and death under police custody got public outcry in the country. The killing of

¹²⁴ Article 7 of International Covenant on Civil and Political Rights – 1966.

¹²⁵ Article 2 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment- 1984.

¹²⁶ Article of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment- 1984.

university student Shamim Reza Rubel was one of the incidents which got attention all over the country¹²⁷ and this case led to a famous writ petition which was between BLAST and others vs. Bangladesh and others in 1998. In this writ petition, the High Court Division says that sections 54 and 167 of the Code of Criminal Procedure are to some extent inconsistent with the provision of Constitution. The High Court Division provided a set of recommendations to those inconsistency as well as provided some directives to prevent the misuse of power by the law enforcing agency¹²⁸.

Despite all the safeguards including constitutional guarantees, court decision, the act of torture by the law enforcing agency has been reported regularly. It was reported that the victims of extra judicial death¹²⁹ were seventy-two in 2013.¹³⁰ In the meantime, various civil society members and human rights organizations have expressed the urgent need for the implementation of a comprehensive legislation to effectively address this issue of human rights violations.

Needless to say, the BLAST and Saifuzzaman cases had also significant impact on the enactment of the Torture and Custodial Death (Prevention) Act of 2013, by highlighting the urgent need for legal reforms to address widespread custodial torture and deaths. Both the cases were initiated as a Public Interest Litigation and put judicial pressure from the Supreme Court on the government through the issuance of some directives which emphasized the necessity of establishing a new legal framework to prevent the act of torture. The decisions of both the cases brought not only the governmental changes but also the huge public awareness to prevent torture.

This call is substantiated by Bangladesh's commitment under the UN Torture Convention to enact a law that criminalizes all forms of torture. Consequently, in response to the societal context, a draft bill has been introduced as a private member's bill¹³¹ in parliament on 5 March 2009. The primary

¹²⁷ Available at - <https://www.thedailystar.net/op-ed/remembering-rubel-1227520> (accessed on 03/03/2024).

¹²⁸ BLAST v. Bangladesh, 55 DLR (2003) 363.

¹²⁹ "Extrajudicial death" refers to the killing of a person by state agents or individuals acting on behalf of the state outside of the recognized legal system. These killings may be regarded as extrajudicial executions since they frequently occur without a fair trial, which is totally inconsistent with the idea of protection of human rights.

Bangladesh has a lot of cases of extrajudicial deaths committed by the law enforcement agencies. Such incidents are often committed by the Rapid Action Battalion (RAB) and police. The authorities claimed that suspects were killed in shootouts while the suspect was resisting arrest and the authorities report it as 'crossfire' or 'encounter' death. The number of death by torture is also included in the number of extra judicial killings.

¹³⁰ Available on: <http://greenwatchbd.com/504-violence-deaths-72-extrajudicial-killings-53-disappearances-in-2013/> (accessed on 24/07/2023).

¹³¹ According to the Rules of Procedure of Parliament of the People's Republic of Bangladesh, 'Private members' means a member other than a minister. Rules 72, 73 and 74 of the Rules of Procedure of Parliament have discussed details about the introduction of the private member's bills.

If any member of the parliament (who is not a minister) wants to propose a new bill, he must inform the Secretary in writing

objective of this bill is to establish legal provisions that specifically target and penalize acts of torture carried out by law enforcement agencies. Subsequently, the bill was passed in parliament 27th October 2013. This Act marks a significant milestone in Bangladesh, as it is the first of its kind not only within the country but also in the wider Subcontinent region. The main objective of this law is to ensure the effective implementation of the United Nations Convention against Torture (UNCAT) within the country.

6.4 Torture and Custodial Death (Prevention) Act of 2013

The Act has defined different terms regarding torture. It provides provisions for offense as well as for punishment. It has also provided how and where a trial of torture will be started and finished. The Act has also given protection to the victim as well.

6.4.1 Definition of Different Terms

According to section 2 (6) of the Act, 'torture' means any act or omission which causes pain, whether physical or mental, to any person¹³², in addition to -for the purposes of- obtaining information or a confession from that person or some other person; or punishing any person for any act or omission for which that person or some other person is responsible or is suspected of being responsible; or intimidating or coercing any person or some other person; or on the basis of discrimination,

fifteen days in advance. Along with the notice, they need to provide three copies of the bill and an explanatory statement explaining the purpose and reasons for the bill. The explanatory statement should not include any arguments.

If the proposed bill requires prior approval from the President according to the Constitution, the member must also include a copy of the President's recommendation with the notice. This recommendation should be conveyed through the relevant Minister. The notice will not be considered valid until this requirement is fulfilled.

If the proposed bill involves spending public money, it must be accompanied by a financial memorandum. This memorandum should highlight the clauses that pertain to expenditure and provide an estimate of both recurring and non-recurring expenses if the bill is enacted into law. The financial memorandum draws specific attention to the financial aspects of the bill.

Requests to introduce Private Members Bills must be listed on the agenda for a day designated for Private Members business. These motions for leave to introduce the bills will be scheduled in the Orders of the Day accordingly. If there is opposition to a motion for leave to introduce a bill, the Speaker may allow a short explanation from the member proposing the bill and the member opposing it, if deemed appropriate. After this, the Speaker can proceed to put the question to the parliament without allowing further debate on the matter. If the parliament grants leave for the introduction of the bill, the member responsible for the bill (member-in-charge) will be called upon to formally propose the introduction of the bill without delay. Once the member-in-charge makes the motion, the bill will be considered officially introduced in the parliament.

"Motion" means a proposal made by a member for the consideration of the Parliament relating to any matter which may be discussed by the Parliament, and includes an amendment.

¹³² The original text of the Act is in Bangla, the definition provided here is an unofficial translation made by Asian Human Rights Commissions, it is available on <http://www.humanrights.asia/wp-content/uploads/2018/09/Torture-CustodialDeath-ActNo50of2013-English.pdf>.

provocation or consent or authority of any public officer or any governmental capacity- Any such act shall also be considered as "Torture";¹³³

The Act has also defined the term "custodial death". According to that 'custodial death' refers to the death of a person while under the care of a public officer. It also includes any death that happens during an illegal detention or when someone is being arrested by a law enforcement officer. This definition applies even if the person who died is not directly involved in a case but was being questioned at the time of the incident. In essence, custodial death refers to any death that occurs while someone is in the control or under the responsibility of law enforcement or public officials.¹³⁴

According to the Act "law enforcement agencies" means an uniformed and disciplined forces in Bangladesh, such as the Police, Rapid Action Battalion, Border Guards, Customs, Immigration, Criminal Investigation Department (CID), Special Branch, Intelligence Agencies, Ansar VDP, Coast Guard, and other state agencies responsible for enforcing and implementing the law within the country.¹³⁵

6.4.2 Complaints of an Offense

If a person brought before a Court claims that she/he has experienced torture, the Court must immediately record the statement of the person or must direct the person to be examined promptly by a registered medical doctor and if the person making the complaint is female, the examination should be conducted by a female registered medical doctor.

The registered medical doctor conducting the examination must prepare a report within 24 hours detailing any injuries, wounds, or signs of violence on the person. The report should also mention the approximate time when these injuries or marks may have occurred. Once the examination is completed, the medical doctor must provide a copy of the examination report to the person examined or to a person nominated by the examined individual. Additionally, a copy of the report should be furnished to the court. If the medical doctor determines that the person examined requires medical treatment, the Court must direct that person to be admitted to a hospital. This ensures that appropriate medical care is provided if needed.¹³⁶ In addition, any person who wishes to file a complaint of torture, despite not being an aggrieved person, either concerning him/herself or concerning a third person, may do so to a Court of Sessions Judge or to a police officer not below the rank of the Superintendent of Police.

¹³³ Torture and Custodial Death (Prevention) Act, 2013 section 2 (6).

¹³⁴ Torture and Custodial Death (Prevention) Act, 2013, section 2 (7).

¹³⁵ The Torture and Custodial Death (Prevention) Act, 2013, section 2(4).

¹³⁶ The Torture and Custodial Death (Prevention) Act, 2013, section 4

6.4.3 Court May Direct Registration of Cases¹³⁷:

Registration of a case

Once the Court records the statement, it must promptly send a copy of the statement to the Superintendent of Police. In certain cases, if necessary, the statement may be forwarded to a higher-ranking police officer under their jurisdiction, along with an instruction to register a case. Then, the Superintendent of Police or the police officer who receives the order must initiate an investigation immediately and submit a report to the Court, either with or without charges.¹³⁸

Investigation of complaint:

Regardless of the provisions mentioned in the Code of Criminal Procedure, any investigation of an offense under this Act must be finished within 90 working days from the date of recording the initial complaint. If the investigation cannot be completed within the specified time frame, the investigation officer must personally appear before the Court and provide a valid explanation for the reasons behind the delays and inconveniences. The Court must hear the statements of the victim(s) or aggrieved person(s) within 30 days to resolve matters concerning the extension of the investigation time. This allows the Court to consider the circumstances and make appropriate decisions regarding the time extension.¹³⁹

6.4.4 Protection of Complainant¹⁴⁰

If someone has a complaint against a person under this Act and wants protection, they can go to the Court of Sessions Judge and submit a petition. Both the state (representing the government) and the person who the protection is sought from will be involved in this petition. Once the Court receives the petition, it will inform the respondents (the accused and others involved) and then make a decision on the petition within fourteen days. When the Court handles the petition mentioned earlier, it can make various orders that it believes are necessary. For example, it may decide to detain the person for at least seven days, and this detention period can be extended if needed. The Court can also instruct the officer in charge of investigating the offense related to this Act to take specific actions to ensure the Court's order is followed. The Court has the authority to issue appropriate orders to protect the person who filed the petition and is seeking protection. This can include arrangements for relocation, providing security, or issuing restraining orders against the respondent, like restricting them from entering a particular area.

6.4.5 Offences¹⁴¹:

If someone inflicts torture upon another person, that action will be considered an offense committed

¹³⁷ The Torture and Custodial Death (Prevention) Act, 2013, section 5.

¹³⁸ The Torture and Custodial Death (Prevention) Act, 2013, section 7.

¹³⁹ The Torture and Custodial Death (Prevention) Act, 2013, section 8.

¹⁴⁰ The Torture and Custodial Death (Prevention) Act, 2013, section 11.

¹⁴¹ The Torture and Custodial Death (Prevention) Act, 2013, section 13.

by the person responsible for the act. Additionally, any person who attempts to commit, assists in committing, or conspires with others to commit an offense of torture will also be considered as having committed an offense under this Act. The offender, who commits an offense under this Act, will be personally responsible and held liable for the crimes he/she has committed.

6.4.6 Trial¹⁴²:

Any offense committed under this Act will be tried exclusively in front of a Court of Sessions Judge. The trial process must be concluded within 180 days from the date when the complaint was officially registered. In case the trial is not completed within the specified 180-day period due to valid reasons, the Court is required to finish the trial within the additional 30 days following the initial 180-day period.

6.4.7 Punishment¹⁴³:

Any person found guilty of committing torture under this Act will be punished with either a minimum of five years of strict imprisonment, or a fine of at least fifty thousand Taka, or both. Additionally, the convicted person must pay compensation of twenty-five thousand Taka to the victim or aggrieved persons.

If someone commits torture on another person, and as a result, that person dies, the perpetrator will be considered to have committed an offense under this Act. The punishment for this crime will be a rigorous imprisonment of at least a life term or a monetary penalty of at least one hundred thousand Taka, or both. Additionally, the perpetrator will be required to pay compensation amounting to at least two hundred thousand Taka to the victim or aggrieved person.

In case anyone is found guilty of attempts to commit, assists in committing, or conspires with others to commit an offense of torture, the punishment will involve a minimum of two years of rigorous imprisonment or a monetary penalty of at least twenty thousand Taka, or both.

Furthermore, any person convicted under this Act must submit the monetary penalty and compensation amount to the trial Court within 14 days from the date when the verdict is passed. Without fulfilling this obligation, no appeal against the verdict under this Act will be accepted.

6.5 Drawbacks of the Act

The law itself has many theoretical loopholes along with the practical obstacles. The most important drawback of the Act is the lenient punishment for offence. There is a significant difference between the punishment given by this Act and the punishment given by the existing penal code of the country for the same offence.

¹⁴² The Torture and Custodial Death (Prevention) Act, 2013, section 14.

¹⁴³ The Torture and Custodial Death (Prevention) Act, 2013, section 15.

Death of the victim due to torture is the most horrible consequences of torture. According to section 15 of the Torture and Custodial Death (Prevention) Act, 2013, the punishment for custodial death is life imprisonment or fine not less than one lakh taka or with both. So, it means that it is possible to dispose of a case of death only with fine and without passing a sentence of imprisonment.

Also the amount of monetary punishment is very much insufficient considering the value of money of the country. If a defendant accused of murder under the penal code of Bangladesh, and is found guilty, there is no possibility that the case would end up with just paying monetary punishment. Monetary punishment can only be added to the base punishment, the most lenient of which is the life imprisonment, and the death penalty, occasionally. Not only the physical punishment but also the monetary punishment is significantly inadequate considering the gravity of the crime. This insufficiency of punishment cannot fulfill the purpose of this Act properly.

This Act just has criminalized all acts of torture in one frame, but it has not categorized the act of torture like the existing penal law of the country. The Penal Code of 1860 has defined hurt¹⁴⁴ in different categories like hurt, grievous hurt¹⁴⁵ etc. as well as provided punishment in different categories based on the way, purpose, and place (organ of body) of committing hurt. For example the punishment for causing hurt¹⁴⁶ and punishment for grievous hurt¹⁴⁷ are significantly different. So, the Penal Code of 1860 has given a comprehensive protection regarding hurt, where as the Torture Act of 2013 has provided an inadequate definition and punishment for torture.

With regard to trial time, this Act has provided a provision to conclude a case within 180 days and if it cannot be ended within this time for reasonable cause, the Act has provided another period of 30 days to conclude the case. However, the Act has not clearly mentioned anything if the court cannot conclude the case within the period of 30 days.

The Act has both the option of police investigation and judicial investigation and does not recognize

¹⁴⁴ According to section 319 of the Penal Code of 1860, whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

¹⁴⁵ According to section 320 of the Penal Code of 1860, the following kinds of hurt only are designated as "grievous":- emasculation, permanent privation of the sight of either eye, permanent privation of the hearing of either ear, privation of any member or joint, destruction or permanent impairing of the powers of any member or joint, permanent disfiguration of the head or face, fracture or dislocation of a bone or tooth, any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

¹⁴⁶ According to section 323 of the Penal Code of 1860, whoever, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand taka, or with both.

¹⁴⁷ According to section 323 of the Penal Code of 1860 whoever, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

any independent body to carry out the investigation of torture. In practice, most of the investigations are carried out by the police officers which hampers the due process of law.

6.6 Implementation of the Act

After the enactment of this Act, very few cases have been filed under this Act. In 10 years of enactment of this Act, only fifty cases of torture have been filed.¹⁴⁸ Unawareness of the people is one of the reasons behind this low number of cases. Particularly, people from village areas are not known about this law.

The cases of torture, harassment, and reprisals against victims and their families in the country not only violate basic human rights but also create an atmosphere of fear and intimidation, preventing victims from seeking justice and accountability for the abuses they have suffered.

The fact that victims of torture or degrading treatment, along with their relatives, have faced harassment and intimidation after filing cases against members of law enforcement agencies highlights a serious issue within the justice system.¹⁴⁹ It indicates a lack of protection for those seeking justice and an environment where law enforcement personnel may act with impunity.

The allegation that the few investigations conducted are not done impartially further adds to the gravity of the situation. Impartial and fair investigations are crucial to ensuring accountability and holding perpetrators responsible for their actions. When investigations lack impartiality, it erodes public trust in the justice system and perpetuates a cycle of impunity.

The case of Limon Hossain¹⁵⁰, a former college student who lost his leg after being shot by RAB on 23 March 2011, is a tragic example of the consequences of such abuse of power. The submission of a Naraji Petition (no confidence petition) against the final report¹⁵¹ by Henoara Begum, Limon

¹⁴⁸ Available on: <https://www.observerbd.com/news.php?id=404433> (accessed on 28/08/2023).

¹⁴⁹ The daily Prothom Alo, 22 June 2022; <https://www.prothomalo.com/bangladesh/crime/পুল-বলে-র-বিরুদ্ধে-মামলা-পাঠান> াবল ার্ন নি ড় ার্নে ন-ি াদ াী Manabzamin, 13 August 2022; <https://mzamin.com/news.php?news=16028>

¹⁵⁰ On 23 March 2011, Limon Hossain (16), a HSC candidate of Kathalia PGS Technical College and son of a day labourer Tofazzal Hossain of Saturia Village under Rajapur Upazila of Jhalkathi District, was returning from the field with cattle. A group of RAB members led by RAB-8 Deputy Assistant Director (DAD) Mohammad Lutfar Rahman held him up in front of the local martyr Jamaddar's house and asked for his identity. Limon identified himself as a student. The RAB members shot him in the left leg and left Limon lying on the ground for two to three hours. Later he was admitted to Barisal Medical College Hospital and when his condition deteriorated, he was brought to the National Institute of Traumatology & Orthopaedic Rehabilitation (NITOR) in Dhaka. Limon's bullet-ridden left leg had to be amputated at the orthopaedic hospital. Available on : <https://www.askbd.org/ask/wp-content/uploads/2013/12/Right-to-Life-and-Right-to-a-Fair-Trial.pdf> (Accessed on 17th May, 2024).

¹⁵¹ The daily Prothom Alo, 6 December 2022; <https://www.prothomalo.com/bangladesh/district/6v461ka6qy> (accessed on

Hossain's mother and the plaintiff in the case, further reflects the lack of confidence in the investigative process.

Not only the inadequate investigation but also the refusal of registering the claim of torture have been reported in dailies and in different reports made by rights organizations. The Committee against Torture shows their principal concern on these issues, which says that it has received information that the mechanisms to accept and investigate the cases of torture committed by the government officials are practically ineffective. The police officers often refuse to register a case of torture. Those either victim or relative of the victim want to make a complaint of torture are reportedly frequently subjected to harassment, threats and retaliation by the perpetrators. The committee also showed their concern in case of investigation process that there is no independent authorized body to carry out the investigation of the case of torture committed by government officials. As a result, the investigation is carried out by the police officers from same units who normally do favor colleague. The government of Bangladesh has received 77 cases of torture from the Bangladesh National Human Rights Commission between 2012 and 2019, but the government could not give the result of the investigation of such cases except one.¹⁵²

Addressing such human rights violations requires a commitment from the government to uphold the rule of law and ensure accountability for any abuses committed by law enforcement agencies. This includes conducting thorough and impartial investigations, providing protection to victims and their families, and holding perpetrators accountable for their actions, regardless of their position within the law enforcement agencies.

It is essential for civil society, human rights organizations, and international bodies to closely monitor the situation, raise awareness about these issues, and advocate for the protection of human rights and the establishment of a fair and just legal system that respects the rights and dignity of all individuals in the country. However, there has been only one case which has been dissolved successfully so far.

On February 8, 2014, two brothers—Ishtiaque Hossain Jonny and Imtiaz Hossain Rocky—were arrested by the police during a wedding in the Pallabi neighbourhood of Dhaka after Jonny hit a police informant named Sumon for allegedly harassing women at the event. The brothers were subjected to intense abuse at the Pallabi police station. Sadly, Jonny died the following day in a metropolitan hospital from his wounds. On August 8, 2014, Rocky filed a case in the Metropolitan Session Judge's Court. On September 9, 2020, the court condemned Sumon and Russell, who was involved in this incident, to seven years in prison and three former Pallabi police station officers to imprisonment for life in prison. The court also mandated that each officer compensate the complainant with Tk 2 lakh.

03/09/2023).

¹⁵² Available on: <https://en.prothomalo.com/opinion/Bangladesh-in-the-eyes-of-UN-Committee-Against> (accessed on 25/03/2024).

This has been the first and the last conviction under the Torture and Custodial Death (Prevention) Act, 2013, so far.¹⁵³

¹⁵³ Available on <https://www.thedailystar.net/opinion/views/the-shores-injustice/news/how-long-will-we-ignore-whats-happening-police-custody-3082721> (accessed on 30/10/2023).

Chapter VII

ANALYSIS AND SUGGESTIONS

7.1 Analysis

Torture by law enforcing agencies is a common problem all over the world. But some countries have been able to minimize it, while some could not. Unfortunately, Bangladesh is one of them who could not. The people in Bangladesh have been experiencing severe violation of human rights through the torture committed by the law enforcing agencies, as we have seen in previous chapters. Though Bangladesh has both national and international legal safeguards against the torture, still torture by police has persisted and been prevalent. This persistence indicates that the established law has some theoretical and procedural loopholes as well as it indicates the gap between the recognized law and their effective implementation. The general people of Bangladesh have a common perception that most of the arrested person are likely to face torture once they fall in the custody of the law enforcing agency, which indicates that the general people have the lack of confidence in the fairness of the criminal justice system.

7.1.1 The Impact of Gap between Pre-Independence and Post-Independence Laws

The human rights of the criminal accused are affected mainly by the misuse of the provision of the outdated Code of Criminal Procedure of 1898, which was enacted during the British colonial period. One of the main purposes behind the enactment of the provisions of the Code was to rule over the people of the Indian sub-continent and to use force to prevent anti-British movements, protests and armed rebellions in India.¹⁵⁴ Now the government of Bangladesh use it to control anti-government protests and movement.

After the independence of Bangladesh, it enacted new Constitution through incorporating some fundamental human rights. The Constitution of Bangladesh is the supreme law of the nation of course, and it was supposed that the Bangladesh government would make significant changes throughout the laws that had been effective at that time, just like Japan did after the new Constitution. However the government of Bangladesh did not take the introduction seriously, and consequently the new Constitution did not bring any change to the provisions of the criminal accused under the Code of Criminal Procedure.

So, there is a significant time gap between the enactment of the Code of Criminal Procedure of 1898 and the Constitution of Bangladesh in 1972 and this gap reflects the mindset of the authority of both enactments. The Code of Criminal Procedure of 1898 was enacted by the British government for territories where now we call India, Pakistan and Bangladesh, the purpose of which was simply to maintain the order in those territories rather than the protection of the human rights. On the other hand,

¹⁵⁴ 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.

the Constitution of Bangladesh was enacted for the purpose of protection of the citizen of Bangladesh. Although the Constitution of Bangladesh recognize the importance of fundamental human rights and its protection, the government of Bangladesh did not make any significant changes on the Code of Criminal Procedure after its independence. Therefore its legal system have still been under the influence of older regime emphasizing the protection and maintaining of social order more than the contemporary human rights norms. The legal system lacking the understanding those contemporary human rights norm does not prevent the law enforcing agencies from committing torture, of course.

The Code of Criminal Procedure provides vast arbitrary power to the law enforcing agency. Because of these vast powers granted by the Code of Criminal Procedure, law enforcement officials frequently participated in abusive behavior with little fear of being accountable for any tragic result. Furthermore the justification granted by the Code of Criminal Procedure has fostered a culture of impunity. As I explained in Chapter III, the impunity system has allowed the government official to be immuned from legal responsibility of their wrongdoing as long as it was done in the course of the government duty. On the other hand, the Constitution which was adopted after the independence of Bangladesh in 1972 explicitly prohibited torture and emphasized the protection of fundamental rights and individual freedoms. This inconsistency between the colonial-era procedural law and the modern constitutional law creates a legal system where the constitutional prohibition of torture was difficult to be enforced effectively.

For example, the Code allows the police to detain the criminal accused for up to 120 days for the purpose of investigation which led to prolonged detention of criminal accused through the violation of their human rights. And this prolonged investigation could be extended more if some conditions are satisfied. Therefore in practice the police could detain the criminal suspect as much as they would like, the practice of which would be real threat and provide hotbeds for possible tortures. Thus, the inconsistency between the Constitution and the Code of Criminal Procedure significantly affects the human rights of the criminal accused in Bangladesh.

The Supreme Court of Bangladesh has declared some provisions of the Code of Criminal Procedure inconsistent and directed the government to amend those provisions.¹⁵⁵ Under article 7 of the Constitution, which is the supremacy clause, those inconsistent provisions must be void. However, in practice, the government has not taken any action to amend those provisions, which shows the government not upholding the Constitution as well as to the highest court of the country. The fact that the government does not show their due respect to the Constitution and the Supreme Court decision creates the ambiguity to the criminal justice system of the country. When there is any issue or problem in their criminal system, the Constitution, and the court decisions which the Supreme Court gave as the final answer to the issue or problem in its Constitution, are supposed to be the guideline showing the government, the legislature in particular, should be following. However, in case of Bangladesh, the

¹⁵⁵ BLAST v. Bangladesh 55DLR 363, 2003.

government policies have not comported with the Constitutional mandates and the Supreme Court decisions in criminal justice system. This inconsistency could potentially justify the existence of two or more different or contradicting laws or practice in criminal justice system.

Bangladesh has failed to follow the recommendation made by the UN Committee against Torture and the Human Rights Committee to prevent the act of torture by police. The Committee against Torture made various recommendations in their concluding observations on the initial report of Bangladesh. The failure to follow these recommendations raises concerns about the sincere commitment of Bangladesh to uphold the international standards of human rights of the criminal accused.

7.1.2 Dissimilarities between International and Domestic Responses towards Torture

Bangladesh has not ratified the Optional Protocol to the Convention against Torture which provides mechanism for preventive measures regarding the torture and international inspection of the situation of torture in the country. And this non-ratification indicates a lack of willingness of the country itself to satisfy the requirement set by the international inspectors of human rights. It hinders the implementation of the human rights of the criminal accused in Bangladesh. It has been the long-time demand of the civil society citizen, different NGOs and particularly the Committee against Torture to enact new laws which will make illegal the act of torture by the government officials.

Lastly, the government of Bangladesh responded to this demand through the enactment of The Torture and Custodial Death (Prohibition) Act 2013 which is indeed a great progress to prevent torture in the country. But the Act has already been criticized nationally and internationally for its loopholes as well as for not maintaining the international standards, which means the Act is not capable to fulfill its goal which has been described by the Convention against Torture.

The Act does not provide a comprehensive definition of torture as described by the Convention which resulted in the ambiguity and challenges in prosecuting the cases of torture. The Act also does not provide adequate protection to the victim of torture and their families, which discourage the victim to seek justice against the torture. The Act allows the police to investigate the case of torture by their own, and the police generally do favor to their fellow colleague against whom such accusation of torture has been brought. The Act also does not provide enough punishment for the offence as provided by the other criminal laws for the same offence. For example, the penal code of Bangladesh provides death penalty for the offence of murder, where as the Torture and Custodial Death (Prohibition) Act 2013 provides life imprisonment as the maximum punishment for the custodial death. It also the monetary compensation is very less which does not create any burdensome on the offender. Due to these loopholes, very few cases have been filed since the Act has been enacted. Those filed cases also does not get progressed as most of them have been submitted to the court as ‘factual error’,¹⁵⁶ which

¹⁵⁶ Available on 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> (accessed on 24/02/2024).

means that a judge determines the victim died of any reason other than torture including sick or committing a suicide based on the reports submitted by the police officers who are in charge of the investigation of the torture allegation. And it is often the case that those police officers submit a intended false reports for the benefit of the colleagues.

7.2 Suggestions

The criminal justice system of Bangladesh is plagued by a variety of problems. Torturing the criminal accused or the violation of the human rights of the criminal accused is the most painful abscess of the present criminal justice system. It is also affecting the whole criminal justice system severely. So, the government's main priority should be solving this problem. There are many actions the government needs to take to solve this problem. Here, in this chapter, I am going to discuss some of the most important ways to adopt for resolution of this problem.

7.2.1 Legal Reforms and Amendments

The very first and the most important action is to amend the laws through the misuse of which the law enforcing agency gets opportunity to violate the rights of the criminal accused. In this sense, section 54 will come first then section 167 of the Code of Criminal Procedure will come respectively. The Supreme Court also declared that the provisions of the existing sections 54 and 167 of the Code are to some extent inconsistent with the provisions of Article 27, 30, 31, 32, 33 and 35 of the Constitution and recommended that the above two sections may be amended for the purpose of safeguarding the liberty and fundamental rights of the citizens.¹⁵⁷ For the purpose of amending section 54, the government should provide more restrictions on the provision of arrest on suspicion. It also the government should follow the recommendations provided by the BLAST case for the amendment of section 54. The BLAST case recommended to amend first subsection of section 54 as, any police officer may arrest any person against whom there is a definite knowledge about his involvement in any cognizable offence or against whom a reasonable complain has been made or credible information has been received or a reasonable suspicion exists of his having been so involved. Here, the police office cannot arrest a person on mere knowledge of involvement of an offence. The BLAST case recommended to insert a new subsection under section 54 which will includes disclosing the identity of the police officer to the arrested person as well as to the person who is present at the place of arrest; after the arrest, recording reasons, offence details, circumstances, information sources and the date and time of the arrest in a special diary; recording the reasons for any injury if there is any on the body of the arrested person and taking him to the hospital; furnishing the grounds of arrest to the arrested person; informing the nearest relation of the arrested person over phone or through a messenger; allowing the arrested person to consult a lawyer.

The BLAST case also recommended to amend section 167 along with some other section of the Code

¹⁵⁷ 55 DLR (2003) 398.

of Criminal Procedure, Penal Code and Evidence Act according to the “recommendation”¹⁵⁸ provided by the case itself. Besides this, the government needs to amend all the black laws which provide vast discretionary power to the police such as the Special Powers Act, 1974. So, reducing the power to the police and magistrate is the one of the most important way to reduce the violation of human rights against the criminal accused.

The second step is to amend the Torture and Custodial Death (Prevention) Act 2013. As I have discussed early, it has lots of loopholes which significantly interrupts the implementation of the purpose of the Act. The government need it provide more protection to the victim as well as to the family member of the victim so that they do not feel worried to file a case against the police. The punishment provided by the present Act is very less which needs to be more severe otherwise it cannot fulfill its purpose. Not only the severe punishment but also the implementation of such punishment is needed to make the law more effective. Providing severe punishment for few cases may be the exemplary ones which the police will keep in mind during torturing the accused. After all, the government needs to amend the law reflecting all the related provisions of the Convention against Torture.

7.2.2 Establishment of Specialized Tribunals

In Bangladesh there are many tribunals dealing with a wide variety of problems arising between the citizen and the state or between the citizen and citizen. The main difference between a court of law and a tribunal is mainly regarding the nature of jurisdiction such as the jurisdiction of a tribunal is vested on a particular area whereas the jurisdiction of the court is very much wider than tribunal. Not like tribunals set up in other countries, these tribunals are internal organs of the judicial system rather than the administrative branch. This means that once a tribunal is properly established, such tribunal would be relatively less influenced from the administrative branch because their jurisdiction directly comes under the judiciary.

There are some reasons behind the creations of these tribunals, but the most important one is to provide speedy remedy. Normally vast majority of courts of law in Bangladesh are full of overwhelming number of then cases pending for the number of judges. Because of the huge gap between the number of cases to be done and the number of judges who deal with, delay of dispositions has been often seen, and this delay has made it still convincing in Bangladesh words by Martin Luther King hat justice delayed, justice denied.

Lacking special expertise to deal with special matter that judges could borrow or count on is another reason that Bangladesh needs tribunals in addition to the system of the court of law. Setting up a tribunal whose personnel is to be filled by experts is a good solution to provide a proper remedy to too much complicated problems for single judge to resolve. There are many tribunals in Bangladesh for

¹⁵⁸ 55 DLR (2003) 387.

dealing with different matters such as, Nari O Shishu Nirjaton Daman (Women and Children Repression Prevention) Tribunals for crimes against women and children, Cyber Tribunal for cyber crimes, International Crime Tribunals for genocide, crime against humanity, war crimes and other crimes under international law committed in the territory of Bangladesh during the war of liberation, Administrative Appellate Tribunal for administrative matters, Labour Appellate Tribunal for labour related dispute, etc. Notably, while there is only one tribunal for that specialized purpose, there are some, even more tribunals for a single purpose. For example, there are 95 Nari O Shishu Nirjaton Daman (Women and Children Repression Prevention) Tribunals in the country. All these tribunals are established under the authority of special laws enacted for different special matter. Needless to say that because of the success of present tribunals, the number of tribunals is increasing day by day.

The dispute of torture has also a special Act to deal with the torture committed by the law enforcing agencies, the Torture and Custodial Death Prevention Act of 2013. It will be undoubtedly a significant progress to solve the problem of torture in the country through the establishing some tribunals. Primarily, those tribunals may be established in different divisions of the country and subsequently in every district if there are a lot of backlogs of cases of torture prevails. The criminal court of Bangladesh is plagued by lots of criminal cases and its backlogs. So, establishing tribunal for solving the case of a particular matter is a crying need for Bangladesh.

Another thing to mention here is the number of the tribunals. Not like a tribunal in other countries which would be established within the administrative branch, there could be multiple or even many tribunals established in the country, depending on the importance of the problem. As noted earlier, there are 95 tribunals of women and children repression problems. It is because such repression against women and children could happen everywhere in Bangladesh, not only in urban areas. In other words, the number of tribunal would suggest that how much the government take the problem seriously. With regard to the number of potential tribunals would be more than eight tribunals, each of which is to be established according to a region in Bangladesh. The torture by the police officer has been rampant across the country, so each region needs to have at least one tribunal which devote itself to dealing with the torture problem.

For assisting such tribunals, the government also needs to establish a new investigation organization which will solely investigate the case of torture and such investigating organization must be independent and free from any external pressure. The power of police such as registering or investigating the case should be transferred to that independent authority by making some amendments to the relevant provisions of the Torture and Custodial Death Prevention Act.

7.2.3 Acceptance of Optional Protocol and International Oversight

The third step is to ratify the Optional Protocol of the Torture Convention and to follow the obligations given by the Optional Protocol. 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). So, ratifying the Optional Protocol is one of the most effective ways to present the real image of the human rights to the international community. After submission of the initial reports by the Bangladesh government, the Committee against Torture has given some recommendations in their concluding observation which need to be followed by the Bangladesh urgently. Bangladesh also needs to submit its reports regularly so that the Committee against Torture could understand the actual scenario of the human rights of the criminal accused in Bangladesh and could recommend the proper measures to improve the situations of the country.

Besides the above recommendations, establishing an impartial oversight body for supervising the operations of the law enforcing agencies is also very much recommended in light of the situation of Bangladesh. There are many such oversight bodies in other countries such as the Independent Office for Police Conduct (IOPC) of United Kingdom or US civilian oversight boards etc.

7.2.4 Providing Human Rights Training and Ensuring Access of Mass Media

Lack of human rights knowledge or education of the field level officials is another reason behind the violation of human rights by law enforcing agencies in Bangladesh. Regular human rights training programs can increase the knowledge and improve professionalism of the law enforcing agency. These trainings should follow the international human rights standards consistently and effectively. 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 would contribute to potential violators including police officers violating the human rights widely and repeatedly. 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 are properly followed.

Chapter VIII

CONCLUSION

Torture by the law enforcing agencies is one of the most grievous human rights violations in Bangladesh. The foregoing discussion reveals that the relationship between the Constitution and the Code of Criminal Procedure regarding the protection of the rights of the criminal accused stands on a loose foot. The Constitution of Bangladesh provides strong protection to the accused where as the Code of Criminal Procedure does not comply with the provision of accused rights properly. As a state party of the torture convention, Bangladesh is legally bound to protect her citizen from torture. Though Bangladesh has made illegal the act of torture because of national and international pressure on it, but it does not provide proper remedy to the victim of torture, as a result, the act of torture still prevails. Because of the prevalent scenario of torture, several international and national human rights organizations, civil society citizen, the Committee against Torture have criticized the actions taken by the government to prevent torture, but there has not been seen any significant effective measures to be taken by the government to protect the rights of the accused in Bangladesh. Because of politicizing the judiciary and the law enforcing agency by the government, the existing protection system for the accused has not been implemented in intended way. For fulfilling the purpose of criminal justice system, the legal system needs to be independent from political influence otherwise the system cannot work properly. Upholding the rule of law is the prime purpose of the judiciary as well as the law enforcing agency of the country, but in reality, the government use them for their own purpose, which resulted in misuse of their power by the judiciary and the law enforcing agency and even misuse for their own benefits.

Only a strong legal framework cannot prevent the act of torture alone without establishing a strong mechanism to enforce that law. The most important thing is the positive mindset of the government to prevent the act of torture; if the government does not want to stop these human right violations, then a proper law cannot prevent it. The government can show their positive attitude towards the prevention of the act of torture through amending the existing laws regarding remand, following the judicial guidelines, and implementing the obligations of international instruments ratifying the Optional Protocol of Convention against Torture. Lastly, as a citizen of a democratic country, no citizen of Bangladesh deserves to be tortured by the law enforcing agency.

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