

## Human Rights Violations in Bangladesh: A Study of the Violations by the Law Enforcing Agencies

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Doi:10.5901/mjss.2013.v4n13p101

### Abstract

*(The law enforcing agencies which are considered the key component of a democratic society all over the world are primarily responsible for the preservation of peace and order, protection of life and property of the citizens and prevention and detection of crime. But during the few years human rights violations by the law enforcing agencies in Bangladesh have increased alarmingly. This paper is an attempt to explore the reasons why protectors become perpetrators, to highlight the pattern of violations made by the law enforcing agency, their implications upon the law and order situation of Bangladesh. This paper also includes a critical appraisal of the existing laws governing the law enforcing agency and finally pinpoints some recommendations for eradication of the loopholes haunting in our security forces and to make them as a force functioning by the law, under the law and for the law.)*

### 1. Introduction

The essence of the democracy is the “*Vox populi vox dei*” i.e. “the voice of the people is the voice of god”.<sup>1</sup> One of the fundamental elements to keep the democracy moving and to protect human rights, a universal concept is the rule of law.<sup>2</sup> The beauties and success of rule of law, the very foundation of sound democratic system depends on the effective and modern law enforcing agency equipped with up-to-date technicalities and facilities of a country and how far they are inclined to show respect, patronize the rule of law and human rights at large. A culture of human rights is must for full realization of human potentials, mutual understanding, tolerance, peace and justice. And for that very reason, the law enforcing agency of a country should have respect first and foremost the domestic law of the society of which it is a part to maintain and restore the law and order and to protect human rights. At present, in Bangladesh, a developing country from the third world which has got its origin in the world map on December 16, 1971, the role of the law enforcing agency is total different and much worse than things were about 20 years ago. Over the couple of years, the role of law enforcing officials is criticized by civil society and public at large. In Bangladesh, as half of our people live below the poverty line, they are the worst victims of human rights violations by the law enforcing agency. They do not have access to justice.<sup>3</sup> In Bangladesh the police neither are friends of the people, nor custodians of human rights.<sup>4</sup> Rather they are considered as patrons of criminals.<sup>5</sup> Transparency International, a Germany based anti corruption watchdog, has found Bangladesh police force as the most corrupt organization in the country.<sup>6</sup> In a survey conducted by ‘Development Options Opinion Reviewers’ 67 percent of those interviewed do not consider the police as friends; 87 percent of the interviewees said the criminal gangs get police patronage, and 90 percent of the people said the country’s police force must undergo drastic change to act against criminals.<sup>7</sup> In fact, with the changing situation of the present socio-economic situations of Bangladesh, the human rights violations are being increased in multifarious ways which undermine the prestige and potentials of Bangladesh law enforcing agency.

This paper is an attempt to analyze the existing defects that lie with the present law enforcing agency in

<sup>1</sup> Ghosh, D.N. Democracy and India, College Essays, Modern Bank Agency Private Limited, 1996 P. 437.

<sup>2</sup> Habibur Rahman, Md. C.J. of BD. Rule of Law and the Independence of Judiciary; The Rallying Power of Law, Pustaka, Dhaka, 1997, page. 142.

<sup>3</sup> Manirul Hossain Chowdhury, Major General (Metd), former ambassador and advisor to the caretaker government, *ibid*, page. 32.

<sup>4</sup> Seminar held in Dhaka, May 7, 2003. Paper submitted there on activities of law enforcing agency.

<sup>5</sup> The Daily Star, August 24, 2003, page. 6.

<sup>6</sup> *Ibid*.

<sup>7</sup> *Ibid*.

Bangladesh, to examine their malpractices, its effects on the socio-economic and political spheres of Bangladesh and to explore the ways to remedy such defects and upheld the rule of law.

## 2. Methodology

This study is generally a non-empirical analysis. The main sources of this study include secondary sources like textbooks, reports, relevant national and international legislations, case studies, some important daily news papers, on-line documents and some publications. The study has also relied on decided cases of Apex Court of Bangladesh and the Subcontinent.

### 2.1 Law Enforcing Agencies in Bangladesh:

In Bangladesh, as a law enforcing agency we have the 'police force'. The year 2004, three special units were formed to help the regular police. These are:

- (i) Rapid Action Battalion
- (ii) Cheetah; and
- (iii) Cobra.

For the better understanding of our discussion, the legal basis of our law enforcing agencies is given below:

#### 2.1.1 Bangladesh Police Force:

Queen Victoria has ascended the throne of this Indian Subcontinent in 1858 and during her reign the Indian Police Act, 1861 was enacted. And the existing police force as an organized department was established during the British rule in 1861 through the promulgation of this Police Act (Act V of 1861). Although there have been a few amendments while it was renamed the Police Regulation of Bengal or PRB, the Act has virtually remained the same in spirit<sup>8</sup> and still in force after almost 150 years.<sup>9</sup> According to the police website, the number of Police Personnel is given rank wise herein below:<sup>10</sup>

Rank	Number of Manpower
IGP	1
Addl.IGP	9
DIG	33
Addl.DIG	41
SP	204
Addl. SP	260
Sr.ASP	230
ASP	911
Ins.	3079
SI	12535
SI (Tr)	254
Sgt.	1569
TSI	113
ASI	7838
HC	6887
NK	6108
Const.	101053
Total	14112

#### 2.1.2 Rapid Action Battalion:

The Rapid Action Battalions (hereinafter 'RAB'), the elite force was created through 'the Armed Police Battalions

<sup>8</sup> Shekh Nazrul Islam and Shamim Ahasan, 'Revamping a Corrupt System,' Star Magazine, December 20, 2002.

<sup>9</sup> Khan, Justice A, (1989) Report of the Police Commission of Bangladesh, 1988-1989, Vol.1, Dhaka: Ministry of Home Affairs. Page 15-25, 243-270.

<sup>10</sup> Bangladesh Police website, at <http://www.police.gov.bd/organisations.php>. last visited on 28 December, 2012

(Amendment) Act, 2003 and published in the Bangladesh Gazette of July 12, 2003. The RAB is a composite force, manpower wise, because section 3(5) of the law states: 'Notwithstanding anything contained in this Ordinance or in any other law for the time being in force, armed personnel and officers in Rapid Action Battalion may, as and when necessary, be appointed on secondment or deputation as the case may be, from among the persons who are in the service of the Republic, including any discipline force'. It is a hybrid force consisting of the police and the army.<sup>11</sup> The Amended Armed Police Battalion ordinance has given birth to:

- Armed Police Battalions,
- Rapid Action Battalions.

According to the old Ordinance, under section: 6 the force was assigned the duties to:

- a. internal security duties,
- b. recovery of unauthorized arms, ammunitions, explosives and such other articles as the government may, from time to time direct,
- c. apprehension of armed gangs of criminals,
- d. assisting the regular law enforcing agencies including the Police for maintaining law and order, and such other duties as the government may, from time to time, assign.

The RAB has been entrusted with exclusive duties like 'intelligence in respect of crime and criminal activities' and 'investigation of any offence on the direction of the government' as laid down in section 6(A), 6(aa), and 6(bb) of the said Act.

Section 6c, clause (1) states: 'An officer of a Rapid Action Battalions Shall, while investigating an offence, follow the procedure prescribed in the Code of Criminal Procedure 1898 [Act (v) of 1898] or, in any other law, as the case may be, for the investigation of such offence.

Section 6c clause (2) states in pertinent part: 'The concerned officer shall on completion of the investigation of any offence under this ordinance, file his report to the officer in charge of the concerned police station, and the officer in charge shall, within forty-eight hours of the receipt of such report, forward the same as it is to the competent court or tribunal, as the case may be'.

Section 6D states; 'An officer of any Rapid Action Battalion may, while investigating an offence or performing any duties under this Ordinance with respect to the case originated from that offence, exercise all such powers and performs all such functions and duties as may be exercised or performed by a police officer under the Code of Criminal Procedure, 1898 (Act V of 1998)'.

Under the Ordinance the superintendence of the Armed Police Battalions and Rapid Action Battalions vests in the government.<sup>12</sup> In respect of clause (a), (b), (c), (d) and (e) of section 6, they have blanket authority to act according to their whims and caprices and without any obligation to the rule of law or due process of law.<sup>13</sup> RAB started their drive on 14<sup>th</sup> April 2003. Since its formation a culture of 'death in crossfire' has been created. This is the means by which many deaths at the hands of RAB have been attempted to be justified. Moreover, through killing criminals on the spot RAB defies the entire judicial system and rule of law.<sup>14</sup>

For all these activities they have been criticized by the civil society and by different human rights organizations. That is why, a rule for the Rapid Action Battalions has enacted and it was published in Official Gazette on 16<sup>th</sup> August 2005. Now in case of any offence committed by RAB personnel can be tried in three ways, namely in special court or summary court and in departmental proceedings. And the punishment may be compulsory pension, demotion in service, termination of service including life imprisonment for severe offence. This rule is known as 'Rapid Action Battalions Rules, 2005'.<sup>15</sup>

In addition, Cheetah and Cobra were formed as special units of detective branch. They also enjoy a lot of impunity in arresting people.<sup>16</sup> We have, also Boarder Guard of Bangladesh (BGB), Industrial police, Highway police, CID, SB, 11 Training institutes, 6 Metropolitan Police, 7 Range, Railway Range, the Special Women Police Contingent (SWPC)

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<sup>11</sup> The Daily Star, 30<sup>th</sup> July, 2004

<sup>12</sup> Ibid.

<sup>13</sup> The Independent, March 11<sup>th</sup>, 2005

<sup>14</sup> Please see, Project on Investigation, Research and Publication of Human Rights violations, Odhikar Report 2004, Odhikar, p. 28. In this connection it is worth to mention that, 'Odhikar' is human rights based non-governmental organizational formed in 1994. For the last few years, it is works on the action of civil & political rights. Special concentration is given on the role of law enforcing agency and how they abused the laws and violates rights in Bangladesh, and has published a number of books on related topics.

<sup>15</sup> The Daily Prothom Alo, September 7, 2007.

<sup>16</sup> Supra note 14.

established in 2008, and Police Hospital.<sup>17</sup>

### 3. How Rights are Violated by Law Enforcing Agency?

This part is an attempt to focus on the human rights violations that are alleged to have been done by the law enforcing agency and why the protectors become the perpetrators.

#### 3.1 Death in Custody:

Custodial death becomes a common happening for quite a long time. The word 'custody' implies guardianship and protective care. No civilized law postulates custodial cruelty-an inhuman trait that springs out of a perverse desire to cause suffering when there is no possibility of any retaliation<sup>18</sup> *In Jatiyo Mahila Ainjibi Samity vs. Bangladesh and Others (criminal)*, the High Court held that detention in safe custody against the will of a detained person was illegal.<sup>19</sup>

Basic Standard 8 states: 'All detainees must be treated humanely'.<sup>20</sup>

Protection of a detainee is a basic precept of police law as it is universally recognized. Right to human treatment as a detainee is recognized under many international instruments like:

- a. Universal Declaration on Human Rights (art. 5).
- b. International Covenant on Civil & Political Rights (1966) (art .10)
- c. Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984).

As to the Human Rights Committee (here in after 'HRC') under the ICCPR 'treated with humanity and with respect for the inherent dignity of the human person' should be interpreted as meaning that 'person deprived of their liberty 'is entitled to respect for his physical and moral dignity, to material conditions and treatment befitting that dignity and to sympathy and kindness.' This provision for the humane and dignified treatment of prisoners and detainees serves as the basis for the positive obligations of state parties stated in Article 10(2) and 10(3) of the ICCPR, which are tailored to the criminal justice context.<sup>21</sup> The HRC stressed in general comment 21 that, the following UN standards<sup>22</sup> should be taken into account in interpreting and applying Article 10 of ICCPR, namely.

- Standard Minimum Rules for the Treatment of Prisoners, adopted August 30, 1955;
- Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment. 4A. Res. 43/174, UN DOC A/43/49 (1988);
- Code of Conduct for Law Enforcement Officials GA, Res. 34/169, (annex) UN, Doc A/34/46 (1979).
- UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). GA. Res. 40/33, Annex, 40 UN GAOR Supp. (No. 53) at 207, UN. DOC A/ 40/ 53.

But whatever are the laws both in national and international sphere, these legal mandates are absent in practice and that is why death in police custody is a growing phenomenon in Bangladesh. As to the Code of Criminal Procedure, custody of an accused or a witness means custody of the court in its ultimate sense. The transitional custody of a person may be with the police. But the ultimate authority to decide the fate of the suspect rests with the court.<sup>23</sup> According to Odhikar documentation, a total of 104 and 76 people died in 2002 and 2003 respectively in the prison and police custody.<sup>24</sup> In the year 2005, October 1<sup>st</sup>, Odhikar has published in the daily Prothom Alo that, number of death in custody and prison is 62. Odhikar's annual report of 2010 on human rights situation in Bangladesh said 109 people died in law enforcing agency's custody, 16 remain missing while they were held by the law enforcing agencies last year. The numbers were 123 and 02 respectively in 2009.<sup>25</sup> In 2011, January to December the number were reported to 140.<sup>26</sup>

<sup>17</sup> Chowdhury, AA(2006) Bangladesh Police-Uttaradhar O Babostapona (Hereditry and Management), Dhaka: Samabesh. Page: 26, 56, 206, 225-227

<sup>18</sup> <http://www.lawyersjurists.com/articles-and-assignment/custodial-death-is-a-gross-violations-of-human-rights>

<sup>19</sup> 59 DLR, 2007, 447, Judgment dated 23rd May quoted in Human Rights in Bangladesh, Ain O Shalish Kendra (ASK)

<sup>20</sup> 10 Basic Human Rights Standards for Law Enforcement Officials prepared by Amnesty International, Page 13, for details please visit. <http://www.amnesty.org>

<sup>21</sup> Central European and Eurasian Law Initiative (CEELI), 740 15<sup>th</sup> ST., N.W. Washington, D.C. 2005-1022 P. 89 at <http://www.abaceeli.org>.

<sup>22</sup> Supra note 14, page 28

<sup>23</sup> Ibid.

<sup>24</sup> Project on Investigation, Research and Publication of Human Rights violations, Report 2003, Odhikar, page. 105.

<sup>25</sup> The Daily Star, February 16, 2012.

### 3.2 Torture:

Many police officers believe that information or confessions cannot be extracted without physical threat or torture. That is why, although torture is prohibited under the law, but its practice is rampant particularly under the 'remand'. The form of torture includes beating on the soles of the feet, hanging, and suspension by the arms while they are tied behind the back, suspension upside down, beating, electric shocks, and psychological forms of torture including humiliation, threat and insult etc.<sup>27</sup>

The International Standards of Police Behaviour, and Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/149) under Article 5 states, 'No law enforcement official may inflict, instigate, or to tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency a justification of torture or other cruel, inhuman or degrading treatment or punishment'.

Article:1 of the Convention Against Torture and other Cruel, Inhuman or Degrading Punishment 1984 states: 'Torture means any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information, or a confession, punishing him for an act or a third person has committed, or is suspected of having committed, or intimidating or coercing him, or a third person, or for any reason based on discrimination of any kind, when 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.' And according to a report of the Committee against torture, 'there are no exceptional circumstances whatsoever where a state can use torture and break its treaty obligation.'<sup>28</sup> Though Bangladesh is a signatory of the aforesaid Conventions, under the prevailing criminal law such kind of definition of torture has not been given and a Torture Bill is only lying before the table of Parliament.

The Bangladesh Penal Code, 1860 has provided definitions and penalties for some offences which very narrowly cover the area of torture as follows:

- Offence affecting life (Section 299-311);
- Hurt (Section 319-338A);
- To wrongful restraint and wrongful confinement (Section 339-348).
- Offences relating to criminal force and assault (Section 339-358).
- Offences relating to rape (Section 375, 376).

When such offences are caused by the members of police force, complains of torture can be brought against them under these provisions.<sup>29</sup>

Very often it seems that torture is committed on a person on the orders of 'higher-ups' which allows police to act with impunity. The lack of disciplinary action against law enforcement personnel remains one of the main attributing factors of torture.<sup>30</sup> In the year 2002 and 2003 there have been a significant number of deaths and allegations of torture in police and jail custody. In 2003, from January to December, 81 persons died due to torture by the law enforcement agencies.<sup>31</sup>

Basic standard 8 States: 'Law enforcement officials should be instructed that rape of women in their custody constitutes an act of torture that will not be tolerated. Similarly, they should be instructed that any other forms of sexual abuse may constitute torture or cruel, inhuman or degrading treatment and that offender will be brought to justice'.

While addressing the protection against torture and degrading punishment under Article: 35(5) the HCD in *Alhaj Yusuf Ali vs. The State*<sup>32</sup> asserted against the police torture and spoke of a duty on part of the police not to exercise their power of arrest capriciously and fancifully. In *D.K Basu vs. State of West Bengal*<sup>33</sup> the Court found custodial torture 'a naked violation of human dignity and rule that law does not permit the use of third degree methods or torture on an accused person since actions of the State must be right, just and fair. Torture for extracting any kind of confession would neither be right nor just or fair'.

<sup>26</sup> Human Rights Report, 2011, at [http://www.odhikar.org/2011/English/Human\\_Rights\\_Report\\_2011.pdf](http://www.odhikar.org/2011/English/Human_Rights_Report_2011.pdf), last visited on December, 2012.

<sup>27</sup> Supra note 25.

<sup>28</sup> <http://www.the-daily-star.net/law/2011/04/04/index.htm>

<sup>29</sup> Human Rights and Police Custody, Dhaka Metropolitan Police, Odhikar, 2004, Page. 20, 21.

<sup>30</sup> Supra note 28.

<sup>31</sup> Supra note 14, page 105.

<sup>32</sup> (2002) 22BLD (HCD)231

<sup>33</sup> AIR 1997, SC, 610

### 3.2.1 On arbitrary arrest and detention, the High court's Directives:

In *BLAST and others vs. Bangladesh and others*<sup>34</sup> [‘Section 54 Guidelines Case’, or ‘Rubel Killing Case’ or ‘Guidelines on Arrest and Remand Case’], the High Court recommended the following directives in exercising power under section 54 and 167 of the Cr Pc, 1898 and section 33 of the Special Powers Act 1974.

- No Police officer shall arrest anyone under Section 54 for the purpose of detention under Section 3 of the Special Powers Act, 1974.
- A police officer shall disclose his/her identity and show his/her ID Card on demand to the person arrested or those present at the time of arrest.
- A record of reasons of arrest and other particulars shall be maintained in a separate register till a special diary is prescribed
- The concerned officer shall record reasons for marks of injury, if any, on the person arrested and take him/her to nearest hospital or government doctor
- The person arrested shall be furnished with reasons of arrest within three hours of bringing him/her to the Police Station
- If the person is not arrested from his/her residence or place of business, the relatives should be informed over the phone or through messenger within one hour of bringing him/her to Police Station
- The person concerned must be allowed to consult a lawyer of choice or meet nearest relations
- While producing the detained person before the Magistrate under Section 61 of the CrPC, the police officer must forward reasons in a forwarding letter under Section 167 (1) of the CrPC as to why the investigation could not be completed within twenty four hours and why s/he considers the accusation and information to be well founded
- On perusal of the forwarding letter, if the Magistrate satisfies him/herself that the accusation and information are well founded and materials in the case diary are sufficient for detaining the person in custody, the Magistrate shall pass an order of detention and if not, release him/her forthwith
- Where a person is released on the aforesaid grounds, the Magistrate shall proceed under 190(1)(c) of the Cr.PC,1898 against the Officer concerned under Section 220 of the Penal Code.
- Where the Magistrate orders detention of the person, the Officer shall interrogate the accused in a room in a jail until a room with glass wall or grille on one side within sight of lawyer or relations is constructed
- In any application for taking accused in custody for interrogation, reasons should be mentioned as recommended
- The Magistrate while authorizing detention in police custody shall follow the recommendations laid down in the judgment
- The police officer arresting under Section 54, or the Investigating Officer taking a person to custody or the jailor must inform the nearest Magistrate about the death of any person in custody in compliance with these recommendations
- The Magistrate shall inquire into the death of any person in police custody or jail as per the recommendations.

Later on in *Saifuzzaman vs.State*<sup>35</sup> addressing the Article 33 and Article 35(5), more guidelines have been issued regarding the police behavior while arresting a person as follows:

- The police officer making the arrest of any person shall prepare a memorandum of arrest immediately after the arrest and such police officer shall obtain the signature of the arrestee with the date and time of arrest in the memorandum.
- The police officer within 6 hours of arrest shall notify the time and place of arrest and the place of custody of the nearest relative or to a friend of the arrestee.
- An entry as to the ground of arrest and name of the informer must be made.
- Copies of all documents including the memorandum of arrest, a copy of complaint relating to the commission of a cognizable offence of the entries in the diary should be sent to the Magistrate at the time of the production of the arrestee.

It is expected that, the above guidelines have been followed in all cases of arrest so that harassment of the citizens and the use of ‘third method degrees’ (used for torture the detainee) can be eliminated. It is worth to mention

<sup>34</sup> (2003)55DLR(HCD)363

<sup>35</sup> 56DLR(HCD)(2004)324

that, the number of arrest under Sec.54 of the Cr, Pc, 1898 reduced to a large extent in the years 2003 and 2004 while the use of Sec.86 and 100 of the DMP Ordinance has increased. In 2004, January to August, the total number of arrests in Dhaka Metropolitan City was 62,613. Out of this number, 39,689 arrests were made under section 86 and 100 of DMP Ordinance and 4,129 arrests were made under section 54 of the Cr. Pc, 1898. During this 8-months period, 63.39 percent of the total arrests was under section 86 and 100 of the DMP Ordinance and 6.59 percent of the total arrest, was under section 54 of the Cr. Pc.<sup>36</sup>

### 3.3 Violence against Women by Law Enforcing Agency:

As to the behavior with woman the Code of Conduct for police personnel in police stations states:

'Female visitors will have to be behaved with highest courtesy and manner and decency will have to be maintained in words and behavior with them.'

As to the responsibilities of officer in charge, this Code states: 'If any female comes to an officer-in-charge with complaint or for any other reason, he will give her standing welcome and behave with her decently. He will show courtesy and modesty in his behavior and conversation.'

Basic standard 7 of the '10 Basic Human Rights Standards for Law Enforcement Officials' States: 'Female detainees should be entitled to medical examination by a female doctor. They should be provided with all necessary pre-natal and post-natal care and treatment. Restraints should only be used on pregnant women as a last resort and should never put the safety of women or fetus at risk. Women should never restrain during labor.' Basic standard 8 states: 'Female guards should be present during the interrogation of female detainees and should be solely responsible for carrying out any body searches of female detainees. Whatever be the national or international laws as to the behaviors of law enforcement officials towards women, the attitude of the police and the prison guards to female prisoners in the prison or jail is often crude and brutal. There is a rule that, when a woman is arrested a female police officer must be present in the thana station or the cell of the local police station during her stay there at night. But in Bangladesh, the number of police women cannot meet the requirement of all police stations. Human Rights Organizations allege that the police in the absence of such process abuse and molest arrested women.'<sup>37</sup>Sigma Huda, Barrister said: 'Police arrest women under section 54 for their suspicious movement and files cases under S/74 of the Dhaka Metropolitan Police Ordinance to justify their arrests'<sup>38</sup>

The prisoners are regulated by Bengal Jail Code 1937, which includes the Prisoners Act of 1894. The Bengal Jail Code was turned into Bangladesh Jail Code after the country's independence in 1971. No tangible change was made in this code, except the formulation of the Children Act, 1974. The Jail Code allows the under trial prisoners with permission of the appropriate authorities to keep in touch with their families, friends and lawyers through frequent visits, letters and interviews in jails. But the inmates are sometimes denied the visiting right and their families are turned away at the jail gate if they do not pay bribes.<sup>39</sup> In prison, most women come from poor families and with rural backgrounds. They mostly comprise married, unmarried, divorced, and estranged women involved in begging, odd jobs and prostitution. So they are vulnerable to harassment and sexual abuse.<sup>40</sup>The confinement of male and female prisoners in the same jail without separate areas is harmful to women who are more easily subjected to physical and sexual abuse.

According to Regulation 327 of the PRB:

- a. the accommodation of each lack-up shall be based on the scale of 36 square feet per prisoner.
- b. a notice in English and vernacular language shall be hung up outside the lock-up at every police station and post showing the maximum number of male or female prisoners which the lock-up is authorized by the government of accommodate.

But this rules are absent in our country. In addition, the practice of male prisoners cooking and serving food to female prisoners is also open to abuse by the male prisoners.<sup>41</sup>Since social and religious beliefs compel people, to conceal the incidents of sexual violence, there is very little record of such incidents, apart from media coverage. Rapes of

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<sup>36</sup> Supra note 25.

<sup>37</sup>The Daily Star, August 25, 2002.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup>Human Security in Prison: The Quest for Protection and Reforms of Prisoners, Human Security in Bangladesh, in Search of Justice and Dignity, UNDP, 2002. Page.85.

woman in police custody have increased significantly in the recent years. The cases of Yasmin<sup>42</sup> and Seema, reported in daily News papers are examples of gross violations of human security in police custody. These women supposedly in the safe custody of a law enforcement agency were raped and killed in the process.<sup>43</sup>

Basic standard 8 States: 'Law enforcement officials should be instructed that rape of women in their custody constitutes an act of torture that will not be tolerated. Similarly, they should be instructed that any other forms of sexual abuse may constitute torture or cruel, inhuman or degrading treatment and those offenders will be brought to justice'. Since the offenders are supposed to uphold the law, their liabilities are not acknowledged and charges are generally not brought against them.

### 3.4 Enforced disappearance:

The enforced disappearance of persons has been practiced since the mid 20th century. Enforced disappearances constitute an extreme violation of human rights, infringing many fundamental rights. Furthermore, not only is the person affected who becomes the direct victim, but also his or her family, colleagues and friends as well as society as a whole. Most of the disappeared are persons who are critical of their governments.<sup>44</sup>

It is said that enforced disappearances are replacing the extra judicial killings in Bangladesh. According to Odhikar, the total number of enforced disappearances was reportedly 30 in 2011, 18 in 2010 and only two in 2009. While some of the 43 people who disappeared from January 2010 till November 2011 had prior criminal records, others were mostly clean, working as small traders, students or political activists. Robert O Blake, Jr. the State Department Assistant Secretary while attending the hearing at the US Congress, said that the Rapid Action Battalions is allegedly involved with extrajudicial killings and disappearances in Bangladesh.<sup>45</sup> In fact, this type of criminal act is yet to be penalizing as a separate offence in Bangladesh. The International Federation for Human Rights, Asian Federation against Involuntary Disappearance and its local member Odhikar has already urged the Bangladesh government to ratify the International Convention for the Protection of All Persons from Enforced Disappearances.<sup>46</sup>

### 3.5 Extra judicial killings:

April 14, 2004 the day the RAB began its operation. Since then the so called elite force has repeatedly killed directly or indirectly 1,600 persons<sup>47</sup>. It is found that in no case of 'cross-fire' or 'encounter' whatever no member of RAB, Polices, cheetah or cobra has ever been injured or killed, which gives the impression that the "gun-fight" was unilateral and it was done by the armed personnel.<sup>48</sup> Extra judicial killings in the name of 'crossfire', 'gunfight', or 'encounters' portrays the picture of blatant violation of fundamental rights that are enshrined in the Bangladesh Constitution. The key point which raises the question is the execution without due process. The 'accused' is never formally accused (let alone having his rights read to him) in a court of law, never tried (therefore denied the right to defend himself), never sentenced.<sup>49</sup> The

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<sup>42</sup> Arafat Ameen, Criminal Responsibility for Torture: An urgent Human Rights safeguard in Bangladesh: Criminal Responsibility for Torture, A South Asian Perspective, Research Report 2004, Odhikar, Page. 23,24 Facts of Yasmin's Case: Yasmin a 18 year old girl was raped and killed by three policemen in August 1995. Yasmin was going home and while she was waiting at the bus stop, a police van arrived and offered her a lift. When the villagers found her body, the police claimed that Yasmin had jumped off the van, Yasmin's case revealed an institutional acceptance of violence against women, as it took a long time to initiate proceedings against the accused. The trail of Yasmin consisted of two parts. In the first part, the three principals accused were tried by a special court. The second part involved charges against administrative lapses during rape, including damaging evidence of rape and concealment of facts. From the post-mortem reports and the evidence there is clear sign of rape on the victim girl and that, according to the Medical Reports, her death was due to asphyxia as a result of throttling followed by head injury and she was raped. The Appellate Division after hearing the Parties dismissed the appeal of the accused, who was sentenced to death by the lower court. The death sentences of two of the accused police officers were carried out in September 2004, nine years after the trail.

<sup>43</sup> Violence and Repression against Women and Children: An Unending Agenda, Human Security in Bangladesh, in search of Justice and Dignity, UNDP, 2002, Page. 103,104

<sup>44</sup> [http://www.apdh-argentina.org.ar/relaciones\\_internacionales/2009/enforced-disappearance.pdf](http://www.apdh-argentina.org.ar/relaciones_internacionales/2009/enforced-disappearance.pdf)

<sup>45</sup> Bdnews24.com, 20 July, 2012, at <http://bdnews24.com/details.php?cid=2&id=228562>, last visited on 20 December, 2012

<sup>46</sup> <http://www.rediff.com/news/special/enforced-disappearances-on-the-rise-in-bangladesh/20120420.htm>

<sup>47</sup> BBC, News Asia, Enforced disappearances haunt Bangladesh 20 April, 2012, available at <http://www.bbc.co.uk/news/world-asia-17451178>, last visited on 22 December, 2012

<sup>48</sup> Supra note 15.

<sup>49</sup> The Daily Star, March 14, 2005



present government said she has zero tolerance for extra judicial killings but it continues all over the country for want of proper investigations and prosecute the perpetrators. It seems that the elite force is not a law enforcing agency rather an executive agency ignorant of legal system. Their unlawful killings have generated resentments and protest of the intellectuals, human rights activities and right thinking people who lose their faith upon the law enforcing agency. And raise question as to the creditability of the law enforcing agency and the criminal justice system of Bangladesh as well.

### 3.6 Police and Children:

Children are also victim of police's cruel behavior. In times of political unrest children are used for throwing explosive substance and stones. That is why police always have a tendency to arrest children under S/54 and S/86 Dhaka Metropolitan Police Ordinance. In the Code of Conduct for Dhaka Metropolitan Police as to the responsibilities of the guard with the children, it is laid down that, 'Children will have to be behaved with soft words and in affectionate manners.'

As to the responsibilities of the officer-in-charge, the said Code cited that, 'in case of children or adolescents, officer-in-charge will behave with them with a vascular affection.' Many of the police stations in Dhaka city do not have separate custody room for children or female detainees. They are put in police cell with adults and common criminals, which is, in total contravention with the Jail Code and the Children's Act' 1974. Very often after arrest, what police doing is that they have not recorded the actual age of the children or mentioned extended age.

Under the ICCPR, children are generally considered to be individual' that enjoy full range of rights under the covenant. Article 10(3) requires the separation of 'juvenile offenders'. But all these provisions are not ensured in Bangladesh.

### 3.7 Violence against journalists:

At present a number of journalists faced torture, threats or harassments from law enforcement agencies, (gangsters), government officials, or the student wings of various major political parties as noted in the following table:

**Table:** Violence against journalists in 2007<sup>50</sup>

Nature of violence and Alleged perpetrators	Number of persons
Murder	3
Threat to murder	56
Newspaper/TV channel banned	2
<b>Intimidation/ threats/ harassment by</b>	
Law enforcing agency	97
Local terrorists	72
Militants, including underground leftwing groups	37
BNP cadres	8
Islami Chatra Shibir	3
BNP & AL jointly	10
Government employees	5
Awami League Cadres	7
Others	8

## 4. The Laws In Question and How They Are Misused?

### 4.1 Scope of Torture in Remand:

Part V, chapter XIV of the Code of Criminal Procedure 1898 deals with the police and their powers to investigate. Whenever any person is arrested or taken into custody and it appears that the investigation cannot be completed within 24 hours and there are grounds to believe that the accusation or information is well founded, the officer in charge of the

<sup>50</sup> Source: Statistics compiled from 13 national dailies by Ain o Salish Kendra (ASK) in Human Rights in Bangladesh 2007

police station may forward the accused to the magistrate and the magistrate may authorize the detention of the accused in such custody for a period not exceeding 15 days. After investigation if it appears to the police that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a magistrate such officer shall release the person from custody on his executing a bond with or without sureties. And if upon an investigation it appears to the officer that there is sufficient evidence or ground, such officer shall forward the accused under the custody of the Magistrate empowered to take cognizance of the offence upon a police report and to try the accused and send him for trial.<sup>51</sup>

The general rule is that special orders for the remand of accused persons under section 167 must not be granted to the police without good and sufficient cause shown, accused persons should be brought before the Magistrate having jurisdiction who, if further investigation is necessary, he can adjourn his enquiry from time to time under section 344 of the Code. When, however, a person is brought before the Magistrate prior to the granting of an order of detention the latter must be satisfied that –

- a) there is a substantial ground for suspecting that the person had committed a definite offence such as to warrant his arrest and detention; and
- b) his remaining in the hands of the police is really necessary, such detention may after tend to defect justice rather than further it, and should not be ordered without evidence sufficient to warrant it on the principles stated above.

The order of remand is upon the subjective satisfaction of the magistrate that there is a necessity of granting remand for the interest of the case. Now a days it has become a practice of the police in almost every case to apply for the remand of the accused whether there is any actual need or not. This section is now being misused as an instrument for interrogation and to obtain a confessional statement or any other information through torture. This is how the police manipulate the situation and there are many reported deaths in police custody (discussed earlier) for torturing the arrested person.<sup>52</sup>

#### 4.2 Section 54 of the Code of Criminal Procedure:

According to section 54 of the Criminal Procedure Code (Cr. Pc.), the police can arrest anyone whom it suspects of being involved with any crime. Under section 54 of the Code of Cr. Pc. 1898, individuals may be arrested under suspicion of criminal activity without any order from a magistrate or a warrant. According to the section, there are nine specific reasons for which the police may arrest someone under this law. These reasons (summarized from the original) are:

- If the person arrested has been concerned in any cognizable offence or if there has been credible information against him, or the police have reasonable suspicion to think so;
- If the person has in his possession any implement of house breaking and cannot give a lawful excuse for doing so;
- If a person has been proclaimed under this or any other Code or by government order, to be an offender;
- If there is reasonable suspicion to believe that the person possesses stolen property;
- If the person obstructs a police officer on duty, or if he has or attempts to escape from lawful custody;
- If the person is a deserter from the armed forces of Bangladesh;
- If the person has been concerned in or if there is credible information of his being so involved in or there is reasonable suspicion that he is concerned in committing any act abroad which would have been a punishable offence in Bangladesh (if committed in this country). He would be detained under custody in Bangladesh under the Fugitive Offenders Act 1881 or under extradition laws;
- If the person is a released convict, he can be arrested if he does not notify the sentencing judge of his change of address or absence from residence;
- If the arrest of a specific person for a specific crime has been made by another police officer by requisition.

Some persons initially detained under section 54 are subsequently charged with a crime, while others are released without charge. However, the term 'reasonable suspicion', 'credible information' or 'reasonable complaints' appears in several of the reasons under which a police officer can arrest a person under section 54 of the Code of Cr. Pc. Unfortunately, these terms are one of the reasons why this section is so misused. Therefore, after the arrest under section 54, the police forward the person before the Magistrate with a prayer for remand under section 167 of the Code

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<sup>51</sup> Supra note 43.

<sup>52</sup> Ibid.

of Criminal Procedure which has been discussed earlier.<sup>53</sup> To some officers, moreover, S/54 of the Code of Cr. Pc is the way to get money.

#### 4.3 Section 100/86 of the Dhaka Metropolitan Police Ordinance:

Section 100/86 of the Dhaka Metropolitan Police Ordinance (here after 'DMP Ordinance) echoes the provision of section 54 of the Code of Cr. Pc. Section 86 of DMP Ordinance deals with the punishment of persons on suspicions motives between the times of dusk to dawn. The law states that, if a person is seen between the hours of dusk to dawn, acting under several stated circumstances the police arrest him/her under reasonable suspicion.

Section 86 of the Dhaka Metropolitan Police (DMP) Ordinance provides (unofficial translation):

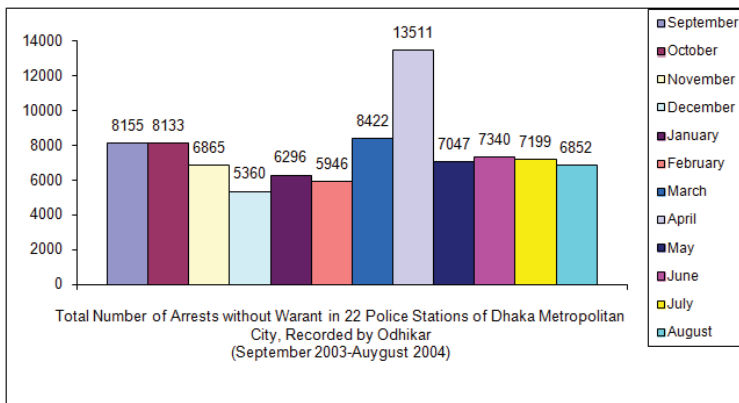
If any person is found in following situations during the period between sunset to sunrise:

- a) Equipped with dangerous machinery without satisfactory reasons, or
- b) Covered face or in disguise without satisfactory reason, or
- c) Present in any residence or any other building or any boat or water vessel or any other transport without satisfactory reason, or
- d) Sleeping or wandering on any street or in any place without satisfactory reasons, or
- e) Possessing the tools of entering any house forcefully without satisfactory reason, then the person will be liable for one year imprisonment or fine of taka two thousand or both.

Section 100 of the DMP ordinance provides: in the presence of any police officer or in his attention if any person commits any offence under this Ordinance or any other law in force, that police officer can arrest him without warrant.

However S/54 of the Code of Criminal Procedure is applied all over Bangladesh but S/86 of DMP Ordinance is used for arrest in the Dhaka Metropolitan area only. It is also common for person arrested under S/54 of the Code of Criminal Procedure, to find they latter charged under the Special Powers Act 1974, a repressive law favored by all the governments, or the Controls of Narcotics and Drugs Act or even the Explosives Act. This conversion occurs where a prayer or petition for detention under these Acts, is submitted to the district magistrate from the concerned police station, through the superintendent of police. The district magistrate then issues a common order and sends it for approval to the ministry of Home Affairs.<sup>54</sup>

Again, Odhikar research and fact finding has shown that between September 2003 and August 2004, there have been 2,914 arrest made with warrant and 91, 106 arrest without warrant.<sup>55</sup> In Dhaka Metropolitan City, Out of this number, 58,728 arrests were made under different sections of the DMP Ordinance and 5,774 arrests were made under S/54 of the Cr. Pc.

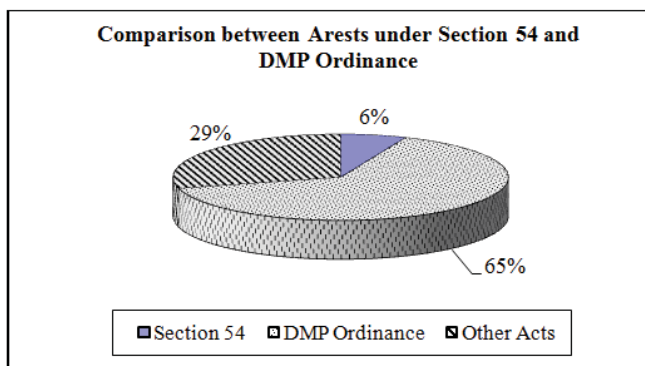


During this 12 months period, 64.46 percent of the total arrests were under different sections of the DMP Ordinance and 6.33 percent of the total arrests were under S/54 of the Cr.Pc,1898.

<sup>53</sup> Ibid.

<sup>54</sup> Supra note 26,Page 10.

<sup>55</sup> Supra note 14,Page 8,9.



Source: Odhikar.

These the DMP police continued to use power of arbitrary arrest by Switching from one legal provision (S/54 of Cr. Pc) to another (S/86 and law of the DMP Ordinance); although According to Regulation 317 of the PRB, "The police shall be careful to abstain from unnecessary arrest" <sup>56</sup>

#### 4.4 The Special Powers Act 1974:

The Special Powers Act 1974 (here in after SPA) is deemed by human rights activists and other members of civil society as a repressive law. The use and abuse of this Act in the name of protecting the security of the state has resulted in a steady pattern of human rights violations. The Act provides 'Special Measures' for the prevention of prejudicial activities, for a speedy trial and punishment for grave offences. Under prejudicial acts the law includes acts that are prejudicial to:

- the sovereign and/or state; to the maintenance of friendly relations between other states and Bangladesh;
- to the security of Bangladesh;
- to the safety or maintenance of public order;
- to the peaceful co-existence among different classes and section of the community;
- to the maintenance of law and order;
- to the security of any section of the public;
- to the economic and financial interests of the state;

For aforesaid grounds police can arrest any person at any time.

#### 4.5 Who are detained under section 54, Section 100/86 and the SPA?

Investigations carried out by Odhikar since January 2003 have shown that the larger majority of persons arrested under S/54 of the Cr. Pc, and section 100/86 of the DMP Ordinance, and under the SPA are from very poor economic background. They are either homeless person, rickshaw pullers striving to make ends meet, small scale vegetable and fruit vendors, street children, destitute women who, being abandoned by their husbands, turn to the streets to try and support their children and youths suspected as terrorists, extortionists and for rival political activities.<sup>57</sup>

## 5. Causes for Violations

Why such violations are rampant in Bangladesh security forces? Various reasons are responsible for such violations by the police discussed with more details here in below:

### 5.1 Corruption:

Our police department has been charged against involve in corruption. Taking bribes, harassing innocent people, links

<sup>56</sup> Ibid,Page,12.

<sup>57</sup> Supra note 14,Page 18,19.

with notorious gangsters, extortions, misusing power for personal gains are some of the common forms of crimes police are accused of. According to the National Household Survey-2012 by the Transparency International Bangladesh (TIB), 75.8 percent personnel of the law enforcement is found corrupt during the one year period ending April 2012.<sup>58</sup>

### 5.2 Political Interest:

One of the recognized reasons against the police for violating human rights is that they are used for political interest by the government. In the last 16 years during which democratically elected governments are ruled the country, it is seen that how blatantly the government use the police as its party cadre to oppress the opposition.<sup>59</sup> We find that by the enactment of some politically motivated laws, namely: the Special Powers Act, Section 54 of the Code of Cr, Pc, the government has provides an opportunity for the police to misuse these laws for personal interest<sup>60</sup>.

### 5.3 Salary Structure of Police:

The salary structure of the police department is so poor that it is simply impossible to lead an honest life. At present, constable starts with the structure of 4500/= to 9095/=, sub- inspector starts with 6400/= to 9305/=, ASP starts with 14430/= to 20370/= and Inspector General of Police gets 40000/= fixed<sup>61</sup>

### 5.4 Inhuman Life of Police:

The Police force particularly the subordinate rank have to work for long and arduous hours (all most daily 12-13 hrs) much beyond the normal working hours to cope with the incessant need of public order and criminal administration. In some cases, they have to work more than 15 hours. During the Odhikar's monitoring, it was found that due to exigencies of public service and more so on occasions of religious and others festivals, police personnel cannot enjoy most of the government holidays because they are deployed in large numbers to maintain peace and order on such occasions.<sup>62</sup> It is to be mentioned that, he never gets better salary or allowances for sacrificing his pleasures just to make sure that our merriment goes on untroubled.<sup>63</sup>

### 5.5 Lack of Human Rights Training for Police Personnel:

Another major drawback lies with the existing training facility of the police. The amount of training of police officers in police stations, compared to training received at head quarters, is very low. A survey on the training of 100 constables of Dhaka Metropolitan Police, selected at random, who had completed 20 years of service, revealed that 96 received only basic training for 6 or 3 months. The basic cause is heavily biased towards physical training. Of 1,329 classes during a 6 month basic course, only 530 were devoted to academic training, and this was mostly on laws and procedures (1996).<sup>64</sup>

"In Bangladesh, there is no such institute for police where international standard education and training for improving over all human rights knowledge and capability of the police officers and training focusing on human security issues of the poor, woman and children can be imparted. As a result, of absence and ignorance, protecting and promoting the universal norms of human rights, police itself, become the perpetrators and human rights violators.<sup>65</sup>

### 5.6 Accommodation:

Accommodation is another big problem according to PRB, only 20% of the constables and sepia are allowed to live with their families. Others have to live in the thanas or barracks. A recent survey of accommodation by police head quarters

<sup>58</sup> TIB website, at <http://www.ti-bangladesh.org/files/HHSurvey-ExecSum-Eng-fin.pdf>, last visited on 29 December, 2012

<sup>59</sup> Supra note 8, page 10.

<sup>60</sup> Police Reform in Bangladesh, an Agenda for Action, Research Report 2003, Odhikar, page. 6-9.

<sup>61</sup> Information personally collected from Odhikar.

<sup>62</sup> Ibid.

<sup>63</sup> Supra note 60, page 11.

<sup>64</sup> Recording and Investigating, Human Security Violations: the Role of Police ; Human Security in Bangladesh; In search of Justice and dignity, UNDP, September 2002, page.60.

<sup>65</sup> Supra note 60, page 17.

revealed that 14,153 constables/ naiks/ head constables did not even have barrack accommodation. There were 32,454 cases of shortages of family accommodation for assistant sub-inspectors / head constables /naiks / constables; 4,603 for sub-inspectors and equivalents; 1,285 for senior assistant police superintendents/ assistant police superintendents/ inspectors and 98 for superintendents of police/ additional/ superintendents of police.<sup>66</sup> Inside the dingy quarters, policemen sleep on the floor in very little space sharing pillow and blankets. Then it is really a question how they are to be conscious of the human rights when they themselves are receiving inhuman treatment.<sup>67</sup>

#### 5.7 Defects in Recruitment Procedure:

There is also a huge flaw in the recruitment procedure, which has far reaching effects on the entire department. In this system, the field level officers do not have the opportunity to be promoted to the highest office of the department. All the higher level posts are exclusively preserved for officers who are appointed through BCS Examination and start as an ASP. This is a strange procedure practiced in our country. This discriminating practice gives rise to frustration among the field level officers. Another important thing is that, in selecting a candidate political affiliation, good connection or how fat the bribe is become the deciding factor. By recruiting a police officer through pay off, the first thing he learns is corruption.<sup>68</sup>

#### 5.8 Lack of Scientific facilities:

Our police do not have modern transportation, information and communication technology. They are ignorant about modern investigations tools like the detector, DNA technology etc. <sup>69</sup>

#### 5.9 Absence of Community Policing:

The fight against crime and disorder can only be won if there is an increased involvement of the community, matched by greater public participation. There is no trust or confidence in police at community level. As a result police, as a service organization fail to receive cooperation from its valuable client, the community. This social isolation makes police more rude and abusive.<sup>70</sup>

#### 5.10 Impunity for law enforcing Agency:

There is no separate authority or department to investigate the human rights violations related crimes committed by the police. As a result, it is the police which investigate allegations of human rights violations committed by their departmental fellow colleagues by which in most of the cases police get relief from the allegations or are awarded comparatively light punishment. In some cases, upon the public pressure some possible perceived consequences are removal from service, damage to career, punitive transfer, disturbance of personal and family life etc. And at these stages the departmental proceedings are completed.

Consequently, police is enjoying an informal impunity despite being perpetrator of human rights violations. When any complaint is filed before any court against the alleged violations of human rights perpetrated by police, it is the state which bears the expenses from its fund. As a result, the corrupt and human rights violators' police that enjoy not only impunity from the responsibility of crime related with human rights violations but also economical relief.<sup>71</sup>The Armed Police Battalions Ordinance,1979 laid down that no suit, prosecution or other legal proceedings shall be against any member of the Force, for anything which is done or intended to be done in good faith under this Ordinance.<sup>72</sup>That is why there are overall despair and dissatisfaction against the police so much that people are usually reluctant to report crimes in thana as they fell certain that they will not get relief or fair treatment. <sup>73</sup>.

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<sup>66</sup> Supra note 64, page 62.

<sup>67</sup> Supra note 8, page 12.

<sup>68</sup> Ibid,page 15.

<sup>69</sup> Supra note 60, page 15.

<sup>70</sup> Ibid.,page 16.

<sup>71</sup> Ibid, page 17.

<sup>72</sup> Section 13.

<sup>73</sup> Supra note 60, page 27.

### 5.11 Role of NGO:

In Bangladesh several Non-Governmental Organizations (NGO) are working to monitor the civil and political rights situations in Bangladesh, including the human rights violations by law enforcing agency. Such NGO's are, namely Bangladesh Legal Aid and Services Trust (BIAST), Ain O Shalish Kendro (ASK), Odhikar etc. For the last four or five years, these organizations monitor the human rights situations in Bangladesh. They play an active role on this point and make many recommendations to the government. But it is the government who is to click such recommendations for upgrading the present law and order situation.

## 6. Legal Framework for the Protection of Human Rights in Bangladesh

For an analysis of the human rights situation in Bangladesh, it is important to look at the country's commitment to human rights both in national and international levels, discussed herein below:

### 6.1 International obligations:

Bangladesh has ratified all the major international human rights instruments although it has made some important reservations. Bangladesh is a party to the International Covenant on Civil and Political Rights, 1966 (ICCPR) (Article 6, 7, 9, 10), she has also ratified the Convention Against Torture (CAT), Convention on the rights of the Child (CRC), the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)). However, there are as number of reservations has been made by Bangladesh which made it ineffective and deny the equal status of women.

Bangladesh is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which stipulates that State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. It also stipulates that State party shall make these offences punishable by appropriate penalties which take into account their grave nature.<sup>74</sup>

International Covenant on Civil and Political Rights, 1966 ensures that no one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment. Constitution of Bangladesh also outlaws any form of torture.<sup>75</sup> The Universal Declaration on Human Rights (UDHR) (art. 3, 5, 7, 8, 9, 10, 11) is considered as the *juscogens* throughout the world from which no derivation is possible. Still no law has been enacted for the prohibition of torture. In other words, still 'torture' has not defined as crime in Bangladesh whereas Srilanka has enacted laws on the prohibition of torture and in violation of the said provisions, punishment for torture is imprisonment for 7 years, whereas in Bangladesh 'torture' is considered only as 'hurt. Again another point also draws our attention in respect of The Convention against Torture. Bangladesh reserved article 14 of the said Convention. Article 14(1) state:

"Each 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. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation."Hence by reserving Article 14 of the said Convention, Bangladesh government denies such compensation or rehabilitation and also invalids the constitutional mandate under Article 35 (5) of the People's Republic of Bangladesh. The ICCPR which was ratified by Bangladesh in 5<sup>th</sup> September 2000 ensures that every human being has the inherent right to life. It stipulates that this right should be protected by law and no one shall be arbitrarily deprived of his life. But in 2007 and 2008, state security forces reportedly continued to be responsible for extra judicial killings and for custodial killings. During the state of emergency, extra judicial killings by joint security forces continued unabated.<sup>76</sup>

### 6.2 National Obligations:

The Bangladesh Constitution also provides the provisions to ensure human rights such as:

- Promotion of international peace, security and solidarity (Article:25)
- Right to protection of law(Article 31)

<sup>74</sup> Indigenous Peoples Human Rights report: in Bangladesh, 2007-2008, Kapaeeng Foundation, page.109, published in July, 2009.

<sup>75</sup> *ibid*.

<sup>76</sup>Supra note 74,page 97.

- Protection of right to life and personal liberty (Article 32 )
- Safeguard as to arrest and detention (article 33)
- Protection in respect of trial and punishment (article 35)
- Freedom of movement (Article 36 )
- Freedom of assembly (Article 37)
- Freedom of thought and conscience and of speech (Article 39)
- Protection of home and correspondence (Article 43)
- Power of HCD to secure the enforcement of rights (Article 102)

According to Article 31, the enjoyment of protection of law, to be treated in accordance with law and in particular no action detrimental to life, liberty, body, reputation or property of any person shall be taken except in accordance with law. In *Mohammad Hossain vs. General Manager, E.B.Railway*<sup>77</sup>, the court held that any invasion upon the rights of citizens by anybody, no matter whether by a private individual or by a public official or body, must be justified with reference to some law of the country, otherwise such invasion would be illegal. Accordingly, *Brahmanbaria Paurashava vs. Bangladesh*<sup>78</sup> the court held that no action detrimental to vested right of an individual or a corporate body can be taken except in accordance with law.

Article 32 ensures freedom from arbitrary arrest indirectly. That is, if there is any necessity for the deprivation of personal liberty for the security of the State, or to control the law and order situation, the concerned authority must be act objectively not subjectively or merely legitimate the Government interest. Again in *Bachan Singh vs. Punjab*<sup>79</sup> the Indian Supreme Court held that the sentence of death to be constitutional, recognizing the right of the State to deprive a person of his life in accordance with fair, just and reasonable procedure established by law. Therefore, where it is reasonable to believe that any person has committed a serious crime under the Penal Code, 1860 or other special laws and has continued that offence, only than the right to personal liberty can be denied upon and convincing that person through fair trial with proper evidences.

In *Muslemuddin Sikder vs. Chief Secretary*<sup>80</sup> the court held that the arrested person must be given a reasonable opportunity to defend him.

Under Article 33, the arrested person has the right to be informed of the ground of arrest. In *Rowshan Bijoya S, Ali Khan vs East Pakistan*<sup>81</sup> it was held that, it is not necessary to inform him of the full details of the offence, but the information should be sufficient to give him an idea of the offence he is alleged to have committed. In *Habiba Mahmud vs Bangladesh*<sup>82</sup> the court held that grounds served need not be particulars in all details, but they must contain sufficient particulars so that an effective and meaningful representation may be made by the detainee.

Article 33, also provides that the arrested person must be produced before a magistrate within 24 hours excluding the time of journey from the place of arrest to the court of the magistrate. In *U.P. vs Abdus Samad*<sup>83</sup> it was held that the failure to comply with this requirement of 24 hours would render further detention of the arrested person illegal.

Article 33 (3), Article 33 (4), Article 33 (5), Article 33 (6) enumerate the provisions of preventive detention and Article 33 (4) does not permit preventive detention more than 6 months. On the other hand the advisory board can extend the time if sufficient cause for detention. In *Monowar Begum vs Secretary, Ministry of Home Affairs*<sup>84</sup> the court held that if no such affirmative opinion is given by the Advisory Board, the detainee has to be released on expiry of six months. In *Fostiana Pereira vs The State and Others*<sup>85</sup> the HCD of Bangladesh held that the detention of prisoners in Jail after they have served out the sentences is a violation of their fundamental rights guaranteed in the Constitution, specially the right to life. Hence, it can be said that through this judicial activism there is scope for a post-trial concession to enjoyed by a prisoner who have spend in custody a considerable time.

Lastly, under the Article 102 of our Constitution, the HCD has the power to monitor the Human Rights Violation and HCD can issue directives in order to secure the enforcement of Human Rights. In recent years, the HCD is welcoming writ petitions in the form of PIL (Public Interest Litigation) from the citizens whenever their Human Rights are

<sup>77</sup> 14 DLR,874

<sup>78</sup> 51 DLR,(AD),54

<sup>79</sup> AIR 1980 SC,898

<sup>80</sup> 8DLR 526

<sup>81</sup> 17 DLR1

<sup>82</sup> 45 DLR, AD

<sup>83</sup> AIR 1962 (SC) 1506

<sup>84</sup> 41DLR

<sup>85</sup> (2001) 53 DLR(HCD) 414



infringed. The Case filed by BLAST, is one of the examples of these PIL discussed earlier.

## 7. Human Rights and Compensation

The High Court may play an important role in pioneering to pay compensation for human rights violations by the law enforcing agency. In *Smt. Nilabati Behera @ Lalita Behera vs. State of Orissa & Ors.*<sup>86</sup> the Supreme Court asserted the jurisdiction of the judiciary as 'protector of civil liberties' under the obligation to repair damage caused by officers of the State to fundamental rights of the citizens, holding the State responsible to pay compensation to the near and dear ones of a person who has deprived of life by their wrongful action.

In *Muhammad Ali vs. Bangladesh*<sup>87</sup> the Court fined 5000 taka as 'token compensation' against each of the two Police Officers for searching the house of a renowned journalist without warrant and during midnight. It seems that the HCD move to provide protection against unauthorized entry, search and seizure as ensured under Article 43. Accordingly, The apex court of Bangladesh can play a pivotal role in this regard. Apex court supposed to show strong judicial activism i.v. by giving directives to the state *suomoto* or of on its own motion that the State must compensate the victims in case of any human rights violations.

## 8. Conclusion

To protect the people from human rights violations in Bangladesh, the law enforcing agencies are the responder in our criminal justice system. Bangladesh still retained the Police Act 1861 which is tainted with colonial policing. Political and bureaucratic interference, low salaries, government's control of promotions and transfers etc still remain as the major drawbacks of our security forces. Therefore, to bring the security forces in line with the 21st century is a great challenge for us. The Police Reform Program (PRP) should keep all the above loopholes in mind before making any strategy in Bangladesh. The role of a vibrant civil society, NGO's, door agencies to create pressure upon the rulers of the Country to initiate strategic reforms cannot be overruled. Moreover, with institutional changes respect for human rights, rule of law and good governance should also be the safeguards for human rights in the domestic regime. If it is done, the security forces can be made accountable and friendly to the common people. Once the security forces are made accountable towards the people, the rate of human rights violations in Bangladesh will be decreased.

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<sup>86</sup> (1993) 2 SCC 746

<sup>87</sup> (2003) 23 BLD (HCD)389

