

## **Human Rights Violation by the Law Enforcing Agencies : Bangladesh Perspective**

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### **Abstract:**

*In today's era of globalization, human right has become a world wide concern. In a second, in a single button-press of remote, people can know the human rights situation around the world. Bangladesh is not out of the bad image regarding human rights violation. Unfortunately, the situation in Bangladesh is worsening and frequently it has been becoming the headline of international press and electronic media. It is really frustrating to know that the state itself is the worst violator of human rights instead of being protector of it. To many extents, law enforcing agencies are held responsible for massive violation of human rights. Torture, assault, arbitrary arrest, police brutality in the peaceful assembly and atrocity towards the women are a common phenomenon in our day to day life. Extra judicial killing in the name of cross-fire, encounter, line of fire have become very popular weapon in order to maintain law and order situation in a short-cut way. RAB, Chetah, Kobra all these elite forces are supplemented to mainstream police force under unconstitutional way in the name of curbing terrorism. Role of judiciary is significantly ignored by the law enforcing agencies since the weapon of cross-fire is in their hands. Army deployment in the aid of police department is a very favorite event for the government and it never cares how many peoples died of heart-attack under such deployment. The procession of death in cross-fire started with the killing of Pitcchi Hannan (an alleged top terror) and still it is a never ending story.*

*Alarmingly, people do not have any faith on the law enforcing agencies about their honest will, skill and capability. Rather they consider that a situation could be more easily handled if the police would not be involved in the matter. They never treat police as friend rather an enemy, alien.*

*This article is to look into the root causes behind the non-confidence of people on the law enforcing agencies as their aide and to find a way out of the problem making them pro-people, public-friendly and ultimate guardian of human rights.*

### **Introduction**

Human rights is a world wide concern of today. It is considered as an indicator to determine how a state is conscious about the welfare of its subjects, to what extent the people can enjoy liberty in their day to day life, whether a state is democratic or not, how far good governance exists there. The concept of democracy, good governance all are meaningless if the standard of human rights practice of a particular country is not up to the mark. In this changing world, human rights issues are frequently crossing the transnational boundary. In present context, it is no more only a domestic issue rather international concern. As globalization has brought all the countries of the world under one umbrella, the worse condition of human rights in any country certainly may affect the others.

We are sorry to say, the human rights condition are deteriorating in many corners of the world. It has become a grave concern to keep the society civilized. Failure of human rights is the ultimate failure of mankind.

Bangladesh is not exception to the scenario. The human rights condition of it is worsening significantly in comparison to the previous records. The reports of Amnesty International, State Department of United States of America, European Union and other national and international watchdog sketch the portrait of the horrified Human Rights condition of Bangladesh. Almost all the organs of the country are violating the human rights. Despite having the constitutional protection and guarantee still the situation is deteriorating day by day.

Among all others, the law enforcing agencies are the most responsible for such deterioration. It is the police which is one of the most corrupt departments in the country and it is needless to say corruption brings violation. The regular and consistent pattern of human rights violations by the law enforcing agencies has got pace by the deployment of military forces during “Operation Clean Heart” and recently by the frequent extra judicial killings committed by the Rapid Action Battalion (RAB) in the name of curbing terrorism.

This article is focusing on the human rights violations particularly by the law enforcing agencies as they are one of the main human rights defenders.

### **Who are law enforcing agencies?**

The term is defined in the 1979 UN Code of Conduct for law enforcement officials. The preamble to this document affirms the function firstly by referring to “the functions of law enforcement in the defense of public order”. And secondly by reaffirming that “every law enforcement official is part of the criminal justice system, the main aim of which is to prevent and control crime”. The code defines law enforcement officials as including “all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest and detention”. In article 1, it was stated that the role of law enforcement officials should be, at all and by protecting all persons against illegal acts. The concept of community service should

be understood to include, in particular, the rendering of assistance to those members of society who “by reason of personal, economic and social or other emergencies are in need of immediate aid”.<sup>1</sup>

All in all, this definition covers the police functions, crime prevention and detection, provision of assistance, and the maintenance and restoring of orders, but it is not a separate function in itself. Therefore, “law enforcement” may be viewed as an unsatisfactory term for officers carrying out a whole range of policing functions. More implicitly, it stresses the aspect of rule of law, in the sense that, according to article 1, the mandate of law enforcing officials is that which is established by law and their duty to prevent crime is based on law. Again, this means that acts that are illegal should be prevented, extending to “the full range of prohibitions under penal statutes.” Law enforcement may thus be viewed as a means to fulfill the main police functions, rather than as a purpose in itself; and ever then, its limitations should be acknowledged.

In Bangladesh, law enforcing agencies include police and some of its special forces like RAB, cheetah, cobra, and village defense party (VDP). It also includes Bangladesh Rifles (BDR) coast guard and the military forces (Army, Navy, Air force) when they are deployed for the purpose of restoring law and order situation for the time being. Though Rapid Action Battalion (hereinafter referred to as RAB) is a part of police but it is considered as an elite force with some special power such as independently investing under “ the Armed Police Battalions (Amendment) Act 2003”.

#### **Various types of violations by the law enforcing agencies**

**Torture:** The allegations of torture as a method to extract information under interrogation have been widely reported. A variety of methods are alleged to be used by Police and Law enforcing officials to extract confessions. These include stripping a detainee and placing him/her in a reservoir of catfish; suspending the detainee from a ceiling fan or tree; covering the face with a cloth and pouring boiling water over the detainee’s face; tying the hands and feet; inserting needles, pokers or bicycle spokes into the fingers and toe nails; pulling nails from the root; and squeezing the penis with pliers. Methods of torture reported included beatings with rifle butts, iron rods and bamboo sticks; hanging by the wrists from the ceiling; rape; “water treatment” in which hose pipes were fixed into each nostril and taps turned on full for two minutes at a time; the use of pliers to crush fingers; and electric shocks. Police officers torture people to extract money, to ensure compliance with their own illegal activities, as a favor to local politicians in return for a bribe, and to obtain confessions.<sup>2</sup>

In 1998 the Deputy Commissioner of Dhaka Police detective branch publicly defended the use of physical coercion against suspect , saying that the practice was necessary in order to obtain information.<sup>3</sup>

Article 35(5) of the Bangladesh Constitution prohibits torture: Article 26 specifically makes any

laws void which is inconsistent with this. Protection is also provided under Article 33 and 35(5) of the Constitution through the right against self incrimination, the right to be produced before a magistrate within 24 hours of arrest.

The Penal Code of 1860, the Code of Criminal Procedure 1898, and the Evidence Act of 1872 prohibit “voluntarily causing grievous hurt” to extort confessions in police custody, except in the presence of a magistrate. The police are also subject to the Police Act of 1861, Police Regulations of 1943 and the various Metropolitan Police Ordinances.

But the law enforcing agencies specially police are violating the laws.

A very recent example of police brutality has been seen in the district of Feni. The Sadar Thana police of Feni has blindfolded five men and has severely beaten keeping them hung from an Arjun tree in public for the accusation of robbery. Hundreds of passer-by and the local journalists got astonished after they see such an atrocity in their presence. A sub inspector asking not to be named told the journalists that the robbers do not have any right to human rights.<sup>4</sup>

**Rape in custody:** Rape in police custody is not a new one. In the very early period of Pakistan, Ela Mitra, the leader of the Santals revolution in the Nachole Thana of Chapainabaganj district was gang raped by the police in the custody. The police brutally entered the boiled hot egg into the sex organ of Ela Mitra.

In recent years, the incident of rape in police custody is frequently occurring. Shima Chowdhury, a 17 year old garment factory worker in Chawkbazar, Chittagong was arrested by the police on the evening of 8 October, 1996 when she was walking with her fiancé. The next day, they were transferred to the custody of the Thana level police. According to Sima’s testimony, after the officer- in- charge had left, 4 policemen on duty in the middle of the night allegedly drugged her before they gang raped her. On his return to the police station next morning, the officer- in- charge found Sima unconscious and took her to the Thana health complex for examination. After examining her, the doctor on duty reported that she had been raped by several persons.<sup>5</sup>

Police sometimes rape women who are not in custody. On December 18, 2004 in Chuadanga, police took Dolly Khatun to a police camp for questioning, where 14 police officers and constables subsequently raped her. Responding to public outrage, the government withdrew all 14 policemen from duty and arrested 5 of them.<sup>6</sup>

(RAB) personnel are also getting involved in committing rape. On August 21, 2005 in Dhaka, a 20 year old lady brought allegation against a Sub -Inspector of RAB of raping her.<sup>7</sup>

In September, 2004, three policemen were convicted for raping and killing a teen age girl named Yasmin in Dinajpur in 1995 were hanged inside Rangpur prison.

### **Custodial death**

The trend in custodial deaths has led to worried reflections on inhumane methods of law enforcement and non observance of rule of law. In the absence of any published reports, it is not possible to say if any action was taken against the offending personnel and executive's failure to take appropriate disciplinary measures may be an encouragement for habitual use of torture and inhumane treatment. Throughout the year, police persistently denied any involvement in custodial deaths despite having allegations that many of the victims were reported to have died after being taken into remand for interrogation.

Under Section 328(b) of the 1946 amended Bengal Police Regulations, arrested persons must be given a body inspection by either the Officer Commanding at a police station or an independent person, (namely a medical doctor). They are expected to check marks of injury prior to placement in custody or for interrogation. Any mark or bodily injury must be recorded in a General Diary. The provision to check the condition of the arrested person during and after interrogation is not followed. Yet, during this period, the arrested person is at greatest risk of torture or ill treatment. Police surveillance and detainee monitoring procedures are suspect, given that many detainees who have died in custody, are declared dead on arrival at a hospital or soon after admittance.

During the period of 2001-2005, 707 men have been killed by the law enforcing agencies. Out of these 536 men were killed in crossfire by RAB and police. 56 were killed during 'Operation clean heart'.<sup>8</sup>

### **Disappearance**

Sometimes the law enforcing agencies get involved in disappearing the opponents by kidnapping and abduction. Kalpana Chakma, a student of Kachalong College in Rangamati, was the organizing secretary of the Central Committee Hill Women's Federation. She had been involved in the election campaign of an independent candidate, Bijoy Chakma. In the early hours of 12 June 1996, she was abducted from her home allegedly by 6 or 7 plain clothed army personnel, who were reportedly recognized by her brother. The States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.<sup>9</sup>

### **Miserable Condition of Prison:**

Prisoners, particularly convicts are not seen as persons worthy of certain rights. Prisons are viewed as punitive and not reformatory institutions. In the hierarchy of rights or even in a humanitarian agenda, prison reform is not high on the list.

Most of the country's jails are overcrowded, in poor condition and provide inadequate services to the inhabitants. Because of serious overcrowding, prisoners are often forced to sleep in shifts. Occasionally, prison officials punish prisoners illegally by confining them in the extremely small "condemned" cell built to accommodate death row inmates.

The health of jail detainees is generally poor because of the cramped living conditions and low quality of food provided. Prison protests and revolts have often focused on issues of overcrowding, poor hygienic conditions, low dietary provisions, corruption of jail officials, physical abuses and torture and the prolonged imprisonment of persons awaiting trial. Most detainees suffer from stomach complaints such as diarrhoea, dysentery and indigestion, one third of all detainees suffer from gastro- enteritis and skin diseases.

Under section 742 of the Jail Code, all prisoners must be “visited daily by the superintendent and also by the Medical Official or Medical Subordinate”. In case of illness, notice must be given to the Head Warden who informs the Sub-Assistant Surgeon. The latter is responsible to visit the detainee and determine whether hospitalization is required (Section 741). Delays in obtaining permission to hospitalize a detainee and lack of adequate transportation services for the very sick detainees often implies that they are admitted to hospital in the eleventh hour.

#### **Police brutality in the peaceful Assembly:**

The Constitution provides for freedom of assembly, subject to restrictions in the interest of public order and public health; however, the government frequently limits this right. Section 144 of the Code of Criminal Procedure allows the Government to ban assemblies of more than four persons. The government sometimes uses Section 144 to prohibit rallies for security reasons, but many independent observers believe that such explanations usually are a pretext. Supporters of the ruling party frequently will schedule their own rallies for the same venue and time as scheduled for opposition rallies and meetings, thus providing the government a basis for imposing Section 144 for security reasons.

To break down the peaceful assembly police force frequently shows their brutality towards the people, particularly the oppositions. They assault the leaders and activists of the political parties. The woman protestors are assaulted by the male police also. Recently the female police force is also participating in their brutal action. Even the Ex-minister for Home affairs is not kept outside of their torture. The police mishandled the female protestors. They touch their body, tearing women’s cloths off and picked them up into police van in indecent way.

#### **Atrocity towards woman**

The police are often rude towards the women where they are bound to respect the female while performing their duties. It has been recognized in the police Regulation Book, Code of Criminal Procedure and in other national and internationally prescribed Code of conduct. But the situation is completely contrary to the text.

On July 24,2002 male and female police officers entered into Shmsunnahar Hall, a female student dormitory at Dhaka University (DU), dragged female students out of the dormitories, and beat them. Some of the victims alleged sexual harassment by male police officers. The

police detained 18 female students overnight. Thirty students were injured in the raid. A one-member judicial commission investigated the incident and found DU administrators and police officers responsible for the incident.

The law requires authorities to obtain a judicial warrant before entering a home; however, according to human rights monitors, police rarely obtain warrants and officers violating the procedure are not punished. In addition, Special Powers Act, 1974 permits searches without a warrant.

### **Arbitrary Arrest**

The Constitution provides guarantees against unlawful arrest and the Code of Criminal Procedure, 1898 does not permit a detainee to be held in police custody for more than 24 hours unless by special order of a Magistrate. Section 167 permits the Magistrate to detain a person in custody for up to fifteen days without charges. Yet, there are instances where detainees have been held in police custody for longer than 24 hours without orders of the Magistrate and where persons have also been held in custody for more than the legally granted fifteen days period.

According to Regulation 317 of the PRB, 'The police shall be careful to abstain from unnecessary arrests...'

Several laws effectively permit arbitrary arrest or detention including sections 54, 55 and 57 of the Code of Criminal Procedure, 1898, the Special Powers Act, 1974 and the Dhaka, Chittagong and Khulna Metropolitan Ordinances. Section 54 of the Code of Criminal Procedure, 1898 authorizes arrest without a warrant and is often used to arrest persons without charges on mere suspicion. The seventh paragraph of the section permits arrest on the basis of "reasonable suspicion" of involvement in any criminal act. Section 54 is frequently used as a preventive measure and political activists are often arrested under it prior to or during political demonstrations.

Powers to arrest without a warrant and to hold persons in preventive detention were persistently abused throughout the year. Alleged criminals, political dissidents, witnesses to particular incidents or persons likely to challenge law enforcement officials have been victimized.

Public reaction against the arbitrary use and abuse of powers under Section 54 fuelled by the deaths of Shima Chowdhury in 1997 and Rubel in 1998 prompted the police to change tactics and use similar powers under the Dhaka Metropolitan Police Ordinance, 1978 and Khulna Metropolitan Police Ordinance, 1985.<sup>10</sup> Sec-100 in each of three ordinances permits arrest without a warrant.

### **Human Rights Violation during "Operation Clean Heart"**

On 17 October, 2002, some 40,000 Army personnel were deployed across the country in a joint Army-Police crack-down on crime named "Operation Clean Heart". By 9th January 2003,

11,149 people including members of opposition and ruling political parties had been arrested “and nearly 56 people were killed during this Joint Drive”<sup>11</sup>

Government statements regarding these deaths at first asserted that the deceased had died of heart attacks or of drowning while trying to escape. However, on November 18 the Government’s Principal Information Officer stated that there had been no deaths in army custody (as of that date the death toll was 36) and on November 24 he alleged that some newspaper reports on deaths related to Operation Clean Heart were baseless.<sup>12</sup>

According to Article 33(1) of the constitution 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.

Again according to Article- 33(2) the arrestee shall be produced before the nearest magistrate within a period of 24 hours of such arrest and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

Let us see how far these constitutional provisions are being followed during the “Operation Clean Heart”. First of all, the detainee is brought to the Army custody. But in civil administration, there is no existence of Army custody. The definition of military custody provided in the Army Act is not certainly a part of a criminal justice system and eventually it is not applicable for the civil public.

But frequently the arrestees have been brought to temporary Army camp established for the time being. Later on they are handed over to the police custody in critical condition. Sometimes the police refused to receive such a critical patient. But in no case they are produced to the magistrate within 24 hours. According to Article 35(5) of the constitution no person shall be subjected to torture or cruel, inhuman or degrading punishment or treatment.

As per sections 330 and 331 of the Penal Code, no force shall be applied upon the detainee or his relatives in order to extract confession. But it is seen during the drive that immediate after the arrest the detainees without identification have been subjected to severe torture. Some died on the spot due to army torture, some after being handed over to the police custody, some after being hospitalized. And thousands of people have become disabled.

During “Operation Clean Heart” in October 2003, an individual was arrested by the police and taken into custody. Relatives and friends were not permitted to see him. While in custody, he was blindfolded and taken to an unknown location where he was hung upside down and beaten on his hips, buttocks and thighs for an extended amount of time. His interrogators accused him of being an agent of the Indian Government and state enemy and instructed him to leave the



country. Interrogators also ordered him to urinate into an electrified bucket. He remained confined in a very small cell for at least 2 more weeks.<sup>13</sup>

In at least one case, family members have reportedly filed a case before a Magistrate court in Dhaka challenging the army's account that one of the victims, Abul Hossain Litu, had died after he jumped from the top floor of his two-storied farm building during a failed attempt to escape. The relatives said that the building was not two-storied and that he died from torture after army personnel tied his hands and legs, blindfolded him, tied him to a tree and beat him severely. His body was then handed over to the police.<sup>14</sup>

### **Massive violations under sec-54 of the Code of Criminal Procedure and sec-86 and sec-100 of the Metropolitan Police Ordinances**

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Under Section 54 of the Code of Criminal Procedure, individuals may be detained for suspicion of criminal activity without an order from a magistrate or a warrant. Some persons initially detained under Section 54 subsequently are charged with a crime, while others are released without any charge. The government sometimes used Section 54 to harass and intimidate members of the political opposition and their families. Police sometimes detain opposition activists prior to and during general strikes without citing any legal authority, holding them until the event is over. Newspapers report instances of police detaining persons to extract money or for personal vengeance.

According to a September 2000 study carried out by a parliamentary subcommittee, 98.8% of the 69,010 Special Powers Act detainees over a period of 26 years were released on orders from the High Court Division of the Supreme Court of Bangladesh<sup>15</sup>.

A large majority of persons arrested under section 54 of the Cr.P.C. and Section 86 and 100 of the DMP Ordinance are from poor economic backgrounds. They are homeless, rickshaw-pullers, small traders, workers in small industries, vendors, street children, destitute woman.

The notion of 'suspicion' is a very subjective term and police apply it subjectively to harass people. In many of the incidents of arrest, police could not justify the reason for arrest and used the ground of suspicion as reason. Subjective application of the term 'suspicion' has made it a tool for abuse by police. Police abuse the provision of 'arrest on suspicion' for taking bribes from arrested people to set them free in exchange of money. In doing so, police do not always record personal information of arrested people in police station registrars. Sometimes police arrest people under Section 54 and implicate them afterwards in other charges.

The High Court Division of Bangladesh in a judgment on 7 April 2004, while disposing a writ petition challenging persisting abuse of the power and authority under sections 54 and 167 of the Criminal Procedure Code directed the government to amend some sections of the Criminal

Procedure Code and the Penal Code within six months. The High Court recommended the incorporation of the following provisions:

- Police must disclose their identity to the relatives of the person before arrest from the residence or office;
- Police must inform the relatives of the arrested person over telephone or by sending special messenger within three hours of arrest from outside the residence or office. Medical check up of the person must have to be done after arrest;
- No detention after arrest under Section 54 of the Criminal Procedure Code;
- No remand under police custody under section 167 of the Criminal Procedure Code;
- Only the investigating officer to interrogate the alleged accused in the jail custody but no other agency;
- Use of a separate glass covered room in the jail custody for interrogation and the relatives or lawyer of the accused can observe it;
- Examination of medical report of the accused, special diary opened after arrest, hearing of the accused and his lawyers have to be taken into consideration if the magistrate wants to grant remand in other cases;
- The magistrate must show the reasons to grant remand. The remand order passed by the magistrate has to be approved by the District and Sessions Judge or Metropolitan Sessions Judge;
- The magistrate should take action against investigating officer if there is any allegation of torture to the accused during the remand and the allegation proved through medical examination;
- Enhance the punishment for illegal confinement under section 220 and for custodial torture under 248 of the Penal Code from two years to seven years and fine.

The judgment also emphasizes that if this guideline is not maintained, the arrest will amount to confining the arrestee in custody beyond the authority of the Constitution, indicating a way of remedy through writ petition. Another wide-spread abuse of section 54 was that police arrested a person on suspicion and then detained them under the Special Powers Act, 1974. The judgment clearly addresses the issue as 'A person is detained under preventive detention law not for his involvement in any offence but for the purpose of preventing him from doing any prejudicial

act. So there is no doubt in our mind that a police officer cannot arrest a person under section 54 of the Code with a view to detaining him under section 3 of the Special Powers Act, 1974’.

After the High Court directive to amend Section 54 of the Cr.P.C. the use of this provision has reduced to a large extent in the year 2003 and 2004. But the use of Section 86 and 100 of the DMP Ordinance has increased. During the period September 2003-August 2004, total number of arrests in Dhaka Metropolitan City was 91,106. Out of this number, 58,728 arrests were made under different Sections of the DMP Ordinance and 5,774 arrests were made under Section 54 of the Cr.P.C.<sup>16</sup>

Truly speaking, after this judgement, stopping illegal arrest and torture by police was a matter of time only if the government would wish. But reality is that the government has appealed against the verdict and the case is still pending in the Appellate Division. This is unfortunate but not surprising. Every prudent citizen can realize it.

### **Critical Overview**

#### **A postmortem of Cross-fire**

Article 32 of the Constitution of the People’s Republic of Bangladesh provides that no person shall be deprived of life or personal liberty save in accordance with law. However legislation of extra judicial executions has reduced some constitutional guarantees to mere inscriptions. As many as 324 people were extra judicially executed by the law enforcement personnel in the country from 1st January to 29th September of 2005.<sup>17</sup> At least 78 people have been killed by RAB alone mostly in the so-called crossfire. The notoriety that the RAB earned within a short period is evident from the fact that alleged criminals were reportedly surrendering before the courts to go to jail to avoid being killed by RAB in so-called crossfire.

All the killings are extra-judicial and are made in clear violation of the Constitution, the Penal Code and Criminal Procedure Code. Nowhere in the law; law enforcers have been given the authority to kill people through crossfire.

The procession of crossfire has started by killing Picchi Hannan. According to RAB statement on the basis of Hannan’s confession RAB went to Savar and attacked the residence of the terrorists. In the mean time while attempting to escape, Hannan was killed by one of his associates. Since then the toll of death in crossfire is increasing. Almost in every crossfire the story is same. In this regard some questions may arise-

- How a handcuffed accused can attempt to escape? Is it practically possible?
- Why is the accused always killed only at the fire of his associates, not of RAB?
- Why is the accused only killed? Why not any of both of the firing groups?

Let us analyze the above questions-

Even if we consider the RAB statement true, they cannot deny their responsibility. A handcuffed man within the tight security can have no option to take attempt to escape. If he truly attempts so, certainly it can be said that RAB possesses an intention to see the accused escaping and for the purpose they facilitate his attempt directly or indirectly. Secondly if the accused is killed in the crossfire there must have a possibility of being killed at the fire of either RAB or of the oppositions. As both parties open fire there might have a chance of being injured from both the group. If we look at the story of crossfire neither RAB nor the opposition is ever injured and never the accused is killed at the fire of RAB. How far the stories of crossfire are believable? It may cause in one or two cases, but if it happens in every case, then it no longer stands as an accident, rather it becomes an established fact.

### **To What Extent the Terrorists are Entitled to Human Rights?**

For whom is the human rights? Is it for 1400 criminals or for the 14 crore people of the country? Here lies the dilemma of law enforcers. When human rights of mass people collide with human rights of terrorists, which rights should be upheld by the law enforcers? Obviously the law enforcers should ensure the human rights of mass people. Then the question comes--in doing so do the law enforcers entitle to commit extra-judicial killing? The answer is no, the law enforcers cannot be permitted to do it for even a temporary period. That may ameliorate law and order situation for the time being, but its aftermath has far reaching consequences leading to the breakdown of criminal justice system. Law and order situation has been deteriorated because of many reasons, which have been mentioned earlier. Operation Clean Heart, formation of RAB do not provide any anti-dote which will have healing effect on society. Criminal activities have taken strong hold in Bangladesh through a slow process where multifarious factors are inextricably related to each other. Politicians and state functionaries patronise criminals. Criminalisation of politics is a major factor of the deterioration of law and order condition. Without addressing this problem any initiative to restore law and order will go in vain. By crossfire RAB is terminating the criminality of field-level criminals; so-called God Fathers remain beyond their reach. Taking shelter in big political parties these God Fathers engage field-level terrorists to commit crimes one after another. Elimination of God Fathers is a pre-condition to restore peace and tranquility in a disturbed society like ours.

### **The Joint Drive Indemnity Ordinance, 2003- An obstacle towards Justice**

In the context of deteriorated condition of law and order, the government deployed joint force (basically armed forces) to reinstate the orderly state of society. Armed officers arrested people including listed criminals. As many as 56 people died because of the torture ('Heart attack' in their language) and many people became crippled.<sup>18</sup> The operation continued from October 16, 2002 to January 9, 2003. Their activities were done in violation of articles 31, 32, 33 and 35 of the Constitution, so they required to be indemnified. The Joint Drive Indemnity Ordinance,

2003 was promulgated on January 9, 2003 to save the illegal and unconstitutional activities of the armed forces. If the joint force did everything by remaining within the boundary of law, they did not require any indemnity. The government invoked article 46 of the Constitution to save the armed forces. The activities of the joint forces were indemnified in violation of the spirit enumerated in the Preamble and article 7 of the Constitution. The Joint Drive Indemnity Ordinance cannot hold good in the light of basic structure principle of the constitution. The Ordinance also precluded any individual to make a petition before any court or tribunal to determine the validity of the activities of the joint force.

This Indemnity Ordinance is against the international human rights instruments. This ordinance violates Article 2(1), 2(2), 2(3), 4, 11, 12 and 13 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984). Bangladesh ratified this Convention in 1999. It means Bangladesh is bound to follow the Convention.

Indemnification of any kind that seeks to protect any civil, police or military personnel for criminal acts even in course of discharging duty is against the principle of rule of law. It permanently debars an aggrieved citizen to seek equal protection of the law and the right to be treated in accordance with law. Viewed in this context, it amounts to flagrant violation of human rights. It cannot be defended on any ground whatsoever, let alone on ground of maintaining law and order.

#### **Safe Custody: No guarantee of safety**

Women are sent to prison by magistrate under a practice known as “safe custody”. The majority are young women who had married against their families’ wishes and whose husbands are accused of kidnapping them. While the husbands were often released on bail pending a court hearing, magistrates invariably sent the women to jail against their will purportedly for their own “safety”. Such women can remain imprisoned “in some cases for years” without being accused of any offence. Women detained in prison are either convicted, awaiting trial or in “protective” custody. Women in “protective” custody, even though innocent, generally reside with the first two categories. This means that women, subjected to sexual crime or seeking security are deprived of liberty and freedom. There exists no statutory provision for “protective” custody in prison and this practice contravenes articles 27, 28 and 31 while holding a woman in “safe” custody against her will contravenes articles 31, 32 and 36 of the Constitution.

“Safe” custody has generally been ordered according to the discretion of magistrates and judges in instances:

- Of rape or kidnapping ( Penal Code sections 366A & 376);
- When rescued or escaped from a brothel and unwilling to return home (Cr,PC Section 4);
- When forced to flee her home for reasons or mistreatment by relatives (CrPC Section 54);

- When detained for vagrancy (CrPC Section 54 and Vagrancy Law);
- When abandoned and without shelter (CrPC Section 54);
- When a court or police determine a need for safety (CrPC Section 54);
- When a witness to a serious criminal offence ( Penal Code Section 302);
- When repatriated after being trafficked outside the country.

The irony is that “protective” or “safe” custody is often anything but not safe. Instances of rape and sexual assault of women in “safe custody” have been reported as have instances of women being handcuffed to their beds. In one or two instances, women residing in safe custody have mysteriously died.

### **Joint Interrogation Cell : Lacking legal basis**

Now a days Joint Interrogation Cell (JIC) has become a common feature in police interrogation. In many cases, we see the detainee is brought to the Joint Interrogation Cell and for doing so even the accused is transferred from one station to another station. From the very word “Joint Interrogation Cell”, it can be understood that it is a combined body of police and other force which are not surely police. But who are that other forces? Are they Army, BDR or any other intelligence branch of defense? If it is so, what is its legal basis? If it does not have any legal basis, if law does not cover JIC, then how it is still operating?

In the name of interrogation the detainee is taken to the Joint Interrogation Cell . Who does torture? Is it police or Army? Dr. Mohiuddin Khan Alamgir was arrested under Sec-54 and was given to remand. Two days after giving remand he was taken to Cantonment Thana. Court ordered not to torture him.<sup>19</sup> Despite the court’s order he was taken to Joint Interrogation Cell and three men covering their face with black cloth beat him severely and according to him these three men are of course not from police. According to The Evidence Act, 1872 the confession given to the police is not admissible in court. If it is so, what’s the use of taking the detainee to such a special interrogation cell?

Under Sec-167 of Code of Criminal Procedure magistrate can permit remand for interrogation to the police custody. In the code, nowhere it is written to allow remand to the Joint Interrogation Cell and always the detainee is taken to the cell without any order and knowledge of the magistrate. It is surprising to know that nobody knows where the Joint Interrogation Cell is located- is it in the Cantonment, in police Headquarter or where? The media, the relatives and the concerned lawyer of the detainee simply know that the arrestee is taken to the Joint Interrogation Cell but where the cell is and who interrogate the accused is never communicated to them.

In conclusion, my observation is that the cell is in operation beyond authority. No law covers it. It has no legal basis. The purpose of the cell is not to interrogate the accused. Simply it is nothing but a torture center. Police is running the cell arbitrarily and bypassing the law. The atrocity of the cell reminds us the black-days of Hitler.

### **Code of conduct for the law enforcing agencies**

#### **National standards and obligation:**

Many provisions of national legislation contain measures to prevent torture. These include the Penal Code, the Code of Criminal Procedure, the Evidence Act, the Police Act, Metropolitan Police Ordinances, as well as Police Regulations.

According to Regulation 33 (a) of the Police Regulation of Bangladesh (PRB), 'No police force can work successfully unless it wins the respect and good-will of the public and secure its co-operation,' According to Regulation 33(b) of the PRB, 'Rudeness, harshness and brutality are forbidden; and every officer of superior rank must take immediate steps for the punishment of any offenders who come to his notice.' According to Regulation 33 (c) of the PRB, 'No officer should be recommended for promotion who habitually disregards the above instruction. Section 190 authorises a magistrate to take legal action if an officer has performed in an inappropriate manner, as defined under section 33(b).

According to Regulation 203 of the PRB, 'A police station should be a pattern of order and cleanliness both inside and out. There should be a place for everything and the officer-in-charge shall be held responsible for everything in its place..... The compound shall be kept tidy'

Police torture on people in remand is a common phenomenon. However, it is common knowledge that if bribed, the police do not torture people in remand. According to Regulation 324 (e) of the PRB, 'An application for a remand to police custody shall not be treated as a matter of routine and of little importance' According to Regulation 327 of the PRB, 'the accommodation of each lock-up shall be based on the scale of 36 square feet per prisoner. Dhaka Metropolitan Ordinance, 1976: Section 53 specifies that "any police officer who offers any personal violence to any person in his custody or holds out to an accused person, any threat or promise not warranted by law shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand Taka or with both"

#### **International standards and obligations.**

The United Nations General Assembly adopted in 1979 a Resolution (34/169, 17 December 1979) titled Code of Conduct for Law Enforcement officials. Article 1 of the Resolution states that law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession. Article 2 states that in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Article 3 of the Resolution states that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. This provision

emphasizes that the use of force by the law enforcement officials should be exception and in accordance with principle of proportionality.

Article 5 of the Resolution states that no law enforcement official may inflict, instigate or 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 state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as justification for torture or other cruel, inhuman or degrading treatment or punishment.

Article 6 of the Resolution states that law enforcement officials shall ensure the full protection of the health of persons in their custody and in particular shall take immediate action to secure medical attention whenever required.

Article 8 states that law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them. Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and where necessary, to other appropriate organs vested with reviewing or remedial power.

#### **Standards and obligations under International Covenant on Civil and Political Rights**

The protection against arbitrary deprivation of life which is explicitly required by the Article 6 (1) is of paramount importance. The Human Right Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.<sup>20</sup>

The aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. The prohibition in article 7 is complemented by the positive requirements of article 10, paragraph 1, of the Covenant, which stipulates that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".<sup>21</sup>

The text of article 7 allows of no limitation. The Committee also reaffirms that, even in situations of public emergency such as those referred to in article 4 of the Covenant, no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee



likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority.

The Committee should be informed how States parties disseminate, to the population at large, relevant information concerning the ban on torture and the treatment prohibited by article 7. Enforcement personnel, medical personnel, police officers and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training. States parties should inform the Committee of the instruction and training given and the way in which the prohibition of article 7 forms an integral part of the operational rules and ethical standards to be followed by such persons.<sup>22</sup>

### **Standards and obligations under Amnesty International**

All governments are required to adopt the necessary measures to instruct law enforcement officials during basic trainings and all subsequent training and refresher courses, the provisions of national legislation in accordance with the UN Code of Conduct for law Enforcement Officials as well as other basic international human rights standard applicable to law enforcement officials.

These standards should be made available as widely as possible to the general public and fully respected under all circumstances. They should be reflected to national legislation and practice, and regular public reports issued on their implementation.

Everyone shares responsibility to uphold the Universal Declaration of Human Rights (UDHR) in its entirety. Nevertheless the UDHR contains a number of Articles which are particularly relevant to law enforcement work.

Everyone has the right to life, liberty and security of person (Article 3,) UDHR)

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5, UDHR)

All are equal before the law and are entitled without any discrimination to equal protection of the law (Article 7, UDHR)

No one shall be subjected to arbitrary arrest and detention (Article 9, UDHR)

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which they have had all the guarantees necessary for their defence (Article 11, UDHR)

Everyone has the right to freedom of opinion and expression (Article 5, UDHR)

Everyone has the right to freedom of peaceful assembly and association, and on one may be compelled to belong to an association (Article 20, UDHR)

Other documents directly to policing work are the following United Nations law enforcement, criminal justice and human rights instruments:

UN Guidelines for the effective implementation of the code of conduct for law enforcement officials.

UN principles on the effective prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

UN Declaration on the protection of all persons from enforced disappearances.

UN Convention against torture and other cruel, Inhuman or degrading Treatment or punishment.

UN Basic principles on the Use of force and firearms by law enforcement officials.

UN Standard minimum Rules for the Treatment of prisoners.

UN Body of principles for the protection of all persons under any form of detention or imprisonment.

UN Convention on the rights of the child.

UN Rules for the protection of juveniles deprived of their liberty.

UN declaration on the elimination of violence against women.

UN declaration of Basic principles of justice for victims of crime and abuse of power.

UN conventions on the elimination of all forms of discrimination against women (CEDAW).

10 Basic Human Rights Standards for Good conduct by law enforcement officials Under Amnesty International:

1. Everyone is entitled to equal protection of the law, Without discrimination on any grounds, and especially against violence or threat, Be especially vigilant to protect potentially vulnerable groups such as children, the elderly, women, refugees, displaced and members of minority groups.

2. Treat all victims of crime with compassion and respect, and in particular protect their safety and privacy.
3. Do not use force except when strictly necessary and to the minimum extent required under the circumstances.
4. Avoid using force when policing unlawful but non-violent assemblies. When dispersing violent assemblies, use force only to the minimum extent necessary.
5. Lethal force should not be used except when strictly unavoidable in order to protect your life or the lives of others.
6. Arrest no person unless there are legal grounds to do so, and the arrest is carried out in accordance with lawful arrest procedures.
7. Ensure all detainees have access promptly after arrest to their family and legal representative and to any necessary medical assistance.
8. All detainees must be treated humanely. Do not inflict, instigate or tolerate any act of torture or ill-treatment, in any circumstances, and refuse to obey any order to do so.
9. Do not carry out order or cover up extra judicial executions or “disappearances” and refuse to obey any order to do so.
10. Report all breaches of these basic standards to your senior officer and to the office of the public prosecutor. Do everything within your power to ensure steps are taken to investigate these breaches.

**Recommendation:**

Through the sacrifice of three millions of valuable lives we have got our motherland. They did not sacrifice their lives without any reason, without any hope. They had a hope of happy, prosperous Bangladesh where the people will be free in true sense, where arbitrarily their lives will not be taken away arbitrarily. But their hope had not been met. Situation is deteriorating day by day. Still people possess a hope for a better future. Their first concern is obviously law and order situation.

In order to improve the human rights situation of the country and to make the police force more active and human rights oriented and as a defender of human rights the following steps should be taken.

1. To bring a reform in the police force, an independent and neutral police commission should be established. All the recommendations made by the previous commission formed time to time should be reviewed again and through this police force has to be made public friendly.

2. Police department is the top most corrupt institution in Bangladesh. To wash away the so image, an independent Police corruption controlling commission should be established.
3. Other institutions of the state are also interrelated with the police department. To curb the corruption the existing Anti corruption commission should be made more active and dynamic.
4. A system for the submission of annual income and expenditure report of all police officers to the independent police commission should be introduced.
5. The honest, active and dedicated police officers should be rewarded and promoted and such reward should be highlighted.
6. A separate and independent investigating department should be established to enquire into the accusations brought against the police.
7. Immediately an independent Human Rights Commission should be established.
8. Police force must be freed from criminalization and nepotism.
9. Witness protection Act should be enacted. Besides, a system of providing compensation to the victim must be introduced.
10. The budget for the reform of police force should be included in the development budget.
11. The pay-scale and other facilities should be increased for police force.
12. Risk allowance of police should be increased
13. Present officer-in-charge in the every thana is a second class officer. To make co-ordination with other department, the post of Upazilla Police officer who will be a 1st Class gazetted officer should be introduced.
14. Long and short term based human rights training should be arranged for police in collaboration with other human rights organizations.
15. International human rights Conventions, Declaration, Covenants, Treaties and other protocols should be included in the curriculum taught to the police.
16. For better output seminar, workshop and training should be arranged to enhance the inter-relation among police, lawyers, judges and journalists and to make them more human rights oriented.

17. Existing recruiting system of Sub-Inspector should be repealed and be brought under Public Service Commission.

18. Criminal Justice delivery system can never work properly keeping present public prosecution system. Because all the public prosecutors are appointed by the govt. on ad-hoc basis. Legal Practitioner having support towards particular party in power gets appointed in this position.<sup>23</sup> A permanent public prosecution system should be introduced where the prosecutors will be appointed on merit basis, not on party inclination and the recruiting of such prosecutors should be conducted by the public service commission.

19. The Suggestion that made by the law commission in their report to the govt. regarding the alteration, amendment of existing any Act or Ordinance to uphold the statue of human rights must be taken into consideration with due effect.

20. Sec-54, 167 of the Code of Criminal procedure and Sec-86, 100 of the Metropolitan Police Ordinances 1976 should be amended as per the directions of the Honourable High Court.

21. Special Power Act 1974 is directly against the spirit of human rights and undoubtedly inconsistent with the constitution. This Act must be repealed for the sake of human rights.

22. The Joint Drive Indemnity Ordinance 2003 must be immediately repealed and let people seek justice.

23. Among most of the countries of the world, police people ratio is very low in Bangladesh obviously which leads to excessive workload resulting ultimate violation of human rights. Moreover the number of female police is unimaginably very less where half of the population of the country is women.

It is found in a survey that, corruption rate among the female employee is very less in comparison to the male employees. To remove the corrupt image of police the number of female police should be rapidly increased.

24. The miserable condition of prison life in Bangladesh knows no bound. To bring a change in jail administration, the recommendation of the caretaker government headed by justice Shahabuddin Ahmed in 1991 and the recommendation of the Munim Commission on jail reforms of 1982 should be implemented in full fledge.

25. The police have a responsibility of understanding crime rates of specific groups in society, in order to focus attention on underlying problems which may require wider or preventive action. They should also encourage other organizations to take responsibility

for preventing or intervening early in situations which could be damaging for community relations.<sup>24</sup>

26. Police authorities are encouraged to create a code of practice for press officers to avoid stereotyping in press release. In some countries, journalists have agreed on such codes of practice.

27. Same police is doing the dual function of investigation and prosecution which results poor performance. Prosecution and investigation should be made separate.

28. In present system police investigates the accused police officers offence. It is not above doubt that justice fails in doing so. Investigation into accused police's offence should be made by an independent investigating department which is not obviously from police.

### **Conclusion:**

Despite providing all sorts of facilities to the police the human rights situation may not improve up to the expectation. In spite of being defender, they may be the worst violator of human rights.

Then what is solution? The ultimate answer is separation of judiciary. Until and unless Judiciary is effectively separated from the Executive (Police is also a part of executive) the violation of human rights by the law enforcing agencies will be a never-ending story at least in the context of Bangladesh. Millions of bundles of paper may be used for making articles and research monograph; series of seminar, workshop, training program may be arranged, Shima, Yasmin, Robel, Jamal, Sumon..... the procession of death in police custody will never cease to continue if separation of judiciary is not done in line with the effective implementation of all directives given by the supreme court in Mazdar Hossain Case and by bringing the necessary amendments in the Constitution.

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