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FOREWORD

Human rights as a concept are normative in essence, capturing a bundle of rights reflecting the interests most fundamental to any human being. It is not without reason that the understanding of human rights has become a critical component of modern legal systems. Human rights have experienced momentous growth during the post-World war II era. At the international, state and local levels, human rights laws, declarations, charters, and covenants have multiplied and endorsed a recurring core of rights and obligations linked to the protection of fundamental human dignity, equality and justice. Nevertheless, there has been a growing concern that simply ratifying or legislating human rights conventions and laws does not lead to the effective enjoyment of human rights in the daily lives of millions of individuals. What really is necessary are initiatives that would translate these broad and abstract human rights norms and standards into the vernacular of everyday life, transplanting these norms into ordinary human relations where they can truly achieve their transformative potential.

Human rights, in the way they have been classically captured in legal standards, protect the individual against oppression by the state. Built on the painful experiences of abuses at the hands of governments, human rights thus correspond to a series of obligations imposed upon the state, including

either duties to abstain from interfering within a protected zone shielding every individual, or duties to provide everyone with the opportunity to develop and realize their full potential. Human rights have transformed the way in which we conceive of the place of the individual within the community and in relation to the state in a vast array of disciplines, including law, politics, philosophy, sociology and geography. The published output on human rights over the last five decades has been enormous, but on the whole bound tightly to a notion of human rights that links individuals and groups directly to the state.

However, over the last two decades, there has been a gradual enlargement of the scope of human rights, moving them beyond claims against the state to contest human rights violations by non-state actors. Initially spurred by feminist critiques of the exclusion of domestic violence as a human rights concern, a move to reinterpret human rights has meant that more and more rights can be claimed to protect victims from abusers which have no relation to the state. Examples include the rise of individual criminal responsibility for war crimes and crimes against humanity. Such application of human rights nevertheless by and large remained anchored in a positivist understanding of law, calling for the state to remain centrally involved as arbiter or enforcer. This has been, till date, the prevailing view with regard to civil and political rights as well as rights popularly defined as “group rights” (e.g. women rights, child rights, rights of the excluded communities etc.).

The situation is somewhat more complicated with regard to economic, social and cultural rights (ESC rights). Economic and social rights are increasingly under threat worldwide as a result of government retrenchment in social spending for both pragmatic and philosophical reasons. Government indebtedness increased rapidly during the 1980s and early 1990s, and the response was to cut deeply into social programmes. And further government retrenchment would seem inevitable in the coming decade, as the recession- and the massive stimulus spending to counter it- has pushed governments back into deficit positions. In many countries, the earlier cuts in social programmes were imposed by the international financial institutions (notably the IMF and the World Bank) through structural adjustment programmes that became part of every loan package. The cumulative effect of these changes on the social safety net as a whole compounded the effect of cuts to individual strands.

Philosophically, a neoliberal, or market-based, approach to governance has been promoted by international lending institutions and others since at least the late 1980s, and is now followed in many countries including in Bangladesh. The effect of this two-pronged approach- imposing social spending cuts in the context of a market-based governance strategy- on the economic and social rights of the most vulnerable is increasingly questioned. But how to protect economic and social rights is difficult to conceptualise, as their legal effect is a matter of debate. The debate focuses mainly on the *recognition* of rights (i.e. their source and

content) and their *enforcement* (i.e. justiciability), and the relationship between the two. However, this focus tends to have an interim step, that of the *implementation* of rights.

ESC rights are recognized, either explicitly or implicitly, at both the international and domestic levels. Explicit recognition is found in a variety of international instruments ranging from hard- law treaties through to soft-law documents. Treaty examples of recognition of such rights include, at the universal level, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and, at the regional level, the *European Social Charter.*

Implicit recognition occurs through a process by which economic and social rights are "read into" international instruments dealing with civil and political rights. This is notably the case with the *European Convention on Human Rights,* where for example, the right to adequate housing has been read into the right to protection against inhuman and degrading treatment and the right to respect for private and family life. It is also the case with the *African Charter on Human and People's Rights,* where a right to housing or shelter has been read into the combined effects of the rights to property, health and protection of the family.

ESC rights are also recognized explicitly and implicitly at the domestic level. This recognition is strongest when it is found in constitutional documents, as in the 1996 South African constitution, but it might also be found in ordinary legislation although this is more vulnerable to changing

political agendas. A recent legislative example is France's *Loi instituant le droit au logement opposable,* which recognizes a right to "decent and independent" housing guaranteed by the State and enforceable by mediation and court action.

"Reading in" also occurs at the national level, either constitutionally as in India where a right to adequate housing has been read into the constitutional guarantees of the right to life and mobility rights, or legislatively as in the United Kingdom where the Human Rights Act gives domestic effect to the European Convention.

These legal regimes- international and domestic- can and often do intersect in two different ways. A first is in regard to content, as international rights are often incorporated into domestic legislation either by reference to the international instrument or in identical or substantially similar terms to it. A second is in regard to enforcement, as domestic courts often have regard to international instruments either to enforce them directly in monist jurisdictions where this is permitted or to use them as aids in interpreting and applying domestic rules in dualist jurisdictions where direct enforcement is not permitted.

The enforcement of ESC rights is hotly contested and is intertwined with the issue of recognition. Rights are often regarded in black and white terms, as being either fully justiciable or simply aspirational. Because economic and social rights are justiciable with difficulty at best, they are

often placed in the aspirational category and thus not recognized as “rights”.

The justiciability of ESC rights is questioned on the grounds that they are too vague to have clear legal content, too costly to implement and thus too political for judicial decision, and too positive to be amenable to court supervision. These are the reasons why ESC rights are recognized e.g. “to the extent provided by law”. And these are the reasons why both the ICESCR and the European Social Charter were, for so long, monitored through state reporting procedures rather than complaints procedures like their sister treaties, the ICCPR and the European Convention on Human Rights.

The U.N. Committee on Economic, Social and Cultural Rights (CESCR), the monitoring body of the ICESCR, has responded to the enforcement critique in a number of ways. One response has been to modify the enforcement mechanisms so that judiciarisation can now be said to be supplementing dialogue. One change was to sharpen the reporting system itself to make it more adversarial in nature. It did this by encouraging the submission of “shadow reports” from national non-governmental organizations and by issuing rather pointed public “Concluding Observations” on the individual national reports.

A second response has been to counter the objection of vagueness by issuing a number of documents clarifying the content of rights. In this vein, the Committee has issued *General Comments* on various rights guaranteed in the

ICESCR; it has had *Special Rapporteurs* named to study particular rights; and it has held "days of general discussion" on individual rights.

A third response has been to address justiciability arguments based on cost and positive nature by clarifying the nature of State obligations under the Covenant. In its General Comment No.3, the Committee defined them as comprising obligations to take steps towards *realizing* the rights (albeit progressively), to avoid any unjustifiable backsliding (i.e. deliberately regressive measures) in their realization, and to assume a minimum core obligation in regard to each right. The Committee has also endorsed a "typology" of State obligations which disaggregates them into (1) the obligation to respect (i.e. to refrain from interfering with the rights of individuals), (2) the obligation to protect (i.e. to protect individuals from interference with their rights by others), and (3) the obligation to *fulfill* (i.e. to provide the object of the right, such as adequate food or housing etc.).

This well-known typology goes some way to responding to objections of justiciability: an obligation to respect is essentially negative in nature and does not require the use of State resources, an obligation to protect might require State action (such as adopting legislation) but does not place undue strain on State resources; it is only the obligation to fulfill that raises the two obligations – costliness and positive nature – most acutely.

Another way of phrasing the Committee's typology is in terms of State roles rather than State obligations. In this way, the obligations to respect, protect and fulfill suggest that the State can play a negative role as perpetrator of a violation of a right, and positive roles as enabler and a provider of the subject of a right. A focus on the roles played by a State emphasizes the implementation of rights. It also provides a framework through which to analyse rights in a disaggregated way.

The notion of indivisibility of human rights and their universality make it almost absurd to erect any artificial glass wall between civil and political rights on one hand and the ESC rights on the other. Additionally, this unnecessary and ill-conceived debate creates an environment where in the danger of diluting the significance and immediate nature of the ESC rights looms large. The National Human Rights Commission, Bangladesh (NHRC) deems its statutory obligation to closely monitor and report back to the government on the status of state compliance with international human rights treaties and conventions at least to the extent signed and ratified by Bangladesh. It is in this connection that the NHRC has undertaken a project to review the status of a number of international human rights instruments ratified by Bangladesh. The first in this sequel are compliance status reports on ICCPR, CAT, ICESCR, CEDAW, Convention on the Rights of the Persons with Disabilities (CRPD) and an Analysis of decisions on Arrest and Detention and Women Rights, etc. On the basis of these

studies the NHRC would like to make concrete recommendation to the government directed towards improving the human rights situation in the country by way of implementation of its international obligations.

It is quite significant that most of the civil and political rights under the ICCPR have been guaranteed in the Constitution of Bangladesh as fundamental rights. Bangladesh has also acceded to the ICCPR in 2000. However, Bangladesh has made some reservations and declarations to the ICCPR to limit the application of ICCPR.

Similarly, Bangladesh has ratified ICESCR in 1998 along with some other instruments in recognition of its constitutional commitment to human rights. However, our review study reveals that the country remains far behind in realization of the rights and fulfillment of obligations under ICESCR. Government is yet to undertake adequate legal framework and necessary administrative measures for adequate realization of ESC rights. Reservations made by Bangladesh to some important provisions of the Covenant also have severely limited its implementation at the domestic level.

Identical problems of either making reservations to certain fundamental provisions of other international Conventions to which Bangladesh is a party or not signing the Optional Protocol/s to many of these international human rights instruments have cast some doubts about the otherwise honest intention of the government to improve the human rights situation in the country.

It is believed that this series of review studies conducted by the NHRC will reveal truths, both known and unknown, about impediments to proper implementation of international legal obligations with regard to human rights in Bangladesh. These 'truths' will have real meaning only when they are heeded to and concrete actions taken by all stakeholders, primarily the Government, to rectify the loopholes, remove the obstacles and create an enabling atmosphere where the 'dignity and worth' of every individual will be protected in all its dimensions.

The NHRC will continue to play its expected role in this direction.

Professor Dr. Mizanur Rahman Dhaka, January, 2013
Chairman
National Human Rights Commission, Bangladesh

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LIST OF ABBREVIATIONS

AC	Assistant Commissioner
ACAT	Convention Against Torture
Cr. P.C.	Code of Criminal Procedure
DGFI	Director General of Foreign Intelligence
DB	Detective Branch
DMCH	Dhaka Medical College Hospital
ICCPR	International Covenant on Civil and Political Rights
NSI	National Security Intelligence
PIL	Public Interest Litigation
RAB	Rapid Action Battalion

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ABSTRACT

Arbitrary arrest, detention and custodial torture by law-enforcing agencies have remained a persistent feature of our criminal justice system. These practices have been widespread in Bangladesh irrespective of the forms of government and successive governments have failed to stop this endemic problem. Arbitrary arrest, detention and infliction of torture are unacceptable in any form of government that is committed to democracy and the rule of law. Despite the legal and constitutional provisions against arbitrary arrest and detention, the practice of arbitrary arrest, detention and torture is rampant in Bangladesh. Against this background, the higher judiciary in Bangladesh has taken a proactive stand in prevention of arbitrary arrest, detention and torture and delivered a number of guidelines in some Public Interest Litigation (PIL) cases for initiating legal reform by the government.

Introduction

Amongst the national institutions, the judiciary always comes in the forefront of the national systems for the protection of human rights. One of the main functions of the judiciary is to protect human rights guaranteed in constitutions and laws. In protecting human rights, the function of the judiciary is to oversee the way in which the diverse powers of government are exercised within the framework of laws and a set of

values, and to protect individuals from arbitrary governmental action.[1] The judiciary can promote and protect human rights in several ways:

- Using the doctrine of constitutional supremacy enshrined in the Constitution of Bangladesh.
- Enforcing fundamental rights in the constitution through judicial review.
- Upholding the procedural safeguards in the criminal justice system. The judiciary has a traditional duty to protect procedural safeguards in two areas: protection of procedural safeguards of accused against arbitrary deprivation of his rights and liberties in the case of preventive detention and secondly ensuring fair trial in criminal proceedings.
- Applying international human rights norms to fill the gap in the national legal system. National judiciaries around the world are increasingly applying international human rights law as the customary norm to fill in gaps or inadequacies of domestic laws.[2] In

[1] Ch. Perelman, 'The Safeguarding and Foundation of Human Rights', Journal of Law and Philosophy, Vol. 1 (1982), pp. 119-129.

[2] See, M. Shah Alam, 'Enforcement of International Human Rights Law by Domestic Courts in the United States', Golden Gate University School of Law, Vol. 10, (2004), pp. 27-52; Ridwanul Hoque and Mostafa Mahmud Naser, 'The Judicial Invocation of International Human Rights Law in Bangladesh: Questing a Better Approach', Indian Journal of International Law, Vol. 46, No.2 (2006), pp. 151-186; B. Conforti and F. Francioni, Enforcing International Human Rights in Domestic Courts, The Hague, Martinus Nijhoff, (1997).

Bangladesh, judicial invocation of human rights norms is also increasingly gaining ground as an instrument of filling the inadequacies in domestic law on human rights norms, as well as an interpretative tool of domestic laws or fundamental rights under the Constitution.

- Allowing Public Interest Litigation (PIL) as a means of protection of collective rights of poor and under-privileged groups of people.[3] Over the last decade, the judiciary of Bangladesh has allowed PIL in a significant number of cases involving wide ranging issues of collective interest, to bring justice and ensure fundamental rights to underprivileged sections of the society.

The aim of this study is to analyse the past decisions of higher judiciary in the field of arrest, detention and torture.

Methodology of the Study

This study is based on an analytical approach and critical appraisal of judicial decisions of the Supreme Court of Bangladesh. For the purpose of the study, relevant judicial decisions have been collected from various sources and analysed to identify the main trends on the issue. The study has also reviewed the existing legal framework on arrest, detention and torture under both national and international law.

[3] See, Jeremy Cooper, 'Public Interest Law Revisited', Bangladesh Journal of Law, Vol. 2, No.1, (1998), pp. 1- 25.

Context of the Study

Arbitrary arrest, detention and custodial torture by law-enforcing agencies have remained a persistent feature of our criminal justice system.[4] These practices have been widespread in Bangladesh irrespective of the forms of government, and successive governments have failed to stop this endemic problem. Custodial torture is typically committed by different state agencies-law enforcing, intelligence and security agencies, which include police[5] , army, para-military forces, coast guard, navy forces, prison officers and security agencies such as the National Security Intelligence (NSI) and Director General of Foreign Intelligence (DGFI). Usually, the venue of custody is the police station. But arrested persons are also frequently taken to the cantonment, or to unknown locations for interrogation by police-army joint cells, which is clear violation of law.[6] Arbitrary arrest, detention and infliction of torture are unacceptable in any form of government that is committed to democracy and the rule of law.

[4] See, 'RAB: Stop Terrorism or Terrorism by the State', a publication of Ain-o-Shalish Kendra, Dhaka, (2008) available at http://www.askbd.org/RAB/RAB_eng.htm

[5] The police force comprises of various investigation agencies, such as the Central Investigation Department, Special Branch (SB), and Detective Branch (DB), and RAB.

[6] See reports titled "The Fear Never Leaves Me" Custodial Deaths, Torture and Unfair Trials after the 2009 Bangladesh Rifles Mutiny', Human Rights Watch, Washington D.C., (2010),;Torture: Beyond Rule of Law, www.drishtipat.org/blog/2008/06/26/ torture/ (last visited on 26/06/2008).

Legal Framework on Arrest, Detention and Torture

Section 54 and 167 of the Code of Criminal Procedure, 1898, gives wide powers to the police to arrest a person without warrant on reasonable suspicion. The phrase 'reasonable suspicion' is not defined and as such creates ample scope for misuse by police. In Bangladesh, custodial confessions are outlawed unless made to a Magistrate and then, if an accused states that he is unwilling to make a confession, he must be sent only to judicial custody if not released.[7] According to Section 27 of the Evidence Act, a statement made by the accused in police custody that leads to the recovery of incriminating information is, when it is found to be true, admissible in court. This provision enables law enforcement officials to use material evidence obtained through torture[8]. There is a widespread belief that most of the information and confessions extracted during remand are not voluntary. The involuntary means for extracting confession goes against Article 35(4) of the Constitution, which makes provision against self-incrimination and Article 35 (5) which provides that "No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment." In many incidents, however, victims died after arrest even before they were produced before the courts as

[7] Section 162. 164 Cr. P.C. and Sections 25 and 26 Evidence Act.

[8] Lutz Oette, 'Torture in Bangladesh 1971-2004, Making International Commitments A Reality and Providing Justice and Reparations to Victims, August 2004', A Study prepared for Redress.

required by Article 33 of the Constitution and Section. 61 of Cr. P.C. Many detainees are also deprived of the right to consult lawyers and to see relatives despite the court orders for the same.

There are a number of special criminal laws which also contribute to a culture of arbitrary arrest, detention and torture. The most infamous piece of special law is the Special Powers Act, 1974 under which a person can be 'preventively detained' by the executive, i.e., detained to prevent that person from committing any prejudicial act, which the administration deems detrimental to the interest of the state. The most important power conferred by this Act is that a person can be detained if the government 'suspects' that he is about to commit a 'prejudicial act', though the individual has not yet committed such an act. It is common for persons arrested under Section 54 of the Code of Criminal Procedure are later charged under the Special Powers Act 1974.

The Constitution of Bangladesh adheres to the protection and respect for fundamental human rights, equality and due process of law to establish a just society. The most important constitutional safeguards as to arrest and detention are incorporated in Articles 27, 31, 33 and 35 of the Constitution. An aggrieved person can file a writ petition under Article 102 of the Constitution of Bangladesh. While Article 27 guarantees the right to equality and equal protection of law, Article 31 provides that all citizens have the inalienable right to be treated only 'in accordance with law'. Article 33 of the

Constitution of Bangladesh provides four fundamental freedoms or safeguards upon a person arrested under ordinary law.

- he cannot be detained in custody without being informed of the charge against him/her as soon as may be, of the grounds of his arrest (re-phrase);
- he must be given the right to consult and to be represented by a lawyer of his own choice;
- he has the right to be produced before the nearest magistrate within 24 hours of his arrest; and
- he cannot be detained in custody beyond the period of 24 hours without the authority of the magistrate.

Similar safeguards can be found in several provisions of the Cr. P.C. Section 60 of the Cr. P.C provides that a police officer arresting a person must produce him before the Magistrate having jurisdiction. Section 61 provides that a police officer must not detain an arrested person for more than twenty four hours without the authority of a magistrate. The other two guarantees are absent in the Cr. P.C. But these constitutional and legal safeguards are honoured more in the breach than their observance.

International Legal Obligations of Bangladesh

Bangladesh has ratified or acceded to a number of international human rights instruments that prohibit

arbitrary arrest, detention and torture. Bangladesh acceded to the International Covenant on Civil and Political Rights (ICCPR, 1966) in 2000. It includes the right to life, including restrictions on the circumstances in which capital punishment may be imposed (Article 6). To protect this right, a State must provide legal protection at both state and individual levels. Thus, a State must take measures to prevent arbitrary state killings as well as arbitrary killings by individuals. It also prohibits torture (Article 7). The ICCPR also makes provision for prohibition of arbitrary arrest or detention (Article 9(1) and provides some rights upon arrest or detention. The rights of persons who are arrested or detained include the right to be informed of the reason for an arrest and of any charges; to be brought promptly before a judicial officer; to be tried within a reasonable time; to take proceedings before a court to have the lawfulness of an arrest or detention determined without delay; to obtain compensation if unlawful arrest or detention is established.

However, Bangladesh made some reservations and declarations to the ICCPR to limit its application. For example, Bangladesh has made a Declaration on Article 10, 11 and 14. The Declaration provides that so far as the first part of paragraph 3 of Article 10 relating to reformation and social rehabilitation of prisoners is concerned, Bangladesh does not have any facility to this effect on account of financial constraints and for lack of proper logistical support. But the last part of this paragraph relating to segregation of juvenile offenders from adults is a legal obligation under Bangladesh law and is followed accordingly.

The Declaration on Article 11 stating that "no one shall be imprisoned merely on the grounds of inability to fulfil a contractual obligation," is generally in conformity with the Constitutional and legal provisions in Bangladesh, except in some very exceptional circumstances, where the law provides for civil imprisonment in case of wilful default in complying with a decree. The Government of Bangladesh will apply this article in accordance with its existing municipal law.

The Declaration on Article 14 provides that so far as the provision of legal assistance in paragraph 3(d) of Article 14 is concerned, the Government of Bangladesh, notwithstanding its acceptance of the principle of compensation for miscarriage of justice, is not in a position to guarantee comprehensive implementation of this provision for the time being. However, the aggrieved has the right to realise compensation for miscarriage of justice by separate proceedings and in some cases, the court *suo moto* grants compensation to victims of miscarriage of justice. Bangladesh, however, intends to ensure full implementation of this provision in the near future. Bangladesh has also made reservation to paragraph 3 (d) of Article 14 which prohibits trial in *absentia.* Thus, in Bangladesh, a person can be tried in his absence, if he is a fugitive offender.

Torture is absolutely prohibited under international human rights law. The Prohibition of torture and ill-treatment is one of the core norms of international human rights law. Torture is prohibited in the Universal Declaration of Human Rights,

(UDHR) 1948, the Convention against Torture, (CAT) 1984, and the International Covenant on Civil and Political Rights, (ICCPR) 1966. Moreover, the Geneva Convention, 1949, on humanitarian law, contains a common Article 3 which prohibits torture and other degrading treatment during an armed conflict "not of an international character."[9] Bangladesh ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, in 1996. Article 1 of the Convention defines torture as:

"... 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 he 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."

Article 2 of the Convention against Torture contains the fundamental state obligation in the following way:

"1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

[9] See Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949; Convention Relative to the Treatment of Prisoners, 1949; Convention Relative to the Protection of Civilian Persons in Times of War, 1949.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture."

Article 4 of the Convention against torture states:

Each 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. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 13 of the Convention against Torture requires that a state shall ensure that victims of torture have the right to bring a complaint and have this case promptly and impartially examined by competent authorities.

It should be emphasized that the Convention against Torture contains both negative and positive obligations. This means that State Parties must not only prohibit torture, but also implement appropriate preventive measures and ensure that victims can access effective remedies. But Bangladesh made reservation to Article 14 of the Convention against Torture which imposes obligation on State Parties to pay fair and adequate compensation to the victims.

Although Bangladesh ratified the Convention against torture, it has failed to adopt the legislation necessary to implement the same.

Judicial decisions on Arrest, Detention and Torture

Despite the legal and constitutional provisions against arbitrary arrest and detention, the practice of arbitrary arrest, detention and torture is rampant in Bangladesh. Fortunately, the higher judiciary in Bangladesh has taken a proactive stand in prevention of arbitrary arrest and detention and protection of people from torture. The most important judicial decision in this regard in recent years is **BLAST vs. Bangladesh.**[10]

In **BLAST(Bangladesh legal Aid and Services Trust) vs. Bangladesh,** Shamim Reza Rubel, a university student was picked up by the Detective Branch (DB) of the police on 23 July 1998 from in front of his house on Siddeswari Road in Dhaka at 4.30 p.m. and he was severely beaten. Shamim was pronounced dead at the emergency section of DMCH by doctors at 9-45 p. m. on the same day. He was brought by a group of plain clothes men who identified themselves as members of the DB. A hospital official said the dead body was not registered. The witnesses also said police were asking Shamim to say that he had illegal arms in his possession. The killing of Shamim by the DB of the police

[10] 55 DLR (HCD) (2003) 363

caused a public outcry and got huge media coverage. As a result of wide publicity of the death of Shamim, there was an investigation. There was a post-mortem and after investigation, charges were brought against the accused persons under section 302 of the Penal Code. It was found that AC Akram, an officer of the Detective Branch, in association with some other officers, brutally tortured the victim, which caused his death. After the trial, the accused was convicted and sentenced to imprisonment for life.

The High Court Division also provided interpretation of several provisions of the Cr. P. C. relating to arrest and detention and issued some guidelines. The court held that the word 'concerned' is a vague word, which gives unhindered power to a police officer to arrest any person. The Court observed that in order to safeguard the life and liberty and to limit the power of the police, the word 'concerned' is to be substituted by any other appropriate word. The Court developed a list of guidelines on the use of arrest and detention that are discussed later.

In **ASK (Ain 0 Salish Kendra) vs. Bangladesh and others**[11], the unlawful detention of the prisoners languishing in Dhaka Central Jail, despite having served out their terms of conviction, was challenged. According to law, after pronouncing conviction, the court will send the conviction warrant to the jail authority. But due to negligence of court staff and jail authorities, the said conviction warrants did not reach the jail and many prisoners could not be released from

[11] 57 DLR (HCD)

jail, even after serving out their terms of conviction. The Court issued a rule nisi upon the respondents on April 16, 2005 to show cause as to why the continued detention of the persons in Dhaka Central Jail, in violation of their fundamental rights as guaranteed under Articles 31, 32, 35 (1) and 36 of the Constitution, and in spite of serving out the terms of their respective sentences, should not be declared to be without lawful authority and why an independent commission should not be appointed to conduct an inquiry into the matter. The Court also directed the respondents to submit a list of such prisoners. The Jail authority submitted the report and the case is still pending for final hearing.

There are numerous reports of cases of extra-judicial killings allegedly committed by law enforcement agencies. Persistent abuse of power and authority by the law enforcing agencies resulting in extra-judicial killing of the citizens, in the name of cross-fire/encounter, constitutes a gross violation of fundamental rights guaranteed by the constitution of the People's Republic of Bangladesh. In the case of **ASK, BLAST and Karmojibi Nari Vs. Bangladesh** and others, the court issued a Rule Nisi returnable within four weeks on 29.06.2009 calling upon the respondents to show cause as to why the extra-judicial killing, in the name of cross-fire/encounter by the law enforcing agencies, should not be declared to be illegal and without lawful authority and why the respondents should not be directed to take departmental and criminal action against persons responsible for such killing.

Abuse and custodial torture and killing by the special forces like the RAB also remains virtually unchallenged, precisely because victims or relatives of victims are intimidated, or because of the reluctance of the police to accept a case against members of such special forces.[12] Only in a few instances, the High Court issued Rules to protect the rights of persons taken into custody by the RAB. In one incident, the High Court Division of the Supreme Court of Bangladesh issued a suo motu Rule against the RAB on the basis of a report published in the Bangla Daily Janakantha dated 24 July 2006 that one Kishore Kumar, a garage worker, was arrested by the RAB from his house in Jessore and his whereabouts were not known to his relations. Human Rights and Peace for Bangladesh (HRPB), a human rights organization, appearing as intervenor in the case, submitted that despite the fact that there was a provision in the Cr. P.C. for producing a citizen before a court within 24 hours of arrest, the police and the RAB personnel had not observed this in many cases.[13] The High Court Division directed the law enforcing agencies, especially the RAB, to follow the Cr. P.C. provisions in the case of the arrest of any citizen. In another instance, on the basis of a public interest writ petition filed by Human Rights and Peace for Bangladesh (HRPB), the High

[12] See, Mehedi Murder- 'Case against RAB in Barisal refused', The Daily Star, November 07, 2004 available at: www.thedailystar.net/2004/11/07/d41107012319.htm, 'Khilgaon Police refuse to take against RAB: Sumon's family', UNB, 4th June, 2005.

[13] Adeeba Aziz Khan, 'Right to Freedom from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,' in: Human Rights in Bangladesh 2006, A publication of ASK, Dhaka, 2007, p. 49.

Court Division issued a Rule against the RAB to show cause as to why they should not be directed to ensure the safety and security of persons detained in the RAB's custody.[14]

Despite the High Court's ruling, the use of torture in custody of the RAB continues unabated as most of the incidents are not challenged in court due to the official impunity they enjoy.

The survey of this case and other judicial decisions reveals that the following broad issues can be identified:

Interpretation of ' Reasonable suspicion: Under section 54 of Cr. P. C., a police officer can arrest any person who has been concerned in any cognisable offence, against whom credible information has been received or against whom a reasonable suspicion exists of having been so concerned in any cognisable offence. Here the words 'concerned' and 'credible' or 'reasonable' information under section 54 of the Cr. P.C. are frequently invoked as grounds for police arrest without warrant. But in the absence of guidelines as to what constitutes 'concerned; 'credible' or 'reasonable information', the section provides ample scope for misuse. The judiciary scrutinized the meaning of 'concerned' 'credible' or 'reasonable information' in several pronouncements.

In Saifuzzaman vs. State[15] the Supreme Court held that what is a "reasonable suspicion" must depend upon the

[14] Ibid, p. 50.

[15] 56 DLR 324

circumstances of each particular case, but it should be at least founded on some definite fact tending to throw suspicion on the person arrested and not on a mere vague surmise.

The court also observed:

> *"The 'reasonable suspicion' and 'credible information' must relate to definite averments, which must be considered by the police officer himself before he arrests a person under this provision. What is a 'reasonable suspicion' must depend upon the circumstances of each particular case, but it should be at least founded on some definite fact tending to throw suspicion on the person arrested and not on a mere vague surmise.*
>
> *The words 'credible' and 'reasonable' used in the first clause of Section 54 must have reference to the mind of' the person receiving the information which must afford sufficient materials for the exercise of an independent judgment at the time of making the arrest. In other words, the police officer upon receipt of such information must have definite and bona fide belief that an offence has been committed or is about to be committed, necessitating the arrest of the person concerned. A bare assertion without anything more cannot form the material for the exercise of an independent judgment and will not therefore amount to credible information."*

In **Alhaj Md. Yusuf Ali vs. The State**[16]**,** the High Court Division interpreted 'reasonable suspicion' in exercising power under section 54, as a bona fide belief on the part of the police officer that an offence has already been committed or is about to be committed. The Court further held that a police officer arresting a person unjustifiably or otherwise than on reasonable grounds and bona fide belief renders himself liable for prosecution under section 220 of the Penal Code. In **BLAST vs. Bangladesh**, the court held:

> "...Use of the expression 'reasonable suspicion' implies that the suspicion must be based on reasons and reasons are based on existence of some fact which is within the knowledge of that person. So when the police officer arrests a person without warrant, he must have some knowledge of some definite facts on the basis of which he can have reasonable suspicion."

Limitation on Magisterial Power of Remand: Considering the fact that torture is a routine matter in police remand of accused, the judiciary has ruled against frequently ordering remand by police, to prevent its abuse. In a recent case of **Ain-o-Salish Kendra vs Bangladesh,**[17] the accused Shaibal Saha Partha was apprehended by plain clothes police, and after four days he was produced at a police station. The accused was taken on remand by the police on two occassions but no confession could be recorded from him.

[16] 22 BLD (2002) 231.

[17] 56 DLR (2004) (HCD) p. 620.

Thereafter, Partha was also shown arrested in a bomb blast case and in connection with that case, the accused was once again taken on police remand. The court held that the accused had already been remanded in custody twice, by the police, yet there is nothing before the court to show the outcome of such remand. The court directed respondents not to go for further remand of the accused and in the case of the ongoing remand, he should not be subjected to physical torture of any kind. In the case of **Hafizuddin vs. the State,**[18] the Magistrate did not issue warnings before recording confessions and did not give time for reflection. In this case, the Magistrate was held liable for failing to inform the accused that they would not be sent to police custody after making confessional statements.

In the case of **State vs Abul Hashem**[19] the court held that when the accused was kept in police custody for two days, it was the duty of the Magistrate,who recorded their confession, to put questions as to how they were treated in the police station, why they were making confessions and that if they made a confession or not, whether they would be remanded in police custody. Further, it is found in the record that the Magistrate did not inform the accused persons that he was not a police officer but a Magistrate. The Court held:

> *"On scrutnity, we find in the record that magistrate sent the accused persons to the police custody after*

[18] 42 DLR (1990) (HCD)p. 397.

[19] 50 DLR (1998)(HCD) p 17.

recording their confessional statements. Therefore, we find the Magistrate had no idea or acumuen that it was his legal duty to remove the other, inducement and influence of the police completely from the mind of the accused before recording their confession. So therefore, we hold that the confessions made by the accused cannot be considered either against the maker or against their co-accused."

Change in Burden of Proof: Since, in most cases, acts of torture by police are carried out as far as possible without any evidence, it is very difficult to hold the offending police officer accountable due to lack of witnesses. The High Court Division in **BLAST vs. Bangladesh** observed that if death takes place in police custody or jail, it is difficult for the relation of the victim to prove who caused the death. Therefore, the High Court Division recommended a change in the burden of proof in cases of torture in police custody, by amending the relevant provisions of the Evidence Act, 1872. The High Court Division drew an analogy from its decisions on wife killing cases. In the last couple of years, in wife-killing cases, the higher judiciary of Bangladesh took the position that the burden of proof can be shifted onto the accused husband to prove the circumstances of his wife's death, if at the time of her death, she was in the custody of the husband.[20]

[20] See, State vs. Md. Shafiqul Islam alias Rafique and another, 43 (1991) DLR (AD) 92; State vs. Khandhker Zillul Bari 57 (2005) DLR(AD) 29; Shahjahan Mizi vs. State,57 (2005) DLR (HCD) 224; Shamsuddin vs State, 45 (1993) DLR (HCD) 587.

Judicial Guidelines on Prevention of Arbitrary Arrest, Detention and Torture

Over the last years, the High Court Division delivered several judgements where the Government has been directed to amend legislation facilitating torture and follow guidelines in dealing with arrested persons to restrain police power.

The judgements in **BLAST vs Bangladesh and Saifuzzaman vs. State** are the most important judicial pronouncements, which provide some important recommendations for amendments of relevant laws, and contain directions to reduce the scope and possibility of the abuse of police power. Although the guidelines and recommendations are not binding on the government, they indicate the potential areas for making necessary legal reform to address arbitrary use of arrest and detention.

The directions given in **BLAST vs Bangladesh**[21] broadly cover three important aspects of criminal proceedings:

Arrest without warrant

- No police officer shall arrest a person under Section 54 of the Cr. P.C. for the purpose of detaining him under Section 3 of the Special Powers Act, 1974.

[21] See for detailed discussion on the judgement of BLAST vs. Bangladesh, 'Seeking Effective Remedies: Prevention of Arbitrary Arrests and Freedom from Torture and Custodial Violence', A Publication of Bangladesh Legal Aid Services Trust, Dhaka, 2005.

- A Police officer shall disclose his identity and if demanded, shall show his identity card to the person arrested and to the persons present at the time of arrest.
- He shall record the reasons for the arrest and other particulars in a separate register till a special diary is prescribed.
- A police officer shall furnish reasons of arrest to the detained person within three hours of bringing him to the police station.
- An arrested person should be allowed to consult a lawyer of his choice or meet his relatives.
- If a police officer finds any marks of injury on the person arrested, he shall record the reasons for such injury and shall take the person to the nearest hospital or Government doctor for treatment and shall obtain a certificate from the attending doctor.
- If the person is not arrested from his residence or place of business he shall inform a relation of the person over the phone, or through a messenger, within one hour of bringing him to the police station.

Guidelines on Accountability of Police Officers

- When a detained person is produced before the nearest Magistrate under section 61, the police officer shall state in his forwarding letter under section 167 (1) of the Code as to why the investigation could not be

completed within twenty four hours and why he considers that the accusation or the information against that person is well-founded.

- If the Magistrate releases a person on the grounds that the accusation or the information against the person produced before him is not well-founded and there are no materials in the case diary against that person, he shall proceed under section 190(1)(c) of the Code against that police officer who arrested the person without warrant for committing offence under section 220 of the Penal Code.

Guidelines on Remand

If the Magistrate is satisfied on consideration of the reasons stated in the forwarding letter as to whether the accusation or the information is well-founded and that there are materials in the case diary for detaining the person in custody, the Magistrate shall pass an order for further detention in jail. Otherwise, he shall release the person forthwith.

- If the Magistrate passes an order for further detention in jail, the Investigating officer shall interrogate the accused, if necessary for the purpose of investigation, in a room in the jail till the room as mentioned in recommendation B(2)(b) is constructed.
- In the application for taking the accused into police custody for interrogation, the investigating officer shall state reasons as mentioned in recommendation B(2)(c).

- If the Magistrate authorizes detention in police custody he shall follow the recommendation contained in recommendation B(2)(c)(d) and B(3)(b)(c)(d).
- The police officer of the police station who arrests a person under Section 54 or the Investigating officer who takes a person in police custody or the jailor of the jail as the case may be, shall at once inform the nearest Magistrate as recommended in recommendation B(3)(e) of the death of any person who dies in custody.
- A Magistrate shall inquire into the death of a person in police custody or in jail immediately after receiving information of such death.

The court directed the Government to implement the recommendations made above within six months from the date of the judgment.

This judgment made detailed recommendations for the necessary amendments to the relevant sections of the Code of Criminal Procedure, 1898, the Penal Code, 1860 and the Evidence Act, 1908 to ensure that the directions, guidelines and safeguards enunciated in the judgment are strictly followed as a matter of law. The judgment made a total of seven sets of recommendations

In **Saifuzzaman V State**[22]**,** the High Court Division took notice of the severe violation of the fundamental rights of the

[22] 56 DLR 324.

citizens by police, and failure of the Magistrate in acting in accordance with the law. SK Sinha J. observed that:

> *"There are complaints about violation of human rights because of indiscriminate arrest of innocent persons by law enforcing agencies in exercise of power under section 54 of the Code and put them in preventive detention on their prayer by the authority and sometimes they are remanded to custody of the police under order of the Magistrate under section 167 of the Code and they are subjected to third degree methods with a view to extract confession. This is what is termed by the Supreme Court of India as 'state terrorism' which is no answer to combat terrorism."*

The Division Bench in this case issued eleven guidelines to the police and magistrates as to arrest, detention and remand of suspects. However, these guidelines are not binding on the relevant authorities.

Guidelines on Arrest

- The police officer making the arrest of any person shall prepare a memorandum of arrest immediately after the arrest and such officer shall obtain the signature of the arrestee with the date and time of arrest in the said memorandum.
- The police officer who arrested the person must intimate to a nearest relative of the arrestee and in the absence of the relative, to a friend to be suggested by the arrestee, as soon as practicable but not later than

6(six) hours of such arrest notifying the time and place of arrest and the place of custody.

- An entry must be made in the diary as to the grounds of arrest and name of the person who informed the police to arrest the person or made the complaint along with his address and shall also disclose the names and particulars of the relative or the friend, as the case may be, to whom information is given about the arrest and the particulars of the police officer in whose custody the arrestee is staying.
- Copies of all the documents including the memorandum of arrest, a copy of the information or complaint relating to the commission of cognizable offence and a copy of the entries in the diary should be sent to the Magistrate at the time of production of the arrestee for making the order of the Magistrate under section 167 of the Code.
- The Magistrate shall not make an order of detention of a person in judicial custody if the police forwarding the report disclose that the arrest has been made for the purpose of putting the arrestee in preventive detention

Guidelines on Remand

- If the arrested person is taken on police remand, he must be produced before the Magistrate after the expiry of the period of such remand and in no case shall he be sent to the judicial custody after the period

of such remand without producing him before the Magistrate.

- Registration of a case against the arrested person is sine-qua-non for seeking the detention of the arrestee either to the police custody or in the judicial custody under section 167(2) of the Code.
- If a person is produced before a Magistrate with a prayer for his detention in any custody, without producing a copy of the entries in the diary as per item No (iv) above, the Magistrate shall release him in accordance with section 169 of the Code on taking a bond from him.
- If a police officer seeks an arrested person to be shown arrested in a particular case who is already in custody, the Magistrate shall not allow such a prayer unless the accused/arrestee is produced before him with a copy of the entries in the diary relating to such case.
- If the investigation of the case cannot be concluded within 15 days of the detention of the accused under section 167(2), the Magistrate having jurisdiction to take cognisance of the case or with the prior permission of the Judge or Tribunal having such power can send such accused person on remand under section 344 of the Code for a term not exceeding 15 days at a time.

- It shall be the duty of the Magistrate, before whom the accused person is produced, to satisfy that these requirements have been complied with before making any order relating to such accused under section 167 of the Code.

The court ordered that these guidelines should be forwarded to the Secretary, Ministry of Home Affairs, Chief Metropolitan Magistrates and District Magistrates and ordered that every police station should comply within 3 months from that date. The Registrar, Supreme Court of Bangladesh, was directed to circulate the requirements as per direction made above. The court also directed that if the concerned police officers and the Magistrates fail to comply with the above requirements, within the prescribed time, they will be rendered liable to be punished for contempt of Court, if any application is made by the aggrieved person in the Court.

In this case, the High Court Division Bench also suggested amendments of the relevant sections, but unlike the BLAST case, it refrained from formulating its own amendments of the relevant provisions of law. The court clearly recognised that it could not direct the Legislature to amend the relevant laws without declaring the existing laws unconstitutional.

According to Dr.Shahdeen Malik, “These judgements, it needs to be emphasised, directed major changes in the way the police act. The police power of arrest and remand had never been scrutinised before and neither had the constitutional safeguards regarding arrest and detention of

the Constitution been brought to bear upon these powers of police. In such a long-standing practice of unfettered power, these two judgements laid down very exacting details regarding what police can and must do in effecting arrest and asking for remand."[23]

Decisions on Arbitrary Arrest, Detention and Torture of Women and Children

Women and children - their position in the class hierarchy coupled with their economic condition categorizes them as one of the most vulnerable sections of society. Women fall victim to torture in different ways. Women are manifestly subjected to discrimination and exploitation of various forms. Prevailing discriminatory practices and cultural attitudes perpetuate gender based violence against women. It is now recognised that the gender specific violence falls within the definition of torture. Custodial rape and death has been a serious problem that has been brought to people's attention by the media. The stigma attached to rape and other forms of sexual harassment inhibits many women from making complaints against the police. Children in custody are also sometimes subjected to various forms of institutional violence.[24] Section 6 of the Children Act, 1974 provides that no child shall be charged with, or tried for any

[23] Shahdeen Malik, 'Arrest and Remand: Judicial Interpretation and Police Practice', Special Issue, Bangladesh Journal of Law, 2007, p. 289.

[24] Our Children in Jail, Violence against children: the scenario in Bangladesh, A Report of Odhikar, 2001.

offence together with an adult. If a child is accused along with an adult of having committed an offence, the case shall be separated and transferred to the Juvenile Court or the court empowered to exercise the powers of a Juvenile Court.[25] In violation of the provisions of the Children Act 1974, children are often put in cells with adults and common criminals.

The Prevention of oppression of women and children Act, 2000 deals with particular offences relating to violence against women and children. It is perhaps the only law which has a separate provision for custodial offences, in the form of a separate penal section and vicarious criminal liability when there is custodial rape[26]. Strangely, there is no separate provision on custodial violence against children. Offences under this law are tried by a Special Tribunal.[27] Significantly, this Act also recognizes the vicarious liability of other officials responsible for the woman in custody.

The Special Tribunal, established under this Act, awarded the death penalty to the three policemen accused of raping and killing Yasmin Akter in **Moinul Haque (Md.) and other vs. State[28].** This decision of the Special Tribunal was upheld by the High Court Division and subsequently by the Appellate Division of the Supreme Court. However, in another case,

[25] Sec. 8 of the Children Act, 1974.

[26] Section 9(v)

[27] Section 20 and 25 of Prevention of Oppression of Women and Children Act 2000

[28] 56DLR (AD) (2004) 81.

Shima Chowdhury, an 18 year old victim of an alleged rape in police custody in October 1996, died in Chittagong Jail where she was being held in "safe custody"[29] during an investigation in February 1997. In July 1997, four police officers accused of raping Shima Chowdhury were acquitted by a trial court in Chittagong. The prosecution was reportedly criticized by the Judge for presenting a weak case.

Recent years witnessed significant judicial intervention in order to mitigate the plight of juvenile offenders. In the case of **State vs. Md. Roushan Mondal elias Hashem[30],** the higher judiciary was dismayed over the way the lower courts deal with juvenile offenders. The higher court emphasised that young offenders should be at all times kept separate from the adult offenders from the time of their apprehension, during the trial and during confinement. Having considered relevant international instruments on child rights and juvenile justice, the court observed that the thrust of the International Declaration, Rules, Covenants and other instruments is towards the reformation and rehabilitation of youthful offenders and for the establishment of facilities for proper education and upbringing of youth. In the event that

[29] Section 31 of Prevention of Oppression of Women and Children Act, 2000- "If at any stage of the trial of an offence under this Act, the Tribunal thinks that any woman or child is needed to be kept in safe custody, the tribunal can direct to keep the women or the child, out of the jail and under the custody of a Government authority determined by the Government for this purpose or under the custody of a person or organization whom the tribunal thinks proper."

[30] 26 BLD (HCD) 2006

a child or juvenile does come into conflict with the law, the aim is to provide a system of justice which is child-friendly. Regarding juveniles who are accused of offences against or infringement of penal laws, recourse must be had to Article 40 of the Convention on the Rights of the Child, 1989. The juvenile justice system must take into account the need to respect the child's rights and the desirability of promoting the child's reintegration in society. It was noted by the court that although the Children Act of 1974 is a forward thinking piece of legislation, it falls short of international standards laid down by the relevant international instruments including the CRC. The court observed that Bangladesh, which ratified the Convention in 1990, is duty bound to reflect the provisions of the CRC in national legislation and as such it should enact a new law in conformity with the provisions of the CRC.

In 2008, the High Court Division in the case of **State vs. Metropolitan Police Commissioner,** Khulna and others issued the following directions:

- *It is the duty of this Court and all other courts as well as other state departments, functionaries and agencies dealing with children, to keep in mind that the best interests of the child must be considered first and foremost in dealing with all aspects concerning that child.*
- *The parents of the children who are brought before the police under arrest or otherwise, must be informed without delay*

- *A probation officer must be appointed immediately to report to the Court with regard to matters concerning the child.*
- *Bail should be considered as a matter of course and detention/confinement should ensue only as the exception in unavoidable scenarios.*
- *In dealing with the child, its custody, care, protection and well being, the views of the child, its parents, guardians, extended family members as well as social welfare agencies must be considered.*
- *When dealing with children, detention and imprisonment shall be used only as a measure of last resort and for the shortest period of time, particularly keeping in view the age and gender of the child.*
- *Every effort must be made at all stages for reintegration of the child within the family and so as to enable him/her to assume a constructive role in society.*

The Court acted suo motu following publication of a daily Star report "8-year old sued, sent to jail for drug trade" on 24 April 2008. The court criticised the police for not considering granting bail themselves, for not attempting to find the girl's guardians, and not informing the Probation Officer so that they could prepare a Social Enquiry Report, all of which they are required to do under the Children Act.

Very recently, the High Court Division in the case of **BLAST vs. Bangladesh** banned corporal punishment in educational institutions in Bangladesh considering the severe effect of

the corporal punishment on the mental and physical state and stature of the Child.[31] The Court observed that laws which allow corporal punishment, including whipping under the Penal Code, Code of Criminal Procedure, Railways Act, Cantonment Pure Food Act, Whipping Act, Suppression of Immoral Traffic Act, Children Rules, 1976 and any other law which provides for whipping or caning of children and any other persons, should be repealed immediately by appropriate legislation as being cruel and degrading punishment contrary to the fundamental rights guaranteed by the Constitution.

Suggestions for Legal Reform

- In order to ensure transparency and accountability of actions of the police authorities, it is imperative that the directives of the Supreme Court in **BLAST vs. Bangladesh and Saifuzzaman vs. State** should be implemented as soon as possible.
- Legislative reform should be initiated in line with the recommendations and guidelines of these judgements.
- Bangladesh should implement obligations under the Convention against Torture through adopting necessary legislative and administrative measures and institutional reform.

[31] Writ petition number of 5684 of 2010.

- The government should repeal all provisions on impunities of law enforcement agencies and securities agencies for committing torture.
- Take urgent steps to ensure access to detainees, especially during periods of custodial interrogation. Relatives, doctors and lawyers should have access to detainees without delay and regularly thereafter.
- Witnesses including family members and human rights defenders should be protected against possible reprisal by the perpetrators of torture or other human rights violations.
- Interrogation should take place only at official centres and any evidence obtained from a detainee in an unofficial place of detention and not confirmed by the detainee during interrogation at official locations should not be admitted as evidence in court against the detainee;[32]
- The detainee should have the right to have a lawyer present during any interrogation;
- The police officer responsible for arbitrary arrest, detention, and torture should be accountable to the law for his/her criminal wrongdoing in 'like manner' as the citizen.

[32] Report of the Special Rapporteur on Torture, 2001, UN Doc.A/56/156, July 2001, para 39.

- Section 24 of the Evidence Act 1872 should be amended to include the terms 'coercion', 'torture' and 'violence' along with the terms 'inducement, threat or promise' as conditions that make a confession irrelevant and thus inadmissible.
- Modern methods of investigation should be introduced and more forensic facilities should be put in place to detect crime and gather evidence of crime.
- Adequate training should be given to the investigating officers about modern scientific methods of investigation.

Status of Implementation of the Guidelines

The guidelines delivered in the judgements of **BLAST vs. Bangladesh and Saifuzzaman vs. State** are yet to be implemented by the government by undertaking necessary amendments to the relevant provisions of the Cr. P. C. The government have filed appeals against these judgements and as a result, these cases are still pending in the Appellate Division of the Supreme Court. Implementation of these guidelines requires political will on the part of the government. The National Human Rights Commission of Bangladesh and civil society should vigorously pursue the implementation of these guidelines. According to a commentator, "The directives of these two judgements are not likely to be implemented by the executive organs of the State on their own volition. Experience suggests that major changes in the way powers are exercised requires sustained

engagements on the part of the civil society and the legal community for implementation."[33] The National Human Rights Commission of Bangladesh should recommend to the government the implementation of these guidelines to prevent arbitrary arrest, detention and torture and to end impunity of the law-enforcing agencies responsible for such acts.

Conclusion and the Way Forward

Arbitrary arrests and detention or torture still occur in Bangladesh. The guidelines of the High Court Division should be implemented immediately and impunity of the perpetrators for arbitrary arrest, detention and torture must also come to an end. The lack of knowledge of human rights and relevant legal safeguards on arbitrary arrest and torture among law enforcement agencies remains one of the major causes of violation of human rights. Human rights law should be widely disseminated amongst the law enforcing agencies. A service oriented, pro-active and human rights-conscious police force is considered equally important for effective functioning of the criminal justice system.

[33] Shahdeen Malik, supra note 23, p. 291.

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