Research Monograph

On

“Criminal Justice System in Bangladesh.”

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By

Asma Aktar
ID No: LLMP2003021002
LL.M (02 Years)
Department Of Law
Sonargaon University (SU)

Under the Gudance of

Sharmin Jahan
Assistant Professor
Department of Law
Sonargaon University (SU)

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Declaration

I hereby humbly declare that the research work entitled **Criminal Justice System in Bangladesh."**was carried out under the guidance of Mrs. sharmin Jahan, assistant professor, **department of Law**, Sonargoan University (SU), Dhaka for achieving the LL.M (02 Years) degree. This is an original work of mine. No part of work has been submitted for another in any other institute at home or in abroad.

Asma Aktar

Student ID: LLMP2003021002
Semester: Summer, 2022
Program Name: LLM (2 Years)
Sonargoan University (SU), Dhaka

Approval

The Research entitled **"Criminal Justice System in Bangladesh."** submitted to **Sharmin Jahan assistant Professor,** the department of Law at Sonargoan University (SU), Dhaka-1215.

Sharmin Jahan
Assistant Professor
Department of Law
Sonargaon University (SU)

Acknowledgement

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Asma Aktar

Student ID: LLMP2003021002
Semester: Summer 2022
Program Name: LLM (2 Years)
Sonargoan University (SU), Dhaka

Title Page

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Asma Aktar
Student ID: LLMP2003021002
Semester: Summer 2022
Program Name: LLM (2 Years)
Sonargoan University (SU), Dhaka

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Chapter 1

Introductory Part

1.1 Abstract

Proper Criminal Justice System is very essential for every country to ensure rule of law. Rule of law is necessary for ensuring justice for every citizen of a country. Bangladesh has criminal justice system for providing rule of law. However present study has conducted to evaluate the Criminal Justice system of Bangladesh from historical perspectives, to trace out the influence of previous Criminal Justice system of Bangladesh on its present legal system, to analyze present Criminal Justice system of Bangladesh and some other countreis of the world, to point out both positive and negative sides of the present Criminal Justice system of Bangladesh and to suggest some recommendations so that present Criminal Justice system of Bangladesh can fulfill the demand of time as per expectation of the people. The study was conducted at eight divisions in Bangladesh. The study was survey and documentary analysis type.Purposive sampling method was used for the study. From each division 50 respondents were selected for the study. So, total sample of the study were 400. Respondents were Advocates-100, Victims-100, Academicians-100 and Policy makers-100. Data were collected from primary and secondary sources.Primary data were collected from the respondents of study area. Secondary data were collected from books, research report, journals, internet etc. Questionnaire was used for data collection. Data were collected through face to face interview with Questionnaire and secondary data were collected from books, research report, journals, internet etc. Data were computerized, analyzed and interpreted using Microsoft EXCEL software. From the result it was found that majority of the respondents replied that the present situation of criminal justice system is not so bad. Steps for providing suitable criminal justice are not taking properly. Most of the people are not aware for criminal justice system. Majority respondents replied that procedures of criminal justice system is lengthy or delay. Maximum people want the proper criminal justice system in Bangladesh. There are many problems in criminal justice system in Bangladesh. The problems should be solved immediately. There are corruptions prevail in every sphere of criminal justice system in Bangladesh. The corruptions should be eradicated immediately forthe proper criminal justice system in Bangladesh.

INTRODUCTION

1.2 Introduction:

The fundamental principle of criminal law and criminal justice system is to control crime, punish the offenders, prevent crimes, protect innocents and to maintain a fair degree of cohesion and stability in society. It is important to realize that criminal justice refers to a process as well as to a system of agencies and organizations. This process is reasonably well-defined in that it takes an offender through a series of steps beginning with his/her arrest and concluding with his/ her reentry into society. The functioning of the criminal justice system is wide enough to achieve its goals and objectives. Its ultimate goal is undoubtedly to make the society safer for its people and protection of Human Rights in the process of criminal justice system. The right to fair trial is Human Rights, which has been accorded to all. The violation of this right, to some extent may be considered as crime. But which must be overcome by the law and criminal justice system of Bangladesh to make a framework of fair trial of accused person in Bangladesh.

1.3 Objective of the Work

The specific objectives of the Research where to:

- The fundamental principle of criminal law and criminal justice system is to control crime, punish the offenders, prevent crimes in society.
- The functioning of the criminal justice system is wide enough to achieve its goals and objectives.
- The right to fair trial is Human Rights,
- This process is reasonably well-defined in that it takes an offender through a series of steps beginning with his/her arrest and concluding with his/ her reentry into society.

1.4 Historical Background

According to *Code Of Criminal Procedure, 1898* and *Penal Code, 1860,* all of criminal offences are related with punishment in Bangladesh. The treatment or conduct of criminal behavior is known as punishment in our criminal justice system or society.

The Constitution of Bangladesh states: "No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment." This provision is nearly duplicated in *Article 7 of the ICCPR*, which states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

The government of People's Republic of Bangladesh had registered some declarations and reservations to particular articles of the treaties and furthermore, Bangladesh has not yet ratified nor has it acceded to a number of international human rights treaties, particularly the Optional Protocols to the two International Covenants, i.e. the *ICESCR* and the *ICCPR.*

The ICCPR expressly states in *Article 6(2)* that a sentence of death may be imposed only for the most serious crimes. The Human Rights Committee has stated that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure."

1.5 Methodology

I have taken opinion from my teacher and some other advocates to whom I work as an appreciative. As secondary source, books, Acts, Journal, Newspapers and law reports have been used. Research Methods include theoretical procedure procedures, experimental studies, numerical schemes, statistical approaches, etc. It help us collect samples, data and find a solution to the problem.

The functioning of the criminal justice system is wide enough to achieve its goals and objectives. Its ultimate goal is undoubtedly to make the society safer for its people and protection of Human Rights in the process of criminal justice system.

1.6. Limitation of the research

Though their huge information in text books, journals and the it's not sufficient. I have to also give about time and cost. Furthermore, the present study is undertaken as part of fulfilment of the requirements of LLM (2 Years) degree. The researcher gets only one month to complete the research. Moreover, the research is directed to be within prescribed word limit. Therefore, there is not much scope for doing a comprehensive study. Yet, I try my best to fulfil objective set out in present study.

Chapter 2
Analytical Developing Crime and Criminal Courts

2.1 Punishment in Criminal Justice System and Human Rights

According to *Code Of Criminal Procedure,1898* and *Penal Code,1860*, all of criminal offences are related with punishment in Bangladesh. The treatment or conduct of criminal behavior is known as punishment in our criminal justice system or society. But under different Human Rights Treaty and Convention, protection of Human Rights must be insured during these punishments. With new criminological developments, particularly in the field of penology, it has been generally accepted that punishment must be in proportion to the gravity of the offence. It has been further suggested that reformation of criminal rather than his expulsion from society is more purposeful for his rehabilitation. With this aim in view, the modern penologists have focused their attention on individualization of offender through treatment methods.

The Constitution of Bangladesh states: "No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment." This provision is nearly duplicated in *Article 7 of the ICCPR*, which states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The People's Republic of Bangladesh (Bangladesh) hasbound itself to upholding human rights law by committing to a number of international human rights treaties. The government of People's Republic of Bangladesh had registered some declarations and reservations to particular articles of the treaties and furthermore, Bangladesh has not yet ratified nor has it acceded to a number of international human rights treaties, particularly the Optional Protocols to the two International Covenants, i.e. the *ICESCR* and the *ICCPR*. *The Second Optional Protocol of 15 December 1989 to the ICCPR* aims at abolishing the death penalty. Likewise, it has not yet ratified or acceded to *the Optional Protocol to the Convention against Torture (CAT).*

The ICCPR expressly states in *Article 6(2)* that a sentence of death may be imposed only for the most serious crimes. The Human Rights Committee has stated that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure." But the shocking breadth of crimes that attract the death penalty under Bangladeshi law breaches the *ICCPR* due to the economic and non-lethal nature of several of the crimes, such as dealing goods on the black market or counterfeiting.[1]

[1]http://www.crin.org/docs/Life_Imprisonment_Final.pdf[Last visited on 01 July 2012].

Although it is a main purpose of police is to protect the innocent from the depredation of criminals. This involves two main tasks *viz.*, to act as the watch and ward to prevent crime and to chase out criminals who have committed crime and bring them before a court of law for trial and punishment. The Constitution of Bangladesh expressly prohibits torture, Bangladesh fails to create a specific definition of torture and therefore allows impunity of law enforcement officials to engage in torture and torture is continuing here, that is proved by the cases of human rights violations handled by the NHRC involved misuse of power by police authorities, torture of detainees or under trial prisoners, killing of civilians under police custody, abduction allegedly perpetrated by Rapid Action Battalion (RAB), killing in "cross fire", and illegal arrest and detention. That is why,it is suggested that the police should honor the culture of human rights rather than the technique of torture for their investigation. It should also provide additional powers to the National Human Rights Commission(NHRC) for creating a conductive atmosphere for the protection of human rights of the accused, suspects and under trial prisoners.

2.2 Human Rights in Criminal Justice and Criminal Laws and Sentencing

Human Rights in Criminal Justice System is a burning question in the field of Human Rights which is executed by sentencing under the domestic criminal laws. In most of the cases, national criminal justice system fails to maintain the international standard of human rights. International human rights law lays down obligations of governments to act in certain ways or to refrain from certain acts. With respect to the criminal justice system, the State has an obligation to establish criminal law and systems sufficient to deter and respond to attacks on individuals. On the other hand, however, criminal laws must not go so far as to deny individual rights, including due process rights. Indeed, once accused of a criminal offence, an individual benefits from rights-based procedural and substantive safeguards. In this context, the State must establish a balance that ensures both the freedom and the protection of the individual as well as public safety and well-being. For the criminal justice system, this balance can be considered at three levels:

- With respect to what should, or should not, be a criminal offence;
- With respect to criminal justice penalties; and
- In the criminal justice process.

Though International Laws are soft law, so with some notable exceptions-such as the obligation to make all acts of torture a criminal offence and the prohibition on non-retroactive criminal offences, international human rights law does not usually specify directly what

should, or should not, be a criminal offence in national law. Similarly, international human rights law does not usually specify directly the appropriate punishment for a particular crime. This is not to conclude that international human rights law has little to say on these matters. Rather, while the content of criminal laws and criminal penalties are left primarily to the discretion of States, there is the important proviso that criminal law and penalties must always avoid denying the rights of individuals. As such, international human rights law provides an agreed normative framework, against which criminalization and penalties are to be assessed. The question of whether a particular criminal law is inconsistent with international human rights must be assessed on a right-by-right basis. One reason for this is that while some rights (such as freedom of expression, for example) may be limited on the grounds of public safety, order, health, morals and the rights and freedoms of others, other rights may not be limited under any circumstances. In particular, the balance between State action and individual rights can be different when it comes to vulnerable groups. Indeed, human rights law can be said to have a particular focus on marginal groups, vulnerability, disadvantage and discrimination. Those accused of a criminal offence, those in prison, victims of human trafficking, persons suffering from health disorders, persons who are drug dependent, and broad groups such as women and children, all have particular vulnerabilities that human rights law aims to protect. Responses to crime, drugs and terrorism must be sure to protect the rights of vulnerable individuals who risk becoming the subject of criminal law and penalties. But what we see in practice? Though this concept is not providing an exhaustive list of possible rights violations related to criminal law and sentencing, it can provide some examples. Such as, with respect to victims of trafficking in persons, for instance, human rights guidelines are clear that trafficked persons should not be prosecuted for violations of immigration laws or for the activities in which they are involved as a direct consequence of being trafficked. Rather, victims of human trafficking must receive assistance and protection. With respect to children who use drugs and abuse alcohol, the United Nations Committee on the Rights of the Child considers that the right of the child to protection demands that such children should be treated as victims and not as criminals. Indeed, the United Nations Convention on the Rights of the Child, as the only core United Nations human rights treaty to refer specifically to drug use — has a strong focus on protection rather than punishment. With respect to human rights and drug laws, such statements do not mean that international human rights law can support a general “right to abuse drugs”. However, a number of human rights-based drug law cases including cases engaging the right to property and the right to freedom of religion, have found drug-related criminal laws to be legitimate

limitations necessary to protect public safety, order, health or morals in the individual; at least in the individual circumstances of the case. This is not inconsistent. As set out above, whether State action is incompatible with international human rights law must be assessed on a right-by-right basis. Criminal laws may at the same time, infringe certain rights but not others. Where the establishment of criminal offences is required by other bodies of international law, such as the international drug conventions, human rights law still continues to apply. The International Narcotics Control Board recognizes that the obligation to establish certain criminal offences is subject to each State party's constitutional principles and to basic legal concepts, including human rights. Whether or not an action is defined as a criminal offence in law is not however the only issue at hand. In some countries, administrative (non-criminal) penalties may be as severe, if not more severe, than under criminal law. International human rights law does not set out specifically what penalty should be applied for what crime. Nonetheless, the principle that the severity of penalties must not be disproportionate to the criminal offence is found in a wide body of human rights related standards. This principle includes the notions that imprisonment should be used as a penalty of last resort, and that the choice between penalties should take into consideration the likelihood of the offender being rehabilitated. While the principle applies equally to adults and children, the rule has seen particular development in the context of children in conflict with the law. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), for example, encompass the "principle of proportionality" hereby any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offender and the offence. In particular, the imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time. In the context of drug laws and sentencing, the drug-control conventions generally require parties to establish a wide range of drug-related activities as criminal offences under their domestic law. Nonetheless, they permit parties to respond to them proportionally, including through alternatives to conviction or punishment for offences of a minor nature. Serious offences, such as trafficking in illicit drugs, must be dealt with more severely and extensively than offences such as possession of drugs for personal use. In this respect, it is clear that the use of non-custodial measures and treatment programmes for offences involving possession for personal use of drugs offer a more proportionate response and the more effective administration of justice. Moreover, the criminal justice response should not be considered proportionate if it results in the denial of another individual human right. Where imprisonment for possession or use offences precludes access to appropriate drug-dependence treatment, for example, this may constitute

a denial of the right to the highest attainable standard of health or even the right to freedom from cruel, inhuman or degrading treatment, rendering the criminal justice response de facto disproportionate. Where severe sentences for less serious offences such as personal possession can be passed on a summary or administrative basis, the door may be opened to acts of corruption by individual law enforcement officers, border police or criminal justice officials. At the extreme end of the scale of punishment, the use of the death penalty for those convicted solely of drug-related or economic offences raises grave human rights concerns. The International Covenant on Civil and Political Rights specifies that in countries which have not abolished the death penalty, the sentence of death may be imposed only for the "most serious crimes". The concept of "most serious crimes" is limited to those where it can be shown that there was an intention to kill which resulted in the loss of life. The weight of opinion indicates that drug offences (such as possession and trafficking) and those of a purely economic nature do not meet this threshold. Moreover, States that have abolished the death penalty are prohibited to extradite any person to another country where he or she might face capital punishment. Despite such prohibitions, a considerable number of the retentionist States that continue to use capital punishment have carried out executions for drug offences in recent years. Overall, while human rights law does not usually direct the content of criminal laws or penalties per se, it does demand strict scrutiny to ensure that laws do not deny the rights of individuals. In the case of drug laws in particular, obligations to establish offences under the international drug conventions must be fulfilled while at the same time respecting a range of rights, including the right to health, to the protection of the child, to private and family life, to non-discrimination, to the right to life, the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, and the right not to be subjected to arbitrary arrest or detention.[2]

2.3 Relation between Criminal Justice System and Human Rights

Criminal justice system and Human Rights are strongly related with each other. Though criminal justice system deals with human, so question of Human Rights and quality of criminal justice is very simple in a criminal justice system. A criminal Justice system attuned to the tenets of human rights needs a harmonious correlation between legislators, police,

[2] http://www.undp.org.bd/Human%20Security/KeyNoteCPD.pdf[Last visited on 02 July 2012].

lawyers, witnesses, courts and prisons. It is primarily for the common need for prevention and detection of crime, maintenance of law and order and development of a culture that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. And no one shall be subjected to arbitrary arrest, detention or exile. It represents an enormous human and physical investment; its problems have become the common place of contemporary dissertation and often occupy centre stage in our media. We should think of it as having four successive stages. First of all, comes the enactment by Parliament and state t legislatures of the criminal law secondly, the task of the police to enforce the laws correctly, thirdly to hold a fair criminal trial, where the question of guilt is decided with the help of lawyers and witnesses and finally, the fourth stage is prisons been considered in isolation. Each tends to be special province of a different group of people and each group thinks in its own independent way, disregardful of the importance of the other, so that an integrated approach, which is essential for a hearty development of the criminal justice system as a whole, is never achieved. Political representatives on the legislature make the laws, police enforce them, lawyers with the help of witnesses and an appreciative court run the trials and the prison or probation services deal with the convicted offenders. None of these groups is obliged to give much thought to the problems of others or to consider the working of the system as a whole. This is unfortunate because the different parts of the system are intimately connected. I t is no use passing good legislation if the police cannot enforce them or honor the spirit of the laws in the inherent perspective of implementing them. There is no point 'in catching criminals if the system great change is the diminution in the respect for authority and deterioration in the basic human values, political, social and economic changes during the last fifty years, have brought benefit to a vast number of people by greatly improving their living standard. However at the same time sophisticated crimes with international links have appeared in the horizon, civil disorders have become fairly common place and the growing complexity and mechanization of society has made necessary a considerable expansion of legislations an expansion that has contributed towards deterioration in the relationship between the pubic and the authority.[3]

Human Rights in CriminalJustice

International protections of human rights have increased dramatically in the last century, sufficiently universal to rise to the level of an internationally recognized general principle.

[3] http://www.undp.org.bd/Human%20Security/KeyNoteCPD.pdf[Last visited on 05 July 2012].

This study uses an inductive method of inquiry to identify internationally protected human rights and the existence of their counterparts in national constitutions. Both international instruments" and domestic constitutions' provide the data for comparison. It sets out the instruments used in the study and how they are applied in the inductive method of comparative research. The rights found in the instruments evidence their international recognition, while their counterparts in the national constitutions evidence national legal recognition. The congruence of both indicates the existence of a "general principle." Clearly, international instruments and national constitutions do not use identical language and drafting styles, if for no other reason than the fact that national constitutions reflect different legal systems and drafting approaches as well as different cultures and languages. Precisely because there are so many reasons to warrant linguistic and theoretical diversity, however, the existence of strong similarities is more convincing evidence that these rights are contained in "general principles" of law. It should be added that the practices of states in applying these commonly recognized fights vary significantly. This study uses a purely empirical model of searching for repetition and similarity among the various rights to prove that similar rights evidence of that right. At present, some protections for the individual within the criminal process have risen to the level of "general principles" of international law, while other protections have been incorporated into international instruments which criminalize the violations of the protected right. It has grown out of the recognition that traditional sovereignty-based arguments against the recognition or application of internationally protected human rights are no longer valid because of the vast array of applicable treaties, the customary practices of states, and the legally binding nature of general principles of international law which, in this context, represent the convergence of treaties, customs, national legislation, and *jus cogens.* Therefore, international human rights law can penetrate into areas that in the past have been deemed to be wholly within the realmof domestic law. It will review issues concerning national sovereignty and its relation to international legal norms. The discussion will lay the foundation for the determination of whether a certain right is individuals must be protected from certain depredations against their person, and that international laws are needed to protect people from policies which ultimately affect the global community. The present discussion will focus on the protections afforded persons in the context of the administration of criminal justice. These safeguards are important protections against abuses of power which affect the life, liberty, and physical integrity of individuals. Without these protections and limitations on the potential abusive

exercise of power bystates, democracy could not exist. Thus, there is an inseparable link between the protection of individual and collective human rights and democracy. [4]

Human Rights and Due Process

Crime is output of mind or brain of human what he obtains from society around him by his Nature but it brings such conduct which is apprehending of the society. So the criminal justice system for treatment of such conduct should be fair which only can be possible by due process of law.

The expression "in accordance with law" does not include any law, but only laws which are (a) not volatile of fundamental rights, and (b) incorporates both procedural and substantive safeguards.[5]

In addition to its preoccupation with vulnerable and marginal groups,international human rights law has a specific concern for the manner in which theState achieves its goals. In international human rights law, the end, no matter howlegitimate, can never justify abusive means. This is particularly true when it comes to the criminal justice system. Indeed,rights are an essential component of the rule of law, which itself requires equalitybefore the law, accountability to the law, fairness in the application of the law, legalcertainty, avoidance of arbitrariness and procedural and legal transparency. Suchprinciples and the specific due process requirements of international human rightslaw apply irrespective of whether the indictment involves robbery, homicide,drug-related crime, corruption, trafficking in persons, transnational organized crime,or offences involving acts of terrorism.According to articles 10 and 11 of the Universal Declaration, the InternationalCovenant on Civil and Political Rights sets out many of the core rights of theaccused, including the right to be presumed innocent until proved guilty, the right tohave adequate time and facilities for the preparation of a defense, the right to betried without undue delay, and the right to have any conviction reviewed by a highertribunal. This right to a fair and public hearing by a competent, independent andimpartial tribunal is applicable in any case regarding the determination of criminalcharges against individuals, or of their rights and obligations in law. In particular, human rights law demands that whenever a person is deprived ofliberty, the detained person

[4]http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1328&context=djcil&seiredir=1&referer=http%3A%2F%2Fwww.google.com%2Furl%3Fsa%3Dt%26rct%[Last visited on 03July 2012].

[5]ShahdeenMaik, 'Arrest and Remand: Judicial Interpretation And Police Practice', *Bangladesh Journal Of Law*; Special Issue: Criminal Justice System, no. 10 (Nov. 2007), p. 267

has the right to take proceedings before a court, in orderthat the court may decide without delay on the lawfulness of the detention and orderrelease if the detention is not lawful. This right also applies to administrative, socialcare or public health procedures, including those that result in deprivation of libertyfor the purposes of drug dependence treatment. As set out above, the question oflawfulness of detention must itself be determined on the basis that imprisonmentshould be used only as a penalty of last resort. Even where the crime is of a particularly serious nature, such rights mustcontinue to be respected. All aspects of counter-terrorism law and practice, forexample, must be in compliance with international human rights law, including theright to a fair trial. In practice, safeguards such as a timely judicial hearing todetermine the legality of detention, the use of military courts only for militarypersons for offences of a military nature, equality of arms for the prosecution andthe accused, full disclosure of prosecution materials, and freedom from politicalinfluence are basic elements for securing the right to a fair trial in terrorism cases. Due process guarantees must also be respected in all actions under theuniversal drugs and crime conventions. A number of convention provisions that areimportant in law enforcement terms nonetheless require careful judicial oversight inorder to protect against the possibility of human rights infringement. For example, powers ofseizure and confiscation of "drugs, substances and equipment" and "proceeds ofcrime, must be applied in a non-arbitrary, proportionate manner and depending upon the nature of the procedure in national law in conformity with the right to a fair trial. Such standards make it clear that, practicessuch as extra-judicial killing by law enforcement officers in drug enforcementoperations, imprisonment without trial, denial of meals, forced labor, isolation andchaining, violence and beatings in detention centers for drug dependence"treatment" are absolutely prohibited. Indeed, where practices amount to torture,such acts should constitute a criminal offence under national law. State obligationsto protect persons from such acts further extend to protection from acts carried outby private entities such as non-state treatment centers or security firms. The protection of the well-known prohibition on torture and cruel, inhuman ordegrading treatment or punishment also includes the obligation not to returnindividuals to another country where they may be exposed to such practices.Moreover, the prohibition on torture is complemented by the positive requirementsof the Covenant on Civil and Political Rights to treat all persons deprived of libertywith "humanity and respect for the inherent dignity of the person". Human dignity is inextricably linked to the principle of non-discrimination.Effective law enforcement and criminal justice processes must ensure that lawenforcement activities, such as searches and arrests are evidence-based and are notcarried out solely on the grounds of

considerations such as racial characteristics. Deployment of law enforcement officers for purposes, such as drug law enforcementmust not disproportionately burden neighborhoods or communities exclusively onthe basis of racial or ethnic profiles.In bringing those responsible for crimes related to illicit drug trafficking andterrorism to justice,Member States must ensure that the means employed are fully consistent with the rule of law and due process rights.[6]

Efficacy of Bangladesh's Criminal Justice System

Different media report implies serious questions about the credibility of Bangladesh's criminal justice system, including the investigation, prosecution and the judiciary, as well as the qualifications of the concerned professionals in those institutions.

There are many thrilling incident in the procedure of our judicial system. Each and every time, there is happen injustice in the name of justice. It is nothing more than hypocrisy with the judiciary. As for example, on 13 March 2008 that a court convicted three persons to rigorous life imprisonment, which is a 14-year sentence for the alleged kidnapping of a girl in Jhalakathi district, when the said crime did not in actual fact take place. According to the news report, Ms Liza Akther alias Fuli, who is now 19-years-old, fled from her maternal uncle's house eight years ago as a result of intolerable treatment inflicted upon her by her uncle and aunt, Mr Anowar Hossain and his wife, Mrs Shefali Begum. Strangely, four years later, Mr Anwar lodged a complaint of kidnapping and trafficking with the Jhalkathi police station on 31 May 2004 against three persons; Mr Rustom Ali Shikdar, a petty fisherman, Mr Harun Hawladar, a day laborer, and Mr Nuru Hawladar, a small businessman. The Jhalkathi police recorded the case under the Women and Child Repression Prevention Act. After police investigation, the men were charged with kidnapping and trafficking and convicted of the same by the Special Tribunal of Women and Child Repression Prevention of Jhalkathi on 7 February 2007. The judge sentenced each of them to 14-years rigorous imprisonment with a fine of 10 000 taka. When the three men appealed the conviction before the High Court Division of the Supreme Court, bail was granted for Harun and Nuru, who were released

[6]https://www.unodc.org/documents/commissions/CND-Uploads/CND-53- Related Files/ECN72010

_CRP6eV1051605.pdf [Last visited on o4 July 2012].

from detention on February 27, while Rustom's petition was rejected. When Liza heard that three persons had been convicted of her 'kidnapping', she immediately visited Jhalkathi and lodged a General Diary with the Jhalkathi police station. She also went to a Notary Public and recorded her testimony in an affidavit. Liza told the media that she had fled to Dhaka from her uncle's house following intolerable torture by her uncle and aunt, and managed to get a job in a garment factory. She later married a businessman. The lawyer of the three convicted persons, Mr Abdur Rashid Howlader, told reporters that Liza was produced before the Chief Judicial Magistrate's (CJM) Court on March 5, and the Court was requested to record her testimony in a petition. The CJM judge, Mr Reza Tarique Ahmad, who was also the judge of the Special Tribunal that initially found the three men guilty, rejected the petition however, and released Liza under her own custody.

The Officer-in-Charge of the Jhalkathi police station Mr AKM Faruk, while admitting this miscarriage of justice, told the media that one of the two investigation officers of this case, Inspector Mr Sohrab Ali, had already passed away while the other, Sub Inspector Mr Muzibur Rahman, was in service elsewhere. The families of the convicted men suffered immense loss, including financial and social dignity, following the case. In terms of civil and political rights guaranteed to citizens, this incident reveals gross abuses. Police investigators failed to critically examine the fabricated charge of kidnapping as well as of attributing the crime to these three suspects; the prosecutors failed to scrutinize evidence before filing charges; and the judiciary failed to ensure a fair trial. This type of injustice and gross violation of Human Rights, occur in our Judicial System in the most of the criminal cases. So it is the high time, to oblige policy makers to look into Bangladesh's existing criminal justice system. The investigators, prosecutors and judges in this case created a case of fiction instead of facts while they arranged depositions from so called prosecution witnesses to convict the three men. This could only have happened amidst dysfunctional institutions. Government authorities, as well as professionals related to the justice delivery system, must ask themselves whether any of the three justice mechanisms have the necessary levels of efficiency, commitment and accountability required for upholding the law of the land. The three victims and their families need to be compensated for the grave suffering that has been caused to them. Moreover, the incident needs to be thoroughly investigated and all those directly involved as well as those indirectly involved by way of command responsibility should be brought to justice. Until this happens they should all be removed from the positions they hold within the criminal justice system of Bangladesh. But it is quite impossible in the

reality of our complex judicial system. Actually both of our government and high police authority have lack wishlist to establish justice and remove the efficiency from our Criminal Judicial System, though it is urgently needed for established justice and development of Human Rights in our existing Criminal Judicial System.[7]

[7]http://www.ethicsinaction.asia/archive/2008-ethics-in-action/vol.-2-no.-2-april-2008/bangladeshs-criminal-justice-system-delivers[Last visited on 12 July 2012].

Chapter 3

ADMINISTRATION OF CRIMINAL JUSTICEC IN BANGLADESH

3.1 Criminal Justice Process

It is important to realize that criminal justice refers to a process as well as to a system of agencies and organizations. A comprehensive view of this process would normally include the following ten critical points:

1. Investigation;
2. Arrest and booking;
3. Custody;
4. Formal complaint;
5. Initial court appearance- preliminary hearing;
6. Arraignment;
7. Bail-detention;
8. Adjudicating;
9. Disposition (sentencing);
10. Appeal.[8]

The criminal justice process normally proceeds in a step-by-step fashion. When a criminal statute has been violated, a police officer first seeks to locate the possible offender. If the officer succeeds, s/he then arrests the offender, files a criminal complaint against him/her, and has him/her brought before a judge or magistrate as quickly as possible. If the offense is relatively minor, the judge may dispose of the case immediately; if the crime is more serious, the judge formally acquaints the defendant with the charge, seeks to have counsel provided, and takes possible action on bail. The public prosecutor is then notified of the case and, if the defendant pleads not guilty to the charge, the case goes to trial. The facts and evidence of the case are then developed by the prosecution on behalf of the defendant. A trial on the merits is then held either before a judge alone or before a jury under direction of a judge to determine the guilt or innocence of the defendant. If the defendant is found guilty,

[8] Wayne Morrison, *Theoratical Criminology from Modernity to Post Modernism,* 1st ed. (London: Cavendish Publishing Limited, 1995), p. 105.

s/he is then sentenced by the judge to a period of incarceration or directed to remain in the community under the supervision and control of probation authorities.[9]

3.2 Right and Protection of the Accused

Criminal justice system is not only for punishing accused but also for reforming him as suitable and law abiding person of the society, and that is why they are allowed to have following rights-

In Bangladesh, every criminal action commences with a First Information Report (FIR), lodged by the victim, relatives, or a witness. The FIR is a written or oral complaint to the investigating officer who must lodge the complaint in writing in the police records per Section 154 of *the Code of Criminal Procedure, 1898*. In a case of a cognizable offence, any officer of a police station may, without the order of a Magistrate, investigate the matter. According to Mr. Arafat Amin, Advocate to the Supreme Court of Bangladesh, when a FIR is lodged in the police station, describing a cognizable offence, the common practice is that the police immediately seek out and arrest the persons named in the FIR, regardless of the suspects' involvement in the crime.

Bail is no more Safeguard

This right of arrested persons is being violated in the Judicial System of Bangladesh, though they are arrested under bailable section of the *Code of Criminal Procedure*. The important procedural safeguard of bail is denied for many offences which could lead to the death penalty. Section 497 of the *Code of Criminal Procedure, 1898*, provides that an accused shall not be so released on bail if there appear reasonable grounds for believing that he is guilty of an offence punishable with death or transportation for life. Provided that, the court may direct that any person under the age of sixteen year or any woman or any sick or infirm person accused of such an offence be realized on bail. The special laws for the protection of women and children provide that all offences under those Acts are non-bailable, which means that bail is *per se* unavailable unless, at the judge's discretion, the court decides to grant bail.

[9] *Ibid.,* p.106.

Inactiveness of Legal Aid in Bangladesh

Most of the people in Bangladesh cannot access themselves to justice to protect and vindicate their legal rights and lawful access. To address this problem legal aid services have been activated under the Legal Aid Act, 2000. But in practically this act is not enforceable in the criminal justice system of Bangladesh, though the need for legal aid is felt more in criminal matters as the life, property and personal liberty of a person are inseparably connected there. As regard criminal matters, section 340 of Code of Criminal Procedure, 1898- states that an accused should be defended by a lawyer and he must pay the fees and nothing more. Commenting on the section 340(1) of the Code of Criminal Procedure, 1898- that the right conferred by this section does not extend to rights in an accused person to be provided with a lawyer by the state or by the police or by the Magistrate. But legal aid is facilities are very necessary in criminal justice system to ensure human rights.

Delay of Justice

It is said that, "delay justice is denied of justice". Delay plagues the administration of justice in Bangladesh at each level of the judiciary, with a backlog of 43,000 criminal cases in Dhaka alone. The government's Ministry of Law estimated that approximately 1,200 prisoners had made no court appearance in six months, often surpassing the maximum sentence possible had they been found guilty. Such backlog seems to be chronic in all 64 district courts that serve the country of 150 million populations. Such lengthy delay compounds concerns about denial of bail to accused and raises serious questions about the presumption of innocence in Bangladesh's criminal justice system.

Chapter-4

OBSTACLES TO CRIMINAL JUSTICE

4.1 Torture

A point frequently raised was the lack of awareness of the absolute nature of the prohibition of torture among law enforcement and prison officials, resulting in the trivialization of torture as a "mistake" rather than condemning it as a serious crime. In addition, interrogation techniques and restrictions on the use of force by law enforcement officials are often not regulated by domestic law, leaving police officers with considerable uncertainty as to which methods can be legally applied.

Bangladesh is obliged to incorporate the rejection of torture which requires state parties to "ensure that all acts of torture are offences under its criminal law. But in practically, she does not perform this other than torture. The same shall apply to commit torture and to an act by any person which constitutes complicity or participation in torture. Although the Constitution of Bangladesh expressly prohibits torture, Bangladesh fails to create a specific definition of torture and therefore allows impunity of law enforcement officials to engage in torture. *According to* provision *of the Penal Code* criminalize causing "grievous hurt" in order to extort a confession or information leading to the detection of an offence, but not only do they fail to use the term torture or explicitly mention that public officials are similarly culpable under the law, but also mental suffering is excluded from the provision altogether. But there are no governmental inaction towards remedying this situation. On 5 March 2009, MP Saber Hosain Chowdhury, who had been arrested and tortured in the early 2000's, submitted the Torture and Death in Custody Prevention Bill to Parliament, as a Private Member's Bill. This Bill was tabled in Parliament on 10 September 2009, but there has been no move since.

Though little step has been done to put such a policy in effect and the rate of these abuses have been decrease. More than 133 deaths occurred in custody during the year, including 74 deaths in prison. Many of the deaths were allegedly the result of torture.

But this unconstitutional and inhuman acts are continuing in support of the government. On May 11, Mohammad Manik was arrested after being named in a theft case. While in custody in the Kotowali police station, Manik allegedly was tortured to death by the sub-inspector. Following the incident, the High Court ordered a full investigation. When the police commissioner failed to comply with the order, the High Court ruled the commissioner and the sub-inspector to be in contempt of court. Following these, on May 24, RAB officials detained Abul Kalam Azad and his son. They were interrogated separately at RAB

headquarters, after which Azad died. Azad's son claimed that the RAB tortured his father to death.

On June 29, the Dhaka metropolitan police detained Mohammad Mizanur Rahman, along with three other persons. While they were in custody, officials took the four individuals to a bridge in Gulshan where a police sub-inspector, Anisur Rahman, interrogated and shot Mizanur and one other person. Doctors treated Mizanur at Dhaka Medical College Hospital, but he died as a result of his injuries. The Dhaka metropolitan police formed an inquiry committee to investigate the incident.

Instead these, there were no developments in the investigation into the January 2009 case of Mohammed Habib. Police from Chandgaon Police Station arrested, tortured, and killed Habib and tortured his colleague claimed. According to police, the men were arrested on suspicion of importing drugs from India and were injured during their arrest. Following Habib's death, an "unnatural death case" was filed. According to the assistant police commissioner of the Chittagong metropolitan police, the three officers involved were suspended.

More than 59 BDR members arrested in the wake of the February 2009 mutiny died in custody. Family members of the victims alleged that they died after being tortured. Several BDR members taken into custody claimed the RAB and police physically assaulted and beat them, administered electric shocks, blindfolded them, and hung them upside down while in custody; At the same time, army personnel also were involved in custodial deaths. The government announced an investigation and promised to publish a report by July 2009 regarding the nature of the deaths but failed to publish any report. The government investigation ruled that only two members died due to torture and that the others died because of illness or suicide. At year's end, the government had not taken any action regarding the deaths or allegations of torture. Officials made little effort to investigate allegations of torture and deaths in custody.

There were no developments in the March 2009 case of Nayak Mobarak Hossain, a detective in the BDR security unit of the 18th Rifle Battalion in Cox's Bazar, who died at the Dhaka Medical College Hospital after soldiers allegedly assaulted him. Hossain allegedly had telephoned his wife to say he was being kept in poor conditions and tortured. His body reportedly showed signs of severe bruising, swelling of limbs, injuries to both palms, and broken joints. A local police sub-inspector in Dhaka, who was present at the medical examination, had opened a murder investigation.

4.2 The Death Penalty

The reality regarding the criminal justice system must be understood to evaluate how dangerous the use of the death penalty can be in Bangladesh. Realistic policies followed by prompt actions must be in place in order to reduce the recurrence of crimes that are currently punished by the death penalty instead of continuing with this failed deterrent. There can hardly be any debate that the death penalty does not amount to cruel punishment, which is prohibited in the country's supreme law. In fact, such cruel punishment comprises a violation of the Constitution by undermining the natural dignity of human beings. Article 32 of the Constitution provides: “No person shall be deprived of life . . . save in accordance with law.” Bangladesh applies the death penalty for such crimes as murder, sedition, offenses related to possession and drug trafficking, treason, espionage, military crimes.

On March 1998 the Bangladesh Cabinet has approved the death penalty for crimes against women and children including trafficking, rape and murder. The maximum punishment for such crimes was formerly 10 years in prison. In 1997 capital offences were extended to include hijacking of planes and sabotage.

On March 16, 2004 Parliament passed the Disruption of Law and Order Offences (Speedy Trial) Act 2004 to extend the term of the much-debated Speedy Trial Act created in 2002 for another two years following its expiry on April 9, 2004. The law, approved by Parliament on March 13, 2002 and effective from April 10, 2002 instituted special tribunals and fast track trials (to take place within 90 days of the filing of a report) with the power to condemn to death people found guilty of violent crimes. The number of death sentences passed in Bangladesh increased significantly with the introduction of these courts. According to official sources in the Ministry of Law, Justice and Parliamentary Affairs, the nine Speedy Trial Tribunals of the country dealt with 650 cases between October 2002, when they were set up, up to June 30, 2005. The tribunals passed death sentences on 311 people.

On the other hand, Sessions Judges' courts of the country sentenced 123 people with death punishment from 2001 until June 30, 2005. A total of 221 people were sentenced to death by different courts of the country until 2001 since independence. On the other hand, 80 people were given death sentence in 2002, 162 in 2003, 112 in 2004 and 80 in 2005 (up to June 30), the sources said. The Ministry of Law, Justice and Parliamentary Affairs, on June 30, 2005, said there were 655 prisoners condemned to death in prisons scattered across the country. The

government had only 53 cells for condemned prisoners with each cell originally made to accommodate only one convict.

Bangladesh resumed executions in 2001, after a de facto three-year suspension. Two men were hanged between February and March and another in November. One execution was recorded in 2002 and two people were put to death in 2003. At least 13 people were sent to gallows in 2004 and at least five in 2005; four people were executed in 2006, six in 2007, 5 in 2008, 3 in 2009, 9 in 2010 and 5 in 2011.

The Human Rights Council, in its 2009 Universal Periodic Review of human rights in Bangladesh, recommended that Bangladesh institute a moratorium on executions, restrict the scope of the death penalty to comply with minimal international standards, and abolish the death penalty. But Bangladesh is not agree with that recommendation yet in their Universal Periodic Review in 2013.

4.3 Extra-judicial Killing

Extrajudicial killing is the killing of a person by governmental authorities without the sanction of any judicial proceeding or legal process. Extrajudicial punishments are by their nature unlawful, since they bypass the due process of the legal jurisdiction in which they occur. Extrajudicial killing referring to actions outside the judicial (court) system, such as an extra-legal confession, which, if brought in as evidence, may be recognized by the judge during a trial. Extrajudicial killings often target leading political, trade union, dissident, religious, and social figures and may be carried out by the state government or other state authorities like the armed forces and police. With this killing, 155 people were killed extra judicially in Bangladesh under the present Awami League government. Extra judicial killings were started by RAB during BNP-Jammat government in 2004. RAB was created in March 2004, to much public acclaim, as the government's response to a breakdown in law and order, particularly in western and central Bangladesh.

In Rajshahi, Khulna and Dhaka districts, armed criminal groups or powerful mercenary gangs colluded with local politicians to run smuggling rings or extort money from local people. Within months of its creation, RAB's operations were characterized by a pattern of killings

portrayed by the authorities as ‘deaths in crossfire’, many of which had the hallmarks of extrajudicial executions.

Rapid Action Battalion (RAB) is powerful. And, though the saying goes that with great power comes great responsibility, this is not the case with RAB. Officers have been accused of human rights violations and the use of excessive force, and most importantly, for extrajudicial killings. Extrajudicial executions continued despite a government pledge to end them. The Rapid Action Battalion (RAB) personnel were reportedly involved in more than 54 unlawful killings in 2011 which were neither investigated independently nor brought the offenders to justice. But unfortunately the home minister refused to even acknowledge the need for accountability. The Home Ministry even went to the extent of ignoring its own previous findings that RAB was behind at least two cases of extrajudicial killings.[10]

There is a dearth of accountability mechanisms in Bangladesh, and even less so where RAB is concerned. The government seems sluggish at best, if not completely disinterested in bringing any of these officers to book, as indicated by both past and current patterns. For example, the year 2003 saw so much illegality on the part of RAB, but the government's inaction was clear.[11]

4.4 Bribery

Now a day’s bribery is consisting in the vain to vain of the court and police administration of Bangladesh. Most often abuse of power and personal gain occur in both the public and private domains and usually by a collusion of individuals or groups of individuals from both sectors. A more elaborate description of bribery is “the abuse of office whether in Government, administration or business, it is about the giving and seeking of favors, it is

[10] http://news.priyo.com/politics/2012/05/24/amnesty-decries-extr-52262.html [Last visited on 29 October 2012].

[11] http://www.thedailystar.net/newDesign/news-details.php?nid=239201[Last Visited on o4 November 2012].

about buying political influence, taking kickbacks, bribing officials. It is about subverting public good for private gain". Corruption may also include any or a combination of such acts as embezzlement, fraud, nepotism, negligence of duty for private gain or promoting any vested interests - financial, political or otherwise, misuse of public or institutional fund and extortion. Corruption, therefore, is more than bribery.

It should be noted that when corruption becomes systemic and widespread, distinction between grand and petty bribery becomes blurred and together they give the total picture of corruption. Another focus of the discourse on bribery is on whether it happens nationally or internationally, which are also linked with each other. Distinction is further made between political and economic bribery, though one is the other side of the same coin.

Bribery of jail authority

Jail authority and doctors are also related with the breach of human rights in criminal justice system of Bangladesh. The life convicted criminals are living in the hospital without any diseases for long time after his arrest. They get division from Home Ministry in against of large amount of bribe. For example- the life convicted accused Mr. Ehasin Rahman who was in hospital without any serious diseases for 14(fourteen) months in the cooperation of jail authority and hospital authority. But he has only simple back pain. Though the convicted persons are keep in general word but he was staying in the cabin. He was enjoying all facilities in the hospital with laptop, mobile and friends. These all are possible for bribery of hospital authority and jail authority. Because he is a son of commercial important person(CIP). He was staying hospital in the power of money of his father, though he is life convicted accused of a murder case. He got division in recommendation of Home Ministry. He was staying on jail only for 3 (three) days after his arrest. The daily charge of cabin was tk-475 and he was in that cabin for 440 days and charge was TK.2,o9,ooo (Two Lac Nine Thousands) which were given by his family. But it is totally ambiguous to the Jail Code or any others existing law in Bangladesh. Actually he got all this facilities for the capital power of his father.

The Criminal Justice Response to Bribery: Bangladesh Perspective

Bribe is a global problem. It exists to a greater or lesser degree in all countries; irrespective of political and economic systems, size, or state of development. Now a day each and every sector of government of Bangladesh bribe is very simpler thing. It is an implied trend, to get a government job you have to pay a large amount of bribe. As a result corruptions are available in the all governmental sectors. Bangladesh is a densely populated country. The pressure of population, terrorism, poverty, illiteracy, natural disasters and corruption are some of the problems facing the country which seriously hamper its growth. Bribery in particular has made this nation unstable. However, the people of Bangladesh fight against these types of illegal activities continuously. The role of the criminal justice system is crucial in the fight against bribery. Successful detection, investigation, prosecution, adjudication and punishment of corrupt offenders contribute greatly to the prevention and eradication of bribery. But these are not easy tasks to accomplish. To successfully overcome the challenges, the criminal justice authorities need to use innovative legal means, both domestically and internationally. In addition, it is of the

4.5 Political Bias

From the eighteen century that means after 1975 our criminal justice system is being randomly bias by politics. Judiciary have become victims of politicization, losing their due effectiveness and independence. Use of religion in politics is also not new to Bangladesh, nor is it over politicization. What is new is the kind of militancy, particularly the way they have been allowed to spread, including the unprecedented phenomena of simultaneous bombings and suicide attacks. Ironically, in spite of the bitter experience of the use of religion in politics as a cover up to political and economic exploitation by Pakistan, coupled with deep-rooted values of pluralism and multiculturalism that catalyzed the assertion of national identity leading to independence of Bangladesh, religion has been used in politics also in post-independence period by successive regimes. The two main political parties or outside the Government as well as military rulers courted the religious parties directly or indirectly.

Eventually, not only has the space for militancy been allowed, but also nothing was done to prevent the recruitment and training activities of the so-called jihadi cadres and other terrorist groups whose links with, or patronage of, the Government including protection by the law enforcement agencies is an open secret by now. The political patronage of militancy and its reported linkage of the sections of the government have left the police and administration

initially inactive and now ineffective, in taking any measures against growing insecurity ranging from petty crimes and violence, repression against women, children and minorities including minorities within Islam. Indiscriminate killings of citizens have now created a widespread sense of human insecurity and despair. Actually they use religion for their political purpose other than establish Soriah Law.

Bangladesh's criminal justice system has also manifold following problems:
a. There is an absence of fairness and transparency in its complaint mechanism. The police arbitrarily control the complaint mechanisms, which are subverted by political interference and a chain of command dominated by corruption from the bottom to the top, resulting in abuses of power and injustices in determining who will be charged and for what crime. The fabrication of cases by the police officers for the purpose of extorting money from targeted persons and/or in order to set the real offender free is a common practice. The police deliberately distort facts related to crimes at the time of recording of complaints, which obstructs the already limited avenues available to the victims seeking justice and redress.

b. Criminal investigations are conducted by the police using primitive methods without acceptable levels of professionalism and efficiency. As a corrupt and political subservient entity, the police force is mostly used as hired gunmen of the ruling political and other authorities and elites.

c. The prosecutorial system is politicized, inefficient, disposable by nature, and incapable of assisting the judiciary to establish justice at the end of the trial. Every political party recruits their own activists cum lawyers as prosecutors, based on their loyalty to the ruling authorities rather than their knowledge of the law, jurisprudence and commitment to the rule of law.

d. The judiciary does not enjoy independence as far as the administration of justice is concerned in terms of logistics, manpower, integrity and the adjudication of the cases. Besides, there is a serious lack of judicial competence and commitment to upholding the rule of law among many judicial officers.

Chapter 5

CONCLUSION

Although Bangladesh is party to many important human rights treaties, such as the ICCPR and the CAT, it also is yet to ratify several important documents that will ensure rights for its citizens and further adherence to international law. In addition, Bangladesh must fulfill its obligations to existing human rights mechanisms by allowing access for the UN Special Rapporteurs and furnishing initial reports to the HRC, CAT and the ICESCR. The National Human Rights Commission that was established in 2008 is a step in the right direction but lacks the appropriate resources and manpower to properly fulfill its mandate. Though after 2010, it has taken some visible step and raises their voice in many sort of violation of human rights.

An extremely broad range of crimes currently attracts the death penalty in Bangladesh. These include non-lethal crimes such as counterfeiting and smuggling, as well as less serious crimes such as kidnapping. This practice runs counter to both the ICCPR and the HRC's directives on the issues, which mandate that the death penalty be applied only for the most serious lethal crimes. The further imposition of mandatory death sentences for certain crimes deprives the judiciary of discretion to take into account possible extenuating circumstances.

The standard police practice of arresting whoever is accused on the First Information Report, filed by the complainant, facilitates the use of the justice system as a form of popular justice in which neighbors retaliate for private disputes via the justice system.

The ability of officers to arrest individuals suspected of so-called cognizable offences without a warrant violates the right not to be subjected to arbitrary arrest and detention. *Section 54 of the Criminal Procedure Codes, 1898* which delineates the broad and vague grounds on which an officer may make an arrest without a warrant, has opened the door to abuse of police power that even the Supreme Court of Bangladesh has condemned. *Section 61* of the Code, which provides for the infamous remand process, has been widely documented to facilitate torture and abuse of suspects while in police custody, often in order to exhort bribes or confessions. We have to overhaul of *the Criminal Procedure Code, 1898*. The Bangladeshi trial system appears to be imbued with violations of due process and presumption of innocence principles. Bail is per se unavailable for several crimes, including all of those enumerated by the *Women and Children Repression Prevention Act* of 2000 and all defendants who are "reasonably suspected" to have committed homicide.

Severe delay and backlog in the court system reportedly drags cases on for years, which is especially pernicious for those held for non-bailable offences or for those who could not afford bail. Speedy-trial courts have been established to try certain cases, although their use appears to be politically-motivated more than hastening the process of justice. Due to these delays, police exhort bribes to release detained suspects, and Court Clerks and Government lawyers often demand bribes to expedite their cases. So, government has to take necessary step to stop these inhuman activities. Repressive and often inhumane prison conditions perpetuates this system of bribery and extortion, further violating international standards in administration of justice and the proper treatment of prisoners. Executions are carried out in jail by hanging. The method of execution is deprived of any legal basis in domestic legislation since other prisoners are forced into carrying out the executions of their peers. This practice clearly amounts to an inhuman and degrading treatment, if not to torture.

The ATA's grant of broad rights of surveillance to law enforcement and restrictions upon freedom of speech are further cause for concern. Bangladesh government has to frankly analyze the continuing necessity of all provisions of the ATA, and whether many of the crimes it addresses are not already covered by existing criminal law.

Under the ICCPR and the CAT, Bangladesh has the obligation to ban torture in its domestic law. However, torture is not defined under its criminal law, as is required by the CAT. The Bangladesh Constitution allows parliament to pardon public officials accused or convicted of torture while the Code of Criminal Procedure requires prior governmental approval before a complaint of torture can be lodged against a political officials. It is concerned that these factors, combined with the lenient procedural rules for unwarranted arrest and remand, contribute towards a culture of impunity for torture for both law enforcement and political officials.

5.1 Recommendations

Based on those findings, we can issue the following recommendations to the People's Republic of Bangladesh on *'The Administration of Criminal Justice'*

– The Parliament and Ministry of Justice should amend *the Code of Criminal Procedure, 1898* according to the guidelines provided by the Supreme Court in the *BLAST* case and the Bangladesh Law Commission.

– *The Penal Code, 1860* should define and criminalize torture as required by the CAT.

– The judiciary should exert a close scrutiny on conditions of detention and interrogation by the police during the remand procedure, and declare inadmissible any statement which is established to have been made as a result of torture, in conformity with *Articles 12 and 13 of the UN Convention against Torture*, and the prohibition of self-incriminating statements enshrined in *Art. 35(4) of the Constitution of Bangladesh.*

– The immunity provisions for public officials that engage in torture within *the Code of Criminal Procedure* must be repealed in particular *Section 132* of the Code, and other legal provisions which impede alleged victims of human rights violations from lodging complaints against State officials suspected of being the authors, instigators or accomplices of such acts.

– Bangladesh should consider amending *Article 46* of the Constitution in order to limit the power given to Parliament by excluding acts of torture and other cruel, inhuman or degrading treatment or punishment from the scope of acts for which public officials can be indemnified.

– Police investigations should be strengthened, in particular through material and forensic information collection, and proper training in those fields should be ensured to prevent arbitrary arrests based solely off of a spurious complaint or FIR and excessive reliance on confessions.

– The backlog of the courts should be diminished, without creating a parallel system of special tribunals like the speedy trial courts, which may contradict the principle of equal protection under law. Right to a fair trial includes the right to be tried without undue delay *(Art. 14.3 of the ICCPR).*

– Prison conditions should be improved in order to comport with relevant international human rights standards. Overcrowding in detention facilities should notably be addressed.

Following Recommendations Can Be Exercised in Our Criminal Justice System:

- Establish oversight of the police by an independent authority separate from the chain of command of law enforcement ("police over police")

・ Legal regulation of the use of force by police officials in accordance with the “Basic Principles on the use of force and firearms by law enforcement officials”

・ Open police custody and pre-trial facilities to independent external monitoring, such as the National Preventive Mechanism under OPCAT

・ Bring suspects “physically” before a judge for an independent review of detention and possible ill-treatment

・ Grant access to a medical doctor and a mandatory medical examination upon admission to pre-trial detention

・ Ensure effective safeguards during interrogation by police and prosecutors, such as video/audio recording and presence of the defense counsel

・ Ensure the non-admissibility of evidence extracted by torture in any proceedings

・ Ensure the strict separation of police custody, detention on remand and imprisonment of convicts in terms of location and chain of command

・ Separate juvenile from adult detainees

・ Implement a mandatory and periodic system of effective, independent and impartial judicial control of pre-trial detention

・ Provide compensation to victims of arbitrary and/or prolonged police custody and detention on remand

・Bangladesh have to ratified international or regional human rights treaties, particularly the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto.

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・ Bangladesh have to take step to establish a regional mechanism, followed by a court similar to the European Court of Human Rights, for the promotion and protection of human rights.

・Government reaffirmed the fundamental obligation to ensure the prevention, investigation, prosecution and punishment of any individual involved in such ill-treatment. In addition, ensured the duty of all actors in the administration of justice, including police, judges, prosecutors, lawyers and prison officials to actively combat torture.

・ Governments should prioritize the provision of adequate resources, including appropriate salaries and conditions of work for police, prosecutors, judges and prison officials, to ensure the independent, impartial and effective functioning of their criminal justice systems.

・ Specific groups, such as children, women or minority groups, have special needs when it comes to the criminal justice process which should be appropriately recognized in domestic law and practice.

・ Rights of victims should be better promoted and protected, including access to justice, the right to reparation and other forms of assistance, in accordance with the 1985 UN Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power. However, the participants agreed that greater recognition for the rights of victims should not be achieved at the expense of the rights of the accused.

・ Training and awareness raising about international human rights standards was frequently highlighted as a crucial way of ensuring better protection of human rights. Actors in the criminal justice system, including judges, prosecutors, lawyers, police, prison officials, and other officials in enforcement agencies should be provided with training on international and regional human rights standards. Consideration should also be given to institutionalizing human rights education in schools, both secondary and tertiary.

・ Independent monitoring bodies, such as national human rights commissions, ombudsmen, regional and international supervisory bodies and NGOs could play in monitoring compliance with relevant human rights standards at the different stages of the criminal justice system.

. Our law enforcers need to train up on human rights to stop torture and extrajudicial killings. To achieve this goal, "the government's political will is needed.

.To reduce the bribery of court official, their Clarkial work can be computerized: Put up, Production, Hajira can be Sent to Magistrate by online.

The death penalty

Considering the large potential for abuse and violations of due process in Bangladesh, it calls upon the authorities, as a first step towards abolition, to:

– Examine existing law with a view towards diminishing the scope of crimes that attract the death penalty to only those with lethal consequences, in conformity with *Art. 6 of the ICCPR.*

– All mandatory death penalty sentences should be repealed as unconstitutionally restricting the discretion and independence of the judiciary, as required under international standards, and as stressed by the High Court Division in its 1995 ruling.

– Other prisoners may under no circumstances be delegated to carry out an execution, a practice that is not in conformity with the domestic legal framework and constitutes an inhuman and degrading treatment for concerned prisoners.

– Make public statistics on the number of death sentences and executions to allow an informed public debate on the death penalty.

– Appoint a committee of high level jurists to report on the application and conditions of implementation of the death penalty in the country.

Reassess the need for anti-terrorism legislation

Parliament and the Ministry of Law to reassess the need for the ATA. If maintained, this law should definitely be amended:

– If the ATA is maintained, it must be amended in order to eliminate vagueness in its wording and the potential for abuse in its application, including regarding the length of police custody, the systematic non-bailable character of the crimes, and the establishment of anti-terrorism special tribunals.

– Judicial oversight should be instituted for all surveillance, searches, and wire tapping.

– The ATA should not be used as a repressive tool against political dissidents.

–Bangladesh government to take all available actions to prevent enforced disappearances and oversee and train police forces in proper arrest and detention practices

Bolster the National Human Rights Commission

We urge the Parliament to approve further allocation of funds for staff improvement and hiring within the NHRC in order to maintain the Commission’s effectiveness and independence without any hindrance from the government.

Treaty Ratification

Bangladesh must withdraw its reservation to *Article 14(1) of the CAT* and to ratify the following international human rights instruments:

– Optional Protocol to *the ICESCR (1966)*, allowing individual complaints from citizens of member states.

– Optional Protocol to *the ICCPR (1966)*, allowing individual complaints from citizens of member states.

– *The second Optional Protocol to the ICCPR*, aiming at the abolition of the death penalty (1989)

– *Optional Protocol to the CAT (2002)*, allowing site visits to the country and requiring establishment of National Preventive Mechanisms.

– International Convention for the Protection of All Persons from Enforced Disappearance (2006)

– Convention on the Protection of the Rights of All Migrant Workers & Members of Their Families (1990)

To the international community

– Third states are invited to raise the issues of concern addressed in this report and echo the afore-mentioned recommendations in the framework of their bilateral meetings with the government of Bangladesh at all levels.

– Support civil society initiatives in favor of abolition in Bangladesh

– Provide technical assistance in the field of criminal investigation, in particular concerning forensic and ballistic expertise and others methods that would allow relying less systematically on confessions that are often obtained under duress.

– To support efforts to develop professional and public human rights education and judicial and prosecutorial training

– To condition its cooperation with the police and other forces of Bangladesh (like the RAB) to concrete progress in the field of the fight against impunity for extrajudicial killings and torture and to ensure transparency and accountability in all the actions undertaken.

5.2 Concluding Remarks

It can be brought an ideal criminal justice system in Bangladesh if above mentioned recommendation are maintained properly. And that criminal justice system will help victim as well as accused person to be adjudicated by a fair trial where the due process of law will

ensure such fairness of trial and proceedings of the case. And I also believe that such criminal justice system will ensure non-violence of human rights and will ensure procedural and substantive safeguard. Whereas the police force is an integral part of criminal justice system, so human rights must form an integral part of the training programme of police personnel at all levels. Regrettably, this is either lacking altogether or is given minimum importance in the syllabus. This subject must also figure prominently in the periodical refresher courses organized for the police personnel at various levels. In such programmes, persons who have been victims of human rights violations by the police and other sections of society, as also representatives of various sections of society should be invited to talk to the police. It would also be useful to familiarize them with the important judgments regarding human rights pronounced by courts from time to time. Thus, sensitization of the police to the importance of human rights has to be the cornerstone of the efforts to improve the present situation. And that should be because police are the only organizational part who can go immediately to protect the victim as well as to through the accused person in a fair trial where his human right will not be breached and he will not be convicted for non-commencement of crime or guilty.

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