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Research monograph

On

"Extra judicial killings is the violation of the constitutional mandate and other international instruments :Bangladesh perspective"

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Submitted by

Israt Jahan Sristy

ID No: LLB 1901016032

Batch : 17A

Department of Law

Faculty of Arts and Humanities

Sonargaon University (SU)

Supervised By

Md. Abdul Alim

Lecturer

Department of Law

Faculty of Arts and Humanities

Sonargaon University (SU)

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Letter of Transmittal

To
Md Abdul Alim
Lecturer
Department of Law.
Sonargaon University
Subject: Submission of the research paper.
Dear Sir, It is a great pleasure for me that I have the opportunity to submit the research paper on
"Extra judicial killings is the violation of the constitutional mandate and other international instruments: Bangladesh perspective "I took a great pleasure in preparing the report of this research program. According to your guidelines I have been able to effectively and enthusiastically accomplish the report. This report attempts to describe my observations, learning and recommendations based on general reasoning and empirical evidence. I made sincere efforts to conduct this study in reviewing related rules, documents, interview and examine relevant records for preparation of this report. During the research period, it is customary to work in this field to gather a better understanding of this arena. While preparing the report, I had gained lot of experience contrary to the limited theoretical knowledge on various aspects' have tried my level best to put meticulous effort for the preparation of this report. Any shortcoming in this report is absolutely my fault. Your active supervision and crafted guidance made it possible for me to prepare this report successfully. I remain available at your convenience to clarify any quarries if necessary.
Thanking you,
Sincerely yours
Israt Jahan Sristy
ID- LLB 1902017037

Acknowledgement

At first I thanks to almighty of Allah for give ability to make this research. It is great pleasure for me to submit this paper on "introduction of mandatory mediation in civil procedure code 1908: an easy way to dissolve civil suits." Special thanks go to the honorable teacher Md. Abdul Alim, Lecturer for giving me one of the most important topics.

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I optimize that this paper will fulfill the expectations of my teachers and make them happy I, therefore hope that you would be kind enough to go through this paper for evaluation.

Again, I would like to thank my supervisor sir, for his strong support.

Declaration

I declare that I have prepared this research monograph on the supervision of my research supervisor Md. Abdul Alim, Lecturer, Department of Law. Faculty of Arts and Humanities, Sonargaon University (SU). I also declare that this research monograph has not been submitted elsewhere for of any degree or diploma.

I am submitting the research for the partial fulfillment of the requirement for the award of my degree.

.....

Israt Jahan Sristy
ID No: LLB 1902017037
Department of Law
Faculty of Arts and Humanities
Sonargaon University (SU)

Certificate of the thesis supervisor

This is to certify that the dissertation on 'Extra Judicial killings is the violation of the constitutional mandate and other international instruments: Bangladesh perspective "is done by Israt Jahan Sristy, ID- LLB1902017037 in partial fulfillment of the requirements for the degree of LLB from Sonargaon University (SU). The research monograph has been carried out under my guidance and is a record of the bona-fide work carried out successfully.

……
Md. Abdul Alim
Lecturer
Department of Law
Faculty of Arts and Humanities
Sonargaon University (SU)

Abstract

The main objective of this research is to analyses Bangladesh's situation of extra-judicial killings by reviewing both national and international human rights law. Furthermore, this research will also describe the recourse available to the family of the victim for extrajudicial killing by law enforcement agencies, especially the Bangladesh Rapid Action Battalion. This is a qualitative analysis in which the cases of extra-judicial killings in Bangladesh, human rights instruments, and judicial activism for the defence of human rights have been reported by both primary and secondary sources. This research would demonstrate immunity for law enforcement agencies by raising the number of extrajudicial killings of civilians by violating the Constitutional and International Human Rights Law on 'right to life.' State sovereignty should not impede the application of international law, but Bangladesh's judiciary must be more effective in protecting citizens' human rights, in addition to bringing criminal prosecution against members of law enforcement agencies by providing "effective and adequate" redress to the family of the victim. This research will only deal with the UDHR and the ICCPR while analyzing the 'right to life' under the International Human Rights Conventions, as those Conventions have been ratified by Bangladesh. This research would add value to the identification of citizens' existing rights under domestic and international law and to the introduction of new legislation by finding that there is a lack of current legislation in Bangladesh to protect the right to life and address extrajudicial killings.

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Abbreviations

UDHR Universal Declaration of Human Rights

ICCPR The International Covenant on Civil and Political Rights

UNCAT Convention Against Torture and other Cruel, Inhuman or Degrading Punishment

CEDAW Convention on the Elimination of All Forms of Discrimination Against Women

CRC Convention on the Rights of the Child

OPCAT The Optional Protocol to the Convention against Torture

RAB Rapid Action Battalion

ASK Ain o Salish Kendra

CRPC The Code of Criminal Procedure

BLAST Bangladesh Legal Aid and Services Trust

HCD High Court Division

Chapter-1

Introduction

Life is the most valuable element, and nothing can be more important than the protection of life. Therefore, deprivation of life should only take place when it is required for the security of the state or the security of an orderly society where people are enjoying life and liberty freely. Therefore, one of the fundamental human rights recognized by any legal system is the right to life. Human rights remain common to all human beings, regardless of race, home address, sex, racial or ethnic origin, color, faith, language, or other status. Any single person without prejudice is similarly subjected to human rights. It is necessary to bear in mind that both of these privileges are interlinked, interdependent as well as inviolable.[1]

For the people of Bangladesh, the growing number of extra-judicial killings by law enforcement authorities has become a nightmare. Via numerous human rights violations, the government utilizes law enforcement officials, particularly the Elite Security Forces, against political rivals. According to human rights groups, the immunity of the Rapid Action Battalion (RAB) is the primary explanation for the rising amount of extra-judicial killings. Thus, both the Universal Declaration of Human Rights 1948 (hereinafter UDHR) and the International Covenant for Civil and Political Rights 1966 (hereafter ICCPR) are illegally stripped by the RAB of the "right to life" granted pursuant to the Bangladesh Constitution. Moreover, extrajudicial killing or unlawful denial of the right to life under customary international law are often known as significant abuses of human rights. State parties have a moral duty to safeguard the right to life in compliance with international law and to include "effective and sufficient" remedies for infringement. This general international norm is also not excluded from the constitution of the People's Republic of Bangladesh. Articles 31 and 32 are the right to access to justice, and it cannot be stated that that right has been dealt with in compliance with the law unless a person has a fair opportunity to contact the court in order to protect his or her right or complaint. But the argument is that by extrajudicial killing, there is regular degradation of right to life and liberty. When an individual dies in police custody or is killed by Rapid Action Battalion.[2]

However, the key object of this research is to examine the condition of extra-judicial killings in Bangladesh by reviewing national and international human rights law. Furthermore, this research would describe the solution possible for the extra-judicial killing of the victims ' families by law enforcement officials, in particular the RAB and the Bangladesh Police. This research would attempt to establish why the exception of law enforcement authorities raises the number of extrajudicial killings of civilians and whether and to what degree this infringes both domestic constitutional and international human rights legislation concerned with the 'right to life.' Additionally, this research would also put a proposal and recommendations for how arbitrary killing ought to be stopped by law enforcement agencies, accountability of the law enforcement

[1] Hossain S, Extra-Judicial Killings and human rights Law Bangladesh Perspective, Available from: www.emeraldinsight.com/1754-243X.htm

[2] ibid

agencies to the law. This research will also try to find out some question answer of the to what extent does the situation of extra-judicial killings in Bangladesh breach domestic Bangladeshi constitutional and criminal law?

To what extent does the situation of extra-judicial killings in Bangladesh breach international human rights law instruments to which Bangladesh is a state party, whether these have not been incorporated into domestic law, or whether they have been directly or indirectly incorporated? What reforms can be proposed to enhance protection of human rights and to ensure respect for the rule of law in Bangladesh, including what remedies should be made available to the families of victims of unlawful extra-judicial killing.

Aims of the project

The key object of this study is to examine the condition of extra-judicial killings in Bangladesh by reviewing national and international human rights law. Furthermore, this research would describe the solution possible for the extra-judicial killing of the victims ' families by law enforcement officials, in particular the Rapid Action Battalion (RAB) and Bangladesh Police. This study would attempt to establish why the exception of law enforcement authorities raises the number of extrajudicial killings of civilians and whether and to what degree this infringes both domestic constitutional and international human rights legislation concerned with the 'right to live.' Additionally, this research would also put a proposal and recommendations for how arbitrary killing ought to be stopped by law enforcement agencies, accountability of the law enforcement agencies to the law.

Hypothesis

Although the principle of state sovereignty as implemented in Bangladesh should not obstruct the enforcement of international law, Bangladesh's judiciary must be more proactive in securing citizens' human rights.[3] In fact, security is currently insufficient; due to the absence of criminal charges against employees of law enforcement departments, and absence of "effective and appropriate" solutions offered to victims ' families.[4]

Research Question

The main questions of this research are discussed below.

- To what extent does the situation of extra-judicial killings in Bangladesh breach domestic Bangladeshi constitutional and criminal law?
- To what extent does the situation of extra-judicial killings in Bangladesh breach international human rights law instruments to which Bangladesh is a state party, whether these have not been incorporated into domestic law, or whether they have been directly or indirectly incorporated?

[3] Md Sazzad Hossain, Extra-judicial killings and human rights law: Bangladesh perspective [4] Moonmoon Binte Aziz, Extra Judicial Killing: An Overview of Bangladesh.

- What reforms can be proposed to enhance protection of human rights and to ensure respect for the rule of law in Bangladesh, including what remedies should be made available to the families of victims of unlawful extra-judicial killing.

Context of the project

The law enforcement agencies are structured to preserve the state of law and order, while the administration of justice is entrusted to the national judiciary. The growing amount of extra-judicial killings by law enforcement authorities becomes a nightmare for Bangladesh 's people. The government uses law enforcement agencies, especially Rapid Action Battalion, against political opponents through numerous human rights abuses. Human rights organizations suggested that Rapid Action Battalion (RAB) immunity is the key explanation for the growing amount of extra-judicial killings.[4]

Extrajudicial killing is an unjust or unconstitutional deprivation of life, just a crime. Bangladesh has gained disrepute in extrajudicial killings. Life and personal freedom privileges are under attack in Bangladesh, despite being assured by the Constitution of the People's Republic of Bangladesh. Article 32 states: "No citizen shall be deprived of life or personal liberty save by statute."[5]

In the time of globalization, civil rights are now covered under international legislation, this is no longer a distinct problem worldwide. Bangladesh adopted the U.N. Charter in 1974 and several UDHR provisions were integrated into the Bangladesh Constitution.[6] The right to life is better acknowledged in Article 3 of the Universal Declaration of Human Rights.[7] Bangladesh signed the Universal Covenant on Civil and Political Rights in 2000. Article 6 of this Convention acknowledges a person's natural right to live, noting that this right "shall be secured by statute" and "no man shall be unlawfully deprived of live."[8] Yet Bangladesh's law enforcement authorities used various terminologies to distract from extrajudicial killings, such as 'crossfire' murders, 'encounter,' 'gunfight' etc.[9]

The Convention on the Rights of the Child also includes the right to life of people under the age of 18 and the duty of States to ensure that this right is enjoyed in Article 6.[10] Pursuant to Article 2 of the Universal Declaration on Human Rights and Articles 2 and 26 of the International Covenant on Civil and Political Rights and pursuant to many other declarations and conventions of the United States, everyone is entitled to the protection of the right to life without distinction or prejudice of some sort and all individuals are assured equal and successful.[11]

[4] AKM Ahsan Ullah, Lutfunnessa Sagor, Overpowering the law enforcing agency and human rights challenges.
[5] Article 32 of the Constitution of the People's Republic of Bangladesh
[6] Md Sazzad Hossain, Extra-judicial killings and human rights law: Bangladesh perspective
[7] Article 3 of the Universal Declaration of Human Rights (UDHR)
[8] Article 6 of the The Universal Covenant on Civil and Political Rights
[9] Md. Abdur Rahim, S. M. Morsalin Hider, Extra-Judicial Killings by the Law Enforcing Agencies in Bangladesh: A Threat to the Public Confidence in the Judiciary
[10] Article 6 of The Convention on the Rights of the Child 1989
[11] Article 26 of The Universal Covenant on Civil and Political Rights

Article 4(2) of the Universal Treaty on Civil and Political Rights states that extraordinary situations such as domestic political disorder or other public crises cannot be invoked to warrant any derogation from the person's right to life and security.[12]

Thus, the RAB unlawfully deprives the "freedom to existence" granted under Bangladesh 's Constitution, namely the 1948 General Declaration on Human Rights and the 1966 International Treaty on Civil and Political Rights.[13] Moreover, under customary international law, extra-judicial executions or unlawful denial of the right to life are often regarded as a significant human rights infringement.[14] State parties have a moral duty under international law to preserve "right to existence" and have "effective and sufficient" remedies for the breach. To guarantee rule of law, reasonable action must be taken to launch disciplinary charges against law enforcement members. The government must be cooperative and accountable in applying international human rights legislation by domestic laws.

However, the UN embraced UDHR and ICCPR as global documents on universal human rights, affecting countries in their governance and topics. Yet, it is argued that government and law enforcement authorities, particularly the RAB, have violated their responsibilities under all these international law clauses.[15]

The state has a responsibility to respect the rights to life that its law enforcement officers, particularly the RAB, are violating.[16] Moreover, violating a person's right to life, liberty and welfare is indeed against the basic concept of the rule of law. Abuse of authority by law enforcement authorities, culminating in extra-judicial executions of civilians in the name of crossfire or encounter, is a serious breach of human rights, and law demands due judgement.
It's utter human rights assassination in Bangladesh.[17] According to Odhikar, there were at least 2088 extrajudicial killings by police, the RAB and other paramilitary and security forces, from January 2009 to May 2019. The government generally declares self-defence and defends the murders under the excuse of the 'fight against extremism,' 'battle on droga,' 'self-defence in gunfights.[18]

[12] The Universal Covenant on Civil and Political Rights 1966
[13] Md. Abdur Rahim, S. M. Morsalin Hider, Extra-Judicial Killings by the Law Enforcing Agencies in Bangladesh: A Threat to the Public Confidence in the Judiciary

[14] Sarah Joseph, Adam McBeth, Research Handbook on International Human Rights Law, (Edward Elgar 2010)

[15] Mohammad Islam, Extrajudicial Killing by Law Enforcement Agencies and Quest for Justice: Bangladesh Perspective
BANGLADESH: Government must end torture and fully implement recommendations made by the UN Committee against Torture.
[16] ibid
[17] Torture and Extrajudicial Killings by Bangladesh's Elite Security Force, Source: https://www.hrw.org/report/2006/12/13/judge-jury-and-executioner/torture-and-extrajudicial-killings-bangladeshs-elite

[18] Civil Society Joint Alternative Report on Bangladesh Submitted to the Committee against Torture.

Finally, this report would show how Bangladesh law enforcement agencies arbitrarily infringe national human rights law and international human rights law, instead of securing such rights. Therefore, it appears the law enforcement authorities have the absolute authorization to seize people' lives anywhere. Sadly, and sorely, this is not a denial of civil rights but an assassination of human rights including extra-judicial killing of human rights in Bangladesh.

It is the government's duty to prosecute any accusation of breach of the right to life. So, there should be some reforms to restrict the powers of the law enforcement agencies and established the rule of law. State actors are obligated to keep their own armed services from arbitrarily stealing their lives or arbitrarily murdering them. The State institutions have become deeply worried over the privation of individuals lives. Therefore, law shall strictly regulate and restrict the circumstances under which certain authorities can deprive an individual of his existence. In addition, the denial of life through barbaric, cruel and degrading penalty for fatwa killings and dowry brutal killings are both severe infringement of the right to life and clearly demonstrate the State 's inability to comply with its duty to preserve life. The state's right to life must not be upheld in this regard.[19]

Methodology

This research would concentrate mainly on primary legal documents, including international treaties and domestic law and case law rulings, alongside analyses of secondary sources such as scholarly and extra-judicial commentary. Other critical references will include specific statistics on extra-judicial executions, Universal Annual Summary Papers, papers from national and foreign human rights groups and expert opinions (where specific). Reliable news media and blogs would also be examined where applicable. The strategy would be to clarify and criticise current law systems, put evidence and narrative instances of violence where appropriate, and pursue a normative plan for legal system changes. Other legal jurisdictions could be considered where applicable and necessary, especially recommending proposed changes to legal systems.

[19] Shirin S. Chaudhury, Right to Life, Source: http://www.askbd.org/ask/right-life/

Chapter 2

2.1 Concept of Human Rights

The idea that everyone is entitled to some human rights by virtue of her or his humanity is comparatively new. However, its origins lay in many societies' older rituals and records; it took the impetus of World War II to drive human rights into the national stage and through the global consciousness. Throughout most of history, through their participation in a party, a family, indigenous country, faith, class, community, or state, citizens acquired rights and obligations. "Many cultures have customs close to the "golden law" of "Conduct to someone that you would have them do to you The Hindu Vedas, Hammurabi's Babylonian Code, the Scriptures, the Quran (Koran), and Confucius' Analects are five of the oldest literary documents covering concerns of the obligations, privileges, and obligations of individuals". Furthermore, Native American sources that prevailed long before the 18th century were the Inca and Aztec codes of action and justice and the Iroquois Constitution. In reality, both cultures have had structures of propriety and justice as well as forms of tending to the wellbeing and safety of their people, whether in oral or written tradition.[20]

2.2 Background of the 20th Century Human Hights

Documents asserting fundamental freedom, such as the Magna Carta (1215), the English Bill of Rights (1689), the French Decree on the Rights of Man and Person (1789), and the US Constitution and Bill of Rights (1791), are published precursors of much of today's human rights documents. Yet all of these documents omitted women, persons of color, and representatives of some racial ethnic, economic and political classes as they were first converted into policy. Nonetheless, marginalized persons across the globe have built on the values articulated by these texts to encourage movements that demand the right to self-determination.[21]

"Human and rights" implies, as used generally, legal statements pertaining to man or humankind and the natural rights of human beings that have grown in humankind since ancient times. These privileges are so fundamental in human beings that they cannot exist without them. In reality, men born with these rights cannot be separated from them by any statute or constitution. It is also no wonder because to date, there is no widely agreed concept of human rights. Three distinguished scholars Maurice Cranston of the London School of Economics, the late Hedley Bull of Oxford University, and Louis Henkin of Columbia Law School have all advanced concepts that are significant but vague. "A human right by definition is a universal moral right, something which all men everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human being simply because he is a human."[22] The concept was described somewhat differently by Hedley

[20] D'Amato A, The Concept of Human Rights in International Law, Vol. 82, No. 6 (Oct. 1982), Published By: Columbia Law Review Association, Inc.

[21] ibid

[22] Cranston M, What Are Human Rights, 2nd edition, New York: Taplinger Publishing Company, 1975 page 367-368. Published online by Cambridge University Press: 01 August 201

Bull: "Human rights are rights attaching to human beings as such, rather than to this or that class of human beings. They are thought to be enjoyed by all human beings, to be enjoyed by human beings only and to be enjoyed by them equally."[23] Finally, Louis Henkin said that human rights are assertions that a person has or should have about the society in which he/she lives. Calling them human means that they are universal: they are due in the human culture to every human being. Geography or history, society or philosophy, the political or economic structure, or the state of progress do not vary. Sex or race, class or rank do not depend on them. To call them 'rights' means that they are as of right' statements, not just appeals to grace or charity, or fraternity, or love; they do not need to be won or deserved. They are more than 'good expectations or assertions but claims of rights and corresponding duty under some relevant law in some political order, if only under a moral law in a moral order.[24]

These rights should not be entirely isolated from religious edicts; these rights are innate in a human being simply because they are human; and the fulfilment of these arguments relies on the state's positive legislation. It follows, however that the advent of the concept of respect for universal human rights and freedoms and the emergence of other conventions and principles of international human rights law does not mean that these rights are directly controlled by modern international law and have ceased to be an internal affair of the States.[25]

Since World War II, the principle of human rights grew greater. The genocide of over six million Jews, Sinti and Romani (Gypsies), gays, and individuals with disabilities by Nazi Germany shocked the world. Since World War II, prosecutions took place in Nuremberg and
Tokyo and officials from the victorious countries were prosecuted for committing war crimes, "crimes against peace," and "crimes against humanity."[26]

Governments subsequently dedicated to establishing the United Nations, with the primary objective of strengthening international peace and conflict prevention. Citizens wanted to ensure that life, independence, food, housing, and nationality would never be unjustly denied to anyone again. In President Franklin Delano Roosevelt's 1941 State of the Union Address, the spirit of these evolving ideals of human rights was caught as he spoke of a society built on four basic freedoms: freedom of expression and faith, and freedom from desire and terror. The calls came from all around the world for principles of human rights to shield people from government violations, standards against which countries should be kept responsible for the care of those living within their boundaries. In the conference in San Francisco that drafted the United Nations Charter in 1945, these voices played a crucial role.[27] The Universal Declaration of Human Rights (UDHR) was ratified by the United Nations' 56 members on December 10, 1948. While eight nations decided to abstain, the vote was unanimous.

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[23] Bull H, The Universality of Human Rights, Volume: 8 issue: 2, page(s): 155-159 Issue published: September 1, 1979

[24] A. Z. M. Arman Habib, Extra Judicial killing in Bangladesh: A Murder of Human Rights, ISSN 1923-6654 (print) ISSN 19236662 (online). Available at http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html

[25] ibid

[26] ibid

[27] Bull H, The Universality of Human Rights, Volume: 8 issue: 2, page(s): 155-159

2.3 Internationalization of Human Rights

The UDHR, generally referred to as the Universal Magna Carta, has broadened the international law movement launched by the Charter of the United Nations, namely that how a country handles its own people are now a matter of genuine international interest, and not just a domestic question. The UDHR's influence has been substantial. Its ideals have been adopted into the constitutions of several of the UN's more than 185 countries today.[28]

Two treaties were drawn up by the United Nations Commission on Human Rights with the purpose of developing frameworks to implement the UDHR: The International Covenant on Civil and Political Rights (ICCPR) and its optional Protocol, and the International Covenant on Economic, Social and Cultural Rights (ICESCR). They are generally referred to, along with the Universal Declaration, as the International Bill of Human Rights. The focus of the ICCPR is on topics such as the right to live, freedom of expression, faith, and voting. The focus of ICESCR is on topics such as food, education, health and shelter. The expansion of freedom to all people is trumped by all covenants which forbids discrimination.[29]

As a common standard of achievement for all peoples and all nations, this Universal Declaration of Human Rights seeks to ensure that every person and every organ of society constantly keeping this Declaration in mind, strives through teaching and education to foster respect for these rights and freedoms and through progressive national and international initiatives to ensure their universal and effective. Everyone has the right to a person's life, liberty and protection.[31] No one shall be subjected to torture or to treatment or discipline that is cruel, inhuman or degrading.[30] All are equal before the law and are entitled to equal treatment by the law without prejudice whatsoever.[31] Both are entitled to fair protection from any prejudice in breach of this Declaration and from any incitement to such discrimination. Arbitrary arrest, imprisonment or exile shall not be the matter of any citizen.[32] The aforementioned articles note that every citizen has the right to live, that no one suffers an inhuman treatment, that everyone is equal before the law, and that no one is arbitrarily imprisoned.[33]

The International Covenant on Civil and Political Rights (ICCPR) was ratified by the General Assembly of the United Nations on 16 December 1966, this Covenant came into force on 23 March 1976. By the end of 2001, 147 states had ratified the Covenant. The Covenant also elaborates on the civil and political rights and liberties referred to in the Universal Declaration of

[28] Cranston M, What Are Human Rights, 2nd edition, New York: Taplinger Publishing Company, 1975 page 367-368. Published online by Cambridge University Press: 01 August 201

[29] Bull H, The Universality of Human Rights, Volume: 8 issue: 2, page(s): 155-159 [31] Article 3 of the UDHR 1948

[30] Article 5 of the UDHR 1948

[31] Article 7 of the UDHR 1948

[32] Article 9 of the UDHR 1948

[33] Bull H, The Universality of Human Rights, Volume: 8 issue: 2, page(s): 155-159

Human Rights. Article 6 states that right to survival and life.[34] Pursuant to Article 9; everyone has the right to individual rights and protection. No one shall be subject to arbitrary detention or arrest. No person shall, except on certain grounds and in accordance with the procedure provided for by statute, be deprived of his liberty. Anyone who is arrested shall be informed of the reasons for his arrest at the time of the arrest and shall be informed immediately of any charges against him. However, if any person arrested or detained on criminal charges shall promptly be brought before a judge or other officer allowed by statute to exercise jurisdiction and shall be entitled to a fair trial or release within a reasonable period.[35]

It is not a general rule that persons awaiting trial be held in detention, but release may be subject to promises to appear for trial at some other point of the judicial process and to the execution of the judgement, where necessary. Any person who is deprived of his or her liberty by arrest or detention shall be entitled to bring proceedings before a court to allow that court to assess the lawfulness of his or her detention without delay and to order his or her release if the detention is not lawful. Furthermore, if anyone who has been the perpetrator of wrongful arrest or imprisonment shall be entitled to compensation on an enforceable basis. It is possible to conclude that every person has the right to live by studying the above posts. If anyone commits a crime, then he or she must be routinely disciplined. Yet it violates all of these human rights and is questionable in the case of extra judicial killings. Therefore, law enforcement officers have to think lawfully while using this power.[36]

2.4 Rights to Life in Customary International law

Moreover, the right to life has been a well and well-developed aspect of international law of treaties, customs and general principles, and of the laws of jus cogens in its core components. Its primacy and the key features of the prohibition against arbitrary deprivation of life are not questioned. Nonetheless in fact, in many parts of the world, life remains cheap. This is true in the many violent wars that rage, but even beyond such conflicts, where disproportionate force is frequently used by police and others approved or permitted by governments, or there is a failure to investigate homicides. During armed wars, the right to life still continues to apply. An infringement is irreversible of the right to life. It is for this reason that it is important to stress that there are two components to the defense of the right to life: the prohibition of arbitrary deprivation of life and where it exists, transparency. A lack of transparency is a breach of this right in itself.[37]

The basic human rights of their people have been recognized in most of the constitutions of the countries of the world. A citizen's right to life is one of the most essential human rights. The right to life is a moral concept founded on the assumption that a human being has the right to live and

[34] Article 6 of the ICCPR 1966

[35] Rahim A, Hider M, Extra-Judicial Killing by the Law enforcing Agencies in Bangladesh: A threat to public confidence in the Judiciary, Available from www.heinonline.com

[36] Article 9 of the ICCPR 1966

[37] Heyns C and Probert T, Securing the Right to Life: A cornerstone of the human rights system, May 2016, Available from https://www.ejiltalk.org/securing-the-right-to-life-a-cornerstone-of-the-human-rights-system/ Accessed on 25th October 2020.

that in particular, another human being should not kill him. The definition of the right to life is central to discussions on topics such as capital punishment, war, the environment, health, food, housing, abortion, euthanasia, and justifiable murder.

2.5 Right to Life in the Constitution of Bangladesh

On November 4, 1972, the Bangladesh Constitution was adopted and came into force on December 16, 1972. In the country's independence movement, the human rights agenda was at the forefront. Respect for human rights and fundamental equality dates back to the declaration of independence on April 10, 1971. The security of the right to life has been assured by Articles 31 and 32 of the Bangladesh Constitution. In addition, Article 3 of the 1948 Universal Declaration of Human Rights (UDHR) provides that everyone has the right to life, liberty and personal protection. " *Every human being has the inherent right to life,' according to Article 6 of the Universal Covenant on Civil and Political Rights (ICCPR). This right is secured by legislation. No one shall be deprived of this right arbitrarily*". Under the sense of Article 31,' the right to life' signifies anything more than the nature of mere animals. It requires the right to live, and without a means of life, no one will live. This was the previous notion of the 'right to life' term.[3839]

But in recent times, constitutional jurisprudence has modified the definition of the 'right to life' in Bangladesh. Let's see some landmark decision on the 'right to life" widening definition. In the famous case of Ain O Salish Kendra Vs Bangladesh[41] The Supreme Court ruled that residents had certain rights to shelter and a fair hearing and made relocation recommendations. With regard to the law, the Constitution provides that the State must guarantee fundamental rights, including life, respect for equality and equal protection of the law, and that the State must also guide its policy towards ensuring that the basic necessities of life, including shelter, are assured. The High Court Division held in the other very recent landmark case Advocate Zulhasuddin V Bangladesh[42], that the VAT imposition on medical and dental care receipts, pathological laboratory and diagnostic center & specialist doctor's fees is ultra vires of right to life.'

Now the new or progressive sense of the right to life has been adopted by our Constitution. Part (III) of the Constitution of the People's Republic of Bangladesh includes the provision of the right to life. The Fundamental Right is enumerated in part (III). The constitutional rights are enforceable by the judiciary according to the language of the constitution. While the fundamental principle of state policy is not judicially enforceable, by referring to the term right to life in Articles 31 and 32, enforceability has in many cases been given. Indeed, for all human beings, the right to life is a widely accepted right. All current human rights are regulated by this right.[40]

[38] Article 31 of The Constitution of the People's Republic of Bangladesh. [41] 1999 BLD 488

[39] BLD 1

[40] Article 8 to Article 47 enshrined in Section III of The Constitution of the People's Republic of Bangladesh. [44] Centre for Human Rights and Global Justice, UN Special Rapporteur on extrajudicial executions handbook, www.extrajudicialexecutions.org/LegalObservations.html

Bangladeshi citizens have 23 fundamental human rights. Here in this Constitution and Declaration, the accused have certain liberties, such as the right to life, the right to be punished by due judicial procedure. Our constitution violates extra-judicial killing. Our constitution supports no extra-judicial killing.

Chapter 3

3.1 Notion of Extra-Judicial Killing

Before addressing any extra judicial killing issue, need to understand the definition of extra judicial killing. There is no clear definition under international law for summary killings. Extrajudicial killings are described by Amnesty International as unlawful and malicious killings carried out on the orders of a government or with its complicity or acquiescence, following the definitions given by international experts. Under this understanding, extrajudicial executions will include illegal killings by state forces as well as by non-state organizations and persons that state authorities do not adequately investigate and prosecute.[44] Although there is no legal concept of extrajudicial killing, if a death is caused by a law enforcement officer without following the law or due process, it may be considered extrajudicial.[4142]

Extrajudicial killing is described as a targeted killing not sanctioned by an earlier judgment of a regularly constituted court that provides all the judicial protections that civilized peoples consider as indispensable in Sinaltrainal v. Coca-Cola Co.[43] Therefore, extrajudicial killing is the assassination of an individual by governmental authorities without any judicial or legal proceedings being sanctioned. Extrajudicial killings are unconstitutional by their very existence, because they circumvent the due process of the legal authority in which they take place.

Extrajudicial killings are often carried out by leading political, synodical, dissident, religious and social leaders and may be carried out by the state administration or other government agencies, such as armed forces and police forces. Killings conducted outside the legal process by or with the permission of elected authorities, rather than as appropriate measures of law enforcement to protect life or as acts of military conflict undertaken in compliance with international humanitarian law.[44]

3.2 Extra Judicial Killing in Bangladesh

Killings by law enforcement agencies have recently come to the fore as the issue is getting worse every day and numerous human rights groups are worried about political violence, denial of access to justice, resources for imperialism and negligence of due process, but the pattern has been set in Bangladesh years ago. In 1972, the Jatiya Rakkhi Bahini paramilitary group entered

[41] A. Z. M. Arman Habib, Extra Judicial killing in Bangladesh: A Murder of Human Rights, ISSN 1923-6654 (print) ISSN 1923-
[42] (online). Available at http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html
[43] Sinaltrainal v. Coca-Cola Co., 578 F.3d 1252, 1257, the key issue posed by this appeal is whether in their charges, Plaintiffs-Appellants (Plaintiffs) have properly pleaded factual claims to survive a motion for dismissal. Plaintiffs, who were trade union officials, brought suit in four combined lawsuits under, inter alia, the Alien Torture Law (ATS), 28 U.S.C. § 1350, and the Torture Victims Security Act (TVPA), 28 U.S.C. § 1350, noting that their employers charged that two Colombian bottling firms had worked with Colombian paramilitary forces to kill and torture plaintiffs.
[44] Rodley N and Pollard M, The Treatment of Prisoners under International Law (3rd edition, Oxford University press 2009)

into force and was notorious for his out-of-court executions until it was integrated into the military in 1975.[45]

The Bangladesh government released an executive order in late 2002 that launched a drive to apprehend "wanted criminals" and retrieve "illegal weapons." The goal of the order was to curb a rapid increase in cases of murder, kidnapping, abduction and crimes against women by warring gangs allegedly connected to members of both major political parties. It consisted of the army, police, village defense force, and border protection personnel, codenamed Operation Clean Heart.[49]

Operation Clean Heart, an anti-crime operation that lasted nationwide from October 2002 to January 2003, killed approximately 60 people, maimed approximately 3,000 people, and detained more than 45,000 people. The day Operation Clean Heart was wound up, on 9 January 2003, the Government of Bangladesh released an order compensating the armed forces and police forces for any acts resulting from Operation Clean Heart actions, including deaths and search and seizure of property.[50] During the countrywide clampdown on violence, the ordinance precludes any attempt to pursue justice in courts for human rights violations. It was put before Parliament on 27 January 2003 and, in compliance with Article 46 of the Constitution, passed an indemnity law on 24 February 2003.[46] Now after the establishment of the elite Rapid Action Battalion (RAB) in March 2004, these killings are on the rise again and are classified under a new vocabulary of "crossfire," "extrajudicial killings," "encounters," etc.[47]

Today, one of the country's main issues seems to be the denial of its people' fundamental rights and human rights. There is an internal as well as an external dimension to the promotion and defence of human rights by individual states. Internationally, if human rights are abused, states will lift their voices. States are actively engaged in establishing norms, institutions and supervisory structures in the area of human rights. In addition, they are the first to bring abuses to the attention of international bodies and have the capacity to stimulate positive changes in terms of compliance with human rights standards.

It is imperative at the national level that states comply with international standards. However, these requirements also offer only minimal protections, and it is therefore preferable for states to provide a higher degree of security, i.e., by making the resources available to make these socio-economic rights more enjoyable. It is stressed that the strength of states ultimately lies in successful domestic security and the success of international norms. In establishing that their oversight should be subsidiary to that of the national courts and domestic structures for the

[45] A. Z. M. Arman Habib, Extra Judicial killing in Bangladesh: A Murder of Human Rights, ISSN 1923-6654 (print) ISSN 19236662 (online). Available at http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html [49] BANGLADESH: Operation Clean Heart, South Asian Analysis Group, Available from:
http://www.southasiaanalysis.org/paper674 , Accessed on 2nd November 2020 [50]
Operation Clean Heart: Bangladesh's Dirty War, 2003
[46] ibid
[47] ibid

protection of human rights, the human rights supervisory frameworks, especially the European Court, have consistently stressed this point.

Human rights specifically impact interactions between individuals and the state. They govern and regulate the exercise of state power over people, grant individuals' freedoms in relation to the state and compel states under their jurisdiction to meet the basic human need. Extra judicial executions are unethical. Since each person has the right to judge properly. While extra-judicial killing reduces violence, it is not reasonable. Since this kind of killing is triggered by many general people killing. Crossfire is also another name for extrajudicial killings. In Bangladesh, killings by law enforcement agencies are normal.[48]

3.3 Formation of Rapid Action Battalion

On 26 March 2004, the then ruling Bangladesh Nationalist Party (BNP) formed the RAB. It is Bangladesh's first elite anti-crime and anti-terrorism force that has been made subservient to the Home Ministry. Bangladesh, an economically promising country, has achieved high-profile achievements in the social development sector. To achieve desired changes, social and political stability, law and order are therefore necessary. Against this context, the Government of Bangladesh felt the need to create a special force to make the Police Force's operations more productive and dynamic. The RAB's primary tasks were to maintain national security; retrieve illegal guns, firearms, explosives and other such articles; arrest armed criminal gangs; assist other law enforcement agencies in maintaining law and order; gather intelligence; investigate any government-related offence; and any other duties that the government needs from time to time.[49] The RAB was accompanied by seconded members of six departments such as the Bangladesh Army, the Bangladesh Navy and Bangladesh Air

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Force, the Bangladesh Police, and members of other Bangladeshi law enforcement organisations such as Bangladesh Border Guard and Bangladesh Ansars. The RAB was formed and published in the Bangladesh Gazette on July 12, 2003 under the "Armed Police Battalions (Amendment) Act, 2003." Nonetheless, it was accomplished by a unilateral decision taken by the ruling government. From the very beginning of the administration, the opposition has been boycotting parliament. This force was given special authority with a special package of pay and benefits. They are better trained than the ordinary police. They are given a helicopter, for instance, in order for them to reach the crime scene quickly.[50]

A central concept of a democratic society is equality under the law. In a democratic society, the police are critical in upholding the law that enhances civic trust and social order. The assistance of law enforcement agencies is required by a modern state. In recent times, with policing, a

[48] ibid

[49] Ullah A and Sagor L, Overpowering the law enforcing agency and human rights challenges, Border Crossing, volume: 8, No:1, pp. 181–199, Available from: https://journals.tplondon.com/bc/article/view/579/544, accessed on 10th November

[50] Rapid Action Battalion, Available from: http://en.banglapedia.org/index.php?title=Rapid_Action_Battalion

paradigm shift took place when the term was shifted from 'police force' to 'police service.' The police are an important part of the state of Bangladesh and a significant branch of the criminal justice system.[51]

3.4 Overpowering Law enforcement Agencies

As mentioned earlier the RAB was established through the 2003 "The Armed Police Battalions (Amendment) Act" and published on July 12, 2003 Bangladesh Gazette. Nonetheless, it was accomplished by a unilateral decision taken by the ruling government. RAB received broad public interest. At first, it seemed that people welcomed, and respected RAB actions as previous offenders were not disciplined. It was because the police charge was too poor to build the case. Thus, over the years, general public confidence in criminal law has declined. In 2013, Bangladesh's conviction rate is 15-25%.[52] Alleged criminals are not punished due to criminal justice system inefficacy. Consequently, they continue their unabated illegal activities that threaten security and human rights.[53] RAB officials complain that courts also give bail to notorious criminals and lengthy trials. Moreover, punishment, sometimes a short-term sentence, does not alter or reform a criminal. Human rights groups say that this doesn't allow police to extra-judicially execute suspects.[54]

Bangladesh's conventional police force appeared ineffective, highly corrupt and inadequate in number relative to the population, i.e., the police ratio is very high.[55] Police salary in middle 2020 and low-income countries is very low, with lower education and transparency. Police face the insufficient logistical support issue. On average, 5-6 police personnel sit in each police station room. In most cases, they are not remunerated for the extra services they provide on case investigations. Police changes were made in election promises but not carried through. Police should simply carry out the collection of "Intelligence in Crime and *Crime A*ctivities" and "Investigation of Crimes in Governance RAB's two main duties.[56] The RAB is a combined unit, manpower wise, since section 3(5) of the law states: "*Despite anything contained in this Ordinance or in any other law for the time being in force, armed personnel and officers in the Rapid Action Battalion may be named, as and when required, on secondment or deputation, as the case may be from among persons in the service of the Republic, including persons in the*

[51] Ullah A and Sagor L, Overpowering the law enforcing agency and human rights challenges, Border Crossing, volume: 8, No:1, pp. 181–199, Available from: https://journals.tplondon.com/bc/article/view/579/544, accessed on 10th November 2020
[52] ibid
[53] Momtaz S, Human Rights Violations in Bangladesh: A Study of the Violations by the Law Enforcing Agencies, Mediterranean Journal of Social Sciences MCSER Publishing, Rome-Italy, Vol 4 No 13 Available from: https://core.ac.uk/download/pdf/228529475.pdf
[54] Ibid
[55] Ullah A and Sagor L, Overpowering the law enforcing agency and human rights challenges, Border Crossing, olume: 8, No:1, pp. 181–199, Available from: https://journals.tplondon.com/bc/article/view/579/544, accessed on 10th November
[56] ibid

service of the Republic."[57] It is a combined force composed of the army, navy, air force and police.[58]

The RAB was charged for exclusive duties such as 'information on crime and illegal activity' and 'investigation of any offence on government direction' as set out in section 6(A), 6(aa), and 6(bb) of that Act. Section 6c, clause (1) states: "*An officer of a Rapid Action Battalions Shall, while investigating an offence, follow the procedure prescribed in the Code of Criminal Procedure 1898 [Act (v) of 1898] or in any other law, as the case may be for the investigation of such offence*". Section 6c clause (2) entails in the relevant part: *"On completion of the investigation of any crime pursuant to this ordinance, the officer in question shall send his report to the officer in charge of the police station concerned and within forty-eight hours of receipt of that report, the officer in charge shall transmit the same report to the appropriate court or tribunal, as the case may be"*. Section 6D entails that "*An officer of any Rapid Action Battalion may, while investigating an offence or performing any duties under this Ordinance with respect to the case originated from that offence, exercise all such powers and performs all such functions and duties as may be exercised or performed by a police officer under the Code of Criminal Procedure, 1898 (Act V of 1998)*".[59]

The superintendence of the Armed Police Battalions and Rapid Action Battalions is vested in the government under the Ordinance. With regard to clauses (a), (b), (c), (d) and (e) of section 6, they have full authority to act in accordance with their whims and caprices, and without any duty to the rule of law or due process of law.[60] On 14 April 2003, RAB began its operations. A practice of "death in crossfire" has been developed since its formation. This is the way by which many RAB deaths have been sought to be justified. In addition, RAB defies the whole justice system and the rule of law by the killing of offenders on the spot. They have been criticized by civil society and by numerous human rights groups for all these practices. So that's why the Rapid Action Battalions Rule was adopted and published on 16 August 2005 in the Official Gazette. Now it is possible to proceed in three ways in the event of any crime committed by RAB employees, namely in special court or summary court and in departmental proceedings.[61] As well as the

[57] The Armed Police Battalions (Amendment) Act-2003

[58] Momtaz S, Human Rights Violations in Bangladesh: A Study of the Violations by the Law Enforcing Agencies, Mediterranean Journal of Social Sciences MCSER Publishing, Rome-Italy, Vol 4 No 13 Available from: https://core.ac.uk/download/pdf/228529475.pdf

[59] Momtaz S, Human Rights Violations in Bangladesh: A Study of the Violations by the Law Enforcing Agencies, Mediterranean Journal of Social Sciences MCSER Publishing, Rome-Italy, Vol 4 No 13 Available from: https://core.ac.uk/download/pdf/228529475.pdf , Section 6c clause 1,2, Section 6D clause 2 of the The Armed Police Battalions (Amendment) Act-2003

[60] The Armed Police Battalions (Amendment) Act-2003

[61] Section 8,9, 10 of The Armed Police Battalions Ordinance, 1979

penalty can be compulsory pension, retirement from work, termination of service, or life imprisonment for a serious offence according to the s. 10(1) of the Armed police battalion's ordinance 1979.[62] This clause is referred to as 'Rapid Action Battalions Law, 2005.[63]

There is no special jurisdiction or agency to investigate the abuses committed by the police and RAB in relation to human rights violations. As a consequence, it is the police who investigate complaints of human rights abuses perpetrated by their departmental fellow colleagues by which police are relieved or given comparatively light discipline in most cases from the allegations. In certain situations, some potential perceived effects are withdrawal from service, harm to career, punitive move, disruption of personal and family life, etc. But departmental hearings are concluded at these levels.[64]

Consequently, despite being a victim of human rights abuses, police enjoy informal impunity. When any lawsuit is brought in any court against alleged human rights abuses committed by police, it is the state that bears the costs of its fund. As a consequence, the police of corrupt and human rights violators enjoying not only impunity from the responsibility for crimes related to human rights abuses but also economic relief. According to s. 13 of The Armed Police Battalions Ordinance of 1979 "*no suit, prosecution or other legal proceedings shall be against any member of the Force for anything which is done or intended to be done in good faith under this Ordinance.*"

For the full realization of human potential, mutual interest, equality, justice and peace, a culture of human rights is important. Therefore, for that very reason, a country's law enforcement agency should obey, first and foremost, the domestic law of the community of which it is part, in order to preserve and restore law and order and to protect human rights. At present, the position of the law enforcement agency in Bangladesh, a third World developing country that originated on the world map on December 16, 1971, is totally different and much worse than it was about 20 years ago. Over the course of many years, civil society and the public at large have questioned the position of law enforcement officials. In Bangladesh, as half of our people live below the poverty line, the law enforcement agency is the worst victim of human rights abuses. Entry to justice is not open to them. The police are neither friends of the people nor custodians of human rights in Bangladesh. Instead, they are known as patrons of offenders. Transparency International, an anti-corruption watchdog headquartered in Germany, has described Bangladesh's police force as the nation's most corrupt organisation.[65]

[62] Section 10(1) of The Armed Police Battalions Ordinance, 1979

[63] Momtaz S, Human Rights Violations in Bangladesh: A Study of the Violations by the Law Enforcing Agencies, Mediterranean Journal of Social Sciences MCSER Publishing, Rome-Italy, Vol 4 No 13 Available from: https://core.ac.uk/download/pdf/228529475.pdf

[64] ibid

[65] ibid

Chapter 4

4.1 Breach of "Right to Life" by Extra Judicial Killing

In 2004, the Rapid Action Battalion (RAB) was formed to stop the spiralling crime in Bangladesh and the alarming rise of terrorism. Moreover, when an individual has been killed during their operations, RAB and the police routinely issue press releases. These comments are reported in the press as a matter of course, without the media making any attempt to check the evidence presented. An analysis of the statements released by RAB between 2004 and 2006 indicates that the organization portrayed in almost similar terms the incidents that surrounded most of the deaths. Typically, these comments stated that a violent suspect in the middle of the night was arrested, interrogated, and taken to retrieve hidden weapons. It is a matter of fact that the suspect's accomplices opened fire on RAB when RAB arrived near the place where the weapons were reportedly concealed, and the suspect managed to flee. Therefore, these three words have been translated into a daily and widespread occurrence driven by law enforcement authorities from the point of view described and listed above, where most of the events have happened in a dramatic way and less in fact.[66]

The RAB has flaunted its aggressive actions as a way to bully and frighten individuals since 2004. Between its inception and 2013, at least 772 people were killed by RAB.[72] They are responsible for systematic torture and the killing in detention of the suspects. The youngest victim was 14, the oldest was 65, and they were both male[67]. The Bangladesh government has justified RAB killings by claiming that the victims were "wanted criminals" or "top terrorists" who died when they resisted capture or were trapped between the force and criminal gangs in "crossfire." Through using the word "crossfire," the government defends the shootings, which it refers to as gunfights between some suspected terrorist group or "hardened" suspects and the RAB or police. In other nations, the word "death in an encounter" is used to mean the same thing, but law enforcement agencies in Bangladesh prefer the term "crossfire". The sinister connotation associated with the word reveals the absolute powerlessness of the people facing extrajudicial killings in Bangladesh.[68]

According to Odhikar records, at least 2,088 extrajudicial killings were committed by the police, the RAB, and other paramilitary and security forces from January 2009 to May 2019. Law-enforcement officials killed 465 individuals in 2018 alone.[69] Usually, the government alleges self-defense and defends the killings under the pretext of "fighting terrorism," "war on drugs," "self-defense in gunfight." A further form of torture and arbitrary deprivation of life has been the

[66] Islam N, Bangladesh's Extra-Judicial Killings: Crossfires or Human Rights Violations, Asian Journal of Social Sciences and Legal Studies. Available from www.universepg.com/journal/ajssls [72] Killed in Crossfire, Amnesty International, Available from: https://www.amnesty.org/download/Documents/ASA1312652019ENGLISH.pdf

[67] ibid

[68] Islam N, Bangladesh's Extra-Judicial Killings: Crossfires or Human Rights Violations, Asian Journal of Social Sciences and Legal Studies.

[69] Civil Society Joint Alternative Report on Bangladesh Submitted to the Committee against Torture, Joint submission by Asian Legal Resource Centre (ALRC); Asian Federation Against Involuntary Disappearances (AFAD); Asian Forum for Human Rights and Development (FORUM- ASIA); FIDH - International Federation for Human Rights; Robert F. Kennedy Human Rights; Odhikar; World Organization Against Torture (OMCT), 67th CAT session (22 July – 9August 2019)

crime of enforced disappearance. Law enforcement authorities are also reportedly responsible for the enforced disappearances, such as the police, RAB, DB Police, and intelligence agencies. At least 526 individuals were victims of enforced disappearance from January 2009 to May 2019.[70]

Quite certainly, the total number of victims of extrajudicial killings and enforced disappearances is much higher than the cases reported. Owing to relentless harassment, physical and digital surveillance, and warnings of dire consequences by state agencies, many families do not dare to speak out. Given the pervasive culture of immunity, victims do not seek remedies from the courts. Within the law enforcement departments, the suspects are almost never investigated. If there is some sort of investigation, it exists only to clear the identity of the perpetrators.[7172]

Custodial death has long been a normal occurrence. 'Custody' means guardianship and security. No civilized law postulates supervisory cruelty-an immoral characteristic that results from a twisted impulse to inflict pain because there is no prospect of retribution. In Jatiyo Mahila Ainjibi Samity vs. Bangladesh and Others[78] the High Court held that a detained person's will in safe custody was unconstitutional.

A detainee's safety is a fundamental rule of police law as generally accepted. Many international instruments recognise the right to human care as a prisoner, such as Article 5 of the Universal Declaration on Human Rights (1948), Article 10 of the International Covenant on Civil and Political Rights (1966) and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984). However, whatever the laws in the national and international realms, these legal mandates are not in effect, and that is why death in police custody is a growing problem in Bangladesh. As with the Code of Criminal Procedure, in its ultimate sense, custody of an accused or a witness means court custody. A person's transitional custody could be with police. But the court's ultimate authority to decide the suspect's fate rests.[73]

Most police officers assume that without physical threat or torture, knowledge or confessions will not be collected. It is why, while the law forbids torture, its practice is especially common under the 'order'. The type of torture involves punching, hanging, and suspending the arms on the soles of the feet while bound behind the back, suspension, beating, electrical shocks, and psychological forms of torture, including humiliation, threat and insult, etc.[74]

According to Article 5 of the International Standards of Police Behavior and the Code of Conduct for Law Enforcement Officials (General Assembly Resolution 34/149), "No law enforcement

[70] ibid
[71] ibid
[72] DLR,2007,447, Ain O Shalish Kendra (ASK)
[73] Momtaz S, Human Rights Violations in Bangladesh: A Study of the Violations by the Law Enforcing Agencies, Mediterranean Journal of Social Sciences MCSER Publishing, Rome-Italy, Vol 4 No 13 Available from: https://core.ac.uk/download/pdf/228529475.pdf
[74] ibid

official may inflict, instigate, or to tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency a justification of torture or other cruel, inhuman or degrading treatment or punishment".[75]

Article 1 of the Convention Against Torture and other Cruel, Inhuman or Degrading Punishment 1984 states: 'Torture shall mean any act by which extreme pain or suffering, whether physical or emotional, is deliberately inflicted on a person for the purpose of extracting information from him or a third person, or confessing, punishing him or a third person for an act, or suspected of having committed a crime."[82] According to a torture committee report, "there are no special circumstances where a state may use torture and violate its treaty duty." While Bangladesh is a signatory of the aforementioned Conventions, no such definition of torture has been provided under the prevailing criminal law.

4.2 Extra Judicial killing undermine Criminal Justice system

Bangladesh's human rights situation has deteriorated to an alarming level in recent years. Since 2004, Bangladesh's government has violated the Constitution and the Universal Declaration of Human Rights. "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, pursuant to Article 35(5) of the Constitution of Bangladesh and Article 5 of the Universal Declaration of Human Rights." And, pursuant to Article 31 of the Constitution of Bangladesh, "Everyone shall have the right to life, liberty and security of persons." In fact, however, Bangladesh does not guarantee the right to life and has refused to comply with the Universal Declaration of Human Rights and Bangladesh's constitution. A few human rights organizations in Bangladesh and abroad have long called on the government to stop the killings, calling them "extrajudicial." In addition, on June 29, 2009, the Bangladesh High Court asked the government to clarify why killing people without trial in the form of extrajudicial killings is not ruled illegal and why action against the perpetrator is not taken.[7677]

Moreover, for such offences that very broadly cover the area of torture, the Bangladesh Penal Code 1860 has given definitions and punishments as follows: crime affecting life (Section 299311), injury[78] unlawful restraint and wrongful imprisonment,[79] criminal force and assault offences,[80] rape offences.[81] Where such crimes are incurred by members of the police force, allegations of torture can be brought against them in compliance with these provisions. It seems very frequently that torture is committed against an individual on the orders of 'higherups,' who encourage the police to act.

[75] Code of Conduct for Law Enforcement Officials, Adopted by General Assembly resolution 34/169 of 17 December 1979. [82] Article 1 of the Convention Against Torture and other Cruel, Inhuman or Degrading Punishment 1984

[76] A. Z. M. Arman Habib, Extra Judicial killing in Bangladesh: A Murder of Human Rights, ISSN 1923-6654 (print) ISSN 1923-

[77] (online). Available at http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html

[78] Section 319-338A of the Bangladesh Penal Code 1860

[79] Section 339-348 of the Bangladesh Penal Code 1860

[80] Section 339-358 of the Bangladesh Penal Code 1860

[81] Section 375, 376 of the Bangladesh Penal Code 1860

The lack of disciplinary action against law enforcement officers remains one of the key characteristics of torture. In the years 2002 and 2003, there were a large number of deaths and reports of torture in police detention and custody. From January to December 2003, 81 people died as a result of torture by law enforcement authorities. Section 8 notes that "*law enforcement officers should be instructed that the rape of women in custody constitutes an act of torture that will not be tolerated. Similarly, they should be instructed that any other type of sexual assault which constitute torture, or cruel, inhuman or degrading treatment and that the perpetrator will be brought to justice.*"

When discussing safeguards against abuse and degrading punishment pursuant to Article 35(5) of the HCD in Alhaj Yousuf Ali vs. State[82] the HCD argued against torture by the police and spoke of a duty on the part of the police not to exercise capriciously and fancifully their powers of arrest. In D.K. Basu v. State of West Bengal[83] the Court considered custodial torture to be a naked breach of human dignity and ruled that the law does not permit the use of thirddegree methods or torture on the accused, because the acts of the State must be right, fair and just. Torture for extracting some kind of confession would be neither right nor just or equitable.[84]

The Code of Criminal Procedure also provides people with basic legal protections while they are in custody and sets out explicit rules concerning the actions of public officials in dealing with the accused.[85] For example, the right to be immediately brought before a judge within 24 hours of his/her arrest was set out in Section 61 and Section 167(1). In Bangladesh, there is no law that criminalises the act of "extrajudicial" or "extra-legal" execution explicitly. Nevertheless, acts of extrajudicial execution, even by law enforcement officers, fall under the provisions of the Penal Code on murder and homicide. Bangladesh has indeed adopted a separate torture statute. Any government official convicted of torture or custodial death is subject to prosecution under the Torture and Custodial Death (Prevention) Act, 2013.[86]

The Supreme Court of Bangladesh raised concerns about alleged extrajudicial killings in 2009 and released a Suo Motu[87] rule urging the state prosecutor to intervene to avoid extrajudicial killings. In this petition, local human rights organisations, the Bangladesh Legal Aid and Services Trust (BLAST) and Ain o Salish Kendra (ASK) appeared as interveners and submitted affidavits stating that the "recorded cases of extra-judicial killing in the name of 'crossfire", 'gunfight' or 'encounters' constitute a gross violation of the right to life, equal protection of the law, and

[82] (2002) 22BLD (HCD) 231

[83] AIR 1997, SC, 610

[84] Momtaz S, Human Rights Violations in Bangladesh: A Study of the Violations by the Law Enforcing Agencies, Mediterranean Journal of Social Sciences MCSER Publishing, Rome-Italy, Vol 4 No 13 Available from: https://core.ac.uk/download/pdf/228529475.pdf

[85] Section 302 of Bangladesh Penal Code 1860

[86] Momtaz S, Human Rights Violations in Bangladesh: A Study of the Violations by the Law Enforcing Agencies, Mediterranean Journal of Social Sciences MCSER Publishing, Rome-Italy, Vol 4 No 13 Available from: https://core.ac.uk/download/pdf/228529475.pdf

[87] Suo Motu is a Latin term meaning Relating to a decision taken by a judge, without the request of the parties concerned, of its own accord. " The Supreme Court took Suo Motu note of the case'

protections for arrest and detention under the article 31,32,33 and 35 of the Bangladesh Constitution.[88]

4.3 Extra Judicial Killing infringe the Presumption of Innocence

A central tenet of the philosophy of criminal law is the principle that persons convicted of criminal crimes should be considered innocent unless proved guilty beyond any reasonable doubt. In every legal system, one of the core concepts of criminal law is that the accused is presumed innocent unless proven guilty beyond reasonable doubt after litigation has been performed in a competent court under due process of law, which requires, among other things, the right of protection of the accuser. According to Article 14.2 of the International Covenant on Civil and Political Rights, 1966, which Bangladesh acceded to in 2000, anyone convicted of a criminal offence is entitled to be presumed innocent unless proven guilty by statute. The presumption of innocence is the inherent right of the accused because as a human being, he has some kind of integrity and honour and never wants to risk it.[89] There are two aspects to the theory of the presumption of innocence: a provision governing the location and standard of the burden of proof and, secondly, a policy directive specifying that the target of a criminal investigation must be regarded as innocent at all points of the criminal proceedings, irrespective of the possible outcome of the proceedings.[90] In recent years, the phenomenal spike in extra-judicial killing of 'criminals' as a populist device to solve 'law and order' issue by law enforcement agencies such as 'operation clean-heart' or crossfire not only violates many cardinal principles of criminal justice, including the presumption of innocence and the right to be defended, but also remains an unrequited form of violation of the rights of a citation.[91] "Cross fire" simply suggests a futile effort to keep crimes under control and points out that our criminal justice system is severely failing.[92]

4.4 War against drugs and extra judicial killing

The latest spree of "shootouts" began after RAB was requested by Prime Minister Sheikh Hasina earlier this month to fix the drug issue. There have been at least seven million drug users, according to the Department of Narcotics Control of Bangladesh, of which five million are hooked on methamphetamine. On May 14, at a press conference, RAB Director-General Benazir Ahmed said a "stronger stance" would be employed to combat substance abuse. Mr. Ahmed stated police cases "*will be less encouraged by the courts... due to the backlog".* Normally, these cases require a lot of time to get processed. Since the operation started, thirty-three suspected drug traffickers have now been killed in 'gunfights' with security forces across the country 2,471 individuals were also convicted by RAB's mobile court, of which 347 were drug traffickers and the

[88] State v. Major Kazi Waheduzzaman and Others (24727/2009), Judgement given by The Bangladesh Supreme Court (2009).

[89] Hussain Mohammad Ershd v. Bangladesh, 2001 BLD (AD) 69 (2001).

[90] Schwikkard, P. J. (1998). The Presumption of innocence: what is it? South African Journal of Criminal Justice, 11, 403.

[91] Report, H. R. (2009). The State of Human Rights in Ten Asian Nations. Asian Human Rights Commission (AHRC).

[92] A. Z. M. Arman Habib, Extra Judicial killing in Bangladesh: A Murder of Human Rights, ISSN 1923-6654 (print) ISSN 19236662 (online). Available at http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html [99] Mahmud F, Bangladesh: Extrajudicial killing fears in drug crackdown, 22 May 2018, Available from: https://www.aljazeera.com/news/2018/5/22/bangladesh-extrajudicial-killing-fears-in-drug-crackdown

rest were drug addicts. Over the same period, police said more than 500 people had been arrested.[99]

In the context of a drug war, charges of extrajudicial killings in Bangladesh expose widespread allegations of enforced disappearance and the fabrication of facts by law enforcement officials. Since Prime Minister Sheikh Hasina initiated an anti-drug crackdown on 3 May 2018, allegations of extrajudicial killings in Bangladesh have shot up, with 52 individuals killed by law enforcement agencies within just ten days of the announcement. There were 466 alleged extrajudicial executions in the country in total during 2018, more than three times the number reported in 2017. The authorities have reportedly tried to fabricate evidence to support their "gunfights" or "crossfire" statements instead of conducting thorough inquiries into these killings. Supposed "witnesses" admitted in interviews with Amnesty that they had not seen the killings but were demanded by the police to make false statements supporting the police account of the deaths. The police and the Rapid Action Battalion seem to have forcibly disappeared all the victims of the alleged "gunfights" - often for up to six weeks - before their bodies were found. The authorities either denied that they were in their care or declined to say where they were as relatives requested knowledge about their whereabouts.

Dinushika Dissanayake, Deputy South Asia Director of Amnesty International, said that the 'war on drugs' has led to the death of at least one person per day. Wherever the Rapid Action Battalion was involved, it seems that they operated outside of the law - the suspects were not prosecuted, let alone put-on trial. The 'anti-drug' operations have spread terror in some of the poorest communities of the world, where people fear that the slightest suspicion of drug abuse may lead to another suspected extrajudicial execution of their loved ones. These killings have taken place in the broader sense of a blanket drug prohibition in which citizens, particularly those from the most vulnerable communities, have been intentionally punished and violently targeted by the government. "The Bangladeshi authorities must immediately put an end to these killings."[93]

As per human rights activists, the drug crackdown in Bangladesh compares with the brutal drug war waged by President Rodrigo Duterte of the Philippines, which killed thousands of drug offenders by security forces, with de facto immunity for executioners. Despite the fact that the inflow of drugs, particularly yaba, which is mostly smuggled across neighbouring Myanmar, has not stopped, the authorities claim the drive was a success. "The progress of the campaign, I could say, is clear. Either the drug dealers went into hiding or stopped the business, and many surrendered," said Jamal Uddin Ahmed, director-general of the Department of Drug Control. There is now minimal substance violence. It is not that drug use has entirely ceased. Because in society there are drug users, they will try to collect drugs one way or the other,' he said. Another DNC official, Abu Sufian, told that during various raids, the law-enforcement agencies seized over 53 million pieces of yaba, a significant rise from 40 million in 2017.

[93] Bangladesh: hundreds killed in 'war on drugs', Available from: https://www.amnesty.org.uk/press-releases/bangladeshhundreds-killed-war-drugs-new-report

The authorities also confiscated 451.8 kilogram's (886 pounds) of heroin during the time, a 50 kg rise from the 401.6 kg seized in 2017, he said. In the past decade, the use of drugs, especially yaba, has multiplied by over 500 times. We recovered 132,287 parts of yaba in 2009. Now after ten years, we've recovered more than five crores (53 million). Sufian acknowledged that the drug causes harm not only to our culture but also to our economy. In 2018, the authorities filed 119,878 cases accusing 161,323 persons of the use, sale and smuggling of narcotics, according to the DNC. An elite police unit that actively engaged in the anti-drug campaign, the Rapid Action Battalion, defended the deaths that took place during their raids. No doubt can be answered as to the deaths. During our campaign, we detained over 100,000 people, but there were no casualties at all,' RAB spokesman Mufti Mahmud Khan told EFE. Khan added that there was no intention for this drive to end soon at any time. There is no timeline for this operation, it is ongoing, once the problem comes to a tolerable limit, he said a decision can be taken. In the move, human rights defenders said killing will not offer any solution to the attack.

The law enforcement authorities are continuing the killings in the name of the anti-drug campaign. Increasing lawlessness is the biggest issue that it creates said Supreme Court lawyer Jyotirmoy Barua. Mr. Barua pointed out that the judiciary gets weakened when law enforcement officials want to prosecute the accused. It can seem, obviously, that this sort of unlawful killing is recognized in society. There may be some anger among common citizens once justice is delayed. There is a view that gives passive legitimacy to the killing). The Law enforcement authorities are attempting to cash it in,' he said. "In many countries, the judiciary is weak. It is being improved by the solution to the problem. Extra-judicial assassination is not a remedy,' said Barua.

4.5 Extra judicial killing continued in Covid-19 situation

Even after the COVID-19 outbreak while court proceedings are postponed but murder in 'gunfight' continues, extra judicial killing has become worryingly the practise. In the past month, when there was a general holiday, starting on March 26 and now extended until May 5, at least 17 people were killed in 'gunfight' to contain the spread of the novel coronavirus. The victims were killed in nine districts in 13 'gunfight' or 'crossfire' events. As mentioned by the media relating to law enforcement officials, twelve of them are accused of engaging in drug trafficking and five in theft. During the time, several cases of custodial torture were also recorded, with one of them involving a farmer shocking the world. On March 23rd, the farmer was arrested at his home in Barguna on suspicion of involvement in a murder; three days later, the police reported he had committed suicide inside the police precinct. Signs of torture have been reported in the post-mortem report.

The rights organisation Odhikar has reported about 3,844 cases of extrajudicial killings since 2001, while in the first three months of 2020, Ain O Salish Kendra reported 85 cases. The staggering figures indicate that little respect for the rule of law is displayed by law enforcement officials. Anyone who is accused of being involved in a crime has the right to a fair trial and defence. Unlawful methods such as extrajudicial killing are not only violations of rights, they undermine the justice system. The government has passed legislation that further allow law

enforcement authorities to search, seize and arrest common citizens instead of a judicious prosecution of death without trial and strict enforcement of the Torture and Custodial Death (Prevention) Act 2013 to curtail criminal wrongdoing by the police. Examples in this respect are the enactment of the Information Protection Act and the Drug Regulation Act. Government officials justify the assassination of the accused on several occasions without trial. In January, a parliamentary lawmaker called on law enforcement agencies to kill rapists in 'crossfire' to avoid cases of rape, which have escalated alarmingly. The deeply flawed legal principles that many politicians have internalised are evidenced by such comments.[101]

[101] Extrajudicial killing continues, even in COVID-19 time, available from https://www.newagebd.net/article/105199/extrajudicial-killing-continues-even-in-covid-19-time Published on April 27, 2020, Accessed on 10th November 2020

The present situation testifies to the fact that the law enforcement agencies and the judicial system have failed to guarantee the fundamental right of people to life and justice, a situation that needs to be modified for the better immediately. In order to mount pressure on the government to avoid such extrajudicial killings and custodial torture that hold back the rule of law, people must make their voice loud.

At least 44 people became victims of "extrajudicial killings" during the ongoing coronavirus outbreak in the country, according to a report prepared by seven eminent citizens of the country. "*Of the victims, 24 people were killed by police, 11 by Rapid Action Battalion and the rest were killed during joint operations of police and Border Guard Bangladesh*," said the report. The seven eminent citizens,[94] including university teachers, researchers and rights activists, prepared the document based on media reports published in 12 national dailies and news portals between March 1 and April 10. In a statement issued today, they said it was important to identify the role and response of human rights violators now so that justice for and rights of the victims could be ensured in the future.

On the Covid-19 outbreak, the report said patients showing symptoms of the infectious disease and their relatives were suffering due to lack of proper testing facilities, as well as because of insufficient personal protection equipment for health service workers. Referring to media reports, the statement said some 130 people died after showing symptoms present in Covid-19 infections between March 8 and April 10. From the government's side, however, there has either been silence over those deaths or causes shown as pneumonia, normal fever and breathing problem, or heart attacks in some cases, it said. In their statement, the noted citizens also stressed the need for effective measures to protect Rohingya refugees in Cox's Bazar camps as well as members of the Urdu-speaking community living in different parts of the country.

[94] They are Prof Anu Muhammad, Shahidul Alam, Farida Akhter, Jyotirmoy Barua, Rushad Faridi, Saydia Gulrukh and Rezaur Rahman Lenin.

The report also said due to the shutdown situation, the country's agriculture sector is likely to face a disaster. On the other hand, there is no specific plan yet for how people in urban areas will get or purchase food amid the current situation, it said. The citizens said incidents regarding garment workers who were forced to come to Dhaka and later sent back were "inhuman and cruel". They also raised concern over the recent measles outbreak and food shortage in the country's hilly region. Their statement condemned incidents of torture and harassment by law enforcement agencies and demanded exemplary punishment for the culprits. Praising the role of the National Human Rights Commission during the coronavirus crisis, the statement stressed for further strengthening the commission's role, especially when dealing with extra-juridical killings and enforced disappearances.[95]

[95] At least 44 victims of 'extrajudicial killings' during coronavirus outbreak: report, Published in https://www.thedailystar.net/least-44-victims-extrajudicial-killings-during-coronavirus-outbreak-1892683, April 13, 2020, Accessed on 13th November 2020.

Chapter -5

5.1 Case studies 1: Md. Lemon Hossen, a 16-year-old student

The investigator is seeking to maintain the real truth of the heinous position of RAB-8 against the survivor, Mr. Md. Lemon via an interview with him on the basis of witnesses and an analysis of the related documents gathered from the various mass media, Lemon Hossen reported below.

Md. Lemon Hossen, a 16-year-old student of the Kathalia P. G. S. Multilateral High School and College and an examinee of the Dhaka Board of Technical Education's Higher Secondary Certificate (HSC) examination. Lemon's family lives in the village of Saturia, under the jurisdiction of the Jhalkathi District Rajapur Police Station. Mr. Tofazzel Hossen's father is a day laborer by trade, while Mrs. Henoara Begum, his mother, is a housewife. At around 3:30 pm on March 23, 2011, his mother asked Lemon to carry the family's cattle from the bank of the Sondha River, where three cows were left for grazing. A group of nine people riding three motorbikes (three people on each bike) stopped Lemon when he returned home at around 4pm. One man among them was clearly clad, while the other eight were wearing the Rapid Action Battalion (RAB) black uniform. The plain dressed man, later recognized as Md. Lutfor Rahman, Deputy Assistant Director (DAD) of the RAB-8 Crime Prevention Company No. 01 based in Barisal District, asked Lemon's name and began beating him (Lemon) for being a 'terrorist.' Lemon, who used to handle his tuition fees by working as a part-time worker at the local brick factory because of the inaccessibility of his family, declared that he was a student informing his college name in order to check his studentship, he also asked the RAB men to contact the principal of Kathalia P. G. S. Multilateral School and College. DAD Lutfor and his peers refused to acknowledge the argument made by Lemon and tried to kill him by pointing a gun at him. Lemon cried with terror and begged the RAB workers not to kill him. Daddy Lutfor unexpectedly shot him, pointing a pistol at his left thigh.

Lemon dropped to the ground and lost his sense of it. The news that Lemon was shooting at Lemon in broad daylight immediately reached his relatives and neighbors. Lemon's mother, Mrs. Henoara Begum, rushed to the scene with her uncle, Moazzem Hossen, and saw Lemon bleeding from his left leg. When the mother and uncle cried out for help to save Lemon's life, the RAB members stopped Lemon from approaching them. Members of the RAB have begun beating Moazzem.

Most notably, however it should be noted that the RAB violently assaulted the law enforcers, i.e., without complying with and following the correct arrest procedure, rather than committing unlawful arrest; arbitrary detention; torture; false charges; threat of death; intimidation; impunity and breach of the rule of law that could be induced to extra-judicial killing if the victim, Md. Lemon Hossen would not have been alive today through that heinous practise of implementing the RAB-8 law in a democratic and developing country like Bangladesh in the name of ensuring protection for people rather than violating human rights.[96]

[96] Islam N, Bangladesh's Extra-Judicial Killings: Crossfires or Human Rights Violations, Asian Journal of Social Sciences and Legal Studies. Available from www.universepg.com/journal/ajssls

5.2 Case study 2: Narayanganj Seven Murder

In the said Narayanganj Sensational 7-Murder Case in a democratic and developing country like Bangladesh, the researcher attempts to uphold the real scenario regarding the breach of law enforcers involving a certain number of civilians committed in the said Narayanganj Sensational 7 Murder Case.

Narayanganj City Corporation (NCC) panel mayor Nazrul Islam and senior lawyer Chandan Sarker were kidnapped from the Dhaka-Narayangonj link road on April 27, 2014. Shortly after the incident, Nazrul's followers vandalised and blocked vehicles on the connecting road in Signboard for some time. On 29 April 2014, three RAB officials, including Lt. Col. Tareque Sayeed Mohammd, RAB-11 commanding officer, were suspended from their duties two days after the murder. In the meantime, the Home Ministry suggests removing Syed Nurul Islam, Police Superintendent; Akhtar Hossain, Fatullah Police Station Officer; and Abdul Matin, Siddhirganj Police Station Officer in Charge.

On May 4, 2014, Shahidul Islam, Nazrul's father-in-law, alleged that RAB men killed Nazrul in exchange for Tk. 6 crore from the accused Nur Hossain and others. "Awami League lawmaker Shamim Osman said, "Nur actually committed the crimes. The police, on suspicion, confiscated a car from Nur's younger brother from a glass factory run by a relative of Shamim Osman. Locals watched a day-long hartal in Narayanganj demanding the accused's arrest. The case was, eventually turned over to the DB.

On August 23, 2017; in the sensational 7-murder case and on August 22, 2017, the High Court revised the lower court verdict; upheld the death sentence of 15, including three former RAB officials and expelled leader of the Awami League Nur Hossain, for their involvement in the plot, abduction and killing of seven Narayanganj men in 2014. However, the court commuted to life imprisonment the death punishment of 11 others. They were fined Tk. 20,000 each for which they have to spend two more years in jail by default. In addition, it is important to note that during the verdict, a total of 23 of the 35 accused were present in the case. Of these, 17 were Rapid Action Battalion (RAB) participants, while 12 other defendants have been absconding since the incident. Most significantly, it is necessary to note that they were barred by a court employee and police staff as journalists were about to enter the courtroom. The court interfered later, however and let them in.[97]

5.3 Case study 3: Councilman of the Municipality of Teknaf killed extra-judicially in 'drug war'

On 26 May 2018, Mr. Ekramul Haque, Ward Councilor of Teknaf Municipality, was killed in a "gunfight" in Cox's Bazar in between RAB and drug traders. Ekramul's brother Ehsanul told the press that on Saturday at around 9.30 pm some plainclothes men of the "information agency" picked up their brother from their home, claiming that they wanted to talk about buying the plot

[97] ibid

with him. He has never been involved in drug peddling in any way. Ayesha Begum, Ekramul's wife, said that the RAB's argument that her husband was a drug dealer was false.

Ekramul Haque had three short phone calls with his daughter prior to his death. The first call he made came from his phone. His daughter made the second and third calls from the smartphone of her mother, Ayesha Begum, which has an app that tracks both incoming and outgoing calls, keen to know when her father will return home. Ayesha Begum herself made the fourth recorded call, trying to contact her husband. Police sirens and whistles were in the background, and there were gunshots. Ekramul was heard screaming in pain, and then more gunshots took place. The killers (RAB members) proceeded to fire from multiple angles at the dead body (which presumably would be registered in a ballistic report and during postmortem). Then on the crime scene, they scattered some empty bullet shells and placed some Yaba (methamphetamine) tablets into the pockets of the dead man.

Mr. Haque's family sent journalists many audio clips capturing the sounds of gunshots and the groans and cries of a dying man, leading human rights groups to challenge the antinarcotics drive's approach and legality. Just after Ekramul's death, Home Minister Asaduzzaman Khan told the media that if any proof of wrongdoing was found, a magistrate would be charged with investigating the killing and those responsible for his death would be brought to book. It has been a year since Mr. Haque's murder, and there has been no progress in the investigation yet.

5.4 Case study 4: Major Sinha Rashed Khan

The killing by the Bangladesh police of a former military officer, Major Sinha Rashed Khan, has finally forced the security forces to tackle their extrajudicial execution culture. For years, officials have denied charges or even justified such killings as a mechanism for the resolution of the crime and have obviously supported false statements that the victims died either in a gunfire or because fire opened in self-defense during security forces. While Maj. Sinha's murder finally turned the leaders of those in power, it is clear that the government is more interested in moving beyond the incident than in solving a general security issue. According to Bangladesh's rights group Odhikar, over 150 people have been killed so far by police officers this year alone, but there has not been a single successful prosecution, not to mention the hundreds of murders that occurred before.

After killing Maj. Sinha, the police first used their normal protection. On 31 July Sinha was shot dead in a checkpoint in a documentary in Cox's Bazar, the police said they had fired in self-defense and seized recreational drugs from Sinha's car, and detained his assistants. But the authorities were compelled to take certain steps following indignation both among the public and within the military at the killing of a soldier who was once part of the security information of the prime minister. 21 police officers were suspended and nine detained again, including a senior officer who publicly justified these "crossfire" murders the euphemism frequently used in Bangladesh by the security forces to sum up killings by saying that the victims were all criminals. The government awarded him a medal instead of investigating the charges.

The arrests following the death of Maj. Sinha could lead to independent investigations of reports of more illegal killings in order to keep the perpetrators responsible. But it seems impossible. While the army and police leaders supervise the investigation into the death of Maj. Sinha, the two seem determined to contain the damage, to characterise it as a separate incident and to condemn rights organisations for using the word 'crossfire.' In the cases investigated by Amnesty, at least four people were killed by security forces in secluded open fields surrounded by trees, large tracts of arable land or under-built houses.[98]

In each of the suspected extrajudicial killings, witness testimonials have been registered by law enforcement officials. Severe charges of fabricating these witness accounts have been made against law enforcement agencies. At least five Amnesty International witnesses interviewed stated that they had not seen the killings but were requested by the police to give fabricated comments supporting the police account of the deaths as having happened in supposed "gunfights" or "crossfire." They said they could not deny demands from the police to serve as witnesses who were afraid of harsh repercussions. Signatures, addresses, phone numbers and personal information of the witnesses were taken by security forces. Later, the witnesses were either called to check their claims by security forces or were called to the law enforcement agencies' offices to testify about what they had "witnessed."[99]

5.5 Truth Behind Crossfire

The fact behind extrajudicial killings is being uncovered as reports of the retired major Sinha Md Rashed Khan killing unfold. This occurrence generated shock and fear among individuals. At a press conference, former army officers requested that extrajudicial killings be terminated once and for all. This is a demand from the public. It is not necessary to disregard this demand if the law and the constitution are to be upheld. According to Prothom Alo reports, 287 individuals were killed in so-called gunfights during the anti-drug campaign in Cox's Bazar alone from 4 May 2018 onwards. Of these, 174 were shot dead in police encounters, 62 with the Bangladesh Border Guard (BGB) and 51 with the Battalion of Rapid Action (RAB) and 161 of these were killed in 'gunfights' with the police at Teknaf. Most of these 'gunfights' involved the suspended officer-in-charge (OC) of Teknaf police station, Pradeep Kumar Das, it is alleged. It is troubling that some person or power in one specific area is involved in so many killings. Such events are taking place all over the world, supported by the undeclared impunity of the government.[100]

A study of the record of extrajudicial killings over the past 20 years shows that this has effectively become a government policy. If not, after committing a series of such killings, how can anyone be awarded? And yet, violence has not decreased. In the other side, it stretches out and grows fresh roots. Outside of the law and judicial procedures, nothing good can emerge. Those who wanted a 'good crossfire' know this now. The history of the Philippines and some Latin American

[98] Killed in Crossfire, Amnesty International, Available from: https://www.amnesty.org/download/Documents/ASA1312652019ENGLISH.pdf

[99] ibid

[100] Extrajudicial killings, The truth behind 'gunfight' narratives, Available from: https://en.prothomalo.com/opinion/editorial/the-truth-behind-the-gunfight-narratives, Accessed on 16 November 2020

countries shows that by attempting to regulate narcotics or crime in this way, crime has not decreased. This further allows law enforcement officers to break the law and increases their vulnerability to violence.[101]

Concerning the incident at Cox's Bazar, the police have said that this will no longer happen. Whether this refers to one unique force or to anyone should be explained. All casualties are comparable. Following the countrywide response to the killing of retired Major Sinha Md Rashed Khan, the government has taken responsible action. Major quarters within the nation are also aware of the question of justice to be served in this event. In the meantime, countless grieving families continue to bear the pain and suffering of losing their loved ones without justice, such as that of the killed Teknaf Councilor and Juba League chief Ekramul. It is not appropriate because in the case of the common man, there will only be justice in the case of influential figures and fictional narratives.[102]

Killing whether it is gun fighting, crossfire or extrajudicial killing is killing. That is a violation of the legislation. The constitution, justice and civil rights are all overlooked as representatives of the law enforcement agencies themselves become the judges and enforcers of the law. No matter what these drives are called illegal killing causes unrest in the state and disables the arm of the law, beginning with 'Operation Clean Heart' to the 'War on Drugs'. Narayanganj's seven murders and the recent killing of Sinha Md Rashed Khan, a retired general, are only instances of such dark incidents. In the midst of the outpouring of public indignation and shock following the murder of Sinha, the government should take the requisite steps to put an end to such law enforcement acts. This is also important for the legitimacy of these powers.[103]

[101] ibid
[102] ibid
[103] ibid

Chapter-6

6.1Statistics of the judicial killing by law enforcement agencies

Table: Crossfires committed between 2001 and 2020 by law enforcement agencies.

Crossfire/Gunfight from 2001-2020																	
Year (s)	RAB	Police	RAB-Police	Joint Force	Cheeta-Cobra	Army	BGB (Former BDR)	Police-BGB	RAB-Coast Guard	RAB-Police-Coast Guard	Coast Guard	DB Police	Forest Guard	Police-Coast Guard	Ansar	BGB-RAB	Grand Total
2020 (upto June)	49	67	0	0	0	1	15	0	0	0	0	8	0	0	0	0	140
2019	101	193		1		4	53	4	0		1	19					376
2018	136	270					2				2	45	1			2	458
2017	32	104				1						2					139
2016	51	92		1				1	4			2					151
2015	48	97		1			2										148
2014	23	83		8							3					2	119
2013	27	36	0	2	0	0	0										65
2012	40	7	2						4								53
2011	42	15	4						4								65
2010	65	21	9						3	3							101
2009	38	63	25			3											129
2008	65	50	15	1			1				4						136
2007	90	35	3	1							1						130
2006	181	96	1								7	4	1				290
2005	107	212			4							2		15			340
2004	63	91		7		1	1	3									166
2003	0	26		4		1						1			1		33
2002	0	5															5
2001	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		0
Total	1158	1563	59	26	4	11	74	8	15	3	18	83	2	15	1	4	3044

Source: Odhikar[104]

[104] Odhikar (a Bangla word which means 'freedom') came into being on October 10, 1994, with the goal of establishing a broader framework for tracking and raising awareness of the violations of civil and political rights. The organization's key goals are on the one hand, to raise awareness of human rights and their numerous violations, and on the other, to create a vibrant democratic

Chapter-7

7.1 A threat to public confidence

The judiciary requires public confidence in its presence and successful functioning as a legislative body in a democratic society. In order to achieve its legitimacy, the judiciary must have public confidence which may not be available despite having power and authority. For criminal justice, this legitimacy is emphatically important as it implements punishment that requires community trust. The common citizens must have confidence in the criminal judiciary for an efficient justice system, because the spontaneity and cooperation of victims and witnesses is very necessary to prove the guilt of the accused. The role of the criminal judiciary is very critical in protecting common people from the persecution of mighty men and the arbitrary use of power by the executive organ of the state. Loss of public confidence in the judiciary leads to a situation where judicial decisions are not properly accepted and respected by the common people. This situation would be quite detrimental to the life of the judiciary and could eventually lead to the violation of law and order in society. In such a society, there would be a culture of avoiding the country's existing laws, particularly by powerful men, and of manipulating legal procedures to curb opposition by the state's executive branch.[105]

The entire system of criminal justice is intended to validate the claims made against a person or government. The accused person will be convicted if the accusation is shown beyond reasonable doubt, but if guilt is not proven, the accused person will be acquitted. It is the expectation of society that after following the legal procedures, a real convict must be punished by the courts and must be held away from the mainstream of society by incarceration or death penalty. The state is mandated by a defined and accepted system, the administration of criminal justice, to satisfy this expectation of society. The extrajudicial killing by law enforcement officials of accused criminals is the deliberate avoidance of a country's judicial branch. The judiciary is forced to deplete its fundamental pillar of public trust by the robust culture of the lynching of alleged offenders in Bangladesh. It is disturbing that some recent mob beating incidents suggest that Bangladeshi people appear to resort to the old retributive model of punishment, eye for eye, tooth for tooth. The unavoidable effect of regular extrajudicial killings by law enforcement officers and the steady loss of public confidence in the administration of criminal justice is this unwelcome development.[114]

The challenges found in the formal legal system beforehand play their part in ensuring access to justice is refused at all times. In Bangladesh, two things create a dilemma. First the Court also does not accept such concerns of rural poor citizens. Secondly, the issue of technical law is another. Language of law is incomprehensible, thus refusing recourse to justice. Even if the first step problems are solved, it would just pave the way for the second stage problems. It needs that

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structure through election monitoring. To discuss the current human rights situation, the group also conducts policy advocacy. There are no field or branch offices for Odhikar.

[105] Rahim A, Hider M, Extra-Judicial Killing by the Law enforcing Agencies in Bangladesh: A threat to public confidence in the Judiciary, Available from www.heinonline.com [114] ibid

the suspect be identified. The inefficiency and unrestrained misconduct of law enforcement agencies creates obstacles at this level and thus access to justice. If, fortunately, anyone succeeds in overcoming this challenge, a legal argument must be made. However, the counter poor laws in the formal judiciary, negative conduct towards the poor, and unnecessary bureaucracy contribute to unwanted delays in the processing of a claim in law.
The most fortunate person will enter the final level, which needs his right to be translated into reality. However, the assurances that justice has been executed can be underfed by obstacles such as corruption, loss of judicial autonomy and 'abuse of political power vis-à-vis law enforcement agencies.[106]

7.2 Extra Judicial Killing: A treat to Universal Human Rights

It is important to have prior knowledge of the Crossfire context in Bangladesh in order to examine the case from a philosophical perspective. In addition, Bangladesh's socio-political dynamics also need to be accounted for. The right to a human being's life has been prioritized by all legal instruments. In the view of certain legislative bodies, offenders are often entitled to a fair judicial process. But the problem arises when these offenders, because of their control over Bangladesh's politics, establish a constant threat to the daily lives of ordinary citizens and become untouchable.

Crossfire, the positive and negative effects of a specific method of extrajudicial killing, is an ongoing controversy in Bangladesh. By adopting this approach, wiping out criminals from society is a common idea among ordinary citizens. On the other hand, civil society, national and foreign non-governmental organisations are pressing the government to ensure the rule of law. Bangladesh is an overpopulated nation and an underdeveloped one at the same time. The government has taken many steps to uphold the country's social order but has struggled because of the severe corruption activities in every industry.[107] To put the godfathers, mafia, and criminals under jurisdiction, they even operate a crash programmed called 'Operation Clean Heart'. This effort has failed because, by using their unlawful influence, the convicted, accused members get out of the prison.

Bangladesh's procedural justice process is grappling with a large number of cases. It takes a long time to get a verdict, especially on serious offences (i.e., Murder). In addition, there are several phases in Bangladesh's judiciary, and it is possible for a convicted person to appeal to the higher court and to continue the process. Therefore, it is easy for offenders to get rid of punishment by pursuing various ill means. Bangladesh's state forces are decentralized into three autonomous entities: legislative, judicial and executive.[108] Several researches have claimed that there is

[106] Aziz B M, Extra Judicial Killing: An overview of Bangladesh, International Journal of Humanities, Arts, Medicine and Sciences (BEST: IJHAMS), Vol. 3, Issue 12, Dec 2015, 131-142.
[107] Kamruzzaman, M., Khan, M. B., Das S. K, Extrajudicial killings: The violation of human rights in Bangladesh, International Journal of Environmental Planning and Management.
[108] Mollah, M. A. H, Independence of judiciary in Bangladesh: An overview, International Journal of Law and Management, Available from: https://doi.org/10.1108/17542431211189605

immense corruption at various levels of these institutions. As a consequence, from 2001-2005, Bangladesh was the most corrupt country in the world.

More frequently, Bangladeshi people open the newspapers and find that in Crossfire a suspect was killed when the law enforcement agencies were in action to find his peers. While such a method of killing is a breach of the law, it gives ordinary people pleasure. Bangladeshi citizens are split into two classes on the issue of whether or not Crossfire is a justified crime prevention mechanism. This act was endorsed by one party, while another group criticized it as a strategy of the state to suppress the opposition. Legislators are still trying to build a strategy to improve the satisfaction of most people. To ensure justice for all, both the law enforcement agencies and the courts are suffering.

Moreover, there are some points for ordinary people and the policymakers who sponsored this act. They argued that it was not possible to restore the weakness of the justice system within a night and punish the offenders for their acts. In addition, because of the social building of Bangladesh, the criminals are strong. Criminals are again, threats to citizens' protection. So; it's just a method of killing criminals in the Crossfire as a result of their evil work and bringing peace to society at the same time. That idea mirrored the utilitarianism of Jeremy Bentham, which is the maximisation of happiness for the greater portion of society. This category is skewed to the result that creates the highest state affairs and ignores the suffering of minority groups (e.g., family members of criminals).[109]

[109] Sakib N and Rashid Z Caught between 'Crossfire' in the Context of Bangladesh, International Journal of Criminology and Sociology · January 2018.

Chapter 8

International Human Rights Organizations Report

Many International Human Rights organization's has published reports on Bangladesh regarding human rights situations. Among them few reports are bellow.

8.1 Human Rights Watch Report

Human Rights Watch inquiries into hundreds of disappearances confirm the presence of the law enforcement authorities, including Police Detective Branch, Quick Action Battalion (RAB) and Powers Intelligence Directorate (DGFI). In certain cases, people lived for months or days in secret detention before they were brought to trial. The security forces reported in particular in disgusting cases that people known to be taken into custody died in so-called 'crushing flames.'[110] In the 2013 UPR, the government of Bangladesh decided to investigate and prosecute thoroughly and impartially all allegations of human rights violations, including enforced disappearances, custodial torture and extra-judicial killings," including violations by members of the security forces. However, the government struggled to honour this promise except for a couple of isolated incidents.[111]

Police refuse to authorise families to lodge complaints against state agencies in a very high number of cases of disappearance and at least allow them to lodge a complaint against "missing persons." A visit to Bangladesh has been requested by the UN's Working Group on Enforced and unwanted disappearance, but no response was received. The International Convention to Protect All Individuals from Enforced Disappearances is yet to be ratified in Bangladesh. Recently, 15 men including the members of the security forces in August 2017 have been convicted of engaging in the disappearance and killing of seven people in the Narayanganj District outside Dhaka, as an exception to this trend of negation and imposition against enforced disappearances.[112]

8.2 Odhikar Report

This research by Odhikar[113] on the human rights situation between January and March 2020. There are extra-judicial killings due to a lack of official transparency, no rule of law, a broken system of delivery of justice, and immunity for law enforcement and security forces. It also occurs in the name of anti-drug operations nationwide. It is believed that law enforcement officials are attempting to conceal the killing by calling it a "gunfight" murder. While men are normally victims of extrajudicial killings, in January this year a woman was also the target of

[110] Submission for the Universal Periodic Review of Bangladesh, 30th session of the UPR; 3rd cycle, Accessed from: https://www.hrw.org/news/2017/10/05/submission-universal-periodic-review-bangladesh

[111] ibid

[112] ibid

[113] Odhikar (a Bangla word which means 'freedom') came into being on October 10, 1994, with the goal of establishing a broader framework for tracking and raising awareness of the violations of civil and political rights. The organization's key goals are on the one hand, to raise awareness of human rights and their numerous violations, and on the other, to create a vibrant democratic structure through election monitoring. To discuss the current human rights situation, the group also conducts policy advocacy. There are no field or branch offices for Odhikar.

extrajudicial killings. In addition, in a "gunfight," seven Rohingya refugees were reportedly murdered together.[114]

Between January and March 2020, a total of 86 individuals were reportedly killed extrajudicially. Of those, 40 were killed by the police, 24 by the RAB, 14 by the BGB, 7 by the Police Detective Branch (DB) and 1 by the Army. Of the 86 extra-judicially killed people, 73 were killed in "crossfire/encounters/ gunfights." In addition, six of the dead were reportedly tortured to death by the police, six were shot to death by the BGB and police, and one was battered to death by the police.[115]

There have been reports of torture and death in police custody within the first three months of 2020. On paper only the Torture and Custodial Death (prevention) Act 2013 is in effect and the fact has not changed. Members of the law enforcement community, with impunity, continue to torture. The families of victims of torture face intimidation and threats by the police after filing charges. Most cases of death in custody are handled by employees of law enforcement agencies. As a result, the proceedings are claimed to be biased and could not be performed in a neutral manner. During this reporting period, six people, including one woman, were allegedly murdered in police custody.[116]

Members of the Bangladesh Border Guards (BGB) were charged with shooting civilians in the first three months of 2020. Moreover, during this time, there have been widespread complaints against representatives of law enforcement agencies for allegedly raising money in fear of crossfire, arresting innocent citizens instead of the main culprits, intimidation, accusing children of criminal cases, trafficking in the name of detention and extortion. Members of these powers enjoy impunity while the government uses law enforcement agencies to silence political rivals, government critics and dissidents.[117]

8.3 UNRHC Report

United Nations High Commissioner for Human Rights Zid Ra'ad Al Hussein condemned the alleged extrajudicial killings in Bangladesh of the alleged drug offenders and called on authorities to immediately put a stop to these serious abuses of human rights and to bring perpetrators on trial. The High Commissioner urged the Government of Bangladesh to investigate allegations of extrajudicial killings and stressed that in the name of drug regulation, there should be no impunity for violations of human rights. At a meeting in Geneva last week, he was reassured by promises made by Bangladesh's Minister for Law, Justice and Parliamentary Affairs that

[114] Three-month Human Rights Monitoring Report on Bangladesh, Reporting Period: January – March 2020, Prepared by Odhikar, Date of Release: 1 May 2020Accessed from: http://odhikar.org/wpcontent/uploads/2020/05/Odhikar_Three-Month_HRR_Jannuary-March_2020_Eng.pdf

[115] ibid

[116] ibid

[117] Three-month Human Rights Monitoring Report on Bangladesh, Reporting Period: January – March 2020, Prepared by Odhikar, Date of Release: 1 May 2020Accessed from: http://odhikar.org/wpcontent/uploads/2020/05/Odhikar_Three-Month_HRR_Jannuary-March_2020_Eng.pdf

investigations would take place and those found responsible for crimes would be kept accountable. He forced the Government to fulfil this pledge, stressing the need for integrity, impartiality, openness and efficacy of the investigations.[118]

Mr. Zeid also voiced alarm that vulnerable populations living in slums had already been especially targeted and subjected to multiple raids. The crackdown has also reportedly severely hindered the willingness of people who use drugs to access health care, as they believe that if they seek help at Drop-In Centres, they will be arrested or even killed. Bangladesh has undertaken to investigate allegations of extrajudicial killings, illegal arrests and other serious abuses during its Universal Periodic Investigation before the UN Human Rights Council on 14 May. The developments since that date, with rising reports of such abuses of human rights, are profoundly alarming.[128]

[118] Killings of suspected "drug offenders" in Bangladesh must stop – UN Human Rights Chief, Accessed from: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23178&LangID=E [128] United Nations Human Rights Report 2019, Accessed from: https://www.ohchr.org/Documents/Publications/OHCHRreport2019.pdf

Chapter-9

9.1 State sovereignty and International Law

Bangladesh has a constitution that is well-written and promotes a democratic form of government. It plays and performs a major role in the international geo-political domain. Bangladesh is like other sovereign nations, a sovereign and civilised country in the world and the subject of international law. Bangladesh is one of the world's civilised nations and can be bilateral or multilateral, entering into international treaties, conventions, covenants, protocols etc. Bangladesh has also signed too many international conventions and entered into them.[119][120]

The mechanism of application at the domestic level of international law varies from country to country. Many states do not give international law precedence over their local laws. As a different legal framework with laws and standards, both international law and domestic law are generally understood. In the background of Bangladesh, in the case of Kazi Mukhlesur Rahman v. Bangladesh,[130] where the Supreme Court's appeal division creatively used specific international law documents, the domestic invocation of international standards was the seedbed. Bangladesh's constitution points out the state's approach to treaty rule.[131] Article 25(1) of the Constitution states that "*A State shall base its international relations on the principles of respect for national sovereignty and equality, of non-interference with the internal affairs of other countries, of peaceful resolution of international disputes and of conformity with international law and the principles set out in the Charter of the United Nations.*"

In the case of Ershad v Bangladesh and others,[121] Justice BB Roy Chowdhury's separate opinion has explained Bangladesh's approach. The national courts could not neglect the international obligations that a country undertakes, it was held. Where domestic laws are vague or missing, national courts should rely on the values expressed in international treaties. In the case of Bangladesh and another v. Hasina and another,[122] it was held that "even if ratified by Bangladesh, the courts would not implement international human rights treaties unless they were incorporated into municipal laws, however they would have tested the ICCPR when interpreting the provisions of the Constitution to assess the right to life, equality and other rights.[134]

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[119] Babu A, Status of International Treaty in Bangladesh: Approach of the Supreme Court", Journal of Law and Global Policy Vol. 3 No. 1 2018 ISSN 2579-051X Available from: https://iiardpub.org/get/JLGP/VOL.%203%20NO.%201%202018/Status%20of%20International.pdf [130] 26 DLR (1974) AD 44.

[120] Babu A, Status of International Treaty in Bangladesh: Approach of the Supreme Court", Journal of Law and Global Policy Vol. 3 No. 1 2018 ISSN 2579-051X Available from: https://iiardpub.org/get/JLGP/VOL.%203%20NO.%201%202018/Status%20of%20International.pdf

[121] Appeal, 21 BLD (AD) (2001)69; ILDC 476 (BD 2000), 16 August 2000 paragraph 3

[122] Appeal judgment, No 46/2008; 60 DLR (AD) (2008) 90; ILDC 1409 (BD 2008); 8 May 2008, at paragraph 86. [134] Babu A, Status of International Treaty in Bangladesh: Approach of the Supreme Court", Journal of Law and Global Policy Vol. 3 No. 1 2018 ISSN 2579-051X Available from: https://iiardpub.org/get/JLGP/VOL.%203%20NO.%201%202018/Status%20of%20International.pdf

Because of the weak link in the international law and the question of a state's sovereignty, implementation of international human rights law has always been seen as problematic. Slow progress can be made with respect to the implementation of human rights law, as the international state system has never established an administrative arm or a robust judiciary to uphold states' international law and obligations. From this point of view, the implementation of international human rights legislation for extra-judicial killings of civilians in Bangladesh is very challenging, as the international human rights provisions legally question the rule of the state over society and national sovereignty.[123]

Bangladesh is already a signatory party to 10 major international treaties on human rights.[124] The International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) (ICC). On 5 October 1998, the Commission acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The State has also made voluntary commitments to expand its support to the Human Rights Council (HRC) and to strengthen its positive commitments. The Bangladesh government declared "zero tolerance" for torture and extrajudicial killings during all three periods of the Universal Periodic Review (UPR) of Bangladesh.[125]

The Optional Protocol to the Convention against Torture (OPCAT) and the Optional Protocols to the ICCPR have not been ratified by Bangladesh. There is therefore no question of creating, in compliance with the OPCAT, the National Preventive Mechanism (NPM) against Torture.
The country refrains from recognising CAT or other Treaty bodies, with the exception of CRPDOP and CEDAW-OP, from the individual complaint procedure.[126][127]

The International Covenant on Civil and Political Rights, 1966, guarantees that no one is subjected to torture or to treatment or punishment that is cruel, inhuman or degrading. The Bangladesh Constitution also forbids any kind of torture. The Universe Declaration on Human Rights (UDHR) (Art. 3, 5, 7, 8, 9, 10, 11) is known as jus cogens worldwide that cannot be extracted from. No rule on the prohibition of torture has yet been passed. In other words,

[123] Hossain S, Extra-Judicial Killings and human rights Law Bangladesh Perspective, Available from: www.emeraldinsight.com/1754-243X.htm
[124] Bangladesh's status of ratification of, and accession to, international treaties, available from: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=14&Lang=EN.
[125] Universal Periodic Review on Bangladesh, available from: https://www.ohchr.org/EN/HRBodies/UPR/Pages/BDIndex.aspx
[126] Civil Society Joint Alternative Report on Bangladesh Submitted to the Committee against Torture
[127] th CAT session (22 July – 9August 2019), Joint submission by: Asian Legal Resource Centre (ALRC); Asian Federation Against Involuntary Disappearances (AFAD); Asian Forum for Human Rights and Development (FORUM- ASIA); FIDH - International Federation for Human Rights; Robert F. Kennedy Human Rights; Odhikar; World Organization Against Torture (OMCT)

torture has not yet described it as crime in Bangladesh, while Srilanka enacted laws banning torture and in breach of the above, punishment for torture has been kept for seven years, though torture in Bangladesh has only been regarded as "hurt." Again, we draw our attention to another point concerning the Convention against Torture. Article 14 of that Convention was reserved by Bangladesh. Under Article 14(1): "*Each State Party shall ensure in its legal system that the victim of an act of torture is redressed and enforceable right, including means for complete recovery, to reasonable and sufficient compensation. In the event of the death of the victim, his dependents shall be entitled to compensation as a result of torture*."[128]

Therefore, Bangladesh Government refuses such compensation or rehabilitation by reserving Article 14 of that Convention and also disqualifies the constitutional mandate pursuant to Article 35(5) of the People's Republic of Bangladesh. The ICCPR, ratified on 5 September 2000 by Bangladesh, guarantees that every human being has the right to life. It stipulates that this rule must be protected and that no one can be robbed of his life arbitrarily. However, State security forces appeared to be liable for extra-judicial killings and custodial killings in 2007 and 2008. Extra-judicial executions by joint security forces continued unabated throughout the state of emergency.[129]

Since 2004, the Bangladeshi government has violated the Constitution and Universal Declaration of Human Rights. According to Article 35(5) of the Bangladesh Constitution and Article 5 of the Universal Declaration of Human Rights, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." And, pursuant to Article 31 of the Bangladesh Constitution, "Everyone has the right to life, liberty and security of a person." Few other human rights groups have long urged the government to stop the killings, calling them "extrajudicial," both at home and abroad.[130]

The state has a responsibility to respect the rights to life that its law enforcement officers, particularly the RAB, are violating.[131] Moreover, violating a person's right to life, liberty and welfare is indeed against the basic concept of the rule of law. Abuse of authority by law enforcement authorities, culminating in extra-judicial executions of civilians in the name of crossfire or encounter, is a serious breach of human rights, and law demands due judgement. It's utter human rights assassination in Bangladesh.[132] According to Odhikar, there were at least 2088 extrajudicial killings by police, the RAB and other paramilitary and security forces, from January

[128] ibid

[129] ibid

[130] Bangladesh's status of ratification of, and accession to, international treaties, available from: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=14&Lang=EN.

[131] Mohammad Islam, Extrajudicial Killing by Law Enforcement Agencies and Quest for Justice: Bangladesh Perspective BANGLADESH: Government must end torture and fully implement recommendations made by the UN Committee against Torture.

[132] Torture and Extrajudicial Killings by Bangladesh's Elite Security Force, Source: https://www.hrw.org/report/2006/12/13/judge-jury-and-executioner/torture-and-extrajudicial-killings-bangladeshs-elite

2009 to May 2019. The government generally declares self-defence and defends the murders under the excuse of the 'fight against extremism,' 'battle on droga,' 'self-defence in gunfights.[133]

9.2 Remedies for victim's family

The international human rights law, the UDHR and ICCPR, recognise the right to redress serious abuses of human rights, including extrajudicial killings. "Article 8 of the UDHR states that "everyone has the right to an effective remedy for actions in violation of the fundamental rights given to him by the Constitution or by statute by the supplementary national tribunals. The UDHR has expanded the right to redress, which requires the breach of the right to life, which must be individualised and judgmental. The right to redress is also enumerated in Article 2 of the ICCPR. Pursuant to Article 2(3)(a) of the ICCPR, the remedy for the violation of human rights by government officials has been specifically stated. The Optional Protocol of the ICCPR includes the legal duty of the States Parties to provide remedies under the national legal system, under which a person can bring human rights violations against the government. As Bangladesh has not ratified any of the optional protocols of the ICCPR, the UDHR and the ICPPR, in the case of extra-judicial killings by the security forces of Bangladesh, in particular the RAB, tend to be more applicable in relation to the right to remedy.

However, the victim's family members are entitled by the law enforcement agencies of Bangladesh to take procedural action for human rights abuses. Therefore, the "right to remedy" has been interpreted by both the Inter-American Commission on Human Rights and the European Court of Human Rights, which requires the responsibility to investigate and prosecute the violation. In addition, the remedy needs to be effective and adequate" under international law. Whether appropriate relief is not afforded by domestic law, or the courts and tribunals are not separate, or the proceedings take a long time, the remedy is not sufficient. Depending on the essence of the allegation, the solution also has to satisfy the plaintiffs.[134] Although no clear remedies for human rights violations are stated in the international human rights instruments, Prof. Schachter, however, indicated that "unravelling, repairing and compensating" may constitute acceptable remedies for human rights violations.

Accordingly, remedial proceedings under national civil and criminal law may also be possible for violations of human rights by the security forces of Bangladesh (Klein v. Superior Court. The family of the victim will move to the high court of Bangladesh and, pursuant to Article 44(1) of the Constitution of the People's Republic of Bangladesh, can file written proceedings to redress the wrongdoings of government law enforcement agencies. Another judicial advocacy is open, called Public Interest Litigation (PIL), which is more suitable for society's disadvantaged, economically marginalised people, where human rights defenders will fight against the RAB's arbitrary deprivation of life on behalf of the victim in court. The High Court of Bangladesh released a "suo motu" decision in State v. DC, where the court ordered the government to

[133] Civil Society Joint Alternative Report on Bangladesh Submitted to the Committee against Torture.

[134] Donnelly v. Jackman [1970] 1 All ER 987

investigate the abuse of human rights.[135] In addition, under PIL, the complainant can also request a redress from the public body or law enforcement authorities for the violation of human rights.[136]

In addition, Sections 132 and 197 of the Code of Criminal Procedure 1898 hinder government authorities, including the police and RAB, from pressing charges. Victims are afraid to open up their encounter with the RAB without the legal obstacles, since they have often received threats from law enforcement officials. In the State v. Major Kazi Waheduzzaman[137] BLAST's affidavit offered details on frequent and ongoing allegations of RAB and other security forces "extra-judicial killings,' citing press reports representing the concerns of civil society and human rights organisations.[138] Such recorded cases of extra-judicial killing in the name of crossfire, gunfighting or encounters constitute a gross infringement of the right to life, equal protection of the law and protections of detention and fair trial, as guaranteed by Articles 31, 32, 33 and 35 of the Constitution. The government, therefore, fails to ensure the basic rights of the people provided in the constitution.[150]

9.3 Extrajudicial killing arguments

Most of the time, the politicians who gave the elite powers the power of crossfire pleaded that the shortcomings and lapses of the current criminal justice system in the country could not be resolved overnight, and that, given the socio-political reality in the country, it would not be easy to deal with god-father-backed and under-world-oriented crimes in any shortterm era. As per them, crossfire is a clear way of suppressing criminals. Although they do not even care of the people in general, what happens when the people in general die under such a crossfire. They are prepared to offer reasons that they behaved in valid self-defence, or that the victims of crossfire were accused of 'x and y' or that the victims were the results of some encounter or engagement or fire exchange with armed goons. Immediate consequences in the community are some relief, for some hardened offenders fall in the line of fire.

Another claim in favour of extrajudicial killing is that the criminal is so dangerous to the country that it is in a critical situation for the safety of people and the state. The policy makers also say that the outcome of RAB officers operating in self-defence is cases of "crossfire" deaths. Through using the word "crossfire," the government defends the shootings, which it refers to as gunfights between some suspected terrorist group or "hardened" suspects and[150] the RAB or police. The hardening of the public mentality that continues to see such killings as an appropriate means of

[135] Mollah, M.A.H. (2014), "Judicial activism and human rights in Bangladesh: a critique", International Journal of Law and Management, Vol. 56 No. 6,

[136] Hossain S, Extra-Judicial Killings and human rights Law Bangladesh Perspective. Available from: www.emeraldinsight.com/1754-243X.htm

[137] State v. Major Kazi Waheduzzaman and Others (2009). Case No: 24727

[138] Hossain S, Extra-Judicial Killings and human rights Law Bangladesh Perspective. Available from: www.emeraldinsight.com/1754-243X.htm

justice and a speedier solution to the existing judicial system is the most negative and dangerous consequence of these cross-firings.[139] [140]

9.4 Proposal for Reform

During the study review, the researcher found certain shortcomings and conclusions along with certain recommendations on the position and violation of human rights committed by law enforcement officers, including the police, in Bangladesh as a developing democracy.

Most significantly, it is unfortunate reality to note that in a democratic and growing country like Bangladesh, human rights abuses by police killing have occurred rampantly. Thus, it is important to note that from the above-mentioned point of view, as there are so many other cases similar to this category that took place in police stations, military garrisons, torture cells of intelligence agencies, and paramilitary forces camps like those of the RAB impunity prevails. Since extra judicial killing in the name of crossfire is well established after establishing RAB where it began. Yet it totally abuses human rights.[141]

However according Article 35(5) of the Constitution of the People's Republic of Bangladesh, 'No individual shall be subjected to torture or barbaric, inhuman or degrading punishment or treatment.' It is observed that this clause on the prohibition of torture was not enforced in effect, mainly due to the lack of a law criminalising torture. There's no culture of protecting human rights in the country, particularly victims suffering ill-treatment and torture from law enforcement agencies.[153]

Section 75(3) of the Criminal Rules and Orders-2009, which reads: 'Whenever a person is detained and brought before the Magistrate, the Magistrate should be satisfied that there has been no unlawful detention beyond 24 hours, as provided for in Section 61 of the Code of Criminal Procedure-1898, and if there is any complaint against the Magistrate, the Magistrate shall investigate the matter.

Article 31 of the Constitution of the People's Republic of Bangladesh states that "Enjoying the protection of the law and being treated in accordance with the law is the inalienable right of every individual, wherever he may be, and of any other person for the time being in Bangladesh, and in particular no action shall be taken against the life, liberty, body, reputation or property of any person. Because of the implications of such deprivation, constitutional drafters made this particular security clause even though certain rights were already protected by Article 31. These Articles 31 and 32 are the right to access to justice, and it cannot be said that this right has been dealt with in compliance with the law unless a person has a fair opportunity to approach the court in vindication of their right or grievance. And a fugitive is entitled to legal protection when

[139] A. Z. M. Arman Habib, Extra Judicial killing in Bangladesh: A Murder of Human Rights, ISSN 1923-6654 (print) ISSN 1923-
[140] (online). Available at http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html
[141] Islam N, Bangladesh's Extra-Judicial Killings: Crossfires or Human Rights Violations, Asian Journal of Social Sciences and Legal Studies. Available from www.universepg.com/journal/ajssls

involving the death penalty. So, extra-judicial killing is always against the Bangladesh People's Republic Constitution.[142]

Moreover, according to Bengal Police Regulations (PRB), 1943; weapons can only be used in emergencies. Firearms are used in three situations: for self-protection and property possession, for foiling an unlawful meeting and in some cases, for detention. 1943 Bengal Police Regulations (PRB) require a full executive probe regarding the use of weapons.
Investigators are expected to send teleport and give a copy to the top leadership of police.[143]

Most notably, under section 197 of the 1898 Code of Criminal Procedure (Prosecution of Judges and Civil Servants), government officials are exempted from responsibility for their acts. Section 197(1) 'When any person who is a judge within the context of section 19 of the Penal Code or any Magistrate, or any public servant who is not removable from his office except by or with the permission of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall acknowledge such offence. This code forbids criminal conduct against public officials-including police officers-without government permission if the crime is committed while the officer works or purports to act in his official capacity.[156]

Moreover, the Supreme Court has claimed in many cases that police officers committing murder and other human rights abuses are not working within their official duties. In practise, however the provision discourages police and judicial proceedings against public servants. Even when seeking permission, the appropriate government agency.

[142] ibid
[143] ibid

Conclusion

As an independent country, Bangladesh began its journey with a constitutional and political determination to safeguarding human rights for all of its citizens. Extrajudicial killings are never the only option in a country to protect safety of the public or their property from violation or maintaining the law and order under control, or self-defence. It would not be out of position to note that recorded human rights violations played and guided nothing that this law enforcement agencies anticipated positive role, i.e., the police rather the precedent of extreme violations, after reviewing the violation of human rights concerned with several years of reports reported in various human rights organisations and mass media in a country like Bangladesh. In addition, it is recognised that the actions of law enforcers have been moderated by multiple strategies of committing infringements, where transparency is shielded by unlawful law practise. Therefore, in the actions of the dramatic position of law enforcers, i.e., the police, some domestic laws and foreign instruments have been grossly violated. Most significantly, it should be remembered that political influences have largely succeeded in every field of service delivery to people. In addition, national human rights abuses among individuals are becoming more ferocious in committing crimes again and again, believing that justice can never be served by law enforcers where these bodies have already become more corrupt. It was noted, after critical consideration of the abuse of human rights, that the recruitment of law enforcement agencies, i.e., the police, should be strictly maintained in order to keep a fair appointment. Finally, therefore, it can be said that the government should strictly uphold the standard of police appointments from the point of view of law and order, where accountability for the abuse of human rights in a democratic and developing country like Bangladesh will be completely clear. Indeed, under all cases, the requisite steps taken by the government should be taken to maintain the rule of law. And in a democratic country like Bangladesh, if the rule of law, i.e., the proper enforcement and application of the law, could be ensured, even in a state like Bangladesh, it would not be difficult to ensure human rights.

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