

Custodial Torture: Laws and Practice in Bangladesh

by

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Abstract

Custodial torture is the most pathetic sign in arrest, detention, and remand in our country. Now, it has become a talk of the town of the country. To prevent such a curse from society, country, and world lots of national and international laws, guidelines and precedents continuously come from judicial decisions of different nations. Bangladesh's judiciary is not an exception here. In light of this issue, the study has analyzed, for the purpose of focusing on judicial developments, examining relevant laws and its implementation, national and international legal framework along with the reference of judicial precedents upon the prohibition of inhuman custodial torture including arrest, detention, a remand by the law enforcement agency. This paper has critically analyzed national and international instruments which directly stand against the custodial torture and degrading punishment.

Keywords: Arrest, Detention, Remand, Custodial Torture, Judicial Development on Torture, Implementation and Legal Framework.

Introduction:

Inhuman custodial torture is a common issue in our country. It is happening not only in Bangladesh but also in each and every corner of the world. Sometimes it remains clam; and sometimes it grows rapidly at a high level of tolerance. At present, it turns into a social curse for the civilized. To prevent such a curse from society, country, and world various qualitative and quantitative national and international laws are formed. In spite of having national and international humanitarian law (IHL) the inhuman treatment and torture are happening day by day because of its no proper implementation worldwide. The main reason for not implementing the laws against inhuman treatment and torture is political influence. Most of the facts pertaining to the torture are done due to acquiring political gratification. So, political hand plays a very vital role to cause ill-treatment, inhuman treatment, and torture. No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment (Bangladesh Const. art. 35, §5). Besides these, amongst the international humanitarian laws Bangladesh rectified the following conventions to protect torture and inhuman treatment.

Methodology:

In conducting this study, the mixture of quantitative and qualitative methods was applied and data have been collected from both primary and secondary sources. This study analyzes

textbooks, journals, reports, relevant national and international legislation, case studies, some important daily newspapers, online documents, and some publications as secondary sources of data. Data has been accumulated for this study from both primary as well as secondary sources to find out the gap or drawback of the laws which are made for the protection of human rights especially for the protection of people from inhuman treatment and torture. The study has also relied on decided cases of the apex court of Bangladesh and the subcontinent.

Objectives of the Research:

The main objective of this study is to explore the present scenario of custodial torture in Bangladesh. Especially, focus on the laws and practices in Bangladesh on custodial torture. The other related objectives of the study are:

- i. To focus the judicial developments upon the arrest, remand and detention;
- ii. To examine the existing laws, precedents regarding their implementation;
- iii. To find out the causes of non-implementation of judicial precedents on arrest, remand and detention.

Scope of the Research:

The study emphasizes the laws and judicial precedence pertaining to torture and inhuman treatment. There have lots of national and international humanitarian laws to reduce ill-treatment and torture from society. In national law, article 32, 33, 35 (5), 31, 27, 26 and 7 of the Constitution of the People's Republic of Bangladesh; Sections 15 (1), (2) and (3) of the Prohibition to Torture and Death in Custody, 2013; Section 29 of The Police Act of 1861 protect the right to protection from torture. Besides these, art. 7 of the ICCPR; art. 5 and 7 of the UDHR; art. 5 (2) of ACHR; art. 3 of the ECHR; art. 1-3 & 13-16 of the CAT Convention; art. 32 of the Geneva Convention; art. 37 (a) of the CRC also ensure the right to protection from torture. These all legal instruments are recognized by the government of Bangladesh so it is the duty of the state to protect the right. In addition, 19 reliable judicial guidelines were delivered by the Appellate Division of the Supreme Court of Bangladesh in a case *Bangladesh v. BLAST* (Bangladesh v. BLAST, 2016) where court recommended to construct a remand room made by the full glass so that lawyers or the relatives of detenu can observe the activities of remand officer. Besides these, in *BLAST v. BD* (BLAST v. BD, 2003) *Saifuzzaman v. State* (Saifuzzaman v. State, 2004) honorable court also recommended reliable guidelines in arrest, detention, and remand so that no violation of the right to life and other related therein occurs.

Theoretical Framework:

Principles of Arrest:

A leading namely *BLAST v. BD* (BLAST v. BD, 2003) clears the term “*reasonable suspicion*”. Generally the law enforcement agencies abuse the terms and following these terms they are used to cause any different types of brutal torture and inhuman treatment through arrest, detention, and remand in police custody. Now, the police officers must write the reason for arrest and mustn't arrest any offender until he meets with his family member on the matter of arrest and must have the facility to choose an advocate. In the case of *Mrs. Aruna Sen v. Government of Bangladesh* (Mrs. Aruna Sen v. Government of Bangladesh, 1975) it is held that the ground on

which order of detention is made must be communicated to the detenu to enable him to a make represented at the earlier opportunity. There are complaints of indiscriminate arrest of innocent persons who are subjected to third-degree methods with a view to extracting confessions. This is termed by the Supreme Court of India as “*State terrorism*” (Mrs. Aruna Sen v. Government of Bangladesh, 1975). Reasonable Suspicion and Credible information must relate to definite averments considered by the police officer himself before arresting a person under this provision. What is a reasonable suspicion must depend upon the circumstances of each particular case, but it should be at least founded on some definite fact tending to throw suspicion on the person arrested and not on a mere vague surmise (Mrs. Aruna Sen v. Government of Bangladesh, 1975). The word “*concerned*” used in the section is a vague word that gives unhindered power to a police officer to arrest any person stating that the person arrested by him is concerned in a cognizable offense. In this regard some reliable guidelines for arrest are mandated in *BLAST v. Bangladesh* (Bangladesh v. BLAST, 2016), *Saifuzzaman v. State*, and *Bangladesh v. BLAST*. Those are as follows:

- i. A police officer shall not arrest anyone under section 54 in order to detain under section 5 of the Special Power Act, 1974 (Bangladesh v. BLAST, 2016).
- ii. At the time of arrest, a police officer shall disclose his/her identity and show ID card on demand to the person arrested (Bangladesh v. BLAST, 2016).
- iii. The concerned officer shall record the reason for arrest and other particulars in a separate registrar (Mrs. Aruna Sen v. Government of Bangladesh, 1975).
- iv. The concerned officer shall mark injury and if an arrested person is injured shall take him/ her to the hospital or government doctor (Mrs. Aruna Sen v. Government of Bangladesh, 1975).
- v. The concerned police officer shall record the reasons for arrest within three hours of bringing him/her to the police station.
- vi. The police officer shall within *one hour* inform over the phone or through messenger to the relatives of the person arrested if he is not arrested from residence or place of business (Bangladesh v. BLAST, 2016).
- vii. The person arrested must be allowed to choose a lawyer for defense or to meet the nearest relation (Bangladesh v. BLAST, 2016).
- viii. The police officer shall prepare a memorandum of arrest after arrest and shall take the signature of arrestee with date and time of arrest in the memorandum (Saifuzzaman v. State, 2004) and Bangladesh v. BLAST, 2016).
- ix. The police officer shall inform on about arrest to the relative of the arrestee or suggested friends within 6 hours after notifying the time and place of arrest and the place of custody but in 2016 appellate division extended the time limit of notifying from 6 hours to 12 hours (Bangladesh v. BLAST, 2016).
- x. The police officer shall record the ground of arrest and the name of informee along with the address and shall also record the name of relatives to whom information is given about the arrest (Bangladesh v. BLAST, 2016).

Shields against Arbitrary Arrest:

In order to protect arbitrary arrest national and international laws frame several rules and legislations. In national laws, article 33 of our constitution mandates that no person who is arrested shall be detained in custody without being informed of the grounds for such arrest and

shall give the right to consult with a lawyer in order to defend himself (Bangladesh Const. art. 33, §1). In addition, within 24 hours of such arrest the police officer shall present the arrestee before a magistrate (Bangladesh Const. art. 33, §2). In this context, Article 35(5) prohibits not to cause any kind of torture or cruel, inhuman or degrading punishment or treatment. Besides these, article 32, 31, 27, 26 and 7 of the Constitution of the People's Republic of Bangladesh (Bangladesh Const. arts. 33-44); sections 15 (1) (2) and (3) of the Prohibition of Torture and Death in Custody, 2013 (The Torture and Custodial Death (Prevention) Act of 2013, U.S.C. 13§ 1); section 29 (The Police Act of 1861, U.S.C. 29) of the Police Act of 1861 also protects a person or accused or detenu from being tortured before and after arrest by the LEA. In International Laws, ICCPR (International Convention on Civil and Political Rights of 1966, art. 7), UDHR (The Universal Declaration of Human Rights of 1948, art. 5) (adopted on 31 January 1948 UNGA Res. 217), ACHR (The American Convention of Human Rights of 1969 art. 5 §2), ECHR (The European Convention of Human Rights of 1950, art. 3), CAT Convention (The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, arts. 1-3 & 13-16), Geneva Convention (The Convention of the Right of the Child of 1989. Art. 37 §a), CRC (The Convention of the Right of the Child of 1989, art. 37 §a) ensure the right to protection from torture and any kind of inhuman treatment.

Principles of Right to Fair Remand:

In *BLAST v. Bangladesh* (BLAST v. Bangladesh, 2003) it is held that the very system of taking of an accused on remand for the purpose of interrogation and extortion of information by application of force is totally against the spirit and explicit provision of the constitution. In case *BLAST v. Bangladesh* the High court Division gave direction regarding detention and remand as well as magistrate's duty, those are as under;

- i. If the police officer seek permission for detention of person arrested under section 61 of the CrPC for the purpose of completing investigation, the police officer must forward reasons in a forwarding letter under Section 167 (1) of the CrPC as to why the investigation could not be completed within (24) twenty four hours and why s/he considers the accusation and information to be well founded.
- ii. In this regard with the forward letter the police officer shall present before the magistrate a memorandum of arrest, a copy of information and complain as well as a copy of dairy for making the order of the Magistrate under section 167 of the Code of Criminal Procedure, 1898 (*Saifuzzaman v. State*, 2004).
- iii. On the basis of forwarding letter, if the Magistrate satisfies him/herself that the accusation and information brought against arrestee are sufficient for detaining the person in custody, the Magistrate shall pass an order of detention and if not, release him/her forthwith.
- iv. If a person is released, the Magistrate shall adequate action under 190(1) (c) of the CrPC against the Officer concerned under Section 220 of the Penal Code.
- v. If Magistrate orders detention of person, the Officer shall interrogate the accused in a room with glass wall or grille on one side within sight of lawyer.
- vi. The Magistrate shall records reasons of granting interrogation. In this regard he shall follow the recommendations laid down in the judgment.
- vii. If any death of person arrested under Section 54 is occurred in police custody during investigation or interrogation then as soon as possible the concerned

- officer or the jailor must inform the nearest Magistrate about the death of any person.
- viii. In this respect the Magistrate shall inquire into the death of any person in police custody or jail as per the recommendations.
 - ix. After the expiry of the period of remand and police officer in no case shall send the arrestee to the judicial custody without producing him before the Magistrate (*Saifuzzaman v. State*, 2004).
 - x. If police officer fails to complete investigation within 15 days of the detention of the accused under section 167 (2), the Magistrate, if satisfies him/herself, can send such accused person on remand under section 344 of the Code for a term not exceeding 15 days at a time (*Saifuzzaman v. State*, 2004).
 - xi. If arrested person dies in his custody on remand, the Magistrate shall direct for the examination of the victim by a medical board to find out whether such death is occurred for burial torture or he shall direct exhumation of the dead body for fresh medical examination by a medical board, and if the report of the board reveals that the death refers to homicidal in nature then he shall take cognizance of the offence made by LEA under section 15 of Hefajate Mrittu (Nibaran) Ain, 2013 against such officer and the officer in charge of the respective police station or commanding officer of such officer in whose custody the death of the accused person took place (*Bangladesh v. BLAST*, 2016). In a case *Masud v. Md Kashed Miah* (*Masud v. Md Kashed Miah*, 2013) it is held that if any death is caused by negligence or breach of statutory duty than the right to get appropriate compensation can be considered (*Saifuzzaman v. State*, 2004).
 - xii. If it is found that a person has been subjected to ‘Nirjatan’ or died in custody within the meaning of section 2 of the Nirjatan and Hefajate Mrittu (Nibaran) Ain, 2013, shall send to doctor or hospital for ascertaining the injury or the cause of death and if the medical evidence reveals that the person detained has been tortured or died due to torture, the Magistrate shall take cognizance of the offence *suo-moto* under section 190(1)(c) of the Code without awaiting the filing of a case under sections 4 and 5 and proceed in accordance with law (*Saifuzzaman v. State*, 2004).

Principles of Detention:

In case of *Mrs. Aruna Sen v. Government of Bangladesh* (*Mrs. Aruna Sen v. Government of Bangladesh*, 1975) it is held that the ground on which order of detention is made must be communicated to the detenu to enable him to a make represented at the earlier opportunity. As a result the *detenu* can be able to take defense on his behalf appointing advocate against the allegation brought against the *detenu*. In a case *Saifuzzaman v. State* (*Saifuzzaman v. State*, 2004) the honourable court provides some direction in all cases of remand and detention, those are as under;

- i. The Magistrate shall not make an order of detention of a person in the judicial custody if the police forwarding report disclose that the arrest has been made for the purpose of putting the arrestee in the preventive detention.
- ii. The Magistrate shall not make order for further detention if the accused person is not produced before him along with the copy of information, dairy, complaint as

- per section 167 (2) of CrPc. In this respect Magistrate shall release him in accordance with section 169 of the Code on taking a bond from him.
- iii. If a law enforcing officer seeks an arrested person to be shown arrested in a particular case, who is already in custody, such Magistrate or Judge or Tribunal shall not allow such prayer unless the accused/arrestee is produced before him with a copy of the entries in the diary relating to such case and if that the prayer for shown arrested is not well founded and baseless, he shall reject the prayer.
 - iv. If the Magistrate has reason to believe that any member of law enforcing agency or any officer who has legal authority to commit a person in confinement has acted contrary to law the Magistrate shall proceed against such officer under section 220 of the Penal Code.

Doctrine of Presumption of Innocence:

In Latin terms it is called “*Ei incumbit probatio qui dicit, non qui negat*” which means “*Innocent Until Proven Guilty*” (Coffin v. the United States, 2003). The accused shall be presumed as innocent until his guilt is proved. According to article 11 of UDHR "Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to the law in a public trial at which he has had all the guarantees necessary for his defense. Article 48 of CFREU affirms the right to the presumption of innocence where it says everyone who has been charged shall be presumed innocent until proved guilty according to the law (The Charter of Fundamental Rights of the European Union of 2000, art.48 § i). So, these provisions impliedly reflect not to cause any kind of torture in the pre-trial stage and not to detain any person until his guilt is proved.

Principle of Double Jeopardy:

In a case *Tarique v. Bangladesh* (Tarique v. Bangladesh, 2011) it is held that no person can be convicted or sentenced without following completing investigation inquiry in respect of an offense. In another case namely *Gias Uddin Al Mamun v. State* (Gias Uddin Al Mamun v. State, 2013) it is held that if a person is punished for his crimes he cannot be again punished for the same crime. In *Mansur v. Ministry of Home Affairs* (Mansur v. Ministry of Home Affairs, 1990) it is held that no person shall be detained more than 6 months without the approval of the advisory board. In *Kalandiar Kabir v. Bangladesh* (Kalandiar Kabir v. Bangladesh, 2002) it is held under the Jail Code a state prisoner shall be treated as a civil prisoner.

This doesn't sufficiently cover the status of a detenu. The Government should frame rules regarding the detenu and shall keep in mind that he still retains some right under articles 27 and 30 of the Constitution in spite of his detention. In this case the courts recommend to the government to frame qualitative laws regarding detenu because Jail Code does not sufficiently cover the status of a detenu. In the case of *HM Ershed v. The State* (*HM Ershed v. The State*, 1993) it was held that no person shall be prosecuted and punished for the same offense more than once. In this case *Shaikh Md Harunor Rashid v. secretary Ministry of Jute Government of the peoples of Bangladesh and others* (Shaikh Md Harunor Rashid v. secretary Ministry of Jute Government of the peoples of Bangladesh, 1981). It was held that under Article 35 (2) of the Bangladesh constitution no person shall be punished for the same offense more than once.

Dimensions of Custodial Torture in Bangladesh:

Torture in Remand and Death in Custody:

Custodial torture in the name of Remand has been also increased indiscriminately by the law enforcement agencies in Bangladesh. Article No. 35 (5) of the Constitution of the People's Republic of Bangladesh, prohibited torture completely. And in the UDHR Art. 5 has stated that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law. International Convention against Torture (CAT) has also been declared torture as a punishable offense. As the member state of this convention, Bangladesh is bound to comply with this convention. In section 167 of the Criminal Procedure Code (CrPC) has been given the power to make interrogation of the accused in the interest of investigation without making torture upon an accused by the name of remand. But law enforcing agencies is oppressing and violating human rights on regular basis through the application of Section 54 of the Criminal Procedure Code and 167 of CrPC which constitute violations of citizens' fundamental rights to life and liberty, to equal protection of the law, to be treated in accordance with the law and to be free from cruel, inhuman and degrading treatment and punishment as guaranteed under Articles 32, 27, 31, 33 and 35 of the Constitution.

In the Writ Petition No. 3806/1998 regarding the killing of the meritorious student Rubel popularly known as BLAST case filed by the Bangladesh Legal Aid and Services Trust (BLAST) on 7 April 2003 a bench of High Court Division of the Bangladesh Supreme Court comprising Justice Md. Hamidul Haque and Justice Salma Masud Chowdhury pass an epoch-making judgment regarding section 54 of the Criminal Procedure Code relating to arrest on suspicion and for amendment of Section 167 of CrPC regarding police remand and directed the government for amending the relevant act. Simultaneously High Court opined to abide by some specific guide lines in these two cases until the time of promulgation of the new act.

The court further mentioned that, if there shall be the requirement of interrogation of someone, then interrogation of the arrested person of a jail shall have to be done in a glass room in the presence of an advocate appointed by him and his relatives. So that in the interest of the investigation relatives and advocates of the arrested person shall not hear any question-answer. But they may observe on the matter whether or not any torture is inflicted. According to Odhikar in 2014, 10 people tortured to death, 39 people shot to death, and 5 people beaten to death by law enforcement agencies.

Due to politicization by law enforcement agencies, targeted individuals have multiple ramifications. The most horrific consequence is the experience of being tortured and sometimes death in custody. Many police officers believe that information or confessions cannot be extracted without physical threat or torture. That is why, although torture is prohibited under the law, its practice is rampant particularly under the 'remand'. The form of torture includes beating on the soles of the feet, hanging, and suspension by the arms while they are tied behind the back, suspension upside down, beating, electric shocks, and psychological forms of torture including humiliation, threat, and insult, etc. (The Daily Star, 2012). Article 1 of the Convention Against Torture and other Cruel, Inhuman or Degrading Punishment 1984 states;

‘Torture means any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information, or a confession, punishing him for an act or a third person has committed, or is suspected of having committed, or intimidating or coercing him, or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity’ (The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 , arts. 1-3 & 13-16).

According to a report of the Committee against Torture, ‘there are no exceptional circumstances whatsoever where a state can use torture and break its treaty obligation (Momtaz, S.2013). The Bangladesh Penal Code, 1860 has provided definitions and penalties for some offenses which very narrowly cover the area of torture as follows:

- i. Offence affecting life (The Penal Code of 1860, U.S.Cs. 299-311)
- ii. Hurt (The Penal Code of 1860, U.S.Cs. 319-338A)
- iii. To wrongful restraint and wrongful confinement (The Penal Code of 1860, U.S.Cs. 339-348)
- iv. Offences relating to criminal force and assault (The Penal Code of 1860, U.S.Cs. 339-358)
- v. Offences relating to rape (The Penal Code of 1860, U.S.Cs. 375-376).

When such offenses are caused by the members of the police force, complaints of torture can be brought against them under these provisions. Whenever any person is arrested or taken into custody and it appears that the investigation cannot be completed within 24 hours and there are grounds to believe that the accusation or information is well-founded, the officer in charge of the police station may forward the accused to the magistrate and the magistrate may authorize the detention of the accused in such custody for a period not exceeding 15 days (The Code of Criminal Procedure of 1898, U.S.C. 61). After investigation, if it appears to the police that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a magistrate such officer shall release the person from custody on his executing a bond with or without sureties. And if upon an investigation it appears to the officer that there is sufficient evidence or ground, such officer shall forward the accused under the custody of the Magistrate empowered to take cognizance of the offense upon a police report and to try the accused and send him for trial (UNDP, 2002). When, however, a person is brought before the Magistrate prior to the granting of an order of detention the latter must be satisfied that:

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

The order of remand is upon the subjective satisfaction of the magistrate that there is a necessity of granting remand for the interest of the case. Nowadays it has become a practice of

the police in almost every case to apply for the remand of the accused whether there is an actual need or not. This section is now being misused as an instrument for interrogation and to obtain a confessional statement or any other information through torture. This is how the police manipulate the situation and there are many reported deaths in police custody (discussed earlier) for torturing the arrested person (UNDP, 2002).

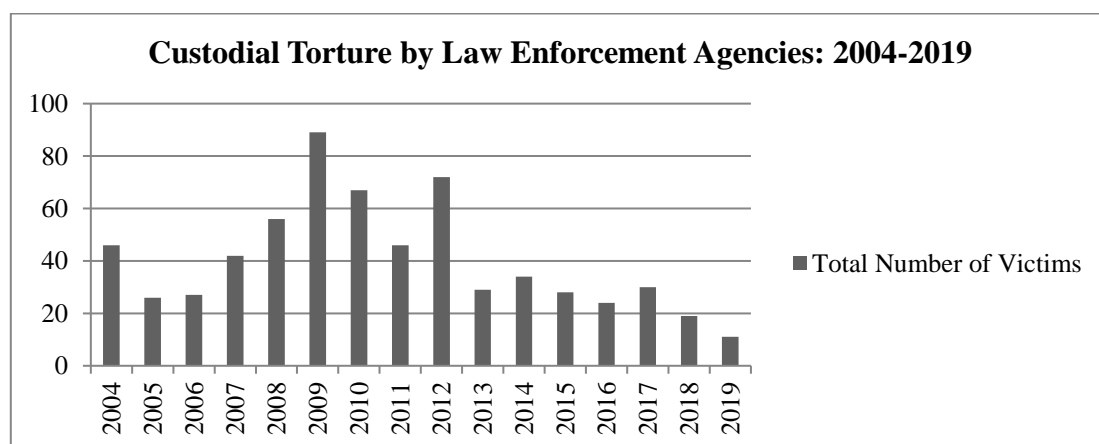
Custodial death becomes a common happening for quite a long time. The word ‘custody’ implies guardianship and protective care. No civilized law postulates custodial cruelty-an inhuman trait that springs out of a perverse desire to cause suffering when there is no possibility of any retaliation (Momtaz, S. 2013). In *Jatiyo Mahila Ainjibi Samity vs. Bangladesh and Others (Criminal)*, the High Court held that detention in safe custody against the will of a detained person was illegal (ASK, 2007). The protection of a detainee is a basic precept of police law as it is universally recognized. The Right to human treatment as a detainee is recognized under many international instruments like:

- a) Universal Declaration of Human Rights
- b) International Covenant on Civil & Political Rights
- c) Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

As to the Human Rights Committee (hereinafter ‘HRC’) under the ICCPR ‘treated with humanity and with respect for the inherent dignity of the human person’ should be interpreted as meaning that ‘person deprived of their liberty ‘is entitled to respect for his physical and moral dignity, to material conditions and treatment befitting that dignity and to sympathy and kindness.’ This provision for the humane and dignified treatment of prisoners and detainees serves as the basis for the positive obligations of state parties stated in Article 10(2) and 10(3) of the ICCPR, which are tailored to the criminal justice context (CEELI, 2005).

These legal mandates are absent in practice and that is why death in police custody is a growing phenomenon in Bangladesh. As to the Code of Criminal Procedure, custody of an accused or a witness means custody of the court in its ultimate sense. The transitional custody of a person may be with the police. But the ultimate authority to decide the fate of the suspect rests with the court (Momtaz, S. 2013).

Table 1: Statistics of Alleged Custodial Torture by Law Enforcement Agencies: 2004-2019 (Odhikar Statistics on Custodial Torture, 2020)



Arrest under section 54 of CrPC:

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

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

Some persons initially detained under section 54 are subsequently charged with a crime, while others are released without charge. However, the term ‘reasonable suspicion’, ‘credible information’ or ‘reasonable complaints’ appears in several of the reasons under which a police officer can arrest a person under section 54 of the Code of CrPC.

Unfortunately, these terms are one of the reasons why this section is so misused. Therefore, after the arrest under section 54, the police forward the person before the Magistrate with a prayer for remand under section 167 of the Code of Criminal Procedure which has been discussed earlier (UNDP, 2002). To some officers, moreover, under section 54 of the Code of CrPC is the way to get money (Momtaz, S. 2013).

The data concerning violation of human rights has been collected from Ain o Shalish Kendra Annual Report 2010 to 2019 and Odhika Annual Report 2010 to 2019.

Reasons of Occurring Custodial Torture in Bangladesh:

- i. **Excess Power of Police:** The Bangladesh Police is recognized by the Police Act (1861), the Code of Criminal Procedure (1898), the Police Regulation, Bengal

(1943), the Armed Police Battalions Ordinance (1979) and relevant Metropolitan Police Acts. Police Act, 1861 specifies the power of the police, superintendence of the force, power of inspector-general to make rules, special police and their powers, and duties of police officers. Code of Criminal Procedure, 1898 empowers the police to arrest any suspicious persons under section 54 of this Act and specifies their powers to investigate an offense. Police Regulation of Bengal, 1943, section 316 empowers police to arrest without a warrant on reasonable suspicion, and section 27 of the evidence Act also gives priority to accept statements made by the accused in police custody.

- ii. **Greediness of Money:** It plays very effective role for not to ensure human right and fundamental right. Because, most of our lawful authorities are used to take bribe to do an act or omission. As a result the enforcement of fundamental rights is being obstructed.
- iii. **Political Influence:** It is another backing point of not ensuring fundamental right. As a result of having political bad hand many offenders can easily release from any case through recommendation by the political concerned authority to the person who is acting as a judge of concerned case. Even many times a case is not filed after informing to the police station on an offence by the victim because of political backing and linking with the police officer.
- iv. **Lack of Proper Monitory System:** Lack of adequate monitory on law sectors specifically on activities of the judges and lawyers and Law enforcement agency, human right is not ensuring properly.
- v. **Illiteracy on Law:** Most of the employees of government organization are not aware of their right. Often they don't understand whether their right is violated or not. at the end, employee agree the decision of superior authority.
- vi. **Failure to Ensure Good Governance:** A good government can bring a peaceful society where the violation of human right can't be occurred. If the government of a state is not good governance and its rule is arbitrary then the violation of human right is deemed as a seli matter. So good governance surely plays a vital role to ensure right of human.
- vii. **Impunity Culture of Law Enforcement Agencies:** There is no separate authority or department to investigate the human rights violations related crimes committed by the police. As a result, it is the police which investigate allegations of human rights violations committed by their departmental fellow colleagues. The consequence is that in most of the cases police get relief from the allegations or are awarded comparatively light punishment.
- viii. **Distance Seating from Mass People:** Police and other law enforcement agencies remain separate in the society and have rare interaction with common people. Therefore, the distance creates hatred and mistrust for which many cases of custodial torture occur.
- ix. **Infrequent Human Rights Training to Field level personnel:** The amount of training of police officers in police stations, compared to training received at headquarters, is very low. A survey on the training of 100 constables of Dhaka Metropolitan Police, selected at random, who had completed 20 years of service, revealed that 96 received only basic training for 6 or 3 months. The basic cause is heavily biased towards physical training. Of 1,329 classes during a 6 month basic

course, only 530 were devoted to academic training, and this was mostly on laws and procedures (1996) (Recording and Investigating, 2002).

“In Bangladesh, there is no such institute for police where international standard education and training for improving overall human rights knowledge and capability of the police officers and training focusing on human security issues of the poor, woman and children can be imparted. As a result, of absence and ignorance, protecting and promoting the universal norms of human rights, police itself, become the perpetrators and human rights, violators (Momtaz, S. 2013).

Findings:

In this study successfully finds out the judicial precedents of arrest, detention, remand and extra-judicial killing and its non-implementation in our county. In this regard it reveals the reason of wrongful arrest, detention, and extra-judicial killing where the paper make liable the section 54, 161, 167 of CrPC; 3 of the SPA; and section 26, 316 of PRB, which is treated as black laws, for abuse of aforesaid powers. Specially section 54 and 167 of CrPC along with section 3 of SPA being mostly used by the political party are the exclusive weapon of the ruling party to defect opposite. On the other hand to protect the person from attack under said black laws judicial body has established definite judicial precedents and guidelines but it is matter of sorry that such precedents aren't still now being implemented by the executive body. In this respect the paper shows the means of reducing abuse of power, by the LEA in exercising power of arrest without warrant, detention, remand and extra-judicial killing, with stipulating five points thus; amending black laws, establishing monitory system under NHRC, raising activity of NHRC, establishing separate police branch for interrogation and ensuring accountability of LEA.

Concluding Remarks:

As the term “torture” is not only an apple of discord in our country but also a bone of contention in the world wide. So its absolute reduction is a bolt from the blue but its standard can be under control by only the well-established government with the implementation of above-mentioned recommendations.

It is duty of the people to establish a good government in a state. However, the term ‘torture’ includes a lot of means by which it may be occurred but in this paper the term ‘torture’ only referring four ways of causing torture namely; arrest, detention, remand and extra-judicial activities of LEA is illustrated as per national and international laws and precedents. Moreover, as it is a hard nut to crack of our society, concerned authority, NGO, human right institutions, clubs and people of society should raise the awareness and make known to all about legal knowledge which may turn over a new leaf in ensuring rule of law.

Besides these, in order to preventing arbitrary arrest and torture as well as detention and remand firstly government should remove or amend black laws stipulated above; secondly state should establish a separate police branch only for remand under judiciary; thirdly Police Thana Monitory Committee under NHRC for every 3 or more Thana should be formed; fourthly Accountability of LEA have to be ensured by enacting new laws; fifthly E-Thana Service should be accurately maintained.

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