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# Interpretation and Protection of Human Rights in Modern Perspective With Special Reference to Criminal Justice in Bangladesh

Faiz-Ud-Din, Muiammad

University of Rajshahi

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**INTERPRETATION AND PROTECTION OF HUMAN  
RIGHTS IN MODERN PERSPECTIVE WITH SPECIAL  
REFERENCE TO CRIMINAL JUSTICE IN  
BANGLADESH**

**A THESIS SUBMITTED IN FULFILLMENT OF THE  
REQUIREMENTS FOR THE DEGREE OF DOCTOR OF  
PHILOSOPHY IN LAW IN THE DEPARTMENT OF  
LAW AND JUSTICE UNDER THE UNIVERSITY OF  
RAJSHAHI**

**BY**

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## DECLARATION BY RESEARCHER

I do hereby declare that the thesis entitled "INTERPRETATION AND PROTECTION OF HUMAN RIGHTS IN MODERN PERSPECTIVE WITH SPECIAL REFERENCE TO CRIMINAL JUSTICE IN BANGLADESH" is the result of my own research. As far as I know, no research was done on this topic in the past. I have submitted the thesis for the degree of doctor of philosophy in law and no part of it has been submitted anywhere for any degree or diploma nor has been published in the form of book.



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## DECLARATION BY RESEARCH SUPERVISOR

Certified that the thesis entitled "INTERPRETATION AND PROTECTION OF HUMAN RIGHTS IN MODERN PERSPECTIVE WITH SPECIAL REFERENCE TO CRIMINAL JUSTICE IN BANGLADESH" submitted by Muhammad Faiz-ud-Din in fulfilment of the requirements for the award of the degree of Doctor of Philosophy in law under the University of Rajshahi is an original research work carried out under my supervision. The work is an attempt to add to our existing store of knowledge in this field. No part of the thesis, to the best of my knowledge, has been submitted by the researcher anywhere for any other degree or diploma.

SUPERVISOR



05.06.05

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This thesis is dedicated  
To  
My parents—  
Late M. Tamsuruddin and  
Late Mst. Rofina Khatun.

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## ABSTRACT

The horrors of the two World Wars in less than two and half decades shocked the very conscience of humanity and compelled the wisdom of the age to rethink seriously for the propagation and protection of human rights. This resulted into the establishment of the United Nations with the aim of providing and promoting rights of all men, women and children all over the world. It is also the concern of the democratic states to safeguard the fundamental human rights of the people. As a result, a series of declarations, conventions and covenants regarding protection of human rights have been and are being adopted by the United Nations, and States Parties are implementing the provisions of those instruments with a view to protecting the rights of the people. There are international and national laws to help the people to protect and promote their rights. In case of infringement of their rights, the victims may have the right to regain their lost rights through national or international courts. The states are duty bound to protect peoples' human rights. But inspite of that, human rights are being violated throughout the world including Bangladesh.

This thesis examines the provisions of the international instruments on human rights which have been ratified by Bangladesh including the International Bill of Human Rights. It also examines the provisions of Constitution of Bangladesh relating to fundamental rights and their implementation . It analyses the misuse of

powers by misapplication of law by the executives in Bangladesh . It identifies the laws which are contrary to human rights and suggests the government to amend those laws. It also proposes to the government to take proper and immediate measures for separation of powers.

The thesis further evaluates the role of Police of Bangladesh who sometimes indulge in violation of rights instead of protection of the rights of the people . The study finds out the causes and suggests necessary measures against such violation .

In Bangladesh women and children very often become the victims of violations of human rights, though there are law like Prevention of Repression against Women and Children Act 2000. This thesis tries to identify the nature and causes of violation against women and children through case studies. A survey has been conducted in some selected factories and the survey reveals that in garment factories women are the victims of discrimination as regards salary . This thesis suggests proposal for elimination of discrimination against women and girls workers.

The thesis recognizes the active role of the human rights NGOs which are providing relentless and selfless service to the victims of violation of human rights. It evaluates the activities of some selected NGOs and assesses their contributions which include legal, financial, rehabilitational, counseling, arbitration and medical assistance. The study reveals that NGOs are rendering laudable service, which is possible due to cooperation and non –interference of the government. In the non-existence of such NGOs in Bangladesh, protection of human rights would not be possible.

At the last chapter, the thesis suggests recommendations so that the victims are not deprived of receiving criminal justice.

A bibliography is given at the end of the thesis.

## ACKNOWLEDGEMENTS

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I convey my thanks to Mr. Asadullah, Mr.M.A.Hamid and Mr. Nahid for composing this thesis.

Finally, I express my sincerest thanks to my wife, sons and daughter who always inspired me to complete the work.

## CHAPTER ONE

### General concepts and plan of study

#### 1.1 INTRODUCTION

The words 'human and rights,' when used collectively, mean legal claims relating to man or mankind and such universal rights of human beings grew in mankind from ancient time.<sup>1</sup> These rights are so inherent in human persons that they cannot live without them. In fact, men born with these rights which cannot be separated from them by any law or constitution.<sup>2</sup> The Vienna Declaration 1993 termed human rights as universal, indivisible, interdependent and interrelated.<sup>3</sup> Human rights, therefore, are birth rights associated with the very birth of mankind, because these are fundamental requirements for existence of human beings.<sup>4</sup> Human rights are not only universal, inalienable and inviolable but also inclusive of fundamental rights and freedoms of members of human family. A human being is entitled to enjoy these rights equally, freely and without any arbitrary public or private interference.<sup>5</sup> Human beings deserve these rights from birth to death irrespective of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>6</sup>

Human rights, therefore, represent minimal moral standards for human society<sup>7</sup> and thus concern with the dignity and worth of the individual person. Human rights cannot be taken off from any individual, as these are inseparable. Arbitrary deprivation of these rights threatens peace and tranquility, which are

<sup>1</sup> (Justice) Mozammel Haque, *Human Rights and Rights to Liberty: Before and Now*, Human Rights Law, (ed) P. 267 (1997)

<sup>2</sup> Hamid Uddin Khan, *Democracy and Human Rights and Rule of Law*, Human Rights Contemporary International Law, Humanist and Ethical Association of Bangladesh, P.27 (1995).

<sup>3</sup> (Justice) Kemal Uddin Hossain, *The International Bill of Human Rights and Bangladesh*, Human Rights Law, (ed) P.27 (1997).

<sup>4</sup> (Justice) A.M. Mahmudur Rahman, *Human Rights violation and Remedies under Constitutional Law of Bangladesh*, The Main Stream Law Report (MLR), Vol. 11, P (1997), Dhaka.

<sup>5</sup> Hamid Uddin Khan, *The role of judiciary in the promotion and protection of Human Rights*, The Dhaka University- Studies, Part-I, Vol. IV, June, P.9, (1993).

<sup>6</sup> Universal Declaration of Human Rights, Article 2.

<sup>7</sup> Morris B. Abram, 'Freedom of Thought, Conscience and Religion', Journal of the International Commission of Jurists, 40 (1997).

the basic pre-requisites of peaceful and stable society. Human rights help developing the human faculties and human qualities of human beings. Unlike other rights, human rights have distinctive features, which human beings inherit universally throughout their lives. The absence of human rights, therefore, is more than denial of human dignity. These rights are inalienable and their protection primarily is dependent on states and its executives and not on individuals.<sup>8</sup>

Though protection of human rights may be referred to Greek civilization but still it is believed that international protection of human rights is firmly established in international human rights law which has been developing systematically from the first quarter of the 20<sup>th</sup> century with the birth of the United Nations. But before the UN's birth, League of Nations was established by treaty of Versailles on 25 January, 1919<sup>9</sup> as a consequence of large scale massacre of life and property during First World War which continued from 30 July, 1914 to 11 November 1918. During the war, human rights were worst affected, specially casualties of life still today rouse the human conscience. The following statistics show the casualties of First World War<sup>10</sup>:

1. Total force mobilized by allied and central powers 65038810
2. Killed and died 8538315
3. Wounded 2129452
4. Prisoners and missing 7750919
5. Total casualties 37508686
6. Percentage of casualties of mobilized force 57.6%

The Covenant of the League of Nations contained no general provisions dealing with human rights. The notion that human rights should be internationally protected had not yet gained acceptance by the community of nations, nor was it seriously contemplated by the persons who made a draft of

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<sup>8</sup> Quoted in M. E. Bari, *The Universal Declaration of Human rights – The Magna Carta of Mankind*, Human Rights in Contemporary International Law, P.16 (1995).

<sup>9</sup> F.P. Walters, *A History of the League of Nations*, London, P. 32 (1967).

<sup>10</sup> Website < [http:// www. Spartaus. School net. Co.uk/F WW deaths. htm](http://www.Spartaus.School.net.Co.uk/F_WW_deaths.htm).> Accessed on 14.07.04 (copy on file with the author).



that treaty.<sup>11</sup> The covenant had two provisions under Articles 22 and 23 dealing with mandates system and fair and human conditions of labour for man, women and children respectively.<sup>12</sup> Besides, the League of Nations played a very important role in developing an international system for the protection of minorities. Though the formation of the League of Nations was aimed at the maintenance of international peace and security and the promotion of international co-operation, it failed to stop the outbreak of the Second World War, which caused more casualties than the First World War. The total number of casualties of both military and civilians in this War were five crore fifty seven lakh and fourteen thousands (5571400).<sup>13</sup> These figures though may not be accurate and may be reviewed, but it is a bare fact that large number of human beings including innocent women and children became the victims of violation of human rights due to the atrocities of the parties involved in the War.

The League of Nations was dissolved by a resolution of its last Assembly on 18 April, 1946<sup>14</sup> because of its failure to stop the War. The death of the League of Nations as a result of its failure to prevent the Second World War which caused huge loss of life and property, as stated above, actually paved the ground for the birth of the United Nations which came into existence on October 24, 1945 with a pledge to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.<sup>15</sup> Thus with the birth of the UN the concept of human rights encroached the national boundaries and entered beyond the limits of municipal law because of the international concern for their protection and promotion within the purview of international law. This view is strengthened from the declaration of the General Assembly in 1986,

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<sup>11</sup> Thomas Buergenthal, *International Human Rights*, U.S.A., P.7. (1995);

<sup>12</sup> *Ibid.* at P.9.

<sup>13</sup> Web site < <http://www.valourandhorror.com/DB/BACK/Casualties.htm> > Accessed on 14.07.04. (copy on file with author).

<sup>14</sup> L Oppenheim, ed. H Lauterpach, *International Law*, Vol. I, P.401; (1967); F.P. Walter, *op.cit.*, P.815.

<sup>15</sup> The UN Charter, Article 1(3).

which is as follows: All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political economic, social and cultural rights.<sup>16</sup>

The interpretation of important international human rights instruments which Bangladesh has ratified reveals how the UN has been making sincere efforts for the protection and promotion of human rights. This idea is established from its adoption of different declarations, conventions and covenants in order to meet the fundamental requirements of human family.<sup>17</sup>

Bangladesh, a member state of the UN and signatory of a number of human rights instruments adopted by the UN, must take all necessary measures so that human rights and fundamental freedoms of the people are not only protected but also promoted. With this end in view, Bangladesh prepared its constitution having a separate chapter containing Fundamental Rights. This chapter inserted many provisions of the UN documents on human rights. Besides, Bangladesh has taken many other legislative and administrative actions in order to uphold human rights. But in spite of that, it cannot be claimed that human rights of the people of Bangladesh have been totally secured and protected. Our study reveals that violation of human right are not only committed by civilians but also by the executives under the coverage of law. Misuse of powers by the executives can be seen from statistics collected from different sources. This research work sorts the factors responsible for violation of human rights on the one hand, and on the other hand, it suggests the ways and means to combat such violations.

## **1.2 OBJECTIVES OF THE STUDY**

The main aim of this study is to examine the provisions of main international instruments on human rights and their implementation in Bangladesh which has ratified those instruments. This research also covers the study of human rights situation in Bangladesh.

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<sup>16</sup> General Assembly Resolution No. 41/128 of 4 December, 1986.

<sup>17</sup> M.Faiz-ud-Din, "Protection and promotion of human rights: International Perspective", Law Journal, Faculty of Law, Rajshahi University, P.67,(1998).

The objectives of this thesis are as follows:

- (i) To analyze the provisions of main international instruments on human rights;
- (ii) To examine the implementation of those provisions in Bangladesh;
- (iii) To examine the application of fundamental human rights provisions guaranteed in the constitution of Bangladesh;
- (iv) To identify the laws contrary to human rights in Bangladesh;
- (v) To identify the nature of violation of human rights by perpetrators in Bangladesh;
- (vi) To assess the contribution of human rights NGOs to protect and promote the rights of the victims of violation of human rights;
- (vii) To find out ways and means to combat violation of human rights in all levels in Bangladesh;
- (viii) To make the government and people aware about their rights and duties relating to human rights and above all,
- (ix) To suggest the government of Bangladesh for taking necessary steps to ensue the enjoyment of human rights by people of Bangladesh.

### **1.3 JUSTIFICATION OF THE STUDY**

Recently violation of human rights has been increased almost everywhere. Bangladesh is not exception to this. This research is devoted to find out the causes of such violation namely prevalent human rights violation laws, misuse of these laws, to find out the areas where such violation is taking place, to evaluate the role of law enforcers and also providing legal protection which the victims deserve. Comprehensive research on this topic, so far knowledge goes, has not been done.

Government, NGOs, researcher, legal practitioners, law students and victims of violation of human rights will accrue benefit from this research. Specially, it will be helpful for our government to identify the causes of violation of human rights and remedial measures thereof and it will be guidance for the government for taking appropriate legislative and administrative actions for the elimination of violation of human rights which is the crying need of the

time. The students of law offering human rights paper in higher studies will be benefited by receiving a clear picture of the state of human rights in the case of criminal justice in Bangladesh. This thesis is also helpful to assess the application of the international instruments on human rights in Bangladesh where violation of human rights has become rampant. On these accounts, this field of research is suitable and timely.

#### **1.4 RESEARCH METHODOLOGY AND SOURCES OF DATA**

This research examines the important international instruments on human rights which have been ratified by Bangladesh. It makes comparison between the constitutional provisions of Bangladesh and some other South-east countries regarding the fundamental human rights. It also examines the existing laws and practices affecting human rights. So in order to shape this research work a complete form, the following methods are used:

- (i) Interpretation of international instruments on human rights including International Bill of Human Rights.
- (ii) Examination of the provisions relating to fundamental rights of the constitution of Bangladesh and some other countries;
- (iii) Analysis of the anti-human rights provisions in the statutory laws of Bangladesh and review of the rulings of the higher judiciary prohibiting statutory provision contrary to human rights;
- (iv) Collection of data of violation of human right through survey conducted and from Annual Report published by different NGOs and from news papers;
- v) The nature of violation of human rights by the executive and civilians and
- vi) And analysis of the role of NGOs for the protection of the rights of the victims of violation of human rights by perpetrators.

In dealing with this research both primary and secondary sources have been used. Primary sources include the UN Charter, Universal Declaration of

Human Rights 1948, International Covenant on Civil and Political Rights 1966, international covenant on Economic, Social and Cultural rights 1966. Covenant on the Elimination of All Forms of Racial Discrimination 1965, Convention on the Elimination of Discrimination against Women 1979, the Prevention of Repression against Women and Children 2000, Convention against Torture 1984 and Child Convention 1989, the children Act 1974, the Constitution of Bangladesh, Constitution of India and Pakistan, Statutes, case laws and data collected through interview. Secondary sources include books of eminent writers, Law journals, Annual Reports of different NGOs, Daily News Papers, Internet.

### **1.5 ARRANGEMENT OF THE STUDY**

This thesis consists of nine chapters including introduction and conclusion, introduction chapter deals with interpretation of the concept of human rights, justification and objectives of study, research methodology, treatment of data and sources and limitations.

Second chapter is devoted with the analysis of different human rights instruments of the UN. Third chapter is devoted to examine the provisions on international human rights instruments ratified by Bangladesh. Chapter four deals with constitutional provisions on fundamental rights of Bangladesh constitution and also critical analysis on preventive detention.

Chapter five deals with the role of the law enforcing agents. Chapter six exclusively deals with section 54 and 167 of the Code of Criminal Procedure and ruling of High Court Division of the Supreme Court of Bangladesh about those sections.

Chapter seven is absolutely engaged in dealing with the rights of women and children. Chapter eight has been devoted to assess the role of NGOs for the protection and promotion of human rights of the people of Bangladesh and chapter nine is the conclusion.

## **1.6 LIMITATION OF THE STUDY**

This research is specially aimed at finding out the degree of enjoyment of fundamental human rights by the people of Bangladesh according to international human rights instruments standard and also to see the nature of violation of such rights. In doing so I had to depend on sources both private and government. I have to search out as to how far the detainees, women, children and labourers are enjoying the rights guaranteed by our constitution as well as different international human rights instruments ratified by Bangladesh.

Here I had to face two limitations. First, the statistics available from private sources, like news media, human rights NGOs are not always uniform. Sometimes the information received from different NGOs on trafficking, rape, dowry victims, for example, differ from sources to sources. In that case I tried to co-ordinate them and mentioned those sources in footnotes.

Secondly, though government sources are primary and authentic but it is a matter of regret that the concerned Ministry and Government offices are found to be reluctant to supply information regarding the prevailing human rights situation.

## **1.7 Review of Literature**

Human Rights are universal in alienable and inviolable; everybody has the right to enjoy them equally, freely and without any interference. At the national level these rights are incorporated in state constitution in the form of fundamental rights; and it is the duty of the government to protect them and punish the violators. These rights are interpreted by courts and enforced by state functionaries. Despite their inviolability and enforceability recently it is found that due to misinterpretation and wrong application of some existing criminal Law, human rights are constantly violated in Bangladesh by law enforcement agents. The subject of this study is the interpretation and protection of human rights with reference to criminal justice in Bangladesh; here human rights are considered in the administration of criminal justice. Human rights and administration of criminal justice are the two aspects of this study. Human rights being the rights of human beings how far these rights of perpetrators of crime

are being protected is a matter of investigation of this work. Since it is a new aspect of modern jurisprudence, there is severe dearth of literature. A huge mass of literature in the form of books and journals may be found on human rights, and also many richly written books on Law of crimes may be found, but very few and even none may be found on the topic under this research. With the development of science and superhighway technology social norms and human behavior have greatly changed giving wide scope for observing traditional things differently from various angles. This research is of such an observation. In spite of this scarcity of relevant literature following books which have directly or indirectly some faint connectives with this research are reviewed here.

Brownlie, Ian, *Basic Documents on Human Rights (1981)*. This book contains all the basic documents on human rights. Here the writer has not shown their interpretation and application by national courts in the case of individual citizen of a state. From this book one may know the nature and character of human rights, but they will not find their individual application in a given situation.

Borhan Uddin, Khan, *Fifty Years of the Universal Declaration of Human Rights (1998)* This book is written in commemoration of the 50<sup>th</sup> anniversary of the adoption of the Universal Declaration of Human Rights (UDHR). Here the writer has attempted to present the civil, political, social, economic and cultural changes effected by the UDHR. The writer has presented the international scenario of human rights without touching their national effects. This book may be helpful to researchers in finding out human rights materials, but it is of little help to develop ideas on the line attempted in the research work.

Choudhury, Abdur Rahman, J, *Democracy, Rule of Law and Human Rights (1993)*. Unlike western writers Chowdhury, J, has seen human rights in somewhat different light, but still it is miles away from how it will be seen in this work. However, this work throws some light on the application of human rights in Bangladesh in the promotion of democracy and preservation of rule of law.

\* The number of this sub-Para would be 1.7 under Chapter one.

Pirzada, Sharifuddin, *Fundamental Rights and Constitutional Remedies in Pakistan (1966)*. This is a very good book on constitutional law; it contains illuminating exposition of fundamental rights and the remedies available for their violation supported by the decisions of decided cases. The national judiciary decides the violation of fundamental rights applying the national laws, since human rights-turned fundamental rights are in the domain of national laws. However, this book has not touched the aspect of our research.

Besides the above works there are a large number of articles written on human rights in Bangladesh but most of them deal with general human rights and not with their role in crime situation. Some books on the Code of Criminal Procedure are also reviewed here.

Nizami, Muhammed Mazhar Hassan, *The Code of Criminal Procedure*. This book is written law practitioners and students; it is not a research work. In this book sections are given and along with sections case references are provided. But the sections are not assessed in the light of human rights which is the main theme of this research work.

Mahmood, Shaukat, *The Code of Criminal Procedure (3 Vol)*. This is another authoritative work on criminal procedure code; but it also does not fall in line with our research endeavour. The writer has not discussed human rights anywhere in his book. Like all other law books in this work the writer has cited a large number of cases in the interpretation of sections under different situations.

Huq, Zahirul, *Law and Practice of Criminal Procedure*. This book is also written for law practitioners. Like the above two books on criminal procedure this one has not considered human rights in the application and interpretation of criminal law.



This research work will be devoted to the interpretation and protection of human rights in the administration of criminal justice in Bangladesh. It is completely something different from what has been seen in the above books and stray articles in various journals published at home and abroad. Probable no other research has so far been carried out in this line. This is a new endeavour, and it is expected that this research work will help the government reform its existing criminal laws in the light to be suggested herein.

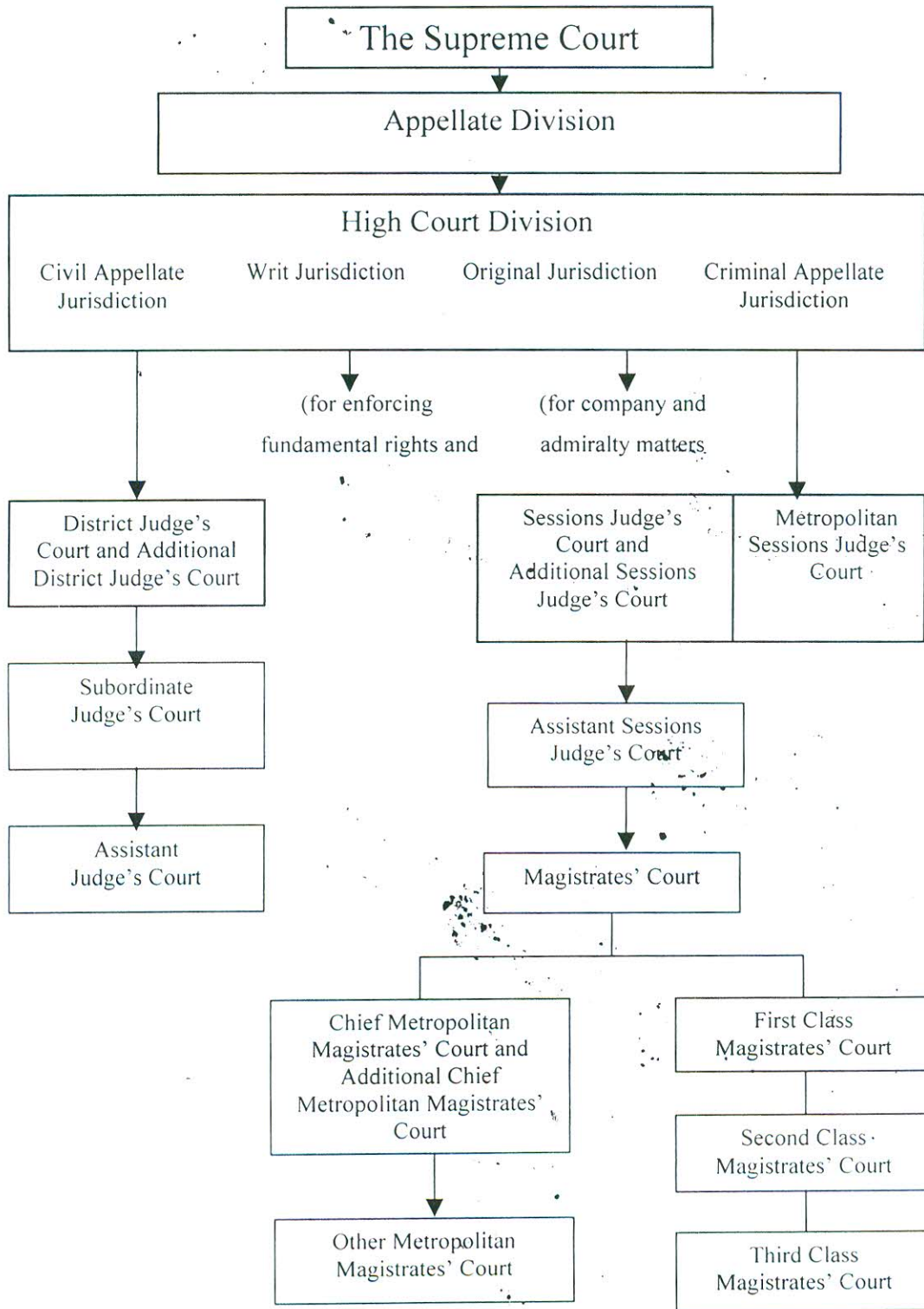
### **1.8 Criminal Justice System in Bangladesh**

Though this research work does not deal with the criminal justice system in Bangladesh but still I deem it necessary to write a few sentences, which are being stated below:

British ruled the Indian Sub-continent for one hundred and ninety years (1757-1947). In 1947 it got independence from the British rule and it was divided into two parts, namely India and Pakistan. By inheritance Pakistan got different laws and regulations from the British. In 1971 Bangladesh emerged as an independent state. Since then Bangladesh has been following and implementing these laws including procedural laws which were in force in Pakistan. The Present court structure owes its origin in the civil courts Act, 1887 in the civil side and the Criminal Procedure Code 1898 in the criminal side with some amendments. Besides, the Supreme Court and the courts constituted under any law other than the Code of Criminal Procedure for the time being in force, there shall be five classes of criminal courts in Bangladesh under section 6 of the Code of Criminal Procedure 1898. These Courts deal with the procedure for trial of the criminals.

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Legal structure of Bangladesh Courts may be seen from the following chart.



The jurisdictions and powers of the criminal courts of Bangladesh are stated to show as to how criminal justice system is being followed here.

### **Court Of Sessions**

Under section 7 of the code, for the purpose of administration of criminal justice, the whole of Bangladesh territory has been divided into some Sessions Divisions and every sessions Division shall be a district or consists of districts. A metropolitan area is deemed to be a Sessions Division under section 7 (4). Section 9 of the Code empowers the government to appoint a judge in each sessions court. It is presided over by a Sessions Judge or Additional Sessions Judge or an Assistant Sessions Judge. The court of sessions for a metropolitan area is called the metropolitan Court of Sessions.

### **Jurisdiction of the Court of Sessions:**

The court of Sessions exercises original, appellate, revision and administrative jurisdictions. In its original jurisdiction, a Sessions Judge or Additional Sessions Judge can try any offence authorized by criminal law. The High Court Division under section 31 of the code shall confirm a sentence of death passed by him. A Sessions Judge hears appeal from the conviction and sentence not exceeding five years passed by Assistant Sessions Judge. He also hears appeals from the conviction passed by the Metropolitan Magistrates, a District Magistrate, Additional District Magistrates or other Magistrates of the First Class.

A Sessions Judge may call for and examine the records of any inferior criminal court within its jurisdiction under section 435. He has also the power of revision under section 439A. This power may be transferred to the Additional District Judge who will exercise all powers of a Sessions Judge.

### **The Court of Assistant Sessions Judge**

An Assistant Sessions Judge has only original jurisdiction under which he can pass sentence up to ten years imprisonment. He may pass any sentence except a sentence of death when he assumes the power of an Additional Sessions Judge under sections 9 of the Code.

### **The Magistrates' Court**

Magistracy may be divided into three divisions –(i) Metropolitan Magistracy, Regular Magistracy and special Magistracy, depending on the nature of power and area of establishment.

### **Metropolitan Magistracy**

Under section 18 Cr. P.C; Metropolitan Magistrates are of three classes. These are:

1. Chief Metropolitan Magistrates Court.
2. Additional Chief Metropolitan Magistrates Court.
3. Metropolitan Magistrate Court.

At present there are four Metropolitan Cities-Dhaka, Chittagong, Rajshahi and Khulna.

In every Metropolitan City, there is one Chief Metropolitan Magistrate, one or more Additional Chief Metropolitan Magistrates and other Metropolitan Magistrates as the government deems it fit. They are all First Class Magistrates.

### **Regular Magistracy**

Regular Magistrates are of three types and they exercise their powers out side metropolitan Area of a district. They are:

- (1) First Class Magistrates.
- (2) Second Class Magistrates.
- (3) Third Class Magistrates.

The Deputy Commissioner of every district is vested with the power of a first class magistrate and acts as District Magistrate. All Magistrates in a district out side Metropolitan Area, are subordinate to the District Magistrate.

### **Powers of the Magistrates**

Section 32 of Cr. P.C. empowers the Magistrates to pass the following sentences.

(a) Court of Metropolitan Magistrates and Magistrates of the first Class	Imprisonment for a term not exceeding five years including such solitary confinement as authorized by law; Fine not exceeding ten thousand taka; whipping.
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(b) Courts of Magistrates of the	Imprisonment for a term not exceeding
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Second class	three years, including such solitary confinement as is authorized by law; Fine not exceeding five thousand taka.
(c) Courts of Magistrates of third Class	Imprisonment for a term not exceeding two years; fine not exceeding two thousand taka.

In default of payment of fine by a convicted person, Magistrate can award imprisonment for a further period in addition to the substantive imprisonment awarded.

Section 29c also provides that (a) Chief Metropolitan Magistrate, District Magistrate or Additional District Magistrate may, try all offences not punishable with death; any Magistrate of the first Class may also try all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding ten years. This is, in brief, the criminal justice system in Bangladesh.

## 1.9 Conclusion

The concept of human rights and its violation is as old as the creation of human beings. Man lives in this world for a definite period of time during which he needs the protection of his rights. Though human rights are inseparable but these are violated by human beings themselves. Men are the best of all creations. In this respect it has been declared in the holy Quran, "Verily, we have honoured the children of Adam (human beings)."<sup>18</sup> But it is an irony of fate that major violation of human rights took place during the First and Second World War for which human beings are responsible. That is why it has been stated in the holy Quran, "Then we reduced him (man) to the lowest of the low."<sup>19</sup>

<sup>18</sup> Al-Quran 17:70

<sup>19</sup> Al-Quran 95:5

In order to stop violation of human rights, the United Nations was established which has been trying to protect and promote human rights since its inception. In the study efforts are made to find out the causes of violation of human rights and remedies thereof. Bangladesh as a member of the UN has been trying to implement the provisions of human rights instruments specially which have been ratified by it. But violation of human rights has not been totally stopped due to black law and corrupt law-enforcement agents. In spite of some limitations, attempts have been made to achieve the objectives of the study. In the whole length of this work these attempts are spread out with available materials and reasons thereof.

Since human rights are the prime subject matter of this study, international instruments containing human rights will be discussed in the next chapter.

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## CHAPTER TWO

# INTERNATIONAL BILL OF HUMAN RIGHTS AND THE UNITED NATIONS

### 2.1 INTRODUCTION

Before the birth of the United Nations there were no international provisions regarding the protection of human rights though there were only national or regional instruments for the protection of human rights. These national or regional instruments were as follows:

1. *Magna Carta*, 1215
2. The Petition of Rights, 1627
3. The Bill of Rights, 1689
4. Act of Settlement, 1702
5. The Virginia Bill of Rights, 1776
6. The Declaration of the Rights of Man and Citizen, 1789.
7. American Declaration of Independence, 1776
8. American Bill of Rights, 1791

These instruments were basically related to some civil and political rights of concerned states. These instruments had no world-wide application. Human rights received global recognition only after the establishment of the United Nations on 24 October, 1945. UN recognizes human rights and

fundamental freedoms which are the corner stones for future maintenance of peace and international security.<sup>1</sup>

The consequent sections are devoted to examine the provisions of the UN dealing directly with the protection and promotion of human rights.

## 2.2 UN CHARTER AND HUMAN RIGHTS

The United Nations Charter was adopted at San Francisco Conference on 26 June 1945 which was attended by the representatives of fifty states.<sup>2</sup> The Charter of the UN is the first international instrument which deals with the protection of human rights and fundamental freedoms. The Charter envisages the United Nations as an agency for the centralization and co-ordination of international administration for the protection and promotion of human rights through international co-operation.<sup>3</sup> The UN Charter mentioned in seven places the determination of the establishment of fundamental human rights. First, the preamble of the Charter states:

“ We, the peoples of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our life time has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the equal rights of men and women and of nations large and small.....”

Human rights and fundamental freedoms have also been mentioned in Articles I (3), 13(I)(b), 55(c), 62(2), 68 and 76. Article I (3) of the Charter of the

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<sup>1</sup> Muhammad Zamir, *Human Rights Issues and International Law*, Dhaka P.6 (1990).

<sup>2</sup> L. Oppenheim, *International Law*, ed. H. Lauterpacht, London P.40(1967)2.

<sup>3</sup> Oppenheim, *op.cit*, 444.



UN proclaims the followings goal as one of the purposes of the UN:

“To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinctions as to race, sex, language or religion.”

It has also been stated under Article 13(I) (b) of the Charter in almost in the same language that the General Assembly shall take initiative for the promotion of international co-operation in the economic, social, cultural, educational and health fields, and it shall also assist for the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Further, the Charter is promised to promote “universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>4</sup> The Charter states that the Economic and Social Council may make recommendations for the purpose of promotion of respect for and observance of human rights and fundamental freedoms. The Council shall set up commissions in economic and social fields and for the promotion of human rights.<sup>5</sup> Lastly, the Charter explains the very purpose of the UN as follows:

“To encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion and to encourage recognition of the interdependence of the peoples of the world.”<sup>6</sup>

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<sup>4</sup> The UN Charter. Article 55(c).

<sup>5</sup> Article 62, *op.cit*

<sup>6</sup> Article 76(c), *op.cit*

Though the UN Charter does not define “human rights and fundamental freedoms” but its Article 55(c) which, when read together with 56, makes it clear that the Member States and the organization have an obligation to promote human rights and fundamental freedoms without discrimination of any kind. In spite of vagueness, the human rights provisions of the UN Charter have had a number of important consequences. First, the UN Charter “internationalized” human rights. The states parties recognized that the human rights are a subject of international concern and no longer within their exclusive domestic jurisdiction. Second, the obligation of human rights and fundamental freedoms has provided the UN legal authority for undertaking a massive effort to define and codify these rights. The adoption of International Bill of Human Rights is an outcome of that effort. Third, the organization has over the years succeeded to promote human rights by creating the UN Charter-based institutions designed to ensure compliance by governments.<sup>7</sup>

The UN Charter, in fact, the constitution of the UN, makes direct or indirect provisions for the protection of human rights nationally and internationally. The preparation of necessary human rights instruments in various phases has become possible due to inherent power of the UN Charter. The following sections will be devoted to interpret these instruments.

## **2.3 HUMAN RIGHTS AND INTERNATIONAL BILL OF HUMAN RIGHTS**

In 1946 the Economic and Social Council recorded the view that the purpose of the United Nations with regard to the promotion and the observance

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<sup>7</sup> Thomas Buergenthal, *International Human Rights Law*, Washington (1995), PP.25-27

of human rights, as defined in the Charter of the UN, can only be fulfilled if provisions are made for the implementation of human rights and of an international bill of rights.<sup>8</sup> So under Article 64 of the UN Charter, the Economic and Social Council established the Commission on Human Rights in 1946.<sup>9</sup> The Commission was requested to prepare and submit two documents: (1) concrete proposal and recommendations for an international bill of human rights, (2) suggestions concerning ways and means for the effective implementation of human rights and fundamental freedoms.<sup>10</sup> The Commission felt that it would be relatively easy to adopt the text of a hortatory declaration, but it would be much more difficult to reach agreement on the wording of legally binding treaty. Accordingly, the Commission decided to work first on a declaration and to take up immediately afterwards the preparation of one or more treaties. The Commission prepared a final draft of declaration on human rights and a covenant on human rights and measures of implementation and submitted them to the Economic and Social Council in June 1948.

The Economic and Social Council, thereafter, submitted them to the General Assembly at its third session which was held in Paris in September 1948. The General Assembly adopted only a Declaration on 10 December 1948 as the Universal Declaration of Human Rights by forty eight votes and eight member states abstained.<sup>11</sup>

According to Thomas Buergenthal, an eminent scholar on human rights, the International Bill of Human Rights consists, in addition to the human rights

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<sup>8</sup> H. Lauterpacht, *International Law and Human Rights*, U.S.A P.273(1968).

<sup>9</sup> Economic and Social Council's Resolution No. 5(I) of 16 February 1946.

<sup>10</sup> Resolution No. 9(II) of 21 June 1946, Economic and Social Council.

<sup>11</sup> Resolution No. 217A(III) of 10 December 1948 of General Assembly.

provision of the UN Charter, of the Declaration of Human Rights, the two International Covenants on human rights-Civil and Political Rights; Economic, Social and Cultural Rights and Optional protocol on the Civil and Political Rights”<sup>12</sup>

These instruments are analyzed sections wise.

### **2.3.1 The Universal Declaration of Human Rights**

The Universal Declaration of Human Rights is the first complete and comprehensive human rights instrument adopted and proclaimed by a universal international organization. It “has been hailed as an historic event of profound significance and as one of the greatest achievements of the United Nations.”<sup>13</sup> It is also considered as the greatest effort yet made by mankind to give society new legal and moral foundations and thus marking a decisive stage in the process of uniting a divided world.<sup>14</sup> The General Assembly of the UN opined that it is a common standard of achievement for all peoples and all nations.<sup>15</sup> The Declaration recognizes the inherent dignity and equal and inalienable rights of all members of the human family.<sup>16</sup> The declaration, which consists of thirty Articles including a preamble, is based on the fundamental principle that:

“ All human beings are born free and equal in dignity and rights.”<sup>17</sup> As regards the enjoyment of all the rights and fundamental freedoms set forth in the

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<sup>12</sup> Thomas Buergenthal, *op.cit*, P.28 .

<sup>13</sup> H. Lauterpacht, *op.cit*, P.394

<sup>14</sup> Official Records of the Third Session of the General Assembly, part I, P.854.

<sup>15</sup> Preamble, The Universal Declaration of Human Rights, 1948.

<sup>16</sup> *Ibid*.

<sup>17</sup> The Universal Declaration of Human Rights, Article I.

Declaration, it emphasizes that every one is entitled to the rights without any discrimination of any kind.<sup>18</sup>

The Universal Declaration of Human Rights 1948 basically proclaims two types of rights- (I) civil and political rights and (2) economic, social and cultural rights. Articles 3-21 contain civil and political rights which are as follows: Right to life, liberty and security of person;<sup>19</sup> freedom from slavery;<sup>20</sup> right not to be subjected to torture, or cruel, inhuman or degrading treatment or punishment;<sup>21</sup> right to recognition as a person before the law;<sup>22</sup> equality before the law and equal protection of law;<sup>23</sup> right to an effective judicial remedy;<sup>24</sup> right not to be subjected to arbitrary arrest, detention or exile;<sup>25</sup> right to a fair trial and public hearing by an independent and impartial tribunal;<sup>26</sup> right to be presumed innocent until proved guilty;<sup>27</sup> freedom from arbitrary interference with privacy, family, home or correspondence;<sup>28</sup> freedom of movement and residence;<sup>29</sup> right to asylum;<sup>30</sup> right to a nationality;<sup>31</sup> right to marry and to found a family;<sup>32</sup> right to own property;<sup>33</sup> right to freedom of thought, conscience and religion;<sup>34</sup> freedom of opinion and expression;<sup>35</sup> right to

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<sup>18</sup> The Universal Declaration of Human Rights, Article 2.

<sup>19</sup> Article 3, *op.cit.*

<sup>20</sup> The Universal Human Rights 1948, Article 4.

<sup>21</sup> Article 5, *op.cit.*

<sup>22</sup> Article 6, *op.cit.*

<sup>23</sup> Article 7, *op.cit.*

<sup>24</sup> Article 8, *op.cit.*

<sup>25</sup> Article 9, *op.cit.*

<sup>26</sup> Article 10, *op.cit.*

<sup>27</sup> Article 11, *op.cit.*

<sup>28</sup> Article 12, *op.cit.*

<sup>29</sup> Article 13, *op.cit.*

<sup>30</sup> Article 14, *op.cit.*

<sup>31</sup> Article 15, *op.cit.*

<sup>32</sup> The Universal Declaration Human Rights 1948, Article 16.

<sup>33</sup> Article 17, *op.cit.*

<sup>34</sup> Article 18, *op.cit.*

peaceful assembly and association;<sup>36</sup> and right to take part in the government and equal access to public service of one's own country.<sup>37</sup>

Articles 22 to 28 deal with economic, social and cultural rights which are as follows:

Right to social security;<sup>38</sup> right to work and free choice of employment, equal pay for equal work and right to form and join trade unions;<sup>39</sup> right to rest and leisure;<sup>40</sup> right to adequate standard of living;<sup>41</sup> right to education;<sup>42</sup> and right to participate in the cultural life.<sup>43</sup>

These rights, stated in the Declaration, are declaratory in nature and so these are not legally binding either directly or indirectly; specially, there is no warrant for assuming that it can properly be resorted to for the interpretation of the provisions of the Charter in the matter of human rights and fundamental freedoms.<sup>44</sup> Although the declaration can claim no legal force and it contains only moral authority, but still the circumstance does not deprive it altogether of significance of potential effect.<sup>45</sup> Mrs. Eleanor Roosevelt, the first Chairperson of Commission on Human Rights, described that the Declaration may become the international Magna Carta of all men everywhere.<sup>46</sup> Some lawyers of international repute and also some governments contended that the United

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<sup>35</sup> The Universal Declaration Human Rights 1948, Article 19.

<sup>36</sup> Article 20, *op.cit.*

<sup>37</sup> Article 21, *op.cit.*

<sup>38</sup> Article 22, *op.cit.*

<sup>39</sup> Article 23, *op.cit.*

<sup>40</sup> Article 24, *op.cit.*

<sup>41</sup> Article 25, *op.cit.*

<sup>42</sup> Article 26, *op.cit.*

<sup>43</sup> Article 27, *op.cit.*

<sup>44</sup> Oppenheim, *op.cit.*, P.745..

<sup>45</sup> H. Lauterpacht, *op.cit.*, P.425.

<sup>46</sup> M.E. Bari "The Universal Declaration of Human Rights-The Magna Carta of Mankind," Human Rights in Contemporary International Law (Humanist and Ethical Association of Bangladesh, Dhaka, (1995), P.74.

Nation's consistent reliance on the Universal Declaration compels the conclusion that the Declaration has been accepted as an authoritative interpretation of the provisions of the UN Charter.<sup>47</sup>

Besides, as regards its significance the following statement is noteworthy:<sup>48</sup>

“The Declaration is now considered to be an authoritative interpretation of the UN Charter, spelling out in considerable details the meaning of the phrases “human rights and fundamental freedoms”, which member states agreed in the Charter to promote and observe. The Universal Declaration has joined the Charter as part of the constitutional structure of the world Community. The Declaration as an authoritative listing of human rights, has become a basic component of international customary law, binding all states, not only members of the United Nations.”

The Secretary-General of the UN rightly emphasized the significance of the Declaration in the following language:

“This declaration, the first attempt in history to write a Bill of Rights” for the whole world, is an important first step in the direction of implementing the general pledges of the charter concerning human rights.”<sup>49</sup>

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<sup>47</sup> Thomas Buergenthal, *op.cit*, P35.

<sup>48</sup> Thomas Buergenthal, *op.cit*, P.37.

<sup>49</sup> Quoted in Lauterpatch, *op.cit*, pp 396-397.

However, the Declaration carries a value of standard action and moral obligation; it has now been frequently referred to in official drafts, pronouncement in national constitution, legislation<sup>50</sup> and also at the time of pronouncement of judgment in higher judiciary.

It has direct impact on many national constitutions enacted since 1948, some of which reproduced the Declaration words for word. Bangladesh constitution 1972, for example, included in its part III entitled “Fundamental Rights” many provisions of the Universal Declaration of Human Rights. So in order to give legal effect to the human rights and fundamental freedoms as stated in the Universal Declaration of Human Rights, the UN Commission on Human Rights worked diligently for the preparation of the rest of the International Bill of Rights-the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Civil and Political Covenant. These three instruments were submitted to General Assembly which adopted them unanimously on 16 December 1966 and they were kept open for ratification.

### **2.3.2 The International Covenant on Civil and Political Rights.**

This Covenant came into force on 23 March 1976 after ratification by 35 states under Article 49 of the Covenant. Because, as per that Article, the Covenant was to be enforced three months after ratification by 35 states. Bangladesh ratified this instrument on 7 September 2000 and as of 23 of July

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<sup>50</sup> Oppenheim, *op.cit*, pp 745-746.



2003, 149 states out of 189 member states of the United Nations ratified this and 8 non-member states became signatories of the instrument.<sup>51</sup>

The International Covenant on Civil and Political Rights covers all most all the civil and political rights proclaimed in the Declaration. Those rights are right to life;<sup>52</sup> Prohibition against torture, cruel, inhuman or degrading treatment or punishment;<sup>53</sup> prohibition against slavery;<sup>54</sup> right to liberty and security of person;<sup>55</sup> treatment with humanity of persons deprived of this liberty;<sup>56</sup> non-imprisonment for debt;<sup>57</sup> freedom of movement,<sup>58</sup> fair trial,<sup>59</sup> non-retrospection of penal sanction;<sup>60</sup> entitlement to recognition as a person before law;<sup>61</sup> right to privacy;<sup>62</sup> freedom of thought, conscience and religion;<sup>63</sup> freedom of expression;<sup>64</sup> right to peaceful assembly;<sup>65</sup> freedom of association;<sup>66</sup> right to marry and found a family;<sup>67</sup> right of a child to acquire nationality;<sup>68</sup> the right to take part in government including the right to vote and to be voted;<sup>69</sup> right to

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<sup>51</sup> website:<[http://www.fco.gov.UK/xcelerate/graphics/images/fcomain/hr/annex\\_05.html](http://www.fco.gov.UK/xcelerate/graphics/images/fcomain/hr/annex_05.html)> Accessed as on July 23, 2003. (The copy on file with the author).

<sup>52</sup> International Covenant on Civil and Political Rights 1966, Article 6.

<sup>53</sup> Article 7, *op.cit.*

<sup>54</sup> Article 8, *op.cit.*

<sup>55</sup> Article 9, *op.cit.*

<sup>56</sup> Article 10, *op.cit.*

<sup>57</sup> Article 11, *op.cit.*

<sup>58</sup> Article 12, *op.cit.*

<sup>59</sup> Article 14, *op.cit.*

<sup>60</sup> Article 15, *op.cit.*

<sup>61</sup> Article 16, *op.cit.*

<sup>62</sup> Article 17, *op.cit.*

<sup>63</sup> Article 18, *op.cit.*

<sup>64</sup> Article 19, *op.cit.*

<sup>65</sup> Article 21, *op.cit.*

<sup>66</sup> Article 22, *op.cit.*

<sup>67</sup> Article 23, *op.cit.*

<sup>68</sup> Article 24, *op.cit.*

<sup>69</sup> Article 25, *op.cit.*

equal protection before law and the right to enjoy these rights without any discrimination of any nature.<sup>70</sup>

Though the International Covenant on Civil and Political Rights is based on the Universal Declaration of Human rights, but the rights are not identical. Some rights incorporated in the declaration are not included in the International Covenant on Civil and Political Rights such as the right to own property, to seek and enjoy asylum and the right to a nationality, the right to own property was not included in the covenant because the difference in ideology and political blocs represented in the UN at time could not agree.

On the contrary, this covenant includes some rights that are not listed in the Declaration such as the rights of ethnic, religious or linguistic minorities to enjoy their own language; freedom from imprisonment for debt and the right of every child to acquire a nationality.

In order to implement the rights of this covenant, there shall be established a Human Rights Committee (HRC) under Article 28 and the States Parties shall comply with the obligations by ratifying the treaty. This Committee consists of 18 experts elected from the nationals of the States Parties for four years duration, who serve in their personal capacities. The functions of the HRC are confined to two systems (1) Reporting system and (2) Inter-state communication system.

### **2.3.2.1 Reporting system**

Article 40 of the covenant provides for reporting system by the states parties. The HRC shall examine the reports submitted to it by the states parties

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<sup>70</sup> International Covenant on Civil and Political Rights 1966, Article 26.

regarding the measures they have adopted in order to give effect to the rights recognized within one year of the entry into force of this covenant. The Human Rights Committee may ask any state party to submit to it report whenever the Committee so requests. The Human Rights Committee considers such reports and transmits its comments to the states parties and also to the Economic and Social Council. This reporting system actually creates moral pressure upon the states parties to comply with the rights contained in the Covenant. The evolution of this system has accelerated in recent years and has been proved to be an increasingly more effective instrument for the implementation of the covenant.<sup>71</sup>

#### **2.3.2.2 Inter-state communication system**

Article 41 of the Covenant provides for inter-state complaint system enabling a State Party to complain against another State Party for not giving effect to the provisions of the treaty, provided that both the States Parties shall have to declare separately the recognition of the competence of the Committee to receive and consider communications.

This shall be done by the following procedure:

If a state considers that another State Party is failing to implement the provisions of the Covenant then that party may draw the attention, in writing, of that party which violates. The receiving State Party shall reply giving explanation within three months from the date of the communication. If the matter is not adjusted within a period of six months, each of them has the right

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<sup>71</sup> Thomas Buergenthal, *op.cit*, P.45.

to refer the matter to the Human Rights Committee which shall use its good office to bring friendly solution of the matter. In case of arriving friendly solution, the Committee shall confine its report to a statement. But if no solution is arrived at within a period of twelve months, the Committee shall prepare a report containing a brief statement of the facts along with the submissions made by the States Parties concerned. Under the circumstances, the Committee may with the consent of both parties appoint an *ad hoc* Conciliation Commission which shall consist of five members acceptable to the parties.<sup>72</sup> The Conciliation Commission shall report to the Human Rights Committee regarding its success or failure to come to a solution. In case of failure, it may suggest solution to the problem. However, the states parties are not formally required to accept the proposed solution, although their failure to do so may be called to the attention to the UN General Assembly by the Human Rights Committee in its Annual Report.<sup>73</sup> So this procedure is neither for adjudication nor quasi-adjudication, but this is an attempt for arbitration leaving a permanent effect for international peaceful co-existence.

In the constitution of Bangladesh, civil and political rights as stated in the International Covenant on Civil and Political Rights have been enshrined in Part III as fundamental rights and the Supreme Court has been empowered by the constitution for enforcement of those rights under Article 102 and also prevention of their violation by any quarters.<sup>74</sup> In *Hamidul Haque Chowdhury*

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<sup>72</sup> Article. 42 ICCPR.

<sup>73</sup> Thomas Buergenthal, *op.cit* P.48

<sup>74</sup> See chapter 4 where detailed discussions have been made.

*Vs. Bangladesh*,<sup>75</sup> Sultan Hossain Khan, J said that the fundamental rights should be regarded inviolable subject to other constitutional provisions.

### **2.3.3 Optional Protocol to the International Covenant on Civil and Political Rights:**

Optional Protocol to the International Covenant on Civil and Political Rights was entered into force on 23<sup>rd</sup> March 1976 in accordance with its Article 9. Under this Article, 10 states were required to ratify the instrument for its enforcement. This protocol supplements the measures of implementation of the Civil and Political Covenant. It enables private parties, claiming to be victims of a violation of the covenant, to file individual communications or complaints with the Human Rights Committee. Written complaints may only be filed against States Parties to the Covenant which have ratified the Protocol, and recognize the competence of the Human Rights Committee to receive and consider communications from individuals, provided that the complainants have exhausted all domestic remedies. The communication shall not be entertained if it is anonymous and incompatible under Article 3.

After admissibility of the complaint, the Human Rights Committee would bring the matter to the attention of the alleged State Party which is to give written explanations and remedy, if any, to the Human Rights Committee within six months. Thereafter the Committee reviews the explanations of the State Party and the individual complaint and its findings shall be communicated to them both. A summary of these findings is included in the Committee's annual

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<sup>75</sup> 34 DLR 190 (1982).

report to the UN General Assembly under Article 6 of the Protocol and under Article 45 of the Covenant.

Since the entry into force of the protocol in 1976, the number of admissible communications has increased significantly in recent years. There has also been a rise in the number of ratifying states to the protocol. In view of the increase of number of complaint, the Committee now requires the States Parties to indicate in their periodic reports about the measures they have taken to give effect to the Committee's recommendations in those individual cases in which they were held to have violated the Covenant.<sup>76</sup>

In this respect the Human Rights Committee observed: "The state Party should indicate what remedy it has afforded the authority of the communication whose rights the Committee found to have been violated."<sup>77</sup>

Thus there grows the sense of accountability in checking the violation of the civil and political rights of the individuals provided in the Covenant.

Bangladesh is yet to ratify this optional protocol and therefore, communication / complaint by individuals to the Human Rights Committee is not admissible.

### **2.3.4 The International Covenant on Economic, Social and Cultural Rights.**

This Covenant was adopted by the General Assembly on 16 December

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<sup>76</sup> Buerghenthal, *op.cit.*, P.50

<sup>77</sup> Report of the Human Rights Committee, UN DOE. 40(A/46/40).

1966, as stated above and came into force on 3 January 1976<sup>78</sup> as per its Article 27. Bangladesh ratified this instrument on 5 October 1998 and therefore, it is a State Party to the Covenant. This Covenant recognizes the following rights: the right to work; the right to the enjoyment of just and favorable conditions of work; the right to form and join trade unions; the right to social security; the right to a standard of living; the right to the enjoyment of the highest attainable standard of physical and mental health; the right of everyone to education; and lastly, the right to take part in cultural life.

As of 23 July 2003, 146 UN member states and 7 non-member states ratified this covenant.<sup>79</sup> The Covenant emphasizes the duties of each state party stating:

Each state party undertakes to take steps, individually and through international assistance and co-operation .....to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognized in the present covenant by all appropriate means including particularly the adoption of legislative measures.”<sup>80</sup>

It is essentially a “Promotional Convention” stipulating objectives more than standards and requiring implementation over time rather than all at once as the rights enumerated require direct expenditure by the state.<sup>81</sup> However, in order to create immediate obligations for the states parties, “ the Committee on Economic, Social and Cultural Rights”, consisting of 18 experts, was established

<sup>78</sup> website:<[http://www.fco.gov.UK/xcelerate/graphics/images/fcomain/hr/annex\\_05.html](http://www.fco.gov.UK/xcelerate/graphics/images/fcomain/hr/annex_05.html)> Accessed as on July 23, 2003. (The copy on file with the author).

<sup>79</sup> website:<[http://www.fco.gov.UK/xcelerate/graphics/images/fcomain/hr/annex\\_05.html](http://www.fco.gov.UK/xcelerate/graphics/images/fcomain/hr/annex_05.html)> Accessed as on July 23, 2003. (The copy on file with the author).

<sup>80</sup> International Covenant on Economic, Social and cultural Rights 1966, Article 2.

<sup>81</sup> M.E. Bari, “*International Concern for the Promotion and Protection of Human Rights*”, The Dhaka University Studies, part F, Vol. 11 No.1 June, 1991 P.33.

in 1985.<sup>82</sup> The Committee hears states reports and draws upon a list of questions prepared by its Pre-sessional working Group and prepares “General Comments”. The Committee holds general discussion on particular rights. But it cannot hear individual petitions nor it has inter-state complaint competence.<sup>83</sup> This permanent Committee, in spite of numerous obstacles, is effectively endeavoring hard to achieve the objectives of the covenant.

Bangladesh is a Republic where the rights enshrined in the Economic, Social and Cultural Rights are freely enjoyed by people except in few cases. For example, rural female workers do not get equal wages for equal work like male workers. Bangladesh as a state party is obliged to ensure under Article 7 of the Covenant that both men and women shall enjoy equal pay for equal work. Domestic helps both in urban and rural areas in Bangladesh do not enjoy fair wages. Human Rights NGOs in Bangladesh are trying to solve this problem by creating awareness in both Government and the people.<sup>84</sup>

## 2.4 CONCLUSION

Though human being is the best of all creations, but human beings themselves commit the violation of the rights of human beings, and commission of such violation started from the very birth of mankind. But it is also a reality that the protection and promotion of all types of rights including human rights is possible by human beings themselves. The most effective mechanism for the protection of human rights, in fact, started by the formation of the United

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<sup>82</sup> Ecosoc Resolution 1985/17 of may 22, 1985. Cited in T. Buergenthal, op.cit p.56.

<sup>83</sup> M.N. Shaw, International Law, Cambridge (1991), PP 203-204.

<sup>84</sup> For details See Sections 8.3.1,8.3.2,8.3.3 and 8.3.4.



Nations after World War II. The destruction caused in two World Wars, as stated above, led the foundation of the United Nations, which in its Charter first inserted clauses of human rights. The Charter of the United Nations 1945 was the first international instrument, which internationalized human rights and fundamental freedoms. The United Nations adopted a Declaration known as the Universal Declaration of Human Rights listing a number of rights and giving a clarion call to all the nations of the world to observe and implement those rights in their respective states. This declaration has been accepted by all countries including Bangladesh. It has been accepted as a “common standard of achievement for all peoples and all nations” aiming at the Protection and Promotion of human rights.

After the Universal Declaration of Human Rights two important human rights instruments, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, ratified by Bangladesh, and a protocol were adopted by the General Assembly of the UN in order to protect human rights effectively. These instruments called the International Bill of Human Rights represent a milestone in the history of human rights. Following the Bill many regional, national and international instruments, conventions have been adopted with the intention to protect human rights. Many countries including Bangladesh have inserted in their constitutions the main provisions stated in the Declaration, Civil and Political Covenant and Economic, Social and Cultural Covenant. The provisions of these instruments are being frequently cited in the national, regional and international courts at the time of giving decisions and opinions. That's why the International Bill of Human

Rights is considered as the beacon, which lights all efforts in the field of human rights.<sup>85</sup> If the provisions of the International Bill of Human Rights are strictly followed, the incidents of violations of human rights would be a rare event. But in order to stop violation totally, we require more detailed conventions, covenant and laws for implementation by all the member and non-member states of the United Nations. In the following chapter efforts will be made to interpret and examine the principal human right instruments which have been ratified by Bangladesh.

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<sup>85</sup> Mofizul Islam Patwary, "Human Rights in Contemporary International Law," (Humanist and Ethical Association of Bangladesh, Dhaka, 1995), P. 302.

## CHAPTER THREE

### INTERPRETATION OF PRINCIPAL INTERNATIONAL HUMAN RIGHTS INSTRUMENTS RATIFIED BY BANGLADESH AND THEIR IMPLEMENTATION

#### 3.1 INTRODUCTION

In addition to the International Bill of Human Rights, the United Nations has adopted a number of treaties dealing with specific types of human rights violation. These include racial discrimination, discrimination against women, torture convention, child convention, apartheid, genocide etc. The number of this type of instruments dealing with human rights has already exceeded sixty.<sup>1</sup> Bangladesh ratified some of these instruments and became a party to those. Some principal human rights instruments ratified by Bangladesh are analyzed in the following sections in order to see the procedure of implementation of the provisions of these instruments and also to examine how far Bangladesh has been able to implement these human rights instruments.

#### 3.2 Convention on the Elimination of All Forms of Racial Discrimination 1965 (CERD)

This convention was adopted by the UN General Assembly on 21 December 1965 and kept open for signature on 7 March, 1966 and entered into force on 4 January 1969.

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<sup>1</sup> (Dr.) M.E. Bari "International concern for the promotion and protection of Human Rights" The Dhaka University Studies, Part F. Vol. 2 No.1 June 1991.

Before its adoption, the General Assembly adopted a Declaration on the Elimination of All Forms of Racial Discrimination on 20 November, 1963. The General Assembly felt the necessity of adopting national and international measures to eliminate racial discrimination including teaching, education and information in order to secure universal and effective recognition and observance of the principles of the Declaration as a legally binding instrument.<sup>2</sup> This Declaration prepared the ground for adoption of this Convention (CERD). This convention was adopted and came into force after three years and nine years respectively of the adoption of Declaration on Racial Discrimination.

The CERD was ratified by Bangladesh on 11 June 1979. As on 23 July 2003, 166 member states of the UN and 8 Non-member states ratified this Convention. Racial Discrimination is prohibited under this convention.<sup>3</sup> Racial discrimination has been defined by the convention as—

“any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing, of human rights and fundamental freedoms in the economic, social, cultural or any other field of public life”.<sup>4</sup>

The International Court of Justice accepted this definition of racial discrimination as authoritative.<sup>5</sup> The convention is considered to be the most comprehensive and unambiguous codification in treaty form of the idea of the equality of races. The enforcement machinery of the convention consists of a

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<sup>2</sup> Resolution No. 1904 (XVIII) of the General Assembly.

<sup>3</sup> website <<http://www.fco.gov.uk/Xcelerated/graphics/images/fcomain/hr/annex05.html>> Accessed on 23 July, 2003 (The copy on the file with the author)

<sup>4</sup> Convention on the Elimination of All Forms of Racial Discrimination, Article I (I).

<sup>5</sup> Thomas Buergenthal, *International Human Rights*, U.S.A. P.62 (1995).

Committee in the Elimination of Racial Discrimination which is composed of 18 members. The members are elected by the States Parties and they serve in their personal capacities.

The States Parties to the convention have the legal obligation to eliminate racial discrimination in their territory by enacting necessary laws to ensure non-discrimination. The provisions of this Convention are implemented by the Committee on the Elimination of Racial Discrimination by three processes:

**By Reporting process:** The CERD administers a reporting system under which all States Parties are required to submit detailed information on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the Convention.<sup>6</sup> Every after two years, States Parties submit reports. The Committee examines the information and reports, its findings and suggestions to the States Parties and also to the General Assembly of the UN.

**Inter-state communication:** Under Article 11 of this Convention, a state party submits itself to the jurisdiction of the Committee for dealing with inter-state communications directed against it by any other state party. Unlike in the case of Civil and Political Covenant, the inter-state complaint system under this Convention is not optional. After receiving Complaint, the Committee will try to resolve it. If it is not settled, an *ad hoc* Conciliation Commission will be established to settle the dispute. It shall prepare a report on the dispute and make

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<sup>6</sup> Convention on the Elimination of All Forms of Racial Discrimination, Article 9(I).

recommendations for the amicable solution of the dispute under Article 12 and 13.

**Individual Communication:** The Committee may also receive and consider individual petitions under Article 14 of the Convention. The individual petition system is optional and it requires a separate declaration recognizing the jurisdiction of the Committee to receive and consider such communication. After studying the information received from the state concerned and the petitioner, the Committee summarizes its findings and makes suitable recommendations, which are published in the annual report of the General Assembly. Racism has been reduced after adoption of this Convention, though not eliminated. Racial discrimination on the basis of religion and colour has been reduced to a large extent in south Africa, U. S.A. and some others parts of the world due to the application of the Convention.

Though Bangladesh is a State Party to this Convention, but it has yet to give separate declaration recognizing the competence of the Committee to receive and consider individual complaints. In Bangladesh, Muslims, Hindus, Christians, Buddhists live together in peace and harmony and here there is no serious incident of communalism. People of different religions, colour and culture live in the same towns and villages where they freely observe their rituals without any interference. Bangladesh is a unique country of communal harmony.<sup>7</sup>

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<sup>7</sup> The Daily Star, 3 December, 2004; Daily Sangram, 30 December, 2004; Daily Sangram, 3 February, 2005 (sub-editorial).

### 3.3 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW), 1979

The UN General Assembly adopted this treaty on 18 December, 1979. It came into force on 3 September, 1981 after ratification by 20 states under Article 27(1) of the Convention. It has been ratified by 174 member states of the UN and 1 Non-member states by 23 July 2003.<sup>8</sup> This Convention was adopted in order to eliminate discrimination against women which means “any distinction, exclusion, or restriction made on the basis of sex that obstructs the enjoyment by women of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”<sup>9</sup>

The States Parties under Article 2, undertake to embody the principle of equality of men and women in their national constitutions or other appropriate legislation and to adopt laws or other measures prohibiting all discrimination against women. It further requires the States Parties to take a series of measures in the political, social, economic and cultural realm to advance the enjoyment of equal rights by women in all walks of life.<sup>10</sup>

The States Parties are to provide reports concerning the legislative, judicial, administrative or other measures they adopted to give effect to the provisions of the Convention.<sup>11</sup>

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<sup>8</sup> website <<http://www.fco.gov.uk/Xcelerate/graphics/images/fcomain/hr/annex05.html>> Accessed on 23 July, 2003 (The copy on the file with the author)

<sup>9</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, Article 1.

<sup>10</sup> Thomas Buergenthal, *op.cit.*, P.69.

<sup>11</sup> Convention on the Elimination of All Forms of Discrimination against Women 1979, Article 18 (1).

These reports are received by the Committee on the Elimination of Discrimination Against Women, which consists of 23 experts elected by the States Parties but serving in their personal capacities. The Committee normally meets for a period of not more than two weeks annually to review the reports.<sup>12</sup> But two weeks time is not enough to review so many state reports. Observations on the reports by the Committee are sent to the Commission on Status of the Women, which forwards its observation to the General Assembly through the Economic and Social Council.

Bangladesh ratified this Convention on 6 November, 1984 with reservation to Article 15(2).<sup>13</sup> The term “reservation” has been defined under Article 2(1) of the Vienna Convention on the Law of the Treaties, 1969 which runs as follows:

“Reservation means a unilateral statements made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby, it purports to exclude or modify the legal effect of certain provisions of the treaty in their application to the state.”

Article 18(2) of the Convention, of course, declared that “reservation incompatible with the object and purpose of the present convention shall not be permitted”. Although the Convention was adopted to bring equality between man and woman in all aspects, but still it has not been possible to implement all the provisions by all States Parties including Bangladesh due to religious

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<sup>12</sup> Convention on the Elimination of All Forms of Discrimination against Women 1979, Article 20(1).

<sup>13</sup> Article 15 (2) of the Convention runs, “States Parties shall accord to women in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity .....



injunctions. Both Muslim and Hindu personal laws have their own rules and regulations in case of inheritance. In Bangladesh under Muslim personal law, for example, a daughter is entitled to inherit half the share of a son from the property of the *propositus* as per the law of inheritance.

An over-whelming majority of working women live in the rural areas where women are worst affected, who receive lesser wages than male labour. Besides, there has been a great exodus of teen-age girls into garment factories where they work for low wages and long hours.<sup>14</sup> This is a discrimination against women, though Bangladesh constitution guarantees equal rights for women on the same level as men in all spheres of the state and of public life.<sup>15</sup> Government enacted different legislations in order to ensure elimination of discrimination against women. These are: Muslim Family Laws Ordinance, 1961; Dowry Prohibition Act, 1980, the Prevention of Repression against Women and Children Act, 2000; Family Courts Ordinance, 1985etc. Further, women are given protection against discrimination by higher judiciary. *In Dalia Parveen Vs. Bangladesh Biman Corporation and another*<sup>16</sup>, for example, Mahmudur Rahman, J and Mhahfuzur Rahman, J. declared discrimination between citizen and citizen based on sex is violative of Article 28 of the

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<sup>14</sup> Sumaiya Khair, "Human Rights and Women in the Indian sub- Continent" The Dhaka University Studies Part F, vol. 2, June 1991, P.154.

<sup>15</sup> The Constitution of Bangladesh, Article 28(2). I took Interview with 50 workers (male and female), of factories performing the same nature of job, and it has been disclosed that pay structure of male and female workers is not the same. Male workers receive higher salary than female workers. This is violation of the Convention as well as the Constitution of Bangladesh creating discrimination between man and woman. The survey has been conducted by me with the supply of questionnaire in the garments factories located at Chittagong district in the month of March, 2005. In all most all the garments factories in Bangladesh, female workers receive lesser salary than male workers.

<sup>16</sup> 48 DLR (1996) 132

Constitution. So Bangladesh Biman brought Parity as regards the age of retirement of stewards and stewardesses by the direction of the Supreme Court of Bangladesh. Efforts are being made by both Government and human rights NGOs to bridge up the discrimination against women as per provisions of this Convention.

### **3.4 CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT 1984.**

This Convention was adopted and opened for signature, ratification and accession by General Assembly on 10 December, 1984 and came into force on 26 June, 1987, in accordance with Article 27(1). The Convention is designed to prevent the government officials or other acting in an official capacity to commit torture.

Torture defined under Article 1(1) of the Convention is: “ any act by which sever 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.....”

Each State Party shall take effective legislative, administrative, judicial or other measures to prevent torture in any territory under its jurisdiction. In order to implement the measures provided in the Convention, there shall be a Committee Against Torture (CAT). This Committee is composed of ten experts of high moral standards, elected by States Parties but serve in their individual capacities. The Convention provides measures for implementation which consist

of (i) an obligatory reporting system under Article 19, (ii) optional inter-state complaint system under Article 21 and (iii) individual petitions system under Article 22. In case of inter-state and individual communications, the States Parties concerned are to make declarations recognizing the competence of the Committee. It receives and considers individual complaints regarding torture in a State Party.

Besides, Article 20-empowers the Committee to initiate an enquiry when it receives reliable information suggesting “well-founded indications that torture is being systematically practised in the territory of a state party.” After conclusion of the enquiry, the Committee may prepare a summary of its findings for inclusion in its annual report. That report is submitted to the States Parties and the UN General Assembly under Article 24 of the Convention.

Article 14 of the Convention states that State Party shall ensure in its legal system that the victims of an act of torture obtains redress and has an enforceable right to fair and adequate compensation. In the event of death of the victim as a result of torture, his dependents shall be entitled to compensation. Strict application of this Article will definitely reduce the rate of torture in any State Party.

We find daily in the medias that physical or mental torture or inhuman treatment to human beings have become a common features almost in every state. This is being done either by law enforcing agents or by private individuals. Victims mostly do not get remedy against torture, if law enforcement agents commit it. But in the case of torture committed by individual perpetrators, the victims receive judicial relief through court.

Bangladesh ratified this Convention on 5 October 1998 and as such it is a State Party to this convention and it has become obligatory to it to eliminate torture. But “for many years” says Amnesty International’s Report on Bangladesh 2003, “torture has been the most widespread and persistent human rights violation in Bangladesh but has been routinely ignored by successive governments since Bangladesh’s independence in 1971.” Perpetrators are mostly police personnel. They torture the victims by using different methods which include beating with rifle butts, iron rods, bamboo sticks, or bottles filled with hot water so they do not leave marks on the body, hanging by the hands, “water treatment” in which hose pipes are fixed into each nostril and taps turned on full for two minutes at a time, the use of pliers to crush fingers and electric shocks, burning by fire or cigarette etc.<sup>17</sup>

Police by misusing their Power torture the victims. Usually sections 54 and 167 of the Code of Criminal Procedure are misused by police. In order to prevent misuse of powers under those sections, the High Court Division of the Supreme Court in *Bangladesh Legal Aids and Services Trust (BLAST) and others Vs. Bangladesh case*<sup>18</sup> directed the government to amend those sections and made it obligatory to compensate the victims of torture by the perpetrators. Government has not as yet implemented those directions instead filed appeal.

But torture by police has been reduced due to the impact of the ruling of the Supreme Court of Bangladesh on Government. In order to prevent torture

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<sup>17</sup> Amnesty International Report 2003, quoted in the daily star, 8 June, 2003; Human Rights in Bangladesh 1998, Ain O Salish Kendra (ASK), P.58; Annual Report 1998, Bangladesh Rehabilitation Centre for Trauma victims (BRCT), P.8; Article-14, April-June, 2004, BRCT.

<sup>18</sup> 55 DLR ( 2003) 363. For details see Sections 5.4 and 6.2 also chapter 6 where detailed discussions have been made, infra.

committed by perpetrators other than police, Government formed a special team known as Rapid Action Battalion (RAB).<sup>19</sup> This team has been working round the clock to arrest the hardened listed criminals who are committing various crimes including torture. It has attained success remarkably to arrest the members of the outlawed parties and other terrorists involved in the commission of crimes including torture. Some of them died in armed confrontation with RAB, some went on hiding either in the country or outside the country. Bangladesh, as a ratifying State Party to this Convention, must take effective, legislative, administrative and judicial measures to prevent acts of torture. It has to eliminate torture in any form from its territory. Bangladesh is to submit report to the Committee against Torture (CAT) annually from 2000. But Bangladesh did not submit first periodic report to the committee by 2001.<sup>20</sup> Elimination of torture is possible if the government fulfils its commitment under the torture convention and it can achieve this goal if it works with all sincerity. Thus the government is urged to step forward to eradicate torture so that people can live with security and peace.

### **3.5 CONVENTION ON THE RIGHTS OF THE CHILD 1989.**

This Convention was adopted and opened for signature, ratification and accession by General Assembly on 20 November 1989 and it entered into force on 2 September 1990, in accordance with Article 49 which require 20 states to

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<sup>19</sup> Rapid Action Battalion (RAB) has been formed under The Armed Police Battalions (Amendment) Act, 2003. (Act NO. XXVIII of 2003) This Act came into force on 12 July, 2003. RAB consists of army, navy or air force and police force. It can investigate any offence under section 6B of the Act.

<sup>20</sup> Human Rights in Bangladesh 2001, op.cit, P.126.

ratify for its enforcement. Bangladesh<sup>21</sup> ratified this convention on 3 August 1990 with reservations to Article 14 and 21.

Bangladesh was one of the first 20 states (7<sup>th</sup>) to ratify the Convention. Ecuador ratified this convention first on 23 March 1990. Almost all the member States to the UN have ratified this Convention.

Although in the International Bill of Human Rights, stated in chapter 2, there are provisions for the protection and promotion of all human rights irrespective of sex, colour, birth or origin and age, the General Assembly adopted a special convention to uphold the rights of the children only, bearing in mind that the child by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before and after birth. This is the first time that children have been singled out as exclusive subjects of international rights and protection.<sup>22</sup> A child, under this convention, means every human being below the age of 18 years unless, the law applicable to the child, majority is attained earlier.<sup>23</sup>

The Convention seeks to protect children from economic exploitation, illicit use of drugs, and from all forms of sexual exploitation and sexual abuse and traffic in children. It is the duty of the States Parties to ensure the rights of a child to preserve his or her name, nationality, family, protection against physical and mental torture, right to health care, education, right to rest and leisure and right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. States Parties shall take all necessary measure in

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<sup>21</sup> website:// untreaty. Un. Org.

<sup>22</sup> Thomas Buergenthal, op.cit, P.77

<sup>23</sup> Convention on the Rights of the Child, Article 1.

order to ensure these rights. The Convention establishes a Committee on the Rights of Child (CRC) composed of ten experts of high moral standing elected by States Parties from among their nationals and serve in their personal capacity.<sup>24</sup> The Committee reviews the reports which States Parties submit to it regarding the measures they have adopted in implementing the Convention.<sup>25</sup>

The Committee may recommend to the General Assembly that the Secretary-General be requested to undertake on its behalf studies on specific issues relating to the rights of the child and may also make suggestion and general recommendations.<sup>26</sup> But the committee has no power to receive individual or inter-state complaint. If the committee would have been given competence to receive and consider inter-state as well as individual communication, this would grow more accountability of the States Parties.

But in spite of this Convention, the human rights condition of the child has not been remarkably improved. The UN report on the rights of the child shows that from 1987 to September 1998 more than 20 lakh children have been killed and 60 lakh wounded or crippled permanently in wars and in 50 states children have been suffering due to war. Besides, 3 lakh children below the age of 15 years are directly fighting in the war either as insurgent or behalf of the governments.<sup>27</sup> The UN should find out more effective mechanism like accountability of States Parties for proper implementation of the provisions of the Convention. Bangladesh is very much conscious to uphold the rights of the

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<sup>24</sup> The Child Convention, Article 43.

<sup>25</sup> Article 44, op.cit

<sup>26</sup> Article 45, op.cit

<sup>27</sup> UN Report on its fifty three birth anniversary. See also Article "protection and promotion of Human Right: International Perspective," M. Faiz-ud-Din, Law Journal, 1998, Faculty of Law: Rajshahi University.

children. Before the adoption of this convention, Bangladesh had separate enactments specially aiming at the protection of the rights of child.

These Acts are:

- a) The Children (Pledging of labour) Act No. 11 of 1933
- b) The Employment of Children Act, 1938(Act no. XXVI of 1938)
- c) The Tea plantations Labour Ordinance, 1962
- d) The Factories Act, 1965 (Act No. IV of 1965)
- e) The Shops and Establishment Act, 1965 (Act, No. VII of 1965)
- f) The Children Act, 1974 (Act No. XXXIX of 1974)

According to the Children (pledging of labour) Act, 1933 a child is one who is under the age of 15 years. This Act prohibits the making of an agreement to pledge the labour of children. The main purpose of this Act is that no child labour should be pledged in order to avoid compulsion and economic exploitation. The Employment of Children Act, 1938 prohibits the employment of children under 12 years in some occupation like handling of goods or transport to passengers and some processing works, carpet weaving, cement manufacture, tanning, soap manufacture, wood cutting etc. The Tea Plantation Labour Ordinance, 1962 provides that no child under 12 years is allowed to work in a tea plantation. Of course, a child above 12 years and below 17 years are allowed to work provided fitness certificate from a physician is produced.

The Factories Act, 1965 prohibits the employment of a child below 14 years in any factory where more than 10 labours are working. This Act permits to work in a factory by a person who is above 14 years and below 18 years under certain conditions (sections 66,67,68). The Shops and Establishment Act,



1965 provides that a child below 12 years of age is prohibited from employment in any establishment. But a young person who has not completed 18 years of age will be allowed to work in an establishment not more than 7 hours a day or forty-two hours per week.

The Children Act regulates the law relating to the custody, protection and treatment of children who are under the age of 16 year. This Act provides care and protection of destitute and neglected children. The above Acts deal with the children whose age falls between 12 to 16 years, but Child Convention deals with a person who has not attained the age 18 years.

As a signatory of the Convention on the Rights of the Child (CRC), the government of Bangladesh is to submit report every after five years from the date of ratification. Bangladesh submitted its periodic report to the Committee, which sat for review on 30 September 2003.<sup>28</sup> Committee hailed Bangladesh for submission of report that was discussed in presence of Bangladesh representative and it was adopted with some comments and suggestion at 918<sup>th</sup> meeting of UN on October 3, 2003. The Committee also considered reports prepared by NGOs and UN agencies.

The Committee suggested Bangladesh to work more sincerely to establish the rights of the child.<sup>29</sup> The Committee, however, appreciated some steps taken by the Bangladesh government. Adoption of National Plan of Action (NPA), National Water and Sanitation Regulation, action taken by NPA on sexual abuse, exploitation and trafficking are the points of success by

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<sup>28</sup> Oli Md. Abdullah Chowdhury, "Reporting to CRC Committee and state of Juvenile Justice" The Daily Star, 7 March 2004.

<sup>29</sup> Ibid.

Bangladesh. The Committee also applauded the enactment of Prevention of Repression against Women and Children Act, 2000; Acid Control Act, 2002; The Acid Crimes Prevention Act, 2002 and repealing of the public safety Act, 2002. The Committee suggested to increase the minimum age of a minor from 7 which is the lowest age for criminal responsibility. It suggested that arbitrary treatment by police to street children should be stopped. It is further suggested that children must be kept separately from the adults while in the custody. The government should implement these suggestions in order to ensure children's rights in Bangladesh.

### **3.6 CONCLUSION**

It is revealed from the study of the four principal international instruments on human rights, Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of Discrimination Against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Convention on the Rights of the Child, that the United Nations has been doing systematic and sincere efforts from its inception for the protection and promotion of human rights and fundamental freedoms through adoption of many human rights instruments with a urge to implement those provisions by States Parties. Bangladesh, a signatory to these instruments, has been endeavoring to implement them in its territory.

Of the four major human rights instruments, Torture Convention and Racial Discrimination Convention have reporting, inter-state communication and individual complaint system. The rest two provide only reporting system

which is not so effective mechanism to implement human rights. So compulsory reporting, inter-state complaint and individual complaint system should be introduced into these human rights instruments for every state. But as there is no mechanism in international law to compel any nation to ensure all the rights provided in these instruments, the violation of human rights specially the rights of women and children has not been remarkably reduced. The implementation of human rights law, of course, depends on the voluntary good intention of the nations. Accountability and transparency must be exercised by the States Parties which is a precondition for the full enjoyment of human rights by the people.

With this end in view, the Vienna Declaration and Programme of Action<sup>30</sup> reaffirms the solemn commitment of all states to fulfill their obligations to promote all human rights and fundamental freedoms for all in accordance with the Charter of the UN and other instruments relating to human rights.

The protection of human rights in fact is the primary duty of the government. So if the government is determined to prevent violation of human rights or in other words, if it has honest intention to promote and protect human rights, it can do so though one hundred percent achievement is not possible.

Bangladesh, a member-state of the United Nations and signatory to the above international human rights instruments, has been trying to implement the provisions of these instruments. It has brought legislative, judicial and administrative actions to that end. But political intolerance, sheltering the perpetrators politically by their godfathers and above all dishonest law-enforcement agents stand on the way to implement the provisions in their true

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<sup>30</sup> It was adopted on 20 June, 1993 at the World Conference on Human Rights in Vienna.

spirit. Recruitment of honest, fair and efficient law enforcers, it is suggested, is an urgent need to improve the human rights situation in Bangladesh.

National Human Rights Commission can play a vital role to achieve the desired goal. Ombudsman should be appointed to look after the activities of the political leaders who can play a vital role to promote human rights. Lastly, the accountability of the government to the people who help it to go into power should be ensured which is the demand of the time in Bangladesh. It is to be noted that Article 77 of the Constitution of Bangladesh provides for the appointment of Ombudsman.

Human rights are accommodated in the constitution of Bangladesh in the form of fundamental rights, and remedies for the violation of these rights are also provided therein. In the following chapter an analysis will be made to show how far constitutional safeguards are provided to human rights in Bangladesh in their practical application, and in so doing some decided cases will also be discussed.

# CHAPTER FOUR

## HUMAN RIGHTS AND CONSTITUTIONAL SAFEGUARDS

### 4.1 INTRODUCTION

Constitution is not only the principal document of a state to regulate the state mechanism but also it is the supreme law of the land which guarantees the fundamental human rights without which a man cannot live like a human being. Human rights and fundamental freedoms help us to develop our human qualities, consciousness and personality, which are essential to satisfy our physical and spiritual needs. The presence of a constitution, therefore, is a must and without having a constitution the existence of a modern democratic state cannot be imagined.

After the adoption of the *Universal Declaration of Human Rights* 1948 (UDHR), most of the democratic states of the world inserted in their constitutions some of these rights either in the name of fundamental rights or fundamental human rights. These rights are the basic rights without which a citizen cannot enjoy the life of a free citizen as because these rights are essential for the development of human beings.

Bangladesh emerged as an independent state through a liberation war of 10 months in 1971 and it received recognition by different states. The noble purpose behind this war was to establish a just and democratic society in which all citizens will enjoy fundamental rights without any discrimination. With this

end in view Bangladesh framed a constitution in which civil, political, economic, social and cultural rights are guaranteed so that people can live with peace and harmony. Taking into consideration the provisions of the Universal Declaration of Human Rights, Bangladesh framed a constitution which came into force on 16 December, 1972.

The important fundamental rights, which every citizen is entitled to enjoy, are enshrined in part III of the Constitution of Bangladesh. The provisions of this part shall prevail upon other laws if found inconsistent. In this respect Art 26 (I) of the Constitution states that “[a]ll existing law inconsistent with provisions of this part shall, to the extent of such inconsistency, become void on the commencement of this Constitution”. Moreover, Art. 7 declares that the provisions embodied in the Constitution are supreme laws of the State and in the case of conflict between any provision of the Constitution and other prevailing laws of the land, the constitutional provisions shall stand and other laws shall be void to the extent of inconsistency.

This chapter will analyse the fact as to how and to what extent provisions regarding the basic human rights as guaranteed in the Constitution of Bangladesh are implemented and as such the citizens are enjoying these rights. In doing so, the rights guaranteed by the Constitution will be discussed under the following subheadings: (1) right to equality: Arts 27-30, (2) right to protection of law: Arts 31-32, (3) safeguard as to arrest and detention: Art 33, (4) protection against forced labour: Art 34, (5) protection in respect of trial and punishment: Art 35, (6) Right to freedom: Arts 36-41, (7) right to property: Art

42, (8) protection of home and correspondence: Art 43 and (9) right to enforce fundamental right: Art 44.

## 4.2 RIGHT TO EQUALITY

The right to equality may be classified as (a) right to equality in broad-spectrum (b) specific right to equality.

### 4.2.1 Right to Equality in broad-spectrum

The right to equality in broad-spectrum signifies the general application of the principles of equality instead of concentrating on any particular aspect of rights. This right is widely recognised by international and regional human rights instruments. Article 7 of UDHR states that “[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law”. Likewise, Art 26 of the *International Covenant on Civil and Political Rights* 1966 (ICCPR) states, “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law”. The *African Charter on Human and Peoples’ Rights*, 1981, a regional instrument, in its 3(1-2) also declares that every individual shall be “equal before the law” and “entitled to equal protection of the law”. In the same way, the *American Declaration of the Rights and Duties of Man* 1948 (Art 11) and *American Convention on Human Rights* 1969 (Art 24) provide the right to equality before the law.

The right to equality before law and equal protection is also guaranteed by the constitution of different countries. In this respect, Art.14 of the Constitution of India declares that the “state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. Article 25 of the Constitution of Pakistan states that “[a]ll citizens are equal before law and are entitled to equal protection of law”. In this respect the provision of the Constitution of Bangladesh is very much identical to that of the Constitution of Pakistan.

Article 27 of the Constitution of Bangladesh guarantees that, “[a]ll citizens are equal before law and are entitled to equal protection of law”. Despite this constitutional guarantee of the right to equality, fair and impartial application of this fundamental right is sometimes found to be absent at the time of disposal of cases specially in granting bail to the accused. Sometimes some accused are granted bail while others are not granted in the similar circumstances. The following incidents are cited as examples.

### **Case studies**

(a) A Member of Parliament Alamgir Kabir of Noagon District was arrested on 10<sup>th</sup> April 1999 on suspicion that he was involved in a murder case of two political leaders of the same district. He was not granted bail by the lower Court and as such he could not join the on going session of the Parliament. On the contrary, a Member of Parliament of Moulivi Bazar District, Mohibur Rahman (Manik) was arrested for an incident which took place in his residence where some bombs were explored at the time of their preparation and two



persons involved in the incident were killed. Killing of two persons and explosion of bombs are two separate penal offences, which took place in the residence of the said M.P. He was arrested on the above charge but shortly he was granted bail by the lower court and so he got the opportunity to join the session of the Parliament.<sup>1</sup> However, Alamgir Kabir was granted bail by the High Court Division on 9 August, 1999 and he was released from the Dhaka Central Jail on 27 August, 1999. So in similar case, one was granted bail by the lower court, but the other was granted bail by the High Court Division. Of course, the courts have the discretion to grant bail or not to grant bail depending on the merit of the cases.

(b) In another incident,<sup>2</sup> in Jessore District some accused persons against whom warrant was issued were set free from Jessore sub-jail without observing due legal formalities, though regular case was lodged against them. According to report of the police authority 248 persons were arrested under section 54 of Criminal Procedure Code; 221 of them were granted bail on 13 July, 1999, and others were set free including two top terrors against whom there were different charges including murder. This clearly appears to be against the principle of equality before law. Criminals, whoever they may be, whatever much influential persons they may be, must follow a definite principle so that the accused persons may not be the victims of discrimination. It has been found in the survey that particular persons have been refused to grant bail by the Magistrate even up to 20 times.

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<sup>1</sup> Daily Inquilab, 20, July, 1999 Dhaka.

<sup>2</sup> Ibid.

Absence of separation of powers i.e. separation of the judiciary from the executive in the Magistrate level is responsible for the defeat of the provision of Article 27. Article 22 states, “The State shall ensure the separation of the judiciary from the executive organs of the state”. But this Article has not been implemented, though much has been said and written on this issue. As the Magistrates are not free from the Government influence, the ruling party very often uses undue influence to grant or not to grant bail to the accused. It is worthy mentioning that a High Court Division Bench of the Supreme Court consisting of Mozammel Haque, J and Hasan Amin, J, on a Writ Petition,<sup>3</sup> said that there is no necessity of amendment of the constitution for separation of the judiciary from the executive and directed the Government to take necessary steps for separation of the judiciary from the executive under Article 8 and 22 of the constitution. Government filed an appeal against the judgement of the High Court Division of the Supreme Court. The Appellate Division of Supreme Court upheld the judgement of the High Court Division and ordered the Government to take necessary step to make rules for separation of judiciary from the executive to discharge fair and impartial judicial authority of the Magistrates.

The decisions of the Appellate Division of the Supreme *in Secretary, Ministry of Finance vs Masdar Hossain*<sup>4</sup> (2000) are summarised below:

The Appellate Division observed that although the judicial service is a service of the Republic, “it is functionally and structurally distinct and separate service” from other civil services and therefore, the “judicial service cannot be

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<sup>3</sup> *Masdar Hossain V. Govt. of Bangladesh* (1997) 2 BLC, 444 (Bangladesh Law Chronicles).

<sup>4</sup> *Secretary, Ministry of Finance Vs. Masdar Hossain*, 52 DLR (A.D) (2000) 82, 104.

amalgamated, mixed up and tied together with” other services of the Republic. It declared that under Art. 115 of the Constitution of Bangladesh the President can create and establish a judicial service and a judicial magistracy, make recruitment rules and all pre-appointment rules in that behalf, but Arts 133 and 136 as well as the Services (Reorganization and Conditions) Act, 1975 have no application to the judicial service and judicial magistracy. The Court also declared that the ‘creation of BCS (Judicial) cadre along with other BCS’ cadres by the *Bangladesh Civil Service (Reorganization) Order* 1980 including its amendment in 1986 is ‘*ultra vires* the Constitution’ and the *Bangladesh Civil Service Recruitment Rules* 1981 do not apply to the judicial service.

The Court further declared that nomenclature of the judicial service must follow the language of the Constitution and must be designated as the “Judicial Service of Bangladesh or Bangladesh Judicial Service.” Then the Court directed the executive government to establish a Judicial Service Commission with majority of members from the senior judges of the Supreme Court and the subordinate courts for recruitment to the Judicial Service.

The Appellate Division continued to declare that in exercising control and discipline of persons employed in the judicial service and magistrates exercising judicial functions under Art 116 of the Constitution the views and opinions of the Supreme Court must have primary control over those of the executive. It directed the government to enact or frame or make separate law or rules or orders under Art 133 of the Constitution relating to posting, promotion, grant of leave, discipline (except suspension and removal), pay, allowances,

pension and other terms and conditions of service for persons employed in the judicial service and magistrates exercising judicial functions.

The Court also directed the government to establish a separate Judicial Pay Commission to review the pay, allowances and other privileges of the judicial service. Moreover, it was declared that until the Judicial Pay Commission gives its first recommendations the salary of members of the judicial service would continue as on 8-1-94. If pay increases are effected in respect of other services before the Commission gives its recommendation, the members of the judicial service would get increases etc in commensurate with their special status in the Constitution and in conformity with the pay etc. that they are presently receiving.

In order to ensure judicial independence, the Court declared that security of tenure, security of salary and other financial benefits of judicial officers and institutional independence of the judiciary must be secured in the law, rules or executive orders having the force of rules.

The Court observed that members of the judicial service are within the jurisdiction of the administrative tribunal. It also observed that the Parliament could amend the Constitution to make the separation of the subordinate judiciary from the executive more meaningful, pronounced, effective and complete.

With a view to ensure the financial independence of the Supreme Court, the Appellate Division directed the government to issue necessary administrative instructions and financial delegations to all concerned so that the supreme court does not require to seek approval from the executive government

for incurring any expenditure on any item from the funds allocated to the Supreme Court in the Annual Budget.

It is to be noted that following the direction of the Appellate Division the executive government has so far taken necessary steps to ensure the financial independence of the Supreme Court and established a Judicial Pay Commission as well as a Judicial Service Commission. However, until now the government has neither created and established any judicial service and any judicial magistracy, nor made any recruitment rules and pre-appointment rules in that behalf under Art. 115 of the Constitution. Furthermore, the government has not yet enacted or framed or made any law or rule or order under Art 133 of the Constitution relating to posting, promotion, grant of leave, discipline (except suspension and removal) pay, allowances, pension and other terms and conditions of service for persons employed in the judicial service and magistrates exercising judicial functions. The government has always been taking time for the implementation of the directions of the Supreme Court which has thus so far granted 20 time petitions extending the time limit for one, three, four or six months on every occasion. The Supreme Court of Bangladesh, on the last occasion, granted the 20<sup>th</sup> extension of deadline for six months on 16 April 2005 to the government to separate judiciary from the executive. The full bench of the Supreme Court Appellate Division headed by the Chief Justice Syed JR Mudassir Husain granted the government this additional time to implement the 12 point SC directive for separation of the judiciary.<sup>5</sup>

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<sup>5</sup> The Daily Star, 17 April 2005.

## 4.2.2 Specific Right to Equality

The specific right to equality may be discussed under four sub-headings: (1) right to non-discrimination, (2) right to equal opportunity in public employment, and (3) abolition of foreign titles.

### 4.2.2.1 Right to Non-discrimination

Article 7 of UDHR states that all 'are entitled to equal protection in case of any discrimination or violation of this Declaration and against any incitement to such discrimination.' Article 26 of ICCPR states:

[T]he law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Similarly, Arts 2(2-3) and 3 of the *International Covenant on Economies, Social and Cultural Rights* 1966, Arts 14 and 16 of the *European Convention on Human Rights and Fundamental Human Rights and Fundamental Freedoms* 1950, Arts 1 (1) and (2) of the *American Convention on Human Rights* 1969, Arts 2, 18(3) and 28 of the *African Charter on Human and Peoples' Rights* 1981, Art 15 of Indian Constitution and Arts 26, 27 of Pakistan constitution deal with the non-discrimination.

The right to non-discrimination is guaranteed by Constitution of Bangladesh in its Art 28 which provides:

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.
- (2) Women shall have equal rights with men in all spheres of the State and of public life.
- (3) No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.
- (4) Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.

Thus though the Constitution pleads against discrimination as to race, sex, language, religion, political opinion etc, but still some times discriminatory behaviour is found. A case may be cited to show the discrimination between male and female in *Dalia parveen Vs. Bangladesh Biman Corporation*<sup>6</sup> and another, Mahmudur Rahman, J and Mahfuzur Rahman, J declared that the discrimination between citizen and citizen being based on sex is violative of Article 28 of the constitution. In the above case, the appointing authority, Bangladesh Biman, by amendment the age of stewardesses was made 35 years while the age of the stewards was 45 years. It is nothing but violation of fundamental right. So the learned judges declared this discrimination as illegal and violation of human rights. It is to be noted that the Chief Justice of Supreme Court of Bangladesh Syed JR Mudassir Husain admitted in a workshop held on 5 May 05 that though the Constitution provides equality

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<sup>6</sup> 48 DLR (1996) 132 .

before the law and upholds the spirit of equal rights of men and women, some discriminatory provisions still exists in the law. He, however did not mention the specific discriminatory provisions. It was published in the national dailies including the Daily Star on 6 May 05.

The Supreme Court of Bangladesh in *Dr. Nurul Islam Vs. Bangladesh*<sup>7</sup> case delivered judgement that in the absence of any guideline either in Act or with rules compulsory retirement is a violation of Article 27 and 25 of the constitution. So if any citizen thinks that discriminatory behaviour has been made with him and as such his right has been infringed, he may file a writ petition before the High Court Division of the Supreme Court under Article 102 of the constitution. It is to be noted that Professor Dr. Nurul Islam was removed from the post of Director of Institute of Post Graduate Medicine and Research on force retirement. He was re-instituted as per court's order.

#### **4.2.2.2 Right to Equal Opportunity in Public Employment**

As to the right to equal opportunity in public employment Art 21 of UDHR states that everyone “has the right of equal access to public service in his country”. Similar provision has been made by the Constitution of Bangladesh in its Art 29 which guarantees that there “shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic.”

In Bangladesh, Gazetted posts are filled up by the recommendation and selection of Public Service Commission through examination. But it was found

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<sup>7</sup> 33 DLR (AD) 201 (1981).



that some blind persons were not allowed to take the examination under the P.S.C. However, recently there has been a change in the attitude of P.S.C. in this respect.

#### 4.3 RIGHT TO PROTECTION OF LAW

The Constitution of Bangladesh deals with the right to protection of law in Art.

Article 31 provides:

To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

Like Article 31 of the Constitution of Bangladesh, Art. 21 of the Constitution of India provides that there shall not be any deprivation of life or personal liberty except according to procedure established by law, according to Indian Supreme Court, must mean reasonable and new arbitrary procedure and must any procedure that may be prescribed by parliament.<sup>8</sup> American Constitution also prescribes prohibition on all privation of life, liberty or property “without due process of law”.<sup>9</sup> The accused may know the allegations

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<sup>8</sup> *Moneka Gandhi v. Union of India*, AIR 1978 SC 597.

<sup>9</sup> Fifth Amendment of American Constitution 1777.

against him who may have reasonable opportunity to defend himself.<sup>10</sup> Art.31 of Bangladesh constitution, therefore, provides opportunity like Indian and American constitution, that the accused shall face trial by an impartial tribunal. Thus this Article answer fair procedure in any proceeding affecting rights and liberties of individuals and this fairness concept is a pre-condition of natural justice. In Bangladesh courts are independent and the judges exercise their discretion in such a manner so that Article 31 of the Constitution of Bangladesh is implemented in letter and spirit. Article 32 of the Constitution of Bangladesh guarantees the right to life and personal liberty. It states that “[n]o person shall be deprived of life or personal liberty save in accordance with law.” Right to life is an inherent right of a man. No man can take away the life of other man capriciously. This right has been guaranteed by all national, regional and international law, custom, usage etc. Article 3 of the Universal Declaration of Human Rights states, “Everyone has the right to life” The International Covenant on Civil and Political Rights states vividly the right to life:<sup>11</sup>

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. The penalty (death) can only be carried out pursuant to a final judgment rendered by a competent court. Anyone sentenced to death shall have the right to seek pardon or commutation of sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. Sentence of death shall not be imposed for crimes

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<sup>10</sup>Mahmudul Islam ,Constitutional Law of Bangladesh , Bangladesh Institute of Law and International Affairs , Dhaka , P.152 1995.

<sup>11</sup> The International Covenant on Civil and Political Rights, 1966, Article 6.

committed by persons below eighteen years of age and shall not be carried out on pregnant women.

The European Convention on Human Rights and Fundamental Freedoms also speaks against arbitrary deprivation of life.<sup>12</sup> It states under Art.:2(1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law". The American Declaration of the Rights and Duties of Man advocates against arbitrary deprivation of life saying, "Every human being has the right to life."<sup>13</sup> The American Convention on Human Right also states," Every person has the right to have his life respected. This right shall be protected by law from the moment of conception. No one shall be arbitrarily deprived of his life. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority."<sup>14</sup>

The African Charter on Human and Peoples' Right also upholds the right to life. It says, "Human rights are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."<sup>15</sup> These International and regional documents, as stated above, left a far reaching impact upon the constitutions of different states which framed their constitutions afterwards. The constitution of India and

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<sup>12</sup> The European Convention on Human Rights and Fundamental Freedoms 1950, Article 2.

<sup>13</sup> The American Declaration of the Rights and Duting of Man 1948, Article 1.

<sup>14</sup> The American Convention on Human Rights 1969, Article 4 (1), (5), (6).

<sup>15</sup> The African Charter on Human and Peoples' Rights 1981, Article 4.

Pakistan may be quoted, which were framed and enforced before the constitution of Bangladesh. Regarding the protection of life and personal liberty, Indian constitution is as follows:

“No person shall be deprived of his life or personal liberty except according to procedure established by law”.<sup>16</sup>

In the like manner, Pakistan Constitution also accords recognition to the right of life and safeguards against arrest and detention. It has been stated in the Pakistan Constitution, “No person shall be deprived of life or liberty save in accordance with law.”<sup>17</sup> Discussion on the International Bill of Human Rights, regional human rights instruments and Bangladesh, India and Pakistan Constitutions reveals that the right to life is the top most right which must be protected irrespective of sex, race, language, colour, political opinion, birth or origin. But in spite of all these documents, right to life in Bangladesh is not fully secured. There is, perhaps, no day when one or more persons are not killed. The most strange thing that the right to life has been, besides others, infringed by the members of law enforcing agencies like police, D.D.R and Ansar. Detailed discussion has been made regarding infringement of rights committed by law enforcers in the following chapter.

#### **4.4 SAFEGUARDS AS TO ARREST AND DETENTION**

The Universal Declaration of Human Rights provides safeguards as to arrest and detention in Art 9 which states that no person “shall be subjected to arbitrary arrest, detention or exile”. In this regard, Art 33 of the Constitution of

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<sup>16</sup> India Constitution 1950, Article 21.

<sup>17</sup> Pakistan Constitution 1962, Article 9.

Bangladesh provides four constitutional safeguards to a person who has been arrested. The protections for the arrested person are as follows:

1. He or she must not be detained in custody without being informed, as soon as may be, of the grounds for such arrest.
2. He or she shall have the right to consult and to be defended by a legal practitioner of his or her own choice.
3. He or she has the right to be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate.
4. He or she is not to be detained in custody beyond the period of twenty-four hours without the authority of a magistrate.

However, the above constitutional protections are not to be applicable (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention.

Moreover, Art 33 (4-5) provides safeguards against preventive detention as follows:

- (4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless-
  - (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention.

- (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

It is to be noted in this context that in the original Constitution of Bangladesh, enacted in 1972, there was no provision relating to preventive detention. The framers of the Constitution carefully avoided such type of black provision and the original Art 33 did not leave any scope for preventive detention. However, by the *Constitution (second Amendment Act) Act 1973*, the original Art 33 was substituted by the new one provides that the safeguards as to arrest and detention will not be applicable to persons arrested or detained under any law providing preventive detention.

Thereafter, a new statute entitled the *Special Powers Act 1974* was enacted which came into force on 9 February 1974. The *Special Powers Act* was enacted in line with the *Indian Security Act 1971*, *Security Act 1952* of Pakistan and *Public Safety Ordinance 1958* of Pakistan, but its provisions are more anti-humanitarian than those of Indian and Pakistani laws.

#### **4.4.1 Background of the enactment of the *Special Powers Act 1974***

The preamble of the Act provides that in order to provide for special measures for prevention of certain prejudicial activities, for more speedy trial

and effective punishment of certain grave offences, the Special Powers Act is enacted. After the emergence of Bangladesh, P.O. 50 was promulgated in order to face the grim and grave situation in May 1972. But due to the improper application of the law, people were harassed and victimised routinely, which caused the government to face severe public criticism. So the government repealed the P.O. 50 along with the Security Act, 1952 and the Public Safety Ordinance, 1958 and legislated the Special powers Act, 1974 on 9<sup>th</sup> February. Under this Act, any person can be arrested and detained if there is apprehension that he may commit “prejudicial act”<sup>18</sup> which means-

- a. to prejudice the sovereignty or defiance of Bangladesh.
- b. to prejudice the maintenance of friendly relation of Bangladesh with foreign states.
- c. to prejudice the security of Bangladesh or to endanger public safety or the maintenance of public order.
- d. to create or to excite feelings or enmity or hatred between different communities, classes or section of people.
- e. to interfere with or encourage or incite interference with the administration of law or the maintenance of law and order;
- f. to prejudice the maintenance of supplies and services essential to the community;
- g. to cause fear or alarm to public or to any section of the public;
- h. to prejudice the economic or financial interests of the state.

In the Pakistan regime, it was Awami League which submitted a bill on 20<sup>th</sup> September 1958 to repeal the tyrannical black law, the Security Act 1952.

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<sup>18</sup> The Special Powers Act, 1974(Act No. XIV of 1974), Section 2(6).

But Awami League, after coming into power, submitted a bill called the special powers bill, 1974 which is more tyrannical and repressive than the Security Act 1952. While discussing on the special powers Bill in the parliament in 1974, the ruling party M.P. Serajul Haque termed the proposed law (Special Powers Act) as “the whitest law that we are bringing against blackest background.”<sup>19</sup> The then Law Minister Mr. Monoranjon Dhar told in the parliament that the law would be used only to prevent massive smuggling, hoarding, black marketing, killing, arson, etc. prevailing at the time. But it is fact that the law has been widely and indiscriminately used against the political opponents by the ruling party.<sup>20</sup>

#### **4.4.2 Drawbacks of the *Special Powers Act 1974***

Since under this law a person can be detained up to six months without the approval of the Advisory Board and up to indefinite period with the approval of the Advisory Board, it has been indiscriminately termed as a black and repressive law. All the political parties, since the enactment of the law, describing it as a repressive law, have been demanding its repeal, but for more than 30 years from its enactment, nothing has been done for repealing such anti-humanitarian law under which many innocent men had been detained mostly on the ground of differences in political opinions.

The Bangladesh Nationalist Party (BNP), before coming into power repeatedly demanded repeal of the Act, but after assuming power, (1991-1996)

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<sup>19</sup> The Daily Star, 25 July 1999.

<sup>20</sup> Ibid.



the party asserted that it is a necessary law and without this law the country could not be administered. In fact, this law has been used widely from the date of its enactment by all successive governments to oppress the political opponents. Under this Act, in 1996 a number of influential leaders and several thousand activists of opposition party were detained by the then government.

The Awami League also committed to repeal all black laws including the Special Powers Act, 1974 before it came into power by the parliamentary election held on 12<sup>th</sup> June, 1996. But ironically, after assuming power, (1996-2001) the government deviated from its stand drastically and the then ruling party defended the same law as necessary. The then Prime Minister said, “Since previous government (B.N.P.) did not repeal it, so we cannot,” and on March 11, 1997 Prime Minister ruled out the possibility of repealing the Special Powers Act saying that the Act had been identified by the previous government as an essential to run the state.<sup>21</sup> In national election held in 2001 new government headed by B.N.P came into power. But this government has not as yet repealed this Act and as such it is still in force.

#### **4.4.3 Preventive Detention under the *Special Powers Act 1974***

Detention is of two types under constitutional law - (i) punitive detention and (ii) preventive detention. Punitive detention is given by a court of law while executive authority i.e. by District Magistrate or Additional District Magistrate gives the preventive detention. Punitive detention is given to a person for committing a crime but preventive detention is awarded for preventing the

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<sup>21</sup> The Daily Star, 25 July 1999.

accused from committing prejudicial acts. Suspicion or reasonable possibility of the impending commission of prejudicial acts is sufficient for preventive detention. Section 3 of the Special Powers Act, 1974 gives power to the executive authority to arrest and detain some one on the subjective satisfaction of the concerned executive officer. If the concerned officer is personally satisfied that there is sufficient cause of suspicion against any person of committing any of the acts prohibited by the Special Powers Act, he can give order for preventive detention. Thus Civil Servants may abuse the power as he is not accountable to anyone for awarding preventive detention. Political leaders very often, experience says so, exert influence upon the Magistrate or Additional Magistrate and also on the police officer so that they exercise subjective satisfaction for detaining political opponents.<sup>22</sup> In some of the cases the Magistrates try to serve the vindictive desire of the ruling party against his will.

Whatever may be the expressed purpose of the enactment of this Act, the inner intention was to harass the opposition parties. So the power of the preventive detention under this Act has been greatly abused from the date of its enactment. Hundreds and thousands of political leaders and workers had been detained under this law without any trial. This law, in actual practice, negates all the avowed commitment and spirit of the constitution, particularly the fundamental rights guaranteed by the Constitution.<sup>23</sup>

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<sup>22</sup> Dhaka Courier, 13 August, 1999 pp.16-17.

<sup>23</sup> Ibid.

#### 4.4.4 Rule of Law and Preventive Detention

The *Special Powers Act* provides for indefinite periods of detention subject to certain limited but virtually ineffective safeguards. This arbitrary and malicious discretion of the government is grossly against the very doctrine of rule of law. Under section 3(3) of this Act, District Magistrate or Additional District Magistrate can initially issue detention order for 30 days. Later, it can be extended with the approval of the Government. In this respect, the Ministry of Home Affairs plays a vital role. Under this Act, the detainee is not produced in a court and he is deprived to defend himself by any legal practitioner.

This is a denial to the constitutional safeguards of an arrested and detained person who is not produced, as per the provision of this Act, to the nearest Magistrate within 24 hours from the time of his arrest. So this Act has been regarded by Gazi Muhammad Shahjahan MP of BNP as a “jungle law framed by the previous Awami League government in 1974.”<sup>24</sup>

In case of detention beyond the period of 6 months, the approval of the Advisory Board comprising of three persons - two persons qualified to be appointed as Supreme Court Judges and one senior government officer is necessary. The detainee can only submit a representation to the Advisory Board against his detention. But it is a very lengthy process and as such the detainee cannot receive any relief. Under this Act, the detainee may be kept inside the jail for years together subject to the satisfaction of the Advisory Board, because there is no provision in the law for legal representation by the detainee to the Advisory Board and as such he remains in the prison for indefinite period

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<sup>24</sup>The Daily Star, 25 July, 1999.

without trial, without court proceeding. This Act does not provide any compensation in favour of the detainee in case of his grossly wrongful detention. That is why this Act was regarded by Justice Abdur Rahman Chowdhury as the “blackest law of the black laws.”<sup>25</sup>

#### **4.4.5 Remedies for Preventive Detention**

An aggrieved person, under the Special Powers Act, can file a *Habeas corpus writ* under Article 102 of the Constitution to the High Court Division of the Supreme Court of Bangladesh. The Supreme Court declared 95% detention as illegal and without lawful authority.<sup>26</sup> After release of a detainee on order of High Court Division, he is detained in most cases again and after his release, he is detained further and so on and so forth. In this way, the number of detainees remains always higher than that of released persons. Besides, in many cases, the poor detainee cannot bear the legal expenses for writ petition. So he remains inside the jail for years together and at one time he dies there without knowing the ‘offence’ on account of which he was arrested and detained. So this is, no doubt, a repressive and anti-humanitarian law.

#### **Case Studies under the Special Powers Act:**

(a) A case of detention manifests the ugliest application of this Act. Azaduddin, chairman of 7 number Char Alexander union parishad P.S. Ramgati of Laxmipur District and a freedom fighter, was arrested under the Special Powers Act. He was also earlier arrested and detained twice under this Act in

<sup>25</sup> *Ayeen: Prabandha Sankalan* (Law: compilation of Articles) Rajshahi 1999, p.152

<sup>26</sup> *Dhaka Courier*, 13 August, 1999.

1996. In the present case, a High Court Division Bench Consisting of Kazi A.T. Monowaruddin, J. and Muhammad Zoinul Abedin,<sup>27</sup> J. declared the detention of Azaduddin as illegal and without lawful authority and ordered his immediate release. He was arrested for political jealousy and rivalry. The High Court Division in the earlier cases also declared his detention as illegal. In each time he was detained by the order of the District Magistrate (Deputy Commission of Laxmipur District) on the same grounds. The High Court Division, on 1<sup>st</sup> September, 1999, ordered not only release of Azaduddin but also ordered the D.M. to pay compensation personally to Azaduddin of taka ten thousand to be deposited in the High Court within 30 days from the date of order and as because the said District Magistrate repeatedly detained the said chairman on the same unreasonable grounds, the learned judges treated it as contempt of court, and the victim was allowed to file a suit of contempt of court against the said District Magistrate. The Court also ordered the Secretary of the Ministry of Home to make an inquiry about those officers (civil servants) who repeatedly ordered illegal detention in the country and to take action against them. The Government prayed for leave petition to the Appellate Division against the order of the High Court Division, but it was rejected.

(b) In another case, 4 B.N.P leaders in 1997 were arrested and detained. The High Court Division, on writ petition, not only declared the detention order as illegal but also ordered to pay compensation to each of them taka one lakh. Mrs. Bilkish Akhtar Hossain filed a writ petition against the detention of her husband Dr. Mosharrof Hossain, who was one of the 4 B.N.P leaders who were

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<sup>27</sup> The Daily Inquilab, 30 September, 1999.

detained under the Special Powers Act, 1974. In the order Md. Mozammel Haque J. and Md. Hasan Ameen, J of the High Court Division of the Supreme Court of Bangladesh said:

To detain a person means to curtail his fundamental right of liberty, right of movement and right to speak. When without trial such fundamental rights guaranteed by the Constitution are curtailed and invaded by the discretionary action of the detaining authority, the very next moment the aggrieved citizen is entitled to seek relief under the Constitution in view of the provision of article 44 read with article 102 of the Constitution. Right to liberty, right to movement and right to freedom are so much valuable fundamental rights of each citizen that no authority can take it away without due course of law.<sup>28</sup>

In this case the HCD observes that the detainee's rights of freedom of movement (Article 36), the right of freedom of assembly (Article-37) and right to protection of life and personal liberty (Article 32) as guaranteed by the constitution have been invaded by the detaining authority with malafide intention under the garb of the Special Powers Act. HCD is of the opinion that considering the facts and circumstances of the case and provisions of law as considered above as well as the order and grounds of detention made in this case and also considering the materials on record, the detention of the detainee is absolutely illegal, without lawful authority and is made in an unlawful manner. The bench considers that since the fundamental rights of the present detainee

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<sup>28</sup>*Bilkis Akhtar Hossain Vs. Bangladesh* MLR (Main Stream Law Reports,) Vol. 2, (1997) (Dhaka).

guaranteed under the Constitution have been invaded and violated by the detaining authority maliciously, since the detainee has been depicted as a leader of the terrorists and provocateur and instigator of the saboteurs and thereby the detaining authority caused irreparable damage to his reputation, name, dignity, honour, prestige, image and social status in the eyes of the public at large, since all these scandalous, derogatory and defamatory news have been circulated through various Government news media, other news agencies, newspapers and journals of this country and abroad, since he was detached from his family members and deprived of his normal avocation of life for being subjected to inhuman mental and physical torture in jail for last 17 days, since such detention is malicious and malafide and made for political victimisation and the detainee has been forced to spend a huge sum of money as litigation costs, the bench awards reasonable and rational lump-sum monetary compensation of Tk. 1,00,000/= (Taka one lakh only) to be paid by the Respondent Nos. 1 and 2 to the detainee considering the above reasons and sufferings of the detainee and his social position.<sup>29</sup>

The repressive character of the Special Powers Act and the consequent sufferings of the detainees as a result of improper application of the Act, observation and also the helplessness of the judicial authorities may be seen from the findings of some of the cases disposed of by the Supreme Court of Bangladesh.

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<sup>29</sup> *Bilkis Akhtar Hossain Vs. Bangladesh* MLR (Main Stream Law Reports,) Vol. 2, (1997) (Dhaka).

### **In a case the Appellate Division observed:**

We have accordingly no doubt that the framers of the constitution intended to empower the High Court Division to pass appropriate order in the case of illegal or improper deprivation of liberty of person and the power to do so is not at all fettered because of the absence of nomenclature of the nature of writ in the constitution. Clause I of article 44 which occurs under Part III lays down that the right to move the Supreme Court in accordance with clause 1 of Article 102 for the enforcement of the rights conferred by this part is guaranteed. It is, therefore, evident that the enforcement of the fundamental rights and this remedial rights is itself made a fundamental right by being included in part III of the Constitution. The Supreme Court is, thus constituted by the Constitution, the protector and guarantor of fundamental rights and so long as the fundamental rights specified under part III remain in force, it is the constitutional responsibility of the Supreme Court to protect them when the right conferred under clause I of article 44 of the constitution is invoked.<sup>30</sup>

In the writ of Mohsin Sharif V. State,<sup>31</sup> it is found that Shahjahan, a young boy of 18, was arrested on 18.12.73 by Armed personnel of Dhaka Cantonment, Artillery Headquarters. He was taken to Ramna Police Station and a G.D. entry was made showing his arrest under section 54 of Cr.P.C. Soon thereafter, the officer-In-charge of Ramna PS was asked by the Rakkhi Bahini authority to hand over Shahjahan to the Headquarter of the Rakkhi Bahini. Shahjahan was handed over to the Rakkhi Bahini. It was alleged in this case by Mohsin Sharif, the brother of Shahjahan, that Shahjahan had been inhumanly tortured by Rakkhi Bahini and he was last seen by his brother at the Headquarter of the Rakkhi Bahini on 02.01.74. Since then there was no trace of

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<sup>30</sup> The Daily Star, 25 July. 1999.

<sup>31</sup> Ibid.



Shahjahan. Mohsin Sharif then filed a Habeas Corpus writ petition for the production of him (brother) before the court. The High Court Division ordered that Shahjahan should be produced before it. But the Rakkhi Bahini could not produce Shahjahan before the court; actually he was killed by the Rakkhi Bahini. The court directed that an Inquiry Commission should be set up by the government to ascertain the true state of things as to the whereabouts of Shahjahan. But it was not done. To quote Justice Badrul Haider Chowdhury remarked, “the court found the Rakkhi Bahini was functioning illegally. Shahjahan was never found again, just vanished in the air.”

(d) *In Madan Mohan V. Government*<sup>32</sup> ( writ petition No 879 of 1987)

Madan Mohan was arrested on 5.7.77. The High Court Division declared his detention illegal and ordered his release. Madan Mohan was released but at the Jail gate he was again arrested by serving a fresh order of detention. This was done just to frustrate the High Court Division’s order.

(e) Sanaul Haq Niru was arrested and detained first on 13.9.87 under the Special Powers Act. His detention was challenged through writ petition no. 187 of 1988 and the court declared the detention illegal and directed the release of detainee on 10.5.1988. But Niru was not released. Another fresh order of detention was served against him on 29.9.1988. Niru was not placed before the Advisory Board within the statutory period of 120 days. The High Court Division again declared the detention order illegal and directed his release. But Niru was not released; rather another fresh detention order (third time) was served and it was challenged by another writ petition (writ petition no 989 of

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<sup>32</sup> The Daily Star, 25 July, 1999.

1989). Again the court declared the detention illegal and directed the detainee's release. But even this time Niru was not released; rather another fresh detention order was served. The matter came up before a Division Bench of the High Court Division in writ petition no 270 of 1990. The Court said:

“The least can be said is that the detaining authority is paying little regard to the order of the court. It is unfortunate that the authority which is obligated under Article 32 of the Constitution to protect the liberty of the citizens and further required under Article 112 thereof to act in aid of the courts order should flout the laws by resorting to authoritarian acts ... we are satisfied that the detention is illegal and the detainee shall be set at liberty forthwith.”<sup>33</sup>

(f) Another worst case of detention may be cited as reported in 52 DLR(2000) regarding the detention of a victim named Shubhra of Maghbazar, Dhaka. He was arrested and given detention under the Special Powers Act, 1974. The detention order was challenged under writ No. 1607 of 1999 to the High Court Division. After hearing, the High Court Division made the rule absolute, declared the detention illegal and directed the respondent to release him. Thrice detention order was passed and on three occasions the High Court Division declared the detention of Shubhra illegal and directed the respondent to release the detainee. But unfortunately as soon as the detainee came out from jail gate, every time he was served with the fresh detention order and kept him in custody on the selfsame grounds and was kept in custody. In disposing of the detention case, the High Court Division held that only to frustrate the judgment of the High Court Division successive orders of detention were given which is

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<sup>33</sup>The Daily Star, 25 July, 1999.

nothing but interference with the course of justice. Further, the High Court Division directed the detaining authority not to repeat such illegal detention order to frustrate the judgment. A copy of the judgment was sent to the secretary, Ministry of Home Affairs, for information and for taking necessary action for such repeated illegal detention orders of the selfsame grounds to a citizen of an independent and democratic country like Bangladesh.<sup>34</sup>

There are numerous examples of illegal detention which help us to form idea regarding the abuse of power under the Special Powers Act by the executive branch by detaining innocent persons. As a result of misuse of the Special Powers Act, a large number of innocent persons become victims of violation of human rights.

#### **4.4.6 Misuse of the Special Powers Act**

Bangladesh parliament formed a parliamentary sub-committee consisting of three persons on August 7, 1997 in order to find out the mis-application of law with reference to the Special Powers Act, 1974. The sub-committee submitted its 31 page report to the parliament on 7 September, 2000 after three years study of the Special Powers Act records from February 1974 to December 1998. It is revealed from the report that 91765 persons were detained under the Special Powers Act from February 1974 to 31 December 1998. But 99% detainees were released due to vague, indefinite and weak grounds and in 80% of such cases govt. was defeated. During this period (25 years) 12745 writ petitions were filed of which 11393 detentions were declared illegal. 11733

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<sup>34</sup> A.H.M. Monjurul Kader, "Who is misleading the prime Minister"? The Daily Star, 14 August, 2000.

persons were detained during the period from June 1996 to December 1998 but released 12053 persons detained earlier. Besides, 9573 special criminal cases were lodged against the detention orders, of which 9176 were declared illegal by the court. The sub-committee also observed that out of 100 selected cases 38 detentions were declared illegal due to vague, indefinite and uncertain grounds while in 22 cases the govt. orders were found to have been given without lawful authority.<sup>35</sup>

The following table will show the number of detainees arrested under the Special Powers Act, 1974 and kept in jail for years together without trial.<sup>36</sup>

**Table 1**

Number of Detainees under the SPA 1974

Year basis number of detainees under the Special Powers Act, 1974		
Year	Total Number of persons detained	Number of Released Persons through Writ of Habeas corpus
1974	513	13
1975	1114	31
1976	1498	46
1977	1057	25
1978	753	30
1979	960	31

<sup>35</sup> The Daily Star, 8 September 2000, Editorial, Daily Inquilab, 10 September, 2000 reported from Jatyia Sangsad.

<sup>36</sup> Published by Ministry of Home Affairs, cited in Dhaka Courier, 13 August, 1999; the Daily Star, 25 July 1999; The Daily Star, 30 November 2001; U.S. Department of State –2000, P.12 Country Reports on Human Rights practices 2002. <http://www.state.gov/g/drl/rls/hrrpt/18309.htm>.

1980	710	41
1982	1548	54
1983	872	44
1984	643	36
1985	882	38
1986	2194	94
1987	4585	327
1988	4907	741
1989	4482	871
1990	4615	1099
1991	5302	1710
1992	6497	1594
1993	3669	1066
1994	2968	430
1995	4173	1805
1996	5413	3376
1997	4016	Not available
1998	6740	Not available
1999 (Jan-Jun)	6650	Not available
2000	1331	Not available
2001	8000	Not available
2002(Jan-Jun)	755	Not available
Total	86847	

The following statistics show the number of cases filed, set aside and pending under the Special Powers Act, 1974.<sup>37</sup>

**Table 2**

**Number of cases filed, set aside and pending under the SPA**

<b>Year</b>	<b>Case filed</b>	<b>Case set aside</b>	<b>Case pending</b>
<b>1987</b>	<b>93</b>	<b>62</b>	<b>31</b>
1988	168	134	44
1989	475	463	12
1990	1342	1249	93
1991	1671	1616	55
1992	2711	2200	511
1993	602	573	29
1994	659	470	189
1995	198	176	22
1996	1623	1585	38
1997	1870	1822	48
1998	918	881	37
Total	12330	11231	1099

<sup>37</sup> Daily Sangbad 21 October 1999.

#### **4.5 PROTECTION AGAINST FORCED LABOUR**

In Bangladesh forced labour is prohibited. No one shall be forced to do any particular work. Any body is allowed to choose to any legal profession. Article 34 states, “All forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.” But in spite of this provision, it is found in different dailies that some girls are forced to engage in illegal profession. Garments workers and people who are working in some NGOs are not always given due wages: they are indirectly forced to work on a bare minimum wages. Housemaids are mostly victims of forced labour in another form. Step to remove forced labour from society is suggested.

#### **4.6 PROTECTION IN RESPECT OF TRIAL AND PUNISHMENT**

In spite of constitutional guarantees of the right to be free from torture, inhuman, cruel and degrading punishment, both physical and psychological torture by the police like beating with a stick or rifle butt, electric shocks, pouring hot water in the nose, use of bar fetters etc, are widely reported in Bangladesh. Persons responsible for such crime are hardly convicted which encouraged them to commit such inhuman activities. In different international, regional and constitutional documents, this right has been preserved carefully. Mention may be made of these provisions in order to illustrate the importance and significance of this inherent right of man.

Article 5 of the Universal Declaration of Human Right states, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” In the same language, the International Covenant on Civil and Political Rights also supports the preservation of this right against any kind of torture or punishment.<sup>38</sup> The European Convention on Human Rights and Fundamental Freedoms holds the same opinion regarding this right.<sup>39</sup>

It has been stated in the American Declaration, “Every individual who has been deprived of his liberty has the right to human treatment during the time he is in custody”.<sup>40</sup> It has been further stated that every person accused of an offence has the right not to receive cruel, infamous or unusual punishment.<sup>41</sup> Again, the American Convention states, “No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”<sup>42</sup> Another regional instrument on human right, the African Charter on Human and People’s Right, is of opinion that all forms of exploitation and degradation of man, particularly torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.<sup>43</sup>

The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment which was adopted by the General Assembly of the United Nations in 1984 and was enforced in 1987, states that no person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.

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<sup>38</sup> The International Covenants on Civil and Political Rights 1966, Article 7.

<sup>39</sup> The European Covenant on Human Rights and Fundamental Freedoms, Article 3.

<sup>40</sup> The American Declaration of the Rights and Duties of Man, Article XXVI.

<sup>41</sup> Article XXVI, *op. cit.*

<sup>42</sup> The American Covenant on Human Rights, Article 5(2).

<sup>43</sup> The African Charter on Human and People’s Rights, Article 5.



These are the important provisions of international and regional documents which clearly expressed torture of any nature as prohibitive and condemnable and must be stopped in iron hand by the government .As to the protection in respect of trial and punishment, Art 35 of the Constitution of Bangladesh provides:

- (1) No person shall be convicted to any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from that which might have been inflicted under the law in force at the time of the commission of the offence.
- (2) No person shall be prosecuted and punished for the same offence more than once.
- (3) Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law.
- (4) No person accused of any offence shall be compelled to be a witness against himself.
- (5) No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.
- (6) Nothing in clause (3) or clause (5) shall affect the operation of any existing law that prescribes any punishment or procedure for trial.

Section 29 of the *Police Act*, 1861 which is in force in Bangladesh and *Dhaka Metropolitan police Ordinance*, 1976 also speak against torture. In spite of constitutional and statutory prohibitions, torture by the police and jail authority has not been stopped in Bangladesh. Almost every day it is known

through dailies and human rights journals the sad incidents of torture, degrading punishment, and inhuman treatment. Some cases on torture are cited below:

### **Case Studies:**

(a) On 6<sup>th</sup> October, 1992, a news was published in the daily Ittefaq under the caption “সব অভিযোগ থেকে অব্যাহতি অথচ বার বৎসর জেলে” It was known from the above news that Nazrul Islam, a boy of 12 years, had been in jail for 12 years without any case. In the context of that news, a Division Bench of the Supreme Court of Bangladesh issued a suo moto rule upon the Government, the Deputy Commissioner, Satkhira district, S.P and the concerned jail administration where he was kept in custody. The fact was that Nazrul Islam was arrested at the instance of some interested persons and he was kept in jail for 12 years and it was also revealed that he was implicated in 12 different cases, one of which was a gang case. Nazrul Islam was kept in custody for 11 years with chains in his two legs which is called in jail terminology as *Danda Beri*. In the judgement, the High Court Division declared the detention of that detainee as illegal and without jurisdiction. In the judgement, two important things were settled -(a) a minor boy can not be tried with adult accused and he must be kept and tried under the Children Act, 1974; (b) in *habeas corpus* matters the High Court Division can exercise its inherent jurisdiction by declaring a judgement illegal and void which was passed against that minor boy in gang case by lower court. The High Court Division also directed the government to make an inquiry into the matter as to how a minor was kept in jail in connection with 12 criminal

cases which was, prima-facie, absurd and irrational.<sup>44</sup> In this case it is found that the person who had vested interest first conspired against Nazrul Islam and consequently Magistrate who issued custody warrants against that boy was responsible for such illegal detention.

The Magistrate was either ignorant of the right of a minor or intentionally he did so for some interest. The question, in this case, may be raised as to why the Magistrate Court did not consider the actual state of affairs as to how a boy of 12 years can be involved in a gang case? why the jail authority kept the innocent boy, as declared by the High Court Division, tied with chain? Both the concerned Magistrate and the jail authority are responsible for violation of the law of the land and as such they must be tried for violation of fundamental human rights as guaranteed by Bangladesh Constitution like right not to be tortured.

(b) On a writ petition, the High Court Division Bench presiding over by A.M. Mahmudur Rahman J. and K.M. Hassan J. issued “Rule upon the relevant Govt, and authorities to show cause as to why the restraint of a convicted prisoner (Raju Ahmed Pannu) in bar-fetters (dandaberi) at the Dhaka Central Jail should not be declared to be without lawful authority. The learned Judges of the High Court Division also directed the authority to produce the prisoner before the court within the time fixed by it.<sup>45</sup> In the petition it was stated that “Raju Ahmed Pannu, a convicted prisoner in Dhaka Central Jail has allegedly

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<sup>44</sup> Mozammel Hoque, “*Human Rights and Right to liberty: Before and now*,” A Manual on Human Rights Law, Bangladesh Bar Council, Dhaka p.267 (1997)..

<sup>45</sup> (Justice) A.M. Mahmudur Rahman, “*Human Rights – Violation and Remedies under Constitution Law of Bangladesh*”, A Manual of Human Rights Law, *op.citp.*107(1997).

been shackled in bar fetters since March, 1993, for a continuous period of 33 months. The bar fetters consist of two iron rings riveted to each ankle from each of which an iron rod extends up to an interlocking from ring at about the mid thigh level. The fetters prevent pannu from walking or lying down without continuous pain and discomfort.”<sup>46</sup>

It was urged by the Bench that shaking of the prisoner in bar fetters amounted to cruel, degrading and inhuman punishment and such act was manifestly violative of both constitutional right and Jail Code. It was pointed that such inhuman treatment was not only unconstitutional but also violative of international human rights instruments. The action was taken on the strength of constitutional conferment of power of judicial review under Bangladesh constitution as remedial measures.<sup>47</sup>

#### **4.7 RIGHT TO FREEDOM**

The right to freedom as guaranteed by the Constitution of Bangladesh are classified as: (1) freedom of movement, of assembly and of association (Art 36- 38), (2) freedom of thought and conscience, and of speech (Art 39), (3) freedom of profession and occupation (Art 40), (4) freedom of religion (Art 41).

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<sup>46</sup> (Justice) A.M. Mahmudur Rahman , “*Human Rights – Violation and Remedies under Constitution Law of Bangladesh*”, A Manual of Human Rights Law, Bangladesh Barr council P.107 (1997).

<sup>47</sup> Ibid.

#### 4.7.1 Freedom of Movement, of Assembly and of Association

Articles 36-38 of the constitution of Bangladesh provide for freedom of movement, association and assembly. Every citizen shall have the right to move freely throughout the country, has a right to assemble and to participate in public meetings and a right to form associations, subject to any reasonable restriction imposed by law. Articles 13 and 20 of the Universal Declaration of Human Rights in the like manner state: “Everyone has the rights to freedom of movement, residence within the borders of each state, peaceful assembly and association. No one may be compelled to belong to an association.” Though these rights are guaranteed by the constitution but in fact the opposition political parties do not always enjoy these rights, specially freedom of assembly. A few incidents may suffice to prove how far the right of assembly is violated by the government i.e. by police.

At Dhaka city on 22<sup>nd</sup> October, 1999 ‘*Towhidi Jonota*’ called a peaceful meeting which was dispersed by police by unprovoked attack. Police threw tear gas, opened fire from short gun on the peaceful assembly and meeting, made indiscriminate lathi-charge. About 100 persons were injured, at least 8 reporters of different papers were also injured by police. This incident took place when the said organization wanted to hold peaceful protest against government’s policy about Madrasha, Mosque, Quran etc. Police officer threatened the assembly by saying “এখানে আর ১ মিনিটও মিটিং করা যাবে না। উপর থেকে নিষেধ আছে।” Opposition activists became the victims of attack by both police and ruling party activists. When the opposition parties hold protest rally, peaceful assembly

against government, then government unconstitutionally resists these by using police force. In any democratic country, this type of behaviour by the police is undesirable. On many a occasion, the government imposes section 144 of Cr. P.C. to resist opposition parties' peaceful assembly.

#### **4.7.2 Freedom of Thought and Conscience, and of Speech**

Article 39 gives the guarantee of freedom of thought and conscience and also freedom of speech and expression and press are guaranteed by our constitution. Articles 18 and 19 of the UDHR set out freedom of thought, conscience, opinion and expression. These rights are not also properly enforced in Bangladesh. In the name of reasonable restriction they are being stifled by the law enforcing agencies every now and then. Effort must be made to enforce them properly and adequately.

#### **4.7.3 Freedom of Profession and Occupation**

Article 40 of the constitution of Bangladesh states that every citizen shall have the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business. Article 23 of the UDHR also provides for freedom of occupation. Is this right being properly enjoyed by the people of Bangladesh? The Public Service Commission has been criticised for leakage of question papers. Fair examination system by PSC can ensure this right.

#### 4.7.4 Freedom of Religion

Article 41 of the Constitution provides religious freedom. It states - (a) "Every citizen has the right to profess, practice or propagate any religion; and (b) Every religious community or denomination has the right to establish, maintain and manage religious institutions." *Masjids, Mandirs and Churches* are said to be religious places of people and the people of Bangladesh enjoy this right freely.

#### 4.8 CONCLUSION

In case of violation of the fundamental rights as set in part III of the constitution of Bangladesh, Article 102 (I) will enable any person whose right has been infringed to file suit in the High Court Division of the Supreme Court of Bangladesh for the restoration of such right. No doubt it's great assurance extended to people for the enforcement of their fundamental rights and the world will see that Bangladesh is a democratic country and its constitution heavenly supreme document for the protection of the poor and the needy who need legal assistance. But in practice the scene is completely otherwise. Are all the people of Bangladesh able to move the High Court Division? The prophet is to go to the mountain and the mountain to the prophet. Invariably, the poor has no means to move the HCD, only the rich can do it as and when they desire. So to say that human rights or the fundamental rights are enshrined in the constitution and HCD is the custodian of these rights is a myth of the common people, is a far cry to them. They cannot straighten their violations, which needs financial means.

Since they do not have it, their rights constantly violated by means-holders. They are just to look at it in utter despair. In Bangladesh, law only carries coal to Newcastle. No doubt Bangladesh constitution contains all the good principles of human rights, these are all fundamental to the development of a human being, but unless the constitutional provisions are properly enforced and if the violators are not properly brought to book, what benefit will it give to the common people of Bangladesh? Will not human rights remain only as a dream to them? So it is benignly submitted that first a climate be created in Bangladesh where the govt. and its law enforcing agencies will with complete impartiality enforce law with strong hand and the general people be encouraged to fearlessly identify the criminals to law enforcing people and the latter be rough and tough to the criminals.

In the context of violation of human rights and protections thereof, another burning issue is the misuse of the *Special Powers Act 1974* (SPA). The discussion of section 4.4 reveals that with whatever saintly motive the Special Powers Act may have been enacted, it has been used invariably to repress people whom the administration do not like or in other words the opposition political leaders and activists. Ironically, this Act was being used against the leaders and activists of that party who framed this law in 1974. This law is to be repealed in order to uphold the principle of democracy, which provides for free and fair involvement in politics and political opinion. From its inception the SPA has been recklessly criticised by a large section of the community and also the opposition political leaders who became its victim. So we suggest immediate repeal of the tyrannical law in order to develop a democratic and congenial



atmosphere in the country where all people will enjoy fundamental human rights, like freedom of opinion, freedom of movement and liberty, rights to life and person etc. Since SPA is a black law, which deprives a man of his fundamental rights and puts a person into prison for no fault at all, it should not remain in force any more. In the whole of this sub-continent repressive law like this or in any other form is extremely detrimental to the growth and maintenance of human rights. Indeed it appears to be a farce to talk of human rights and, at the same time, nourish and apply laws like the SPA. To be honest and sincere in upholding our constitution we must immediately repeal the SPA. The SPA serves the interest of the ruling parties and not the common people. The government, therefore it is hoped, will take necessary step to repeal the Act and in doing so the present government may earn reputation. It is to be noted that on 7 April 2003 a High Court Division Bench consisting of Md. Hamidul Haque J and Salma Masud Chowdury J, on writ petition, directed the government not to arrest under section 54 and detain under the Special Powers Act, 1974. But the government appealed to the Appellate Division of the Supreme Court of Bangladesh and after hearing it has been stayed. We sincerely hope that the stay order may be vacated very soon to give effect to the directions of the High Court Division.

No law can bring any good to people unless there is honest enforcement agency. Police, BDR and Ansars are the enforcement agents of human rights in Bangladesh. Their powers, activities and role in the protection of human rights will be discussed in the next chapter.

## **CHAPTER FIVE**

### **LAW ENFORCEMENT AGENTS IN BANGLADEH AND THEIR ROLE IN THE PROTECTION OF HUMAN RIGHTS**

#### **5.1 INTRODUCTION**

Police are the important agents to maintain law and order in the state. Their prime duty is to ensure the enjoyment of fundamental human rights by the people. Accordingly, Bangladesh police play a vital role to enforce the laws relating to the rights of the people. But sometimes, police themselves commit violation of the rights by misusing powers and laws. Under the circumstances, the role enforcers specially that of police needs to be evaluated.

Commission of organized crime is threat to the society which has adverse effects on life and property of the people. This also affects daily flow of economic activities undermining the economic, social and political stability. Development of a country is dependant on good law and order situation .The most important duty of government is to protect life and property of the people and police can ensure this by nabbing perpetrators. Public depends primarily upon the police for personal safety as well the safety of their lives and properties. On that account, the sworn duty of policemen is to enforce law neutrality which is a rare phenomenon in Bangladesh. This happens due to the fact that policemen are sometimes used as tools against the opposition political parties' leaders and their activists. Besides maintenance of public order, they are

required to discharge many other extraneous duties.<sup>1</sup> In Bangladesh police are to implement legislated laws for the protection of the rights of the people. Police, therefore, can play a vital role for both protection and promotion of the rights of the people.

## 5.2 POLICE AS LAW ENFORCEMENT AGENTS IN BANGLADESH

According to the 'Code of Conduct for Law Enforcement officials', "law enforcement officials include all officers of the law, whether appointed or elected who exercise police powers, especially the powers of arrest or detention"<sup>2</sup> In Bangladesh, Law enforcement agents include police, Bangladesh Rifles ( BDR) and Ansar who are engaged to protect life, property, persons etc of the Republic of Bangladesh . It is the prime duty of the government to uphold the fundamental human rights of the people and law enforcing agents act as agency of the government. The success or failure of the government basically depends on the law enforcement agents who always fulfill the duties imposed upon them by law by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.<sup>3</sup> In the course of carrying on their duties, law enforcement officials are to respect and protect human dignity and maintain and uphold the

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<sup>1</sup>(Dr.)Enamul Haque, "*Criminal Justice Administration Prerequisite for security and freedom*".- Human Rights Law, Dhaka p. 325, (1997).

<sup>2</sup> Code of Conduct for Law Enforcement officials, Article 1 (a). It was adopted by the UN General Assembly on 17 December 1979. (Resolution No. 34/169,).

<sup>3</sup> Ibid.

human rights of all persons.<sup>4</sup> Besides, “no law enforcement officials may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment”.<sup>5</sup> This prohibition is the result of the ‘Declaration on the protection of all persons from being subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment’ proclaimed by the General Assembly of the United Nations.<sup>6</sup>

Police as law enforcement agents shall ensure the full protection of the health of persons in their custody and they shall take immediate measures to secure medical attention whenever required.<sup>7</sup> They shall not be involved in any act of corruption.<sup>8</sup> Police, therefore, can ensure fundamental human rights of the people as guaranteed by the constitution of Bangladesh without involving themselves into violation of any rights by abusing powers, though sometimes they become the cause of sufferings of the people.

### **5.3 HISTORICAL BACKGROUND OF POLICE SYSTEM IN BANGLADESH:**

No man can enjoy his fundamental human rights without an effective police system and in order to have an effective police system both government and the society at large must be respectful to law and its enforcement. The present police administration in Bangladesh is not the out-come of one day,

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<sup>4</sup> Code of Conduct for Law Enforcement officials, Article 2.

<sup>5</sup> Article 5, *op.cit.*

<sup>6</sup> This Declaration was adopted by the General Assembly on 9 December 1975.

<sup>7</sup> Code of Conduct for Law Enforcement officials, Article 6.

<sup>8</sup> Article 7, *op. cit.*

rather it has been developed through different stages. A brief history about the development of police system in Bangladesh may help to determine its role in the administration of criminal justice. In ancient period there was no existence of the term “Police” and there was no police force for maintaining law and order. In those days, it was the emperor who was all in all in the state. His order was considered as law. He used to maintain army for the maintenance of law and order and security of the people. Besides, the army was also used to defend the country from external aggression.

During the regime of Sher Shah, police administration was originated in Indian-Subcontinent and it was developed during Mughal empire. Emperor Akbor developed the police Administration which was classified as *Fozdar, Mir Adal, Qazi and Kotowal*<sup>9</sup> somewhat similar to the present form of police administration of Bangladesh. In England the term ‘police’ was first used in the 16<sup>th</sup> century.<sup>10</sup> Police was meant for civil administration. A commissioner of police was first appointed in Scotland. In 1660 the post of a Lieutenant General of ‘police’ was created in France and a man was appointed to this post. In England constables were first appointed in 1662 to maintain peace and tranquility in towns.<sup>11</sup> In the Present time all the states of the world maintain police force for the maintenance of internal peace and security. Police personnel must possess some extra-ordinary qualities so that he can discharge his duties sincerely and efficiently. It is said that the very term police signify the following qualities-he must be polite, obedient, loyal, intelligent, courageous and efficient.

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<sup>9</sup> M. Faiz-ud-Din , Ayeen : Probandha Sankalon (Compilation of Articles on Law), p.168 (1999).

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

If a policeman becomes possessor of all the above qualities, it is expected, he can prove himself to be worthy of his post for maintenance of internal peace and tranquility, which is the precondition of safeguards of human rights.

The East India Company was given authority to rule India in 1765. Thereafter the employees of the company and local zaminders received impetus to torture and humiliate the people. Under the circumstances, Warren Hasting recommended to the council for the formation of police team in order to improve law and order situation. In 1792, Lord Cornwallish first promulgated Police Regulation for Bangla, Bihar and Urisa and under the said Regulation police personnel's were appointed. In 1808 and 1819 several regulations were promulgated for police administration. But in 1827, all the regulations were consolidated in which the duties of police officers were reorganized. In 1829 a special Bill for police was passed in the parliament of England under which new police administration was introduced.<sup>12</sup> Police administration was first introduced in New York City in 1833 in the line of England police administration. In 1860, a Police Bill was raised in the Indian Assembly and it was passed in 1861. The Act is known as the Police Act, 1861 (Act No 5 of 1861). This Act is in force in Bangladesh with minor amendment.<sup>13</sup>

#### **5.4 POLICE AND THEIR ACTIVITIES IN BANGLADESH**

There is no denial the fact that the police are the main law-enforcing agents in Bangladesh. The police Act 1861 empowers the police to act for the

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<sup>12</sup> P. M. Faiz-ud-Din , Ayeen : Probondha Sankalon (Compilation of Articles on Law), p.170 (1999).

<sup>13</sup> Ibid.

prevention of violation and protection of human and fundamental rights. But it is unfortunate that sometimes policemen are accused of involvement in violation of fundamental rights. Under the situation, the role of police must be looked upon for two reasons- (i) to assess the existing situation considering real strains and strengths and other limitations, if any, and (ii) to formulate a national agenda for action to make an effective police system truly worthy of the 21<sup>st</sup> century.<sup>14</sup>

Though police is meant for protecting the life, property and honour of the people but it is a reality that most of the police personnel themselves are involved in the commission of crime directly and indirectly. In a report it has been seen that in Dhaka City<sup>15</sup> 40% crime has been committed directly or indirectly by police. The serious crimes are committed either by policemen themselves or by the terrorists with their collaboration not only in Dhaka but also in other parts of country. More than 90 thousand complaints were brought against police after the creation of Bangladesh,<sup>16</sup> of which only 11923 complaints were investigated and 2020 policemen were sacked from job. From 1972-1996, 18911 persons died under police custody by their torture; only 321 cases were lodged for such death and only 3 of them were disposed of. In the same period, 5867 complaints of rape and torture of women by policemen were lodged, of which action has been taken against only 112 policemen. Besides, bribe taking by police is an open secret. About fifty thousand complaints about bribe, corruption, and misuse of power by policemen were brought against them

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<sup>14</sup> A.H. Monjurul Kadir, '*Policing the police*', The Daily Star, 23 August 1998.

<sup>15</sup> Daily Ittfaq, 17 April 1999.

<sup>16</sup> M. Faiz-ud-din, Ayeen: Probondha Sankalon, p.172.

during the said period, of which only eleven thousand were investigated.<sup>17</sup> Thus death, rape and torture under police custody are simple affairs in Bangladesh. Illegal arrest, detention, harassment and confinement followed by torture, rape and death by custodians, who are entrusted with the duty to protect the rights of human beings, are very disappointing.

Constitution is the supreme law of the land which provides safeguards against torture and illegal detention beyond a definite period. Article 33 (1) of the constitution provides, “No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.” Further, Article 33(2) provides, “Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate, and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.” Against custodian torture, the constitution provides under Article 35 (5), “No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment”. So the constitutional provision is very clear regarding torture and illegal detention. But in spite of these, keeping under custody beyond the period of twenty-four hours and custodian tortures are regular affairs in Bangladesh. Even a serious criminal cannot be tortured by civilian, not to speak of torture by police of a person arrested under section 54 of the Criminal Procedure Code on suspicion. Both the police force

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<sup>17</sup> M. Faiz-ud-din, Ayeen: Probondha Sankalon, p.172.



and the intelligence branch and sometimes Joint Interrogation Cell create serious physical and mental pressure upon the accused arrested under the above section.

The following incidents unveil the audacities of police:

### **Case Studies**

(a) On 15<sup>th</sup> November 1999 Shamsuddin alias 'Jewel' died at south Komlapur (Dhaka) near slum area. He was chased by police and he fell in a deep drain. He cried for help to save his life but they did not help to rescue him. Even they prevented other persons who came for his rescue. Bangladesh Rehabilitation Centre for Trauma Victims (BRCT) and Bangladesh Human Rights Bureau (BHRB) held a joint press conference at National Press Club on 2 November, 1999 after their independent investigations which was published in all most all the dailies. Both the organizations made spot investigation from 18 to 21 November 1999 and prepared a report and gave it to the journalists for publication. According to their statement, there was no definite case against shamsuddin alias 'Jewel'. As per evidence from the eye witness it was revealed that he fell into the deep drain as a result of police chasing. Police did not rescue him standing near the drain though he cried for help and ultimately Jewel died. Local witnesses identified the responsible police in the Motigheel Police Station through identification parade. So the concerned 4 police were responsible for the death of Shamsuddin (Jewel). Accordingly, a case was filed in the CMM Court against those policemen who were responsible for his death.<sup>18</sup>

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<sup>18</sup> Daily Inquilab, 25 November 1999.

(b) On 23 July 1998, police of city Detective Branch of Dhaka arrested Shamim Reza Rubel, a brilliant student of BBA of the Independent University, from near his house at about 4-30 P.M. He was tortured barbarously in the DB custody. As a result of torture Rubel falsely said that he would give them arms if he was allowed to go to his residence. After arrival near to his house he denied his previous statement. Police then beat him, kicked him mercilessly and threw him on electrical light post. Members of his family tried to save him from the claws of police, but failed. Rubel was taken to the custody police again and he was succumbed to death for their cruel and inhuman torture. The police claimed two lakh taka as bribe on condition of Rubel's release. But their demand was not satisfied. One day hartal was observed by the opposition political parties against the killing of Rubel.<sup>19</sup>

(c) Shima Chowdhury, a girl of 17 years and a garment factory worker in Chowkbazer under Chittagong District, was arrested by police on 8 October, 1996 in the evening when she was walking with her fiance. She was taken to Raojan thana where four police men raped her at mid-night when the Officer-in-Charge left the Police Station. Shima became unconscious as a result of rape. After medical examination, the doctor gave report of gang rape. Consequently she died in the hospital and she was burnt into ashes according to the rituals of Hindu religion, though she embraced Islam.<sup>20</sup>

(d) Another violation of human rights by police was the case of ill-fated Nabir Hossain who died in Jessore Central Jail on 13<sup>th</sup> January, 1997 by police

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<sup>19</sup> Annual Report 1998, Bangladesh Rehabilitation Center for Trauma victims,(BRCT). p.8

<sup>20</sup> Annual Report 1997(BRCT) P.9.

torture. Nabir was arrested on the 25<sup>th</sup> December 1996. There were three cases against him. A.S.I, Abu Bakkar of Bagherpara Police Station of Jessore district beat him mercilessly hanging him from a mango tree near thana campus. Police demanded Tk. 20,000.00 as bribe to release him. The family of Nabir Hossain gave the police of Tk. 8000. But the police again tortured him in thana custody on 26<sup>th</sup> December, 1996. He was then sent to jail where he fell seriously ill in jail custody as a consequence of police torture and he died on 13<sup>th</sup> January 1997 on way to hospital. An investigation team of BRCT expressed opinion that the victim died on account of torture by police who took illegally 8 thousand taka from the victim's relatives. They unconstitutionally kept the victim in the police custody for 2 days without producing him in the court.<sup>21</sup>

(e) A girl (11) was raped by a police of Shabujbagh police station for four consecutive nights at his Santibagh residence under Motigheel Police Station in Dhaka city from 15 April to 18 April 1998. The victim was Laily Begam and the rapist was Golam Kabir.<sup>22</sup>

(f) Mofazzal Hosain, Additional Superintendent of Police of Khulna Metropolitan City, had been allegedly involved with torture and killing of innocent persons with the intention of extracting money from them. He used to torture even the journalists who would publish news against him. Reports say that journalist Dip Abdur Rob Azad and Shikh Belal Hossain were killed recently by bomb attacks by the perpetrators at his instigation. He has been arrested and sent to jail. A case has been filed by Musammat Rowsan Azad,

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<sup>21</sup> Annual Report 1998 (BRCT), p.8.

<sup>22</sup> *op.cit*, p.77.

Abdur Rob's wife, against Mofazzal Hossain for torture to death of Abdur Rob Azad who was a leading shrimp trader. Mrs. Azad also complained that the accomplices of Mofazzal looted the licensed revolver, Tk. 192000.00, some business related papers and a cell phone of her husband. She mentioned in her complaint that her father-in-law (Father of Azad) had lodged a case with Dakop Police Station on 6 January 2005 naming Mofazzal. But due to death threat from Mofazzal and others accused, the case had to be withdrawn. After arrest of Mofazzal, large number of complaints are being narrated in the dailies against him.<sup>23</sup> Though it was his duty to protect rights of the people and prevention of violation of any human rights, he himself become the violator.

These are only few cases of violation of human rights by police personnel. There are thousand and one cases of such violation reported by news media, annual reports of different human rights NGOs.

Torture under police custody is very common in Bangladesh. In the name of remand, police torture the accused physically and mentally and during interrogation, sometimes the victims become mentally imbalance due to torture. Torture by policemen has been increasing due to political reasons. Many political leaders and activists are arrested and falsely implicated in cases and are tortured under police and jail custody. Torture by law-enforcing agency includes- (i) beating with sticks, (ii) kicking with boots, (iii) beating with rifle butts, (iv) electric shocks, (v) inserting needles in hands, (vi) pouring hot water into nose, (vii) throwing chilli mixed water in the eyes and mouths, (viii) pushing hot eggs into the anus, (ix) beating knee-joints and the bottom of feet;

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<sup>23</sup> The Daily Sangram, 8 March, 2005.

(x) breaking fingernails and forcing the victims to drink urine. But the use of electric shock is common in all cases.<sup>24</sup>

## 5.5 POLICE AND JUDICIARY

In most of the cases, policemen misuse sections 54, 167 and 344 of the Criminal Procedure Code, 1898. According to section 54, “any police-officer may, without an order from a Magistrate and without a warrant, arrest any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned.” Under this section the police officer must consider for himself definite facts and materials about a person whom he is going to arrest. Section 167 and section 344 of the CR.P.C. which deal with remand for confessional statement give opportunity to police officers for physical and mental torture. Courts order for remand to the police officers. And the Police officer, in the name of investigation and interrogation, sometimes torture the accused either to have forcibly false statement or to take bribe. Though the concerned sections permit remand by a court “for a term not exceeding 15 days in the whole,” it has been found to grant remand to an accused up to 31 days, though in different terms. Police prays for second and third time remand during which the accused becomes seriously ill due to torture. It is almost a regular practice that after the first remand, the accused in remand is not produced before the Magistrates to conceal the torture and the Magistrates pass order for remand again and again without examining

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<sup>24</sup> Annual Report 1998 (BRCT), p.9.

the health of the accused, though there is law for such examination. Magistrates sometimes overlook the misuse of power of the police authority. In order to save the accused from police torture during the period of remand, the accused needs to be checked up about his health before and after that. To take remand and interrogate someone for making confessional evidence forcibly against him by torture is against the constitutional provision as well as contrary to human rights. In this respect the judgment of Justice Kuldip Sing is not worthy. The Learned judge gave the following directions:<sup>25</sup>

- (1) The police personnel carrying out the arrest and handing the interrogation of the arrestee should bear accurate visible and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
- (2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest of the time of arrest and such memo shall be attested by at least one witness who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
- (3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock up, shall be entitled to have one friend or relative or other person known to welfare being informed, as soon arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
- (4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the legal aid organization in the district and the police

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<sup>25</sup> *D.K.Bashu vs. Government of West Bengal.* AIR (SC) 610(1997). See the Daily Star, 23 August 1998.

station of the area concerned telegraphically within a period of 8 to 12 hours of the arrest.

- (5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or detained.
- (6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- (7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present of his/her body, must be recorded at that time. The "inspection memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
- (8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor, on the panel of approved doctors appointed by the Director, Health Services of the State or Union Territory concerned. Director, Health Services, should prepare such a panel for all tehsils and districts as well.
- (9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the District Magistrate for his record.
- (10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.”

In a similar case, Chief Justice Warren aptly remarks in *Miranda vs Arizona* case, which is as follows:<sup>26</sup>

“We hold that when an individual is taken into custody or other wise deprived of his freedom by the authorities in any significant way and is subject to questioning, the privilege against self-discrimination is jeopardized, procedural safeguards must be employed to protect the privilege and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honoured, the following measures are required.” He continued,

“He must be warned prior to questioning that he has the right to remain silent, that any thing he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to questioning if he so desires.” He further said,

“Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given and such opportunity afforded to him the individual may knowingly and intelligently waive these rights and agree to answer question or make a statement waiver are

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<sup>26</sup> *Miranda vs. Arizona* (1996) US 86 SC.

See Article, A. H. Monjurul Kadir, ‘*Policing the police*’, The Daily Star, 23 August 1998.



demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.” He further continued,

“In announcing these principles, we are not unmindful of the burdens which law enforcement officials must bear, often under trying circumstance.”

He contended, “We also fully recognize the obligation of all citizens to aid in enforcing the criminal laws. The court while protecting individual rights has always given ample latitude to law enforcing agencies in the legitimate exercise of their duties”. He also said that the limits which have been placed on the interrogation process should not constitute an undue interference with a proper system of law enforcement.

The above judgments are the clear directives to the police personnel so that they can not misuse power and violate fundamental rights of accused.

The incidents of violation of human rights by the law enforcement agents are collected by different NGOs, news medias etc. Year-wise statistics of death, rape, and torture by law enforcing agents can be seen from the next table.

Table<sup>27</sup>

Year	Death under police custody	Torture by law enforcement agents	Killed by Firing	Rape by Police/Ansar/BDR
1994	12	3014	20	-
1995	12	2810	34	40
1996	19	3617	43	11
1997	38	3000	28	16
1998	56	654	26	21
1999	12	490	18	12
2000	not available	582	-	not available
2001	not available	515	-	not available
2002	not available	593	-	not available
2003	not available	328	-	not available

<sup>27</sup> The Daily Star 5 October 2000; The Daily Sangram 4 January 2000; State of human rights Bangladesh 1999; Annual Report 1998 (BRCT); Annual Report 2000(BRCT); Annual Report 2001(BRCT); Annual Report 2002(BRCT); Annual Report 2003(BRCT).

## 5.6 ABUSE OF POWER BY POLICE

In our country police misuse powers mostly under legal coverage. Under section 54, 167 and 344 of Criminal procedure Code and under the Special Powers Act, 1974 as stated above, police arrest and torture so inhumanly that sometimes it leads to death, and under these sections Magistrates grant remand and detention without taking any humane attitude towards the detainee. Any police officer may, without an order from Magistrate and without a warrant, arrest under section 54 of Cr.P.C.:

1. any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned,
2. any person having in his possession without lawful excuse the burden of proving which excuse shall lie on such person, any implement of house breaking.

This section gives wide range of powers to the police officer to arrest a person without warrant from the magistrate. Usually, as we see, police arrest persons under first and second clause stated above. Under the coverage of this section police continue to arrest, beat and torture the suspected ones, whereas terrorists threat, beat and torture the helpless people in and outside their homes. Common people are between the devil and the deep sea. Police rarely come to save a man when *mastans* (terrorists) loot his everything. Now-a-days it is said that police and *mastans* are birds of the same feather. The increased volume of

crimes and the rise of criminal are due to police indulgence. This is the tragedy of the role of police. Besides, under sections 167 and 344 of the Criminal Procedure Code, police torture physically and mentally the remanded persons. This has become so much an ordinary affairs in Bangladesh that people have started considering it as a matter of rights. Police torture inhumanly to have confessional statements from the accused while he is in the remand. Although the confession made by the arrested person during remand does not carry any legal value and it is not accepted if it is not made in presence of the Magistrates.

Section 25 and 26 of the Evidence Act, 1872 support the above view. Section 25 states “No confession made to a police officer shall be proved as against a person accused of any offence.” Section 26 further states, “No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person”. So the question is raised that though these legal bars are there, why do the police torture the suspects inhumanly? The murder of Shamim Reza Rubel, Shamsuddin Jewel and others as stated under section 5.4 by police naturally raise this question. There is no answer to it.

The case studies and statistics under sections 5.4 and 5.5 prove that the policemen in Bangladesh failed to combat the perpetrators either due to their direct involvement with the violation of the rights of the people or their negligence to protect the rights of the people. Government, as alternative formed Rapid Action Battalions (RAB) in the year 2003 consisting of army, navy, air force and police force. Within two years it has been successfully combated terrorism. Now life and property of the people are more secured than any time

after the creation of Bangladesh. A report disclosed that from 1950 to 2003, seventy seven thousand six hundred ninety eight persons have been killed and twenty two thousand people have been crippled by the extremists in South and South-west regions namely, greater Khulna, Jessore, Kushtia and Faridpur districts<sup>28</sup>. Police failed to ensure the security of life and property of the people in general , and the people of those areas in particular. Successful operations of Rapid Action Battalion against terrorism has brought security and rehabilitation of the people who have been suffering from insecurity. As a result of such operation, the terrorist either died in confrontation with RAB or left the country.

## **5.7 CONCLUSION**

Immorality, greediness for wealth and honour, high handedness, raping, bribe-taking are so common with the police that each and every citizen of the country holds a very bad opinion about them. Transparency International has made an adverse comment against police department of Bangladesh as number one corrupted department. This may be due to the fact that people with comparatively less moral character recruited in the police force. Government's wrong process of recruitment and the absence of any effective means to check police excessiveness may be said to have encouraged the police to become a foe and not a friend of the people. Due to police brutality, the relation between them and the people has been deteriorating at an alarming rate. Under the

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<sup>28</sup> The Daily Sangram, 29 April 2005.

circumstance, in order to check the abuse and misuse of power by the police, the government may take the following steps on an urgent basis.

1. The police should be made responsible to the civil administration at each and every administrative unit of the country changing the present warrant of precedence and administrative set-up.
2. The disputed sections 54 and 167 of the CR.P.C. should be immediately amended by curtailing the arbitrary and whimsical power of arrest. The Supreme Court has given directives to the government in this respect.<sup>29</sup>
3. The activities of the Criminal Investigation Department (CID), Special Branch (SB) and Detective Branch (D.B) must be supervised and coordinated by the Ministry of Home regularly through an effective administrative unit to which the above mentioned agencies shall be accountable for their every omission or commission.
4. A separate department must be created for investigation of case or complaint against police.
5. The black Law like the Special Powers Act, 1974 must be repealed immediately in order to reduce abuse of powers both by police officer and ADM/District Magistrate.
6. With a view to stop further gross miscarriage of justice, all alleged homicide, rape and torture committed by police should be investigated and the responsible police shall be tried and awarded exemplary punishment

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<sup>29</sup> For details, see section 6.5.

specially in the case of child rape and the victims or the their heirs shall be given adequate compensation.

7. Honest persons and persons of high moral character are to be appointed in the police force.
8. After appointment, they are to be given training on human and fundamental rights along with moral and religious training.
9. Police are not to be used to serve the purpose of any political party, which has been clearly stated in the police regulation. Section 1 of Police Code of Conduct 1861, states that the police shall discharge their duties neutrally. So the politicization of the police force must be stopped without any further delay.
10. Sensitive cases must be tried speedily .Government has already established Speedy Trial Tribunal to dispose of the sensitive cases quickly.<sup>30</sup>
11. Every police must make a declaration of his wealth either in his name or in the name of his dependants and relations at the time of his recruitment. Every after five years and at the time of his retirement all wealth not in portion to his income, to be determined by a committee appointed by the government for such purpose, will be confiscated to the government treasury.

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<sup>30</sup>Speedy Trial Tribunals have been established in selected regions of the country under the Speedy Trial Tribunal Act 2002,(Act No. 28 of 2002) which came into force on 24 October 2002. After the establishment of Tribunals, many sensitive cases have been disposed of within shortest possible time and victims are getting justice on the one hand and on the other, the perpetrators are punished. This step of the Government has been appreciated from all quarters.

If these suggestions are implemented, it may be hoped that violations of human rights by police will be reduced remarkably. A situation may be created where police and people will be friends and not foes. Law and order and economic stability may be sustained. Police must think that they are to serve the people and not become their masters. They must be honest to their duties in taking necessary measures to check the activities of the criminals, miscreants, *Mustans*, *chandabad* (money extortionist) and similar other elements and ensure Bangladesh as a peaceful habitation for people.

Human rights are being constantly violated in Bangladesh by the executives misusing their powers under the non-humanistic sections 54, 167 and 344 of the Code of Criminal Procedure. In the following chapter these sections will be thoroughly examined in the light of rulings of higher judiciary of Bangladesh.



**CHAPTER SIX**  
**HUMAN RIGHTS AND MISUSE OF POWERS BY THE**  
**EXECUTIVE UNDER THE COVERAGE OF SECTIONS 54, 167**  
**AND 344 OF THE CODE CRIMINAL PROCEDURE AND**  
**RULING OF HIGHER JUDICIARY**

**6.1 INTRODUCTION**

Human Rights have widely been violated by the executive by misusing its powers under sections 54, 167 and 344 of the Code of Criminal Procedure, 1898 and the historic ruling of the higher judiciary of Bangladesh is the warning against such misuse. The executive has nakedly abused its powers under sections 54 and 167 of the Cr. P.C. although a huge numbers of written protests have been made against this misuse. The current substantive and procedural laws of Bangladesh are the laws made by the British rulers to govern the people of their subcontinent colony, India in the mid and late twentieth century. After the Independence of India in 1947 and still further after the liberation of Bangladesh in 1971 things have drastically changed. Situation, society and human values of people have greatly changed and with it the colonial laws should have changed. But unfortunately laws were not changed; on the contrary, they are more widely and inhumanly used by the executive to run the administration exclusively for their own self- interest and not for the interest of the common people who are constitutionally considered as the holders of supreme power of the state. Now-a-days common people are far more conscious about their political rights and obligations and do not hesitate to move the supreme judiciary of the state as and when their rights are violated.

This chapter is concerned with sections 54 and 167 of Code of Criminal Procedure which are off and on misused. The abuse of these sections leads to the violation of human rights and on many a occasions innocent persons become the victims due to the misuse of these sections.

## **6.2 SECTION 54 OF THE CODE OF CRIMINAL PROCEDURE**

### **Section 54 of the Code is as follows:**

54(1) Any Police officer may, without an order from a Magistrate and without warrant. Arrest-

First, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned;

Secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

Thirdly, any person who has been proclaimed as an offender either under this Code or by order of the Government;

Fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

Fifthly. Any person who obstructs a Police officer while in the execution of his duty, or who has escaped, or attempts to escape from lawful custody;

Sixthly. Any person reasonably suspected or being a deserter from the armed forces of Bangladesh.

Seventhly. Any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in Bangladesh;

Eighthly. Any released convict committing a breach of any rule made under section 565, sub-section (3);

Ninthly, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specified the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

Misuse of section 54 takes place at different stages. According to this section, arrests without warrant are permissible only on nine grounds— for cognizable offence; possession of house breaking instruments; theft; obstruction of a police officer; desertion from the armed forces; proclaimed as an offender; for crimes committed outside Bangladesh for which he / she would be culpable in Bangladesh; any breach by a released convict under section 565 (3) and any person whose arrest has been requisitioned by another police officer.

Section 54 is regularly misused in Bangladesh. That section 54 is regularly being misused can be seen from the following incidents.

**Case studies:**

(a) On 23 July 1998, Dhaka City Detective Branch Police arrested Shamin Reza Rubel, a brilliant student of BBA class of the Independent University, under section 54 of the Code.<sup>1</sup> He was arrested on suspicion that he had firearms with him. Police beat him mercilessly, kicked him and threw him on electrical light post. Police took Rubel in the custody and brutally tortured him to death. This led to considerable public outrage. A judicial Inquiry Commission headed by Justice Habibur Rahman Khan was formed to investigate the death of Rubel on 23 August, 1998. The Commission in its report pointed out that corruption, negligence and lack of qualified personnel are responsible for breakdown in the enforcement of law by the police force. It further criticized false arrests and use of torture to obtain confessions during interrogation as violation of Article 35 (5) of the constitution, Article 5 of Universal Declaration of Human Rights, section 33 (b) of the Police Act and section 55 of the Police Ordinance.<sup>2</sup>

On 26 November, 1998, a criminal case was filed under section 302 of the Penal Code. Further, a public interest litigation was filed in the High Court Division of the Supreme Court. After three years and eleven months, the Court found Assistant Commissioner (Police) M. Akram Hossain and twelve others including Mrs. Mukuli Begum, a civilian, guilty of Rubel's murder.<sup>3</sup>

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<sup>1</sup> Annual Report 1998, Bangladesh Rehabilitation Centre for Trauma victims (BRCT), p. 8(1999).

<sup>2</sup> Human Rights in Bangladesh 2002, p. 157 Ain O Salish Kendra(ASK) (2003).

<sup>3</sup> The thirteen convicted were members of the Detective Branch.

The High Court Division passed a ruling on 7 April, 2003 directing the government for changes in the existing provisions of sections 54, 167, 176, 202 of the Code of Criminal procedure as well as sections 330, 302 and 348 of the Penal Code.<sup>4</sup>

(b) Ujjal, a resident of Munshigonj, was arrested by police under section 54 on 29 July, 2000 while he was returning from movie. He was taken to Munshigonj Police station where he was beaten mercilessly by a police officer with a ruler. On 30 July he was sent to jail and detained there.<sup>5</sup>

(c) Shadhu Baran shil (40) of Munshigonj was arrested under section 54 on 3 August, 2000. They asked him for taka 200. But as he was a poor vegetable seller who had no such amount of money with him, he begged the police. He repeatedly told the police that his child was ill and he had to buy medicine for him. In spite of that the police tied him and beat him with a ruler. He was given no food during his detention.<sup>6</sup>

(d) There is a report that during the period from 1 January to 30 June 2001, 17338 persons were detained who were arrested under section 54 of Cr. P.C. This happened in only 11 police stations out of 22 police stations of Dhaka City.<sup>7</sup>

(e) On 24 November 2001 Shahriar Kabir, a writer and journalist, was arrested under section 54 and was given one month's detention under section 3 of the Special Powers Act, 1974.<sup>8</sup>

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<sup>4</sup> Hamida Hossain, Human Rights in Bangladesh 2002, p. 157(2003). The ruling passed by the High Court Division will be discussed.

<sup>5</sup> The Daily Star, 13 November 2000.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Human Rights in Bangladesh 2002, Ain O Salish Kendra (ASK). 158-159 (2003).

(f) In the like manner, Bahauddin Nasim, personal assistant to the leader of the opposition, Sheikh Hasina, was arrested on 28 February 2002 under section 54 without warrant and he was taken to remand for ten days. He was released ten months and six days after arrest following an order by the High Court Division. Similarly, Dr. Mohiuddin Khan Alamgir was arrested without warrant under section 54 of Cr. P.C. on 15 March 2002. After-wards, a sedition case was filed against him. On writ petition the High Court Division declared his detention illegal. Ultimately he was released from jail on 17 September 2002, after confinement from march to September 2002.<sup>9</sup>

In all the above cases, it is found that section 54 has been grossly misused by the police totally ignoring human rights.

### **6.3 SECTION 167 OF THE CODE OF CRIMINAL PROCEDURE**

#### **Section 167 is as follows:**

“Procedure when investigation cannot be completed in twenty-four hours-

167 (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the police officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary

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<sup>9</sup> Human Rights in Bangladesh 2002, Ain O Salish Kendra (ASK). 158-159 (2003).

hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days on the whole. If he has not jurisdiction to try the case or send it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Government shall authorise detention in the custody of the police.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the Chief Metropolitan Magistrate, District Magistrate or Sub-Divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.”

The constitution of Bangladesh provides guarantees against unlawful arrest and the Code of Criminal Procedure, 1898, does not permit a detainee to be held in police custody for more than 24 hours unless by special order of a Magistrate.<sup>10</sup> Section 167 of the Code permits to detain a person in custody up to 15 days without charges. But there are instances where detainees have been held in police custody for

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<sup>10</sup> Constitution of Bangladesh, Article 33 (2).

more than 24 hours without order of the Magistrate and where persons have also been held in custody for more than the legally granted 15 days period.<sup>11</sup>

It is experienced that a person is arrested without warrant under section 54 of Cr. P.C. and then a charge is leveled against him under certain sections of Penal Code in order to prepare the ground for taking remand which is granted by the Magistrate. During remand the arrested person is physically and mentally tortured and lastly he is detained under the Special Powers Act. Under this Act there is no provision for bail in the lower Court and as such he remains inside the jail for an indefinite period unless released by order of the High Court Division on writ petition under Article 102 of the constitution of Bangladesh.

In the year 2002 a number of important persons were arrested under section 54 and thereafter they were remanded under section 167 of the Code. Amongst the better known detainees in Dhaka were Bahauddin Nasim, Dr. Mohiuddin Alamgir, M.P.(1996-2001), and Shahriar Kabir. They, like others, were arrested under section 54 and detained for a further period on sedition charges, a nonbailable offence under the Special Powers Act.<sup>12</sup>

So the pattern of arrest, remand and torture in remand under the coverage of section 54 and 167 of the Code of Criminal Procedure and section 3 of the Special Powers Act show how laws are being abused by police or executives to terrorize detainees during interrogation. In the like manner, a detainee under the Special Powers Act is deprived of the right of bail and detained for a further period.

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<sup>11</sup> Human Rights in Bangladesh, 1998 P.63 (1999).

<sup>12</sup> Human Rights in Bangladesh 2002, *op.cit* p.157 (2003).



Even sometimes the detainees are denied to see their families or lawyers until a court order is obtained or they are transferred to another jail before they could see their lawyers and relatives. More worst than this that some detainees, after their release, reported that they had been beaten on the knees or ankles with a baton, given electric shock, deprived of medicines or family member was kept hostage.<sup>13</sup>

Thus section 54, along with section 167 of the Code of Criminal Procedure provide for arrest without warrant and remand in police custody are most often abused from the inception of this Act. In Bangladesh successive governments have been using them for indiscriminate arrests and torture particularly of political opponents causing violation of fundamental human right and jeopardizing criminal justice. Thus that arrest under section 54 of the Code of Criminal Procedure and subsequent remand under section 167 of the Code has become a common practice. Like section 54 of the Code of Criminal Procedure, the Special powers Act, which is termed as “black law”, gives the police a wide power to arrest any person without any warrant or without order of the court. Even the police officer can arrest any person only on suspicion of his being involved in crime. Being empowered with such power the police officers misuse the section rampantly. Besides, during police remand almost all persons become the victim of inhuman torture.<sup>14</sup> On this backdrop it has become a growing demand of the conscious people to scrap the law or to make some restrictions upon the power of the police.

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<sup>13</sup>.. Human Rights in Bangladesh 2002, *op.cit* p161. (2003).

<sup>14</sup> The daily Star, 13 April 2003.

#### 6.4 RULING OF HIGH COURT DIVISION

The tragic death of Samim Reza Rubel prompted some human rights organizations and individuals to file writ under the banner of public interest litigation.<sup>15</sup> The writ of November 29, 1998 was filed jointly by Bangladesh Legal Aids and Services Trust (BLAST), Ain O Salish Kendra, Sammilita Samajik Andolan, Sabita Rani Chakroborty, Syed Anwarul Haque, Sultanuzzaman Khan, Ummun Naser and Professor Maniruzzaman under Article 102 of the Bangladesh Constitution.

In the above writ petition it was alleged that the police by abusing the power given under section 54 of the Code of Criminal procedure have been curtailing the liberty of the citizens; and by taking an accused into police custody under section 167, they are abusing and misusing the powers and thereby violating fundamental rights guaranteed by different Articles of the constitution. The petitioners narrated several instances of such abusive exercise of power and violation of fundamental rights; and the land-mark judgment was passed by High Court Division bench comprising Mr. Md. Hamidul Haque J and Mrs. Salma Masud Chowdhury J. on 7 April 2003.

In the case, *BLAST VS Bangladesh*<sup>16</sup> the learned judges thoroughly examined the sections 54,167,176 and 202(g) of Cr. P.C, sections 330,302 and 348 of Penal Code, Evidence Act 1872 and Police Act 1861 against the constitutional provisions of Articles 27,31,32,33and35 and an Indian Supreme Court case reported in AIR 1977SC 610 and made the following recommendations:

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<sup>15</sup> Writ Petition No. 3806/1998.

<sup>16</sup> 55 DLR (2003) 363.

## 6.5 RECOMENDATIONS

### “Recommendation-A

(With regard to section 54 of Criminal Procedure Code)

1. The first condition of section 54 of Criminal Procedure Code may be amended as follows:  
  
first, any person against whom there is a definite knowledge about his involvement in any cognizable offence or against whom a reasonable complain has been made or credible information has been received or a reasonable suspicion exists of his having been so involved;
2. The seventh condition may be also amended like the first condition.
3. A sub-section (2) shall be added which shall contain the following provisions:
  - (a) Whenever a person is arrested by a police officer under sub-section (1) he shall disclose his identity to that person and if the person arrested from any place of residence or place of business, he shall disclose his identity to the inmates or the persons present and shall show his official identity card if so demanded.
  - (b) Immediately after bringing the person arrested to the police station, the police officer shall record the reasons for the arrest including the knowledge which he has about the involvement of the person in a cognizable offence, particulars of the offence, circumstances under which arrest was made, the

source of information and the reasons for believing the information, description of the place, note the date and time of arrest, name and address of the persons, if any, present at the time of arrest in a diary kept in the police-station for that purpose.

- (c) The particulars as referred to in clause (b) shall be recorded in a special diary kept in the police station for recording such particulars in respect of persons arrested under this section.
- (d) If at the time of arrest, the police officer finds any marks of injury on the body of the person arrested, he shall record the reasons for such injury and shall take the person to the nearest hospital or to a Government doctor for treatment and shall obtain a certificate from the attending doctor about the injuries.
- (e) When the person arrested is brought to the police station, after recording the reasons for the arrest and other particulars as mentioned in clause (b), the police officer shall furnish a copy of the entries made by him relating to the grounds of the arrest to the person arrested by him such grounds shall be furnished not later than three hours from the time of bringing him in the police station.
- (f) If the person is not arrested from his residence and not from his place of business or not in presence of any person known to the accused, the police officer shall inform the nearest relation of the person over phone, if any, or through a messenger within one hour of bringing him in the police station.

- (g) The police officer shall allow the person arrested to consult a lawyer, if the person so desires. Such consultation shall be allowed before the person is produced to the nearest Magistrate under section 61 of the Code.

### **Recommendations B**

(With regard to section 167 of Criminal Procedure Code)

1. Existing sub-section (2) be re-numbered as sub-section (3) and a new subsection (2) may be added with the following provisions;
- (a) Sub-section (2) (a) If the Magistrate, after considering the forwarding of the investigating officer and the entries in the diary relating to the case is satisfied that there are grounds for believing that the accusation or information about the accused is well-founded, he shall pass an order for detaining the accused in the jail. If the Magistrate is not so satisfied, he shall forthwith release the accused. If in the forwarding of the Investigation Officer the grounds for believing that the accusation or information is well founded are not mentioned and if the copy of the entries in the diary is not produced, the Magistrate shall also release the accused forthwith.
- (b) If the Investigation Officer prays for time to complete the investigation, the Magistrate may allow time not exceeding seven days and if no specific case about the involvement of the accused in a cognizable offence can be filed within that period, the accused shall be released by the Magistrate after expiry of the period.

- (c) If the accused is released under clause (a) and (b) above, the Magistrate may proceed for committing offence under section 220 of the Penal Code *suo motu* against the police officer who arrested the person without warrant even if no petition of complaint is filed before him.
2. Sub-section (2) be substituted by a new sub-section (3) with the following provisions:
- (a) If a specific case has been filed against the accused by the Investigating officer within the time as specified in sub-section (2) (b), the Magistrate may authorise further detention of the accused in jail custody.
- (b) If the order for police custody is made under clause (c), the Investigating officer shall interrogate the accused, if necessary, for the purpose of investigation, in a room specially made for the purpose with glass wall and grill in one side, within the view but not within hearing of a close relation or lawyer of the accused.
- (c) If the Investigating Officer files any application for taking any accused into custody for interrogation, he shall state in detail the grounds for taking the accused in custody and shall produce the case diary for consideration of the Magistrate. If the Magistrate is satisfied that the accused be sent back to police custody for a period not exceeding three days, after recording reasons, he may authorise detention in police custody for that period.
- (d) Before passing an order under clause (c), the Magistrate shall ascertain whether the grounds for the arrest was furnished to the accused and the

accused was given opportunity to consult lawyer of his choice. The Magistrate shall also hear the accused or his lawyer.

3. Sub-section (4) be substituted as follows:

- (a) If the order under clause (c) is made by a Metropolitan Magistrate or any other Magistrate he shall forward a copy of the order to the Metropolitan Sessions Judge or the Sessions Judge as the case may be, for approval. The Metropolitan Sessions Judge or the Sessions Judge shall pass the order within fifteen days from the date of the receipt of the copy.
- (b) If the order of the Magistrate is approved under clause (a), the accused, before he is taken in custody of the Investigating Officer, shall be examined by a doctor designated or by a Medical Board constituted for the purpose and the report shall be submitted to the Magistrate concerned.
- (c) After taking the accused in custody, only the Investigating Officer shall be entitled to interrogate the accused and after expiry of the period, the Investigating officer shall produce him before the Magistrate. If the accused makes any allegation of any torture, the Magistrate shall at once send the accused to the same doctor or Medical Board for examination.
- (d) If the Magistrate finds from the report of the doctor or Medical Board that the accused sustained injury during the period under police custody, he shall proceed under section 190(1)(c) of the Code against the Investigation Officer for committing offence under section 330 of the Penal Code without filing of any petition of complaint by the accused.

- (e) When any person dies in police custody or in jail, the investigation Officer or the Jailer shall at once inform the nearest Magistrate of such death.

### **Recommendation C**

(With regard to section 167 of Cr. P.C)

Existing sub-section (2) be re-numbered as sub-section (3) and the following be added as sub-section (2).

(2) When any information of death of a person in the custody of the police or in jail is received by the Magistrate under section 167 (4) (e) of the Code (as recommended by us), he shall proceed to the place, make an investigation. Draw up a report of the cause of the death describing marks of injuries found on the body stating in what manner or by what weapon the injuries appear to have been inflicted. The Magistrate shall then send the body for postmortem examination. The report of such examination shall be forwarded to the same Magistrate immediately after such examination.

### **Recommendation D**

(With regard to section 202 g Cr. P.C)

1. A new sub-section (3) be added with the following provisions:
  - (3) (a) The Magistrate on receipt of the postmortem report under section 176(2) of the Code (as recommended by us) shall hold inquiry into the case and, if necessary, may take evidence of witnesses on oath.



- (b) After completion of the inquiry, the Magistrate shall transmit the record of the case along with the report drawn up under section 176(2) (as recommended by us), the postmortem report, his inquiry report and a list of the witnesses to the Sessions Judge or Metropolitan Sessions Judge, as the case may be, and shall also send the accused to such Judge.
- (c) In case of death in police custody, after a person taken in such custody on the prayer of the Investigation Officer, the Magistrate may proceed against the Investigation Officer, without holding any inquiry as provided in clause (a) above and may send the investigating Officer to the Sessions Judge or the Metropolitan Sessions Judge as provided in clause (b) along with his own report under sub-section (2) of section 176 and postmortem report.

### **Recommendation E**

(With regard to sections 330, 302 and 348 of the penal Code)

- (a) One provision be added in section 330 providing enhanced punishment up to ten years imprisonment with minimum punishment of sentence of seven years if hurt is caused while in police custody or in jail including payment of compensation to the victim.
- (b) 2<sup>nd</sup> proviso for causing grievous hurt while in such custody providing minimum punishment of sentence of ten years imprisonment including payment of compensation to the victim.

- (c) A new section be added as section 302A providing punishment for causing death in police custody or in jail including payment of compensation to the nearest relation of the victim.
- (d) A new section be added after section 348 providing for punishment for unlawful confinement by police officer for extorting information, etc, as provided in section 348 with minimum punishment of imprisonment for three year and with imprisonment which may extend to seven years.

### **Recommendation F**

(With regard to Evidence Act)

The new section in the Evidence Act shall provide that when a person dies in police custody or in jail, the police officer who arrested the person or the police officer who has taken him in his custody for the purpose of interrogation or the jail authority in which jail the death took place, shall explain the reasons for death and shall prove the relevant facts to substantiate the explanation.

In the Police Act of 1861, there is no provision for maintaining any diary for recording the reasons for arrest without warrant and other necessary particulars as have been mentioned in the recommended sub-section (2) of section 54 of the Code. So, we like to recommend that a new section be added after section 44 of the Police Act.

### **Recommendation G**

(With regard to police Act 1861)

The new section in the Police Act shall provide that the officer-in-charge of a police station shall keep a special diary for recording the reasons and other particulars as required under recommended new sub-section (2) of section 54 of the Code.” It has been already mentioned that the provisions of the existing sections 54 and 167 of the Code are to some extent inconsistent with the provisions of Articles 27, 30, 31, 32, 33 and 35 of the Constitution and it has been recommended that the above two sections may be amended for the purpose of safeguarding the liberty and fundamental rights of the citizens. The respondents are directed to remove the inconsistency within the time fixed by the bench.

The bench is conscious that some of the recommendations cannot be implemented without making necessary amendments in the relevant law but at the same time the bench like to insist that some of the recommendations may be implemented immediately as these are in conformity with some of the existing provisions of the Constitution and the Code itself. So, the bench issued some directions to follow those immediately. The directions are as follows:

- (1) “No police officer shall arrest a person under section 54 of the Code for the purpose of detaining him under section 3 of the Special Powers Act, 1974.

- (2) A police officer shall disclose his identity and, if demanded, shall show his identity card to the person arrested and to the persons present at the time of arrest.
- (3) He shall record the reasons for the arrest and other particulars as mentioned in recommendation A (3) (b) in a separate register till a special diary is prescribed.
- (4) If he finds any marks of injury on the person arrested, he shall record the reasons for such injury and shall take the person to the nearest hospital or Government doctor for treatment and shall obtain a certificate from the attending doctor.
- (5) He shall furnish the reasons for arrest to the person arrested within three hours of bringing him to the police station.
- (6) If the person is not arrested from his residence or place of business, he shall inform the nearest relation of the person over phone, if any, or through a messenger within one hour of bringing him to the police station.
- (7) He shall allow the person arrested to consult a lawyer of his choice if he so desires or to meet any of his nearest relations.
- (8) When such person is produced before the nearest Magistrate under section 61, the police officer shall state in his forwarding letter under section 167(1) of the Code as to why the investigation could not be completed within twenty-four hours, why he considers that the accusation or the information against that person is well-founded. He shall also transmit copy of the relevant entries in the case diary BP Form 38 to the same Magistrate.
- (9) If the Magistrate is satisfied on consideration of the reasons stated in the forwarding letter as to whether the accusation or the information is well-

founded and that there are materials in the case diary for detaining the person in custody, the Magistrate shall pass an order for further detention in jail. Otherwise, he shall release the person forthwith.

- (10) If the Magistrate releases a person on the ground that the accusation or the information against the person produced before him is not well-founded and there are no materials in the case diary against that person, he shall proceed under section 190 (1) of the Code against that police officer who arrested the person without warrant for committing offence under section 220 of the Penal Code.
- (11) If the Magistrate passes an order for further detention in jail, the Investigating officer shall interrogate the accused, if necessary, for the purpose of investigation in a room in the jail till the room as mentioned in recommendation B (2) (b) is constructed.
- (12) In the application for taking the accused in police custody for interrogation, the investigation officer shall state reasons as mentioned in recommendation B (2) (c).
- (13) If the Magistrate authorizes detention in police custody, he shall follow the recommendations contained in recommendation B(2) (c)(d) and B (3) (b) (c)(d).
- (14) The police officer of the police station who arrests a person under section 54 or the Investigation Officer who takes a person in police custody or the jailer of the jail, as the case may be, shall at once inform the nearest Magistrate as recommended in recommendation B(3)(e) of the death of any person who dies in custody.
- (15) A Magistrate shall inquire into the death of a person in police custody or in jail as recommended in recommendation C (1) immediately after receiving information of such death.

In view of the above discussion, the Rule is disposed of with a direction upon the respondent Nos.1 and 2 to implement the recommendations made above within six months. All the respondents are also directed to implement the directions made above immediately.”

In another case *Saifuzzaman (Md) VS. State and others*,<sup>17</sup> the learned Judges of the High Court Division of the Supreme Court, SK Sinha J and Sharifuddin Chakladar J gave the following guidelines to the government for elimination of harassment of the citizens:

- (i) The police officer making the arrest of any person shall prepare a memorandum of arrest immediately after the arrest and such officer shall obtain the signature of the arrestee with the date and time of arrest in the said memorandum.
- (ii) The police officer who arrested the person must intimate to a nearest relative of the arrestee and in the absence of the relative, to a friend to be suggested by the arrestee, as soon as practicable but not later than 6(Six) hours of such arrest notifying the time and place of arrest and the place of custody.
- (iii) An entry must be made in the diary as to the ground of arrest and name of the person who informed the police to arrest the person or made the complaint along with his address and shall also disclose the names and particulars of the relative of the friend as the case may be, to whom information is given about the arrest

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<sup>17</sup> 56 DLR (2004) 324.

and the particulars of the police officer in whose custody the arrestee is staying.

- (iv) Copies of all the documents including the memorandum of arrest, a copy of the information or complaint relating to the commission of cognizable offence and a copy of the entries in the diary should be sent to the Magistrate at the time of production of the arrestee for making the order of the Magistrate under section 167 of the Code.
- (v) If the arrested person is taken on police remand, he must be produced before the Magistrate after the expiry of the period of such remand and in no case he shall be sent to the judicial custody after the period of such remand without producing him before the Magistrate.
- (vi) Registration of a case against the arrested person is sine-qua-non for seeking the detention of the arrestee either to the police custody or in the judicial custody under section 167(2) of the Code.
- (vii) If a person is produced before a Magistrate with a prayer for his detention in any custody, without producing a copy of the entries in the diary as per item No. (iv) above, the Magistrate shall release him in accordance with section 169 of the Code on taking a bond from him.

- (viii) If a police officer seeks an arrested person to be shown arrested in a particular case who is already in custody, the Magistrate shall not allow such prayer unless the accused/arrestee is produced before him with a copy of the entries in the diary relating to such case.
- (ix) On the fulfillments of the above conditions if the investigation of the case cannot be concluded within 15 days of the detention of the accused under section 167(2), the Magistrate having jurisdiction to take cognizance of the case or with the prior permission of the Judge or Tribunal having such power can send such accused person on remand under section 344 of the Code for a term not exceeding 15 days at a time.
- (x) The Magistrate shall not make an order of detention of a person in the judicial custody of the police forwarding report discloses that the arrest has been made for the purpose of putting the arrestee in the preventive detention.
- (xi) It shall be the duty of the Magistrate before whom the accused person is produced to satisfy that these requirements have been complied with before making any order relating to such accused under section 167 of the Code.

The above two judgments make it clear that the accused is neither to be tortured or harassed. Government should follow the directives of the Supreme Court in the above two cases to uphold criminal justice.



may accept the court's guidelines, civil society must be more active towards that. In order to determine how far the recommendations are implemented, human rights defenders must play a vital role in monitoring arrests, investigation and prosecution procedures.<sup>18</sup> However, government (Respondent) filed an appeal on 10 May 2003 in the Appellate Division for staying the ruling of High Court Division. After the hearing, the Appellate Division passed stay order and the directions of the HCD remain unimplemented. It is submitted, if the stay order is vacated and directions made by the HCD are implemented, this will definitely be a giant step forward to protect the human rights in Bangladesh.

Women and children are the weaker section of the community in Bangladesh. Besides violation of human rights under sections 54, 167 and 344 of the Cr. PC, human rights of women and children are also violated through trafficking, rape, physical torture, forced labour etc. Human rights of woman and children will be discussed in the next chapter. Trafficking in women and children, violation of modesty of women, acid throwing are common in Bangladesh; these will come under discussion in the following pages.

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<sup>18</sup> Human Rights in Bangladesh, 2002, Ain O Salish Kendra. P.171(2003).

## CHAPTER SEVEN

### HUMAN RIGHTS OF WOMEN AND CHILDREN IN BANGLADESH

#### 7.1 INTRODUCTION

Women and children are comparatively physically weaker class in the society than men and on that account they are very often become the victims of violation of human rights by males. Though there are sufficient number of national and international laws including the constitution of Bangladesh for the protection of human rights but still the male dominated culture appears to absolve the perpetrators of guilt while a weak law enforcement allows them to escape punishment in most of the incidents.<sup>1</sup>

Like many women and children around the globe, women and children in Bangladesh have had to face violations to their human rights year after year. These acts of violence, both public and domestic, include trafficking, rape, gang-rape, acid-burning, physical torture, forced labour, forced prostitution, camel jockeying etc. Rape of women and children is an ordinary phenomenon in Bangladesh. Even a child of two and a half years of age and a woman of fifty years of age are not spared by the rapists. Housewives, girls of different ages also become the victims of acid burning. Acid burning, a heinous act, was not known in Bangladesh even twenty five years ago. Besides, the culture of gang rape is of recent origin which some times causes death. Garment workers and

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<sup>1</sup> Human Rights in Bangladesh 1999 (Ain O Salish Kendro) P.77 (2000).

domestic help frequently become the victims of torture. Of all the above violations, trafficking in women and children is the most alarming offence committed by the traffickers for less risky earning.

Convention on the Rights of the Child,<sup>2</sup> the Prevention of Repression against Women and Children Act,<sup>3</sup> Penal Code,<sup>4</sup> Children Act<sup>5</sup> etc, international and national laws have been framed specially to safeguard the rights of women and children who need special care for the protection of their human rights.

## 7.2 TRAFICKING IN WOMEN AND CHILDREN

Trafficking in children and women includes all acts involved in the capture, acquisition, recruitment and their transportation within and across national borders with the intent to sell, exchange, or use for illegal purposes such as prostitution, servitude in the guise of marriage, bonded labour or sale of human organs by means of violence or threat of violence.<sup>6</sup>

Trafficking in women and children is the worst violence against them. Recently trafficking in women and children from Bangladesh has increased tremendously. Trafficking has been defined as- "Trafficking is the recruitment, transportation, transfer, harboring or receipt of any child by means of threat or use of force or other forms of coercion, of abduction, of fraud or deception of

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<sup>2</sup> This Convention was adopted and opened for signature, ratification and accession by General Assembly under Resolution no.44/25 of 20 November 1989. It came into force on 2<sup>nd</sup> September 1990 in accordance with Article 49. Bangladesh ratified this Convention on 3<sup>rd</sup> August 1990.

<sup>3</sup> The Prevention of Repression against Women and Children Act, 2000 (Act No. VIII of 2000). This Act has replaced the Women and Children. (Special provision) Act, 1995 ( Act No. XVIII of 1995) by section 34.

<sup>4</sup> The Indian Penal Code, 1860 ( Act No. XLV of 1860) has been adapted in Bangladesh and is in force.

<sup>5</sup> The Children Act 1974 ( Act No. XXXIX of 1974).

<sup>6</sup> State of Human Rights Bangladesh 1999. Coordinating Council for Human Rights in Bangladesh (CCHR) p. 98 (2000).

the abuse of power or of a position of vulnerability or giving or receiving of payments or benefits to achieve the consent of having control over another person.”<sup>7</sup> This definition should not only concentrate on the movement aspect, but also should encompass the outcomes of trafficking. These outcomes include commercial sexual exploitation, illegal adoptions and camel jockeying. Broadly speaking, trafficking is the transport, sale or purchase of women and children for profit, and for any other consideration like prostitution, bonded labour, begging, sexual enslavement and even for polygamy within the country or abroad.

During the last ten years (1991-2000) 2 lakh women have been trafficked from Bangladesh to our neighboring countries including India. Of them, one lakh and sixty thousands trafficked to India only. 14% of the total number of prostitute in Kolkata are Bangladeshi.<sup>8</sup> According to another report, every year four thousand women and children are trafficked to Pakistan, India and Arab countries.<sup>9</sup> According to another report, 20% of the child prostitutes in India are from Bangladesh and Nepal.<sup>10</sup> According to State Department of the U.S.A., 2.5 lakh women who are compelled to be prostitutes in the U.S.A. are from South-East Asia and more than twenty thousand women and children are being trafficked from Bangladesh each year.<sup>11</sup> According to another source, among thirty lakh prostitutes in India, three lakh are from Bangladesh.<sup>12</sup>

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<sup>7</sup> National Plan of Action against the Sexual Abuse and Exploitation of Children including Trafficking, Ministry of Women and Children Affairs, Bangladesh, May 2002.

<sup>8</sup> The Daily Khobarer Kagoj, 14 November 2000; The Daily Star, 7 November 2000.

<sup>9</sup> The Daily Bhorer Kagoj, 10 September 1996.

<sup>10</sup> The Financial Express, 5<sup>th</sup> January 1996.

<sup>11</sup> The Daily Juganthor, 24 January 2000; Country Reports on Human Rights Practices 2002 (USA) Web site: < <http://www.State.Gov/g/drt/rls/hrrpt/18309.htm> >.

<sup>12</sup> The Daily Prothom Alo, 6 December 2000.

It is, in fact, very difficult to find out the accurate statistics of trafficked out women and children from Bangladesh. But it is a reality that a significant number of children are trafficked within the country and across the borders.<sup>13</sup> Variation in statistics arises due to the fact that different news media including human rights NGOs collect information from different sources. Besides, many incidents remain unreported due to unawareness, social impediments etc. The activities of traffickers are usually intensified in borders like Teknaf, Ramu, Ukhia and Cox's Bazar thana of the border of Cox's Bazar District. The borders of Jossore, Satkhira, Rajshahi and Chapai Nawabganj Districts are also used as trafficking route.<sup>14</sup>

According to Regional Representative of International Organization for Migration (IOM) Bangladesh, trafficking in women and children continued to grow world wide as a most lucrative business treating them as commodities in a multi-billion dollar global industry dominated by highly organized criminal groups.”<sup>15</sup> IOM reports that each year between seven lakh to twenty lakh women and children are trafficked globally for exploitative purposes. It makes an annual business of about ten to twelve billion USD. Smuggling of people is less risky than smuggling of drugs and weapons. Over the 1993-1997 period, Bangladesh National Women Lawyers Association (BNWLA) estimated that 13220 children were trafficked out Bangladesh of whom 4760 were later rescued from traffickers.<sup>16</sup> Trafficking of women and children results in gross violation of

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<sup>13</sup> State of Human Rights Bangladesh 1999. ( CCHRB) P. 94 ( 2000).

<sup>14</sup> Ibid.

<sup>15</sup> The Daily Independent, 6 September,2002.

<sup>16</sup> Salma Ali: “*Interlink between trafficking in Women and Children and HIV/AIDS: The Globalization, perspective*”, Human Rights and Globalization(ed), P. 198( 2003).

their human rights including the rights to live with dignity, right to movement and self-determination and the right to justice.<sup>17</sup>

The following statistics show the trend of trafficking in women and children from Bangladesh.<sup>18</sup>

Year-wise child and women trafficking in from Bangladesh (1991-2002)

Table-1

Year	Number of women and children trafficked
1991	6,530
1992	5,681
1993	4,547
1994	4,264
1995	3,089
1996	4,757
1997	14,551
1998	10,457
1999	8,600
2000	6,981
2001	8,000
2002	683

<sup>17</sup> Salma Ali: "Interlink between trafficking in Women and Children and HIV/AIDS: The Globalization, perspective", Human Rights and Globalization, P. 198( 2003).

<sup>18</sup> State of Human Rights Bangladesh 1999, P.93,107(2000); The Daily Jono Kantha, 8 March 2000; Human Rights in Bangladesh 2002, P. 245(2003).

**Some other statistics regarding trafficking are cited below:<sup>19</sup>**

- (i) 13,220 children were trafficked out of Bangladesh in the past 5 years (1995-1999),
- (ii) 3,00,000 Bangladeshi children work in the brothels of India;
- (iii) 4,700 children rescued from traffickers during 1995-1999;
- (iv) 2,00,000 Bangladeshi children work in Pakistani brothels;
- (v) 45,000 women and children trafficked to Pakistan yearly and
- (vi) 1000 child trafficking cases were recorded during the period 1990-1995.

From the above statistics, though there is variation, it is established that a significant number of women and children are trafficked out from Bangladesh each year. Trafficking in is a gross violation of human rights and some times trafficked persons are deprived from justice. Some recent incidents of trafficking are stated below in order to see how this heinous act is committed.

**7.2.1 Case studies on trafficking**

- (a) On 29 July 2004, 15 women and children were rescued from a local hotel of Cox's Bazar, the southern district of Bangladesh. Of the 15 victims, there was a baby of 1 year and six months age. The victims were gathered there with the intention of trafficking in. On secret information, police arrested six traffickers who are the citizens of Myanmar (Burma).<sup>20</sup> A case has been filed under the Prevention of Repression against Women and Children Act.

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<sup>19</sup> State of Human Rights Bangladesh 1999 PP100-101(2000).

<sup>20</sup> The Daily Inquilab, 4 August 2004.

(b) Another incident of trafficking was reported in a news media that a boy of five years named Mubeen Qasim was trafficked to UAE and he was used there for camel jockeying. He received injury by falling from the camel.<sup>21</sup>

(c) Seventeen girls and boys were rescued from a hotel of Nawabpur, Dhaka. All of them were brought from Cox's Bazar with a false hope of job in Saudi Arabiya in the month of September, 1998. Nine persons including three women were arrested for alleged involvement in trafficking.<sup>22</sup>

(d) Another very recent incident of child trafficking stated by the news media is that a boy aged eleven years named Liton, son of Jalaluddin, a rickshaw-puller, was abducted by a gang from Gazipur Bazar of Gazipur District when he was going to his work place. He was made unconscious by applying chemical substance in his nose. He was brought to an unknown hilly place surrounded by forests. They used to torture him when he would cry to meet his parents. It was a forest place of Cox's Bazar District which he came to know later on. The boy reported that he was kept confined in a house for two years along with about 150 more children. The abductors planned to trafficking them abroad. The boy came to know by overhearing that they would be trafficked abroad very soon. He then planned to flee and accordingly in one night he somehow managed to escape from the house. He ran and swam for two hours and then he met some fishermen who helped him with food and money. By bus the boy reached his village home 'Gongadas' under Kurigram District. The boy reported to the correspondent that at least 300 children from across the

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<sup>21</sup> The Bangladesh Observer, 7 September 1998.

<sup>22</sup> The Daily Bangladesh Observer, 5 October 1998.



country were gathered there for trafficking when he fled from there.<sup>23</sup>

Trafficking in Bangladesh is a profitable and less risky illegal business.

(e) 18 women were rehabilitated by Bangladesh Rehabilitation Center for Trauma victims (BRCT) with the help of Noagong Human Rights Development Association (NHRD). These women were trafficked out to India at different times in 1998 through borders of Kolaroa of Satkhira District and Sharsha of Jessore District. Their age is between 16 to 55 years. They were engaged in forced labour at Mumbai of India. Indian Police arrested them and sent to jails. After three and a half months imprisonment, on 26 February 1999 they were pushed back to Bangladesh through Maldah District of India. Police arrested them at the border of Noagoan District. By order of the court, they were sent to safe custody at Noagoan jail. They are: Nurjahan (26), Sayera Khatun (32), Halima (32), Asiya Khatun (22), Saharun (28), Selina (16), Parul (18), Fulmoti (21), Sufiya Khatun (22), Porison Nesa (33), Salma Akhtar (18), Monira Khatun (30), Hira (20), Nargis (25), Sahela (25), Sufiya (28), Joytun (55) and Rowshanara.<sup>24</sup>

Bangladesh National Women Lawyers' Association (BNWLA), an NGO working for protection of human rights, (established in 1999) and Center for Women and Children Studies (CWCS), another NGO working for human rights have identified the following major causes of trafficking in women and children:<sup>25</sup>

(i) Enticement for a better marriage or employment;

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<sup>23</sup> The Daily Star, 7 September 2004.

<sup>24</sup> Human Rights Fact-Finder, April Issue, 1999, P.15.

<sup>25</sup> State of Human Rights Bangladesh 1998(CCHRB), PP. 99-100(2000).

- (ii) Lack of shelters for girls in distress;
- (iii) Inadequate government policies in favour of children;
- (iv) Lack of social security;
- (v) Inefficiency of the law enforcement agents and their corruption;
- (vi) Lack of acknowledgement by the government of the practice of prostitution;
- (vii) Releasing of young girls from safe custody and handing over to improper guardians;
- (viii) Child marriage, polygamy, incompatible marriages;
- (ix) Demand for dowry;
- (x) Frustration in love;
- (xi) Complicated, expensive and time consuming judicial system for victims of child trafficking;
- (xii) Extreme poverty and
- (xiii) Non-registration of child domestic help with the employment exchange department.

The State Department of the USA, in its "Trafficking in Persons Report 2004" (TIP), blamed the Government of Bangladesh for not complying with the standard for elimination of trafficking and for not making significant efforts to do so.<sup>26</sup> The Penal Code 1860 provides punishment of seven years of imprisonment or more and fine for kidnapping, abduction, slavery, forced labour, rape, wrongful confinement, selling and buying minors for prostitution. The Prevention of Repression against Women and Children Act 2000(Act No.

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<sup>26</sup> The Daily Star, 8 August 2004.

viii of 2000) provides under section 5 that if any person is accused of trafficking any woman abroad or bringing any woman from abroad or selling or buying any woman for prostitution or unlawful or immoral act or giving her in rent or transferring her for repression or for any other reason, he/she will be sentenced to death or life imprisonment or maximum 20 years and minimum 10 years of Rigorous Imprisonment and fine.

Section 6 of the Act also provides the same punishment of the perpetrators as stated under section 5 of the Act for commission of offences against children including trafficking. Besides, Bangladesh is a party to (a) Trafficking Convention 1949, (b) Convention on Rights of the Child 1989 (c) SAARC Convention on Prevention and Combating Trafficking in Women and Children for Prostitution 2002. Though there are international, regional and national laws to combat trafficking, it persists because judiciary and law enforcement institutions have failed to systematically implement and enforce anti-trafficking laws effectively. Few traffickers are apprehended. Police collusion and bribery are often cited by anti-trafficking activists as a major part of the problem. The lack of sufficient cross-boarder cooperation compounds the enforcement problem.<sup>27</sup>

In the year 2003, 17 traffickers were prosecuted in Bangladesh, but in Nepal 8 persons, in Pakistan 11 persons and in Srilanka 7 persons were prosecuted.<sup>28</sup> In the month of August, 2004, two Tribunals in Dhaka sentenced three people to life for trafficking 3 children and two women to Dubai.<sup>29</sup> The

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<sup>27</sup> The Daily Star, 11 January 2004.

<sup>28</sup> The Daily Star, 8 August 2004.

<sup>29</sup> Ibid.

victims were taken back with the help of the High Commissioners of both countries. Besides the government's effort, some NGOs are working relentlessly for the repatriation of trafficked out women and children. BNWLA, one of them, has prepared a draft bi-lateral agreement between the government of Bangladesh and that of India on trafficking in women and children. This would help smooth repatriation, extradition or extra territorial prosecution, prevention and rehabilitation of trafficking victims in both the countries. It has been appreciated by the Ministry of Women and Children Affairs, Government of Bangladesh.<sup>30</sup> This organization has been working to address trafficking and playing significant role in rescuing the trafficked women and children.

Many other NGOs and community based organizations have also been working to address the trafficking through prevention efforts, research, documentation, awareness creation, data collection, networking, cross boarder collaboration, rescue, rehabilitation, legal enforcement and legislative reforms. Actions Against Trafficking and Sexual Exploitation of Children (AATSEC), a national anti-trafficking network, for example, has been working to link NGOs and government agencies by establishing a resource centre for disseminating data and to provide technical support to grassroots organizations. Over the last three years (2001-2003) a common, unified umbrella programme has been established to combat the trafficking problem with the cooperation of NGOs and others including the Government.<sup>31</sup>

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<sup>30</sup> Salama Ali, *op.cit*, P.200.

<sup>31</sup> Country Reports of Human Rights Practices 2003 (U.S.A.). Website: <[http:// www. Star. Gov/g/ drl/rls/hrrpt/2003/27944.htm](http://www.State.gov/g/drl/rls/hrrpt/2003/27944.htm)> Accessed on first July 2004.

As it is observed that trafficking in is a growing concern for Bangladesh and other South Asian countries, the active cooperation of these governments is a must to combat the problem effectively.

### 7.3 RAPE AND THE VIOLATION OF HUMAN RIGHTS

Rape is another form of violence against women and girls who become the victims of this offence almost unhindered. In some occasions they fall victims of gang rape by the perpetrators causing death. Rape is not only committed by the civilians but also law enforcement officials commit this heinous crime. All cases are not reported due to intimidation by the perpetrators and also due to the fear of social stigma. This view has been endorsed in the judgment of Justice Badrul Haque in *Amin vs. Bangladesh* case.<sup>32</sup> He observed, “A woman who has been raped undergoes two crisis, one the rape and the other the subsequent investigation and trial. A victim of a sex crime has to undergo certain tribulations. These begin with treatment by the police and continue through a male dominated criminal justice” In Bangladesh the number of rape is 33 times higher than in Nepal, where 0.3 percents are victims of rape.<sup>33</sup>

Rape in Bangladesh is a punishable offence. It has been defined under section 375 of Bangladesh Penal Code (Act No. XL V of 1860) which came into force on 6 October, 1860. It has been defined as. “A man is said to commit ‘rape’ who except in the case herein after excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions-

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<sup>32</sup> 51 DLR (1999) 154.

<sup>33</sup> Human Development Report in South Asia, 2001, P.14.

First- Against her will.

Secondly-Without her consent.

Thirdly-With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly. - With her consent, then the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly- With or without her consent when she is under sixteen years of age.

Explanation. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception-Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.”

It is, therefore, not rape under this section, if a man has illicit intercourse with an adult woman with her consent. Only sexual intercourse without free consent of the woman amounts to rape. Submission of her body under the influence of fear or terror is no consent. Consent, therefore, must be conscious consent with the knowledge of the act involved.<sup>34</sup>

The punishment of rape has been stated as, whoever commits rape shall be punished with imprisonment for life or with imprisonment of either descriptions for a term which may extend to ten years, and shall also be liable to fine...”.<sup>35</sup> The punishment seems to be insufficient, because it fails to decrease the number of commission of rape in Bangladesh, rather statistics show that it has been increased adding gang rape. Of course, a separate law, known as the

<sup>34</sup> Zahirul Haque, The Penal Code. Dhaka 1991, P.830.

<sup>35</sup> Section 376 of Penal Code, 1860 ( Act no. XIV of 1860).

Prevention of the Repression against Women and Children Act has been legislated providing sever punishment than Penal Code for commission of rape or consequential death after rape.<sup>36</sup>

It is to be noted that Islam prescribes only death punishment for a married fornicator or a fornicatress and scourging of 100 stripes for unmarried persons when illegal sexual intercourse takes place with or without consent.<sup>37</sup>

The following statistics show the number of violence committed against children and women:<sup>38</sup>

**Table-2**

Year	Number of Rape	Killed after rape	Suicide after rape
1994	285	not available	not available
1995	651	not available	not available
1996	262	not available	not available
1997	1336	not available	not available
1998	2959	not available	not available
1999	3504	not available	not available
2000	3140	not available	not available
2001	3623	95	3
2002	1350	114	12
2003	1336	142	17
2004	886	116	13

<sup>36</sup> Section 9(1) and 9(3) of the Act make Provisions for death punishment or regorious imprisonment for life and monetary fine for rape and consequential death after rape.

<sup>37</sup> Al-Quran (Sura Noor) 24:2; Shahih Al- Bokhari, vol.vi, P.161(1982).

<sup>38</sup> The Daily Ittefaq, 16 October 2002 The Daily Bhorer Kagoj, 7 March 2003;The Weekly Purnima, 19 January 2000; The Jonokantha, 20 July 1999; The Jonokantha, 11 April 2004; 'Preventive cell of Woman Torture' under the Ministry of Women and Children Affairs, Government of Bangladesh; Daily Stanr, 13 March, 2005.

Reports on Rape committed in 2002<sup>39</sup> are shown below:

**Table-3**

Type of Rape	Total	Rape with Murder	Case filed		
				Safe custody	Arbitration
Attempt	164	4	53	1	6
Rape	607	27	320	7	29
Gang rape	509	39	299	10	21
Rape by law enforcers	10	not available	5	not available	not available
Rape other than the above types	114	79	32	not available	not available
Total	1404	149	709	18	56

Infringement of rights of children and women including rape in 2003 can be seen from the following table.<sup>40</sup>

**Table-4**

Type	Violation committed	Case filed
Murder	740	402

<sup>39</sup> Ain O Salish Kendra ( Law and Arbitration Centre) bulletin December issue, 2002, P.23.

<sup>40</sup> Proshanti, a Journal of Bangladesh National Women Lawyer's Association (BNWLA) 2003 P.24; U.S. Country Reports on Human Rights Practices-2003, P.17 website, <[http:// www./ state. gov/ g/ drl/rs/ hrrpt/ 2003/27944/htm](http://www.state.gov/g/drl/rs/ hrrpt/ 2003/27944/htm)> Annual Report 2003; Bangladesh National Women Lawyers' Association (BNWLA) P.19 (2004) The age of victim of rape is between 6 years to 60 years. See The daily Inkilab, 27 October 1998.



Dowry related killing	262	166
Acid-burnt	103	8
Physical torture	204	68
Sexually harassed	38	
Attempt to rape	94	47
Rape	1456	491
Torture for Dowry	85	
Suicide due to dowry	23	5
Suicide (Reason not known)	562	–
Suicide after Rape	15	14
Gang Rape	424	282
Murder after Rape	166	132

### 7.3.1 Case studies on rape

A few incidents of rape are cited below:

- (a) Taniya, a baby of two and a half years old of village Godnail under Sidhirgonj Police Station of Narayanganj District, was raped by khokon (17), a worker on 16 January 2000. Police arrested the perpetrator after filing a case by the mother of Taniya.<sup>41</sup>
- (b) Anwara, a child of seven years old, was raped by Hazrat (25 years age) at village Jhikra of Nachol police Station, Chapai Nawabganj District at the

<sup>41</sup> The Daily Sangbad. 18 January 2000.

night of 9 January 2000. As a result of profuse bleeding Anwara died on 10 January 2000. A case was filed on the same date and the rapist was arrested.<sup>42</sup>

(c) On 19 February 2002 Mahima, a Young girl of Puthia Police Station of Rajshahi District, was constrained to commit suicide after being gang raped by four cadres and their accomplices.<sup>43</sup>

(d) On 31 August 2004 Shahnaz Begum (35 years age) of village Noagong, P.S. Dhamrai of Dhaka District while going to the house of her father along with her husband, was raped by four persons by turn by confining her husband. She was rescued when she cried for help. After wards she was constrained to commit suicide when the accusation by the society became intolerable for her.<sup>44</sup>

(e) On August 12, 2004, a baby of six years old, daughter of Uziruddin of village Kazihata, P.S. Bheramara of Kushtia District, was raped by a perverted youth named Rana (18 years old). A case was filed by the father of the victim, a poor carpenter, on 1 September 2004 when arbitration failed.<sup>45</sup>

(f) A pathetic incident of gang rape and thereafter murder was committed by the police, the three law enforcement agents. A girl named yeasmin (14 years old) was returning home from Dhaka to Dinajpur on 23 August 1995 in a night coach, "Hasna Enterprize." She was dropped at place named 'Dos mile' in the early dawn of 24 August 1995. While she was waiting there for another transport, a police patrol van came there and she was forcibly taken in the van and on way to Dinajpur she was raped by three police personnel by turn and thereafter she was thrown out of the vehicle and she died. On protest people

<sup>42</sup> The Daily Sonali Sangbad. 12 January 2000.

<sup>43</sup> Law Review, a Publication of Law Department of Dhaka University, June Issue, 17 (2002).

<sup>44</sup> The Daily Inkilab 5 September 2004.

<sup>45</sup> Ibid.

attacked police station on 26 August at 11 P.M. Police opened fire on the mob and seven persons were killed and many were injured.<sup>46</sup>

A case was filed against nine persons for rape and murder of Yeasmin. Investigation officer submitted charge sheet against 8 persons in the month of May 1996 after long investigation. Hearing of the case started at Rangpur District and Sessions Court on 21 September 1996. The court examined 46 witnesses. Mr. Abdul Matin, the learned District and Sessions Judge, found three police personnel guilty of rape and murder of Yeasmin, a fatherless and poor teen-ager. The judgement was pronounced on 31 August 1997 in a overcrowded court.

In the judgement, he awarded death sentence to the three persons-A.S.I. Moinul Haq, police constable Abdus Satter and Amrita Lal, Police van driver and the rest were acquitted. The Supreme Court, on appeal, upheld the judgement of the lower court. They prayed for life to the Honorable President of the Peoples' Republic of Bangladesh. But it was rejected. Moinul and Abdus satter's death sentence was executed on 1 September 2004 at Rangpur Central jail. Amritalal was hanged until death in the Rangpur Central Jail on 30 September 2004. This is the first time in the history of Bangladesh that law enforcing agents had been given death punishment for commission of rape and killing.<sup>47</sup>

(g) On 10 March 1998 a six year old girl was raped in a police control room near the Chief Metropolitan Magistrate Court, Dhaka by an alleged Police constable around 3 P.M. The victim's name was Tania, a motherless daughter of Fazar Ali. She lived with her father in CMM Court Premises. A Young-man

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<sup>46</sup> The Daily Jonokantho, 27 August 1995.

<sup>47</sup> The Daily Inkilab, 7 September 2004.

took her to the control room at the Court area and raped her. The General Secretary of Dhaka Bar Association took her to hospital and filed a rape case with Kotwali Police Station.<sup>48</sup>

(h) A six year old girl was allegedly raped by a 13 year old neighbour, Milon in Kotwali Thana under Mymensing District on 27 May, 1998. The accused was not arrested as he fled the scene.<sup>49</sup>

(i) On 29 August, 2004 Rahela, a garment worker was raped by two perpetrators at Jahangir Nagor University Campus and thereafter they cut the throat of the victim and threw acid on her body. They left the scene by leaving her in a lonely place near Mir Mosharrof Hossain Hall. She was rescued after three days and was admitted to Dhaka Medical College Hospital at Ward No. 35. After twenty six days struggle with life she died on the night of 23 September 2004 at 3 A.M.<sup>50</sup>

(j) On 17 July, 2002, Trisha, a student of class four of Gaibandha police station, was stalked by three young men for evil design while she was going home from school. In order to save herself she jumped in a pond and drowned. These three men did not assist for her rescue. They were caught by members of the public and handed over to the police. On complaint filed to the Gaibandha police station, the Investigation officer submitted charge sheet against them under section 302/304. The three were convicted and received death sentence by the Gaibandha Sessions Court.<sup>51</sup>

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<sup>48</sup> Annual Report 1998, Bangladesh Rehabilitation Centre for Trauma Victims, p. 12 (1999).

<sup>49</sup> Human Rights in Bangladesh 1998 ; Ain O Salish Kendra (ASK) , p. 177 (1999).

<sup>50</sup> The Daily Inkilab, 9 September 2004; The Daily Star, 25 September 2004.

<sup>51</sup> The Daily Star, 1 October, 2004.

(k) Another incident of child rape by a police is as follows: Laily Begun (11) was raped by Golam Mostofa, a police constable of Shabuzbagh police station who lived at 158/3 Shantibagh residence under Motijhil police station, Dhaka District. He raped Laily from 15 April 1998 to 18 April 1998 with the help of his wife Bilkis Begun who was the colleague of Jahanara, the mother of the victim. The police arrested the rapist and his wife after intervention of BRCT.<sup>52</sup>

The number of violence against women and children in the form of rape has been increasing due to lack of proper and quick implementation of the punishment. Besides, absence of exemplary punishment may be regarded as one of the reasons for perpetration of such crime by the civilians as well as police.

#### **7.4 HUMAN RIGHTS AND ACID ATTACKS**

In Bangladesh acid violence is a heinous and cruel form of crime which is committed mostly against women. It is a major subject of national concern and is being reported frequently by media throughout the year. Acid attack is a horror which must not be adhered in any civilized society. Only 25 years back, acid violence virtually was not known to this country. Acid attack causes severe pain, disfigurement, disabilities or death. Acid attacks usually take place due to rejection of offers of marriage or sexual relations, family disputes or dowry refusals. Acid throwing causing harm and injury is a serious crime for which death punishment or life imprisonment and monetary fine up to one lakh taka

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<sup>52</sup> Annual Report 1998(BRCT) P.77, see also section 5.4 case no.(e) .

has been provided in the Prevention of Acid Crime Act, 2002.<sup>53</sup> Besides, government legislated 'Acid Control Act 2002. But in spite of these laws, the rate of acid attacks on women and girls has not shown any sign of decrease. The Act calls for the death penalty for perpetrators, but these provisions seem to be counter product, because courts are loath to pass such harsh sentences.<sup>54</sup> Under the Acid Control Act, the import, production, storage, sale or use of acid without a license is a punishable offence. But the mechanisms prevalent to regulate importation, preparation and sale of the acid used in these attacks are inadequate.<sup>55</sup> Due to absence of strong monitoring or inspection process, acid is available in grocery and stationary shops, motor-garages and other easily accessible places.<sup>56</sup>

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<sup>53</sup> Section 4 of the Act ( Act No. 2 of 2002) prescribes death Punishment or rigorous imprisonment for life including fine taka not more than one lakh if any body causes death or makes an attempt to cause death to any child or woman by using any burning substance, e.g. acid.

<sup>54</sup> Human Rights in Bangladesh 2002 (ASK), p. 205 (2003).

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

The following statistics reveal the year-wise acid attacks on women and girls.<sup>57</sup>

**Table-5**

<b>Year</b>	<b>Number of acid attacks</b>
1996	80
1997	117
1998	178
1999	192
2000	181
2001	159
2002	274
2003	243
2004	240
	<b>Total 1097</b>

The victims of acid attacks are mostly between 12 to 25 years of age.

The following statistics bear the testimony to the fact.

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<sup>57</sup> State of Human Rights Bangladesh 1999, PP.158-159 (2000); Human Rights in Bangladesh 2002,P.204 (2003); Annual Report 2003, (BNWLA), P. 20(2004); Daily Ittefak, 16 October 2002 and U.S country Reports on Human Rights Practices for 2000, P.28 (2001);Daily Star, 13March, 2005 The information collected from the above sources for different years.

Acid attacks in 2002<sup>58</sup>

Table-6

Cause of violence /Age	0-12	13-24	25+	No mention of age	Total	Case filed
Family dispute	2	5	27	5	39	11
Rejection of love	-	13	5	1	19	8
Refusal to marriage proposal	1	9	4	-	14	5
Rejection of sexual relation ship	-	2	9	3	14	3
Demand for dowry	-	9	7	5	21	4
Enmity	1	1	1	2	5	
Refusal to give permission to second marriage	-	1	3	-	4	-
Demand for acknowledgement of paternity	-	1		1	2	-
Attempted rape or after		1	2	3	2	
Dispute over land	1	2	8	1	12	4
No mention of reason	9	33	53	34	129	26
<b>Total</b>	15	78	115	54	262	63

Number of acid attacks from January to December 2002 is 262, number of case filed is 63 and 2 persons died as a result of such attack .According to

<sup>58</sup> Bulletin, Ain O Salish Kendra. December Issue 2002, P.24.



Acid Survivors Foundation (ASF), the total number of victims of acid attack is 1772 during the period of five years (2000-2004), published in Noya Diganta on 16.12.2004. The number may be more than that, because there are many incidents of acid attacks which remain unreported due to intimidation, social stigma, Police harassment, poverty, unawareness.

#### **7.4.1 Case studies on acid attack**

(a) On 26 August, 1999, Asma 14 year old girl and a domestic worker at Bogra town was abducted by five perpetrators while she was going to her village home to visit her parents. The abductors took her in a hut and brutally gang raped her. When she threatened to go to the police, they threw acid on her and set fire to her clothes. Later she was admitted to Bogra Muhammad Ali Hospital. But she was shifted to Dhaka Medical College Hospital where her skin began to rot.<sup>59</sup> The Acid Survivors Foundation (ASF) took up the case.

(b) On 1 March 2003 at 11 P.M. Rubia Begum, a house wife, became the victim of acid attack. This happened at village parkhazira, P.S. Moniranpur, Jessore District. Out of enmity, some next neighbours threw acid on her and as a result her right shoulder, right hand and right knee became seriously burnt. She was sent to Acid Survivors Foundation for better treatment.<sup>60</sup>

An Acid Survivors Foundation (ASF) was set up by concerned organizations on 12 May 1999 to provide legal and social support to the victims of acid attacks. It provides support and treatment for acid survivors including

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<sup>59</sup> Prothom Alo, 2 December 1999.

<sup>60</sup> News Letter, BNWLA, June Issue, P.7.

rehabilitation.<sup>61</sup> Its function is also to identify probable causes for the attacks and to improve existing facilities in order to prevent further acid violence. Though there are number of laws to prevent and combat acid attacks, a heinous offence, but still the offence has not been eliminated due to the absence of proper monitoring as well as lack of effective implementation. Very few perpetrators of the acid attacks are prosecuted. In 2002 in two cases, death sentences were awarded to two persons for acid attacks. On 10 January, 2002 an Additional District and Sessions Judge, Dinajpur, awarded death sentence to Shawkat Hossain under section 5 of the Prevention of Repression against Women and Children Act for acid attacks on a 14 years old girl. In another similar case, a Special Tribunal on violence against women and children in Pirozpur District sentenced Ibrahim Baksh death sentence.<sup>62</sup>

## **7.5 HUMAN RIGHTS AND DOWRY VICTIMS**

Dowry is one of the major causes of violence against women. In spite of prohibition against taking of dowry by the bridegroom from bride, violence associated with it continues in Bangladesh unhindered. The social trend of taking and giving dowry is very common in rural areas. There is hardly any marriage without dowry, specially in the poorer community. Failure to meet dowry demand is the prime reason for martial violence which sometimes lead to death of the wife. Parents or guardians reportedly marry off their young daughters / wards to avoid paying higher dowry prices in future. Thus dowry is a

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<sup>61</sup> Human Rights in Bangladesh 1999, op.cit, P. 85 (2000)

<sup>62</sup> Human Rights in Bangladesh 2002 Ain O Salish Kendra, P. 206, (2003).

curse for the poor girls. The government enacted law prohibiting the payment of dowry under the Dowry Prohibition Act, 1980. The payment of dowry by the girl's side and taking of the same by boy's side is punishable offence.<sup>63</sup> Torture, murder, and attempted murder are common consequences for failure to meet the demand of dowry.

The following statistics show the violence against women for dowry.<sup>64</sup>

**Table-7**

<b>Year</b>	<b>Number of Violence</b>	<b>Killed</b>
1995	92	–
1996	77	–
1997	177	109
1998	239	145
1999	253	193
2000	181	181
2001	151	151
2002	190	190
2003	261	261

<sup>63</sup> The Dowry Prohibition Act, 1980 (Act No. XXXV of 1980). Section 3 prescribes imprisonment up to five years or fine of taka five thousand or both for giving or taking of dowry.

<sup>64</sup> Country Reports on Human Rights practices 2003, P. 17 (2004); <Website <[http:// www. State. Gov/g/ drl/rls/ hrrpt/2003/ 27944./htm](http://www.State.Gov/g/drl/rls/hrrpt/2003/27944.htm)> accessed on 1 August 2004; Human Rights in Bangladesh 2002, P.236(2003); Human Rights in Bangladesh 1995, P. 131 (1996); Human Rights in Bangladesh 1998, P.143(1999); Human Rights in Bangladesh 1999 P. 80 (2000). (Information collected from the above sources, because all information are not available in a particular source).

### 7.5.1 Case studies on dowry violence

(a) Rofiqul Islam, a Lecturer of Chilahati Government College, Nilphamari married shahin sultana, daughter of Late Dr. Abdul Quddus, 2 and a half years ago. At that time he was given taka 2 lakh as dowry. Rofiqul further claimed taka one lakh as dowry and he tortured his wife brutally. Police arrested him on 25 September 2004.<sup>65</sup>

(b) Ripon (30 years) allegedly strangled his wife Mammi (20 years) in the early hours of 30 October 1999. At that time she was pregnant of seven months. Ripon received taka 1,38,000.00 in cash and some furniture including a television and a refrigerator as dowry from his in-laws. He demanded a further taka 20,000.00 from Mammi's family, and he and members of his family often assaulted her to realize their demand. Ripon, his mother and sister were charge sheeted on 24 November 1999. Narayangonj District and Sessions Judge ordered the death sentence against husband, mother-in-law and sister-in-law of Mahmuda Sultana Mammy for strangling her for dowry.<sup>66</sup>

(c) On May 14, 2002, a Special Tribunal Judge in Jessore sentenced a man to death for beating his wife, kohinoor, to death in January 1997 over a dowry dispute.<sup>67</sup>

(d) On July 2, 2002 a District Court in Kishoreganj sentenced Motiur Rahman to death for beating his wife, Hosne Ara, to death in June 1994 for her

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<sup>65</sup> The Daily Inkilab, 25 September 2004.

<sup>66</sup> Prothom Alo, 7 December 1999; Sarker Ali Akkas, Independence and Accountability of Judiciary, Dhaka. P.259 (2004).

<sup>67</sup> Country Reports on Human Rights Practices-2002 (2003). Website: <http://www.state.gov/g/drl/rsl/hrrpt/1809.htm>.

is that on 1 July 2002 K.M. Rashid allegedly beat his wife Noorjahan Akhter Bakul following Bakul's family's failure to meet Rashid's demand for dowry. Being seriously injured she rushed to Dhaka Medical College Hospital where she died.<sup>69</sup>

## 7.6 CONCLUSION

Violence against women and girls in the form of trafficking rape, acid attacks, dowry victims etc. are being committed routinely. In spite of sufficient penal provisions to curb the perpetrators, the commission of such type of crime is a great concern to the government as well as to the human rights activists and NGOs. The NGOs not only suggest the government ways and means to combat such violation of human rights of women and children but they are also taking different measures in the forms of legal aids, financial aids, medical aids and the rehabilitation programme for the victims. The Government is benignly urged to adopt drastic measures as are provided in different penal laws and should relentlessly deal with the criminals. Any leniency will redouble the perpetration crimes against women and children. Penal laws and Criminal Procedure Code may be amended, if necessary, to award speedy and exemplary punishment for commission of offence against women and children. Besides, proper monitoring cell may be formed in each district for quick disposal of the case. Further, cross-country efforts are to be strengthened so that trafficking in women and children may be effectively stopped.

National and international Non-Government Organizations (NGOs) are playing a laudable role in Bangladesh in upholding human rights. Along with Transparency International and Amnesty International there are other national NGOs working in Bangladesh in promoting and protecting human rights. So in the next chapter the role of NGOs will be presented; their service will be shown in tabular forms; and some cases handled by some of them will also be discussed.

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<sup>69</sup> Ibid.

## **CHAPTER EIGHT**

### **HUMAN RIGHTS AND THE ROLE OF NON- GOVERNMENTAL ORGANIZATIONS (NGOs)**

#### **8.1 INTRODUCTION**

Non-Governmental Organizations (NGOs), both national and International, are now-a-days playing a laudable role for the protection and promotion of human rights. NGOs bring up particular cases of alleged human rights violations to the agenda of the UN human rights bodies, primarily the Commission on Human Rights and its sub-commissions. NGO submissions and oral interventions today represent an influential source of information on human rights violations. The NGOs use information as their main weapon. A simple proposal to place a specific country on the human rights agenda for violations triggers off fierce diplomatic and Political activity. NGO information is a check on human rights violations; resolution of the Sub-Commission and Commission blacklisting countries where there are serious and widespread human rights violations acts against the development of those countries in economic international transactions. It is a reality that the violation of human rights is committed both at home and abroad by the executives and civilians. But the respective governments sometimes fail to combat both types of violators. NGOs have come forward to the aid of the victims of violation of human rights both legally and financially. They are taking all necessary steps for the protection and promotion of human rights.

NGOs have been defined by different bodies differently. But the World Bank has given an acceptable definition as follows: “NGOs are private organizations that pursue activities to relieve suffering, promote the interest of the poor, protect the environment, provide basic social services or undertake community development”.<sup>1</sup> NGOs can be classified in respect of their activities as to development, religious, secular, service delivery, participatory-private or public.<sup>2</sup> In spite of difference in activities, the common functions they discharge are that they mobilize the mechanisms of shared values and expectations. Besides, the other common activities performed by the NGOs include strong grassroots links, field-based development expertise, the ability to innovate and adopt participatory methodologies and tools, promoting gender issues, flexibility and cost effectiveness.<sup>3</sup>

The development of an international norms, institutions and procedures for the protections of human rights has been running simultaneously with the origin of non-governmental international organizations working in the field of human rights.<sup>4</sup> The NGOs received formal institutional recognition by the UN in its Charter which states that “The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence.”<sup>5</sup>

Human rights NGOs have had an important role in the evolution of an international system in the protection of human rights. They perform their

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<sup>1</sup> Nekesh Amit, “NGO’s as civil society organizations”, The daily star, 17 July 2004.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Thomas Buergenthal, International Human Rights, USA, 1995, p.318.

<sup>5</sup> UN Charter, Article 71.

functions to the fulfillment of the purpose in consideration of their resources, their area of operation and also the nature of their membership. Some NGOs are working for world-wide promotion of human rights, while others are working regionally or in specific countries. Amnesty International, the International League for Human Rights, the International Commission of Jurists, the Watch Committees, the Lawyer Committee for Human Rights, Transparency International etc. are a few well known NGOs which have world-wide interests.<sup>6</sup>

In recent past, some NGOs have made significant contributions to strengthening the reporting systems established under various human rights treaties like the International Covenant on Economic, Social and cultural rights, International Covenant on Civil and Political Rights,<sup>7</sup> the International Convention on the Elimination of All Forms of Racial Discrimination(CERD),<sup>8</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),<sup>9</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>10</sup> and Convention on the Rights of the Child (CRC)<sup>11</sup> Under these treaties, states parties are required to submit periodic reports stating actions they have taken to comply with their obligations. These reports are examined by special committees created under these

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<sup>6</sup> Thomas Buergenthal, *op.cit.*, P.320.

<sup>7</sup> The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights have been ratified by Bangladesh on 5<sup>th</sup> October 1998 and 7<sup>th</sup> September 2000 respectively. Website: <[http:// un.treaty. un. Org](http://un.treaty.un.Org)> Accessed on 23.7.2003 (Copy on file with the author).

<sup>8</sup> This Convention (CERD) was ratified by Bangladesh on 11 June 1979. See website, *op. cit.*

<sup>9</sup> Bangladesh has ratified this convention ( CAT) on 5 October, 1998. See website, *op.cit.*

<sup>10</sup> This Convention (CEDAW) was ratified by Bangladesh on 6 November 1984. See website, *op. cit.*

<sup>11</sup> It (CRC) has been ratified by Bangladesh on 3 August 1990. See website, *op. cit.*



conventions. The representatives of the concerned states parties are asked regarding the contents of their reports by members of the committee in order to find out the reliable fact. This situation, actually, prompted a number of NGOs to prepare their own country reports which help the members of concerned Committee to probe the veracity of the reports.<sup>12</sup> Thus the reports prepared by the NGOs regarding human rights of particular country help the International Committees to form a neutral idea.

## **8.2 INTERNATIONAL NGOs AND BANGLADESH**

Of the important NGOs, Transparency International (TI) and Amnesty International (AI) have their Bangladesh Chapters. They are working for the promotions and protection of human rights globally.

### **8.2.1 Transparency International (TI):**

It is the only international non-government organization, devoted to combating corruption, brings civil society, business and government together in a powerful global coalition. Through its International secretariat and more than 85 independent national chapters around the world, it works at both the national and international level to curb the supply and demand of corruption. In the international arena, it raises awareness about the damaging effects of corruption, advocates policy reform, works towards the implementation of multilateral conventions and subsequently monitors compliance by governments, corporations and banks. Similarly, at the national level, it also works to increase levels of accountability and transparency, monitoring the performance of key

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<sup>12</sup> Thomas Buergenthal, *op. cit.*, P.323.

institutions and pressing for necessary reforms neutrally.<sup>13</sup> TI, a Berlin-based graft watching NGO, identified Bangladesh as the most corrupted country. Out of 146 countries, Bangladesh, according to its report, topped the list for the fourth time as corrupted country securing only 1.5 points out of 10.<sup>14</sup>

Corruption abets the infringement of human rights directly or indirectly. Police, for example, by taking bribe, distort fact, delay in submitting charge sheet and intimidates the victims which indirectly jeopardizes the rights of persons or party concerned. In the like manner, sometimes bribe is taken for giving employment in government, semi-government or autonomous bodies depriving the deserving candidates. This is tantamount to the violation of human rights. Professor Muzaffar Ahmad, Head of the Bangladesh Chapter of Transparency International, Bangladesh, said that Bangladesh government should take proper measures to combat corruption.<sup>15</sup> Bangladesh government rejected the TIB report.

### **8.2.2 Amnesty International (AI)**

It is another NGO which is a world-wide movement of people who campaign for the protection and promotion of internationally recognized human rights. Its target is of a world in which every person enjoys all the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. With this end in view it has undertaken research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from

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<sup>13</sup> Transparency International, website: <[http:// www. Transparency. Org](http://www.Transparency.Org)> Accessed on 28.10.04.(Copy on file with the author). See also The daily Independent, 21 October, 2004.

<sup>14</sup> The Daily Independent, 21 October, 2004.

<sup>15</sup> Ibid.

discrimination. Amnesty International seeks to disclose human rights abuses accurately, quickly and persistently. It also urges all governments to uphold the rule of law and to ratify and implement human rights standards.<sup>16</sup>

Amnesty International publishes annual report on the state of human rights in Bangladesh. In its report on Bangladesh AI expressed its concern regarding failure of successive governments to curb serious human rights violation from the use of legislation and wide spread practices in the law enforcement and justice system which violate international human rights standards. These violations include torture, death in custody, arbitrary detention of government opponents and others, excessive use of force leading at times to extra-judicial executions, death penalty and acts of violence against women. As regards the methods of torture, the report pin points that it includes beating with rifle butts, iron road, bamboo sticks, or bottles filled with hot water so they do not leave marks on the body, hanging by the hands, rape, “water treatment” in which hose pipes fixed into each nostril and tapes turned on full for two minutes at a time, the use of pliers to crush fingers and electric stocks.<sup>17</sup>

Successive governments, according to the report of Amnesty International Bangladesh, have failed to prevent torture, despite provisions in the constitution of Bangladesh and the obligation to provide effective protection against torture to the people in the country under treaties which Bangladesh has

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<sup>16</sup> Amnesty International, Website:<[http:// web. amnesty. Org/report 2004](http://web.amnesty.org/report2004)>Accessed on 28.10.04. (Copy on file with the author).

<sup>17</sup> The Daily Star, 8 June 2003.

ratified.<sup>18</sup> Bangladesh though one of the signatories to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but still torture has not been eliminated from it.

Amnesty International also pointed out with great concern that the misapplication of section 54 of the Code of Criminal Procedure which enables the Police to arrest any one without a warrant of arrest and keeping them in detention up to 24 hours on vaguely formulated grounds and the torture on detainees begins from the moment of arrest.<sup>19</sup> The report of AI also expressed its great concern regarding the detention of thousands of people arbitrarily each year under the Special Powers Act, 1974.<sup>20</sup> The reports published by TI and AI are reliable.

The Amnesty International suggested several recommendations for the improvement of human rights. It recommended that the Special Powers Act should be repealed without delay. Another suggestion was that section 54 of the Code of Criminal Procedure should be amended to avoid unnecessary arrest. Further recommendation of AI was that other Bangladeshi laws should be amended in order to reflect the provisions of the international human rights instrument to which Bangladesh is a party.<sup>21</sup>

Amnesty International observed neutrally the human rights conditions in Bangladesh and suggested to the government specific recommendations with the end in view that the human rights of people can be protected and promoted. The government of Bangladesh should think it with objectivity and implement the

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<sup>18</sup> The Daily Star, 8 June 2003.

<sup>19</sup> Amnesty International's Report on Bangladesh 2003. See, The Daily Star, 8 June 2003.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

recommendations to ensure human rights. The role of AI is definitely laudable which has been working throughout the globe including Bangladesh aiming at the improvement of human rights conditions.

### **8.3 NATIONAL NGOS IN BANGLADESH**

Most of the national NGOs in Bangladesh started working during and after the liberation war of Bangladesh in 1971 to help deliver relief and rehabilitation materials to the war affected people. Like international NGOs around the globe, Bangladeshi NGOs have also graduated step by step. These NGOs are non-profit making organizations.

National NGOs in Bangladesh work under the legal framework formulated by the NGO Affairs Bureau established by the government of Bangladesh. The NGO Affairs Bureau and the Foreign Donations Act ensure the legality of NGOs to operate. The provisions of licenses to operate and permission to receive foreign funding regulate the operation of NGOs. Besides this, NGOs themselves have developed a method of self-regulation by adopting 'Code of Ethics' under the supervision of the Association of Development Agencies Bangladesh (ADAB).<sup>22</sup> NGOs have their grassroots network through which they play an important role in all national disasters of the country and they also reach to the poor people before the government agency and thus the acceptability of the NGOs to the common people as well as to the government has increased.

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<sup>22</sup> The Daily Star, 17 July, 2004.

Some NGOs of Bangladesh are basically working for the protection of human rights by rendering legal and financial assistance. There are a large number of NGOs working regionally or centrally. Attention has been devoted to study those few human rights NGOs that have nation-wide programme for offering legal and financial aids to the victims of violation of human rights indiscriminately. This study evaluates the activities of four NGOs which have both legal and financial programme for which they have been originated. Of the large number of human rights NGOs working in Bangladesh, the role of some of them are credible. They are not only extending to the victims of violation of human rights all sorts of assistance including legal and financial aids but also taking preventive measures so that human rights are not violated.

Now it is devoted to evaluate the activities of the following human rights NGOs which are making relentless efforts to uphold the rights of victims of violation of human rights in criminal justice:

- 1) Bangladesh National Women Lawyer's Association (BNWLA)
- 2) Bangladesh Legal Aid and Services Trust (BLAST)
- 3) Bangladesh Rehabilitation Centre for Trauma Victims (BRCT)
- 4) Ain O Salish Kendro (ASK)

### **8.3.1 Bangladesh National Women Lawyers' Association (BNWLA)**

BNWLA was established in 1979 with the objective to provide services for the establishment of human rights of women and children in the country. It has been working successfully to combat violence against women who are deprived, abused and battered. It has, in fact, devoted its full attention to ensure

promotion of rights of women and children and establish justice in the society, for ensuring the human rights of women and children has become a burning issue in Bangladesh. This organization firmly holds the view that the protection alone is not sufficient to ensure justice rather concurrent preventive measures can help to reduce the severity and future risk of violence. BNWLA has, therefore, organized its programme in an integrated way so that it can work for the protection, prevention and rehabilitation of the victims of various forms of violence.<sup>23</sup>

The objectives of BNWLA are to organize women to develop their status through awareness, to improve women and children's domestic, social, legal and economic status, to ensure justice for all and combat violence against women and children, to create equal opportunities and equal rights for all women and children in Bangladesh, to take measure for removing all forms of discriminations against women and to establish working relationship with the law enforcing agents, local elected bodies, civil society and also with other organizations working for the rights of women and children.<sup>24</sup> Since its inception it has been providing legal aid, providing rescue, release, repatriation, protection and prevention for the victims of violation of human rights. Besides, it has been providing rehabilitation and reintegration support to the survivors.

BNWLA has 27 local level clinics throughout Bangladesh for providing legal support to the victims. There are also two divisional offices of the organization to co-ordinate with the clinics. Women can receive free legal

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<sup>23</sup> Annual Report 2004, Bangladesh National Women Lawyers' Association (BNWLA), P.2 (2004).

<sup>24</sup> Ibid.

assistance in combating violence and other abuses from these clinics. During the year 2003, BNWLA received 6566 complaints regarding maintenance, restitution of conjugal rights, dowry and cruelty to women. Of the total complaints received, it has successfully mediated 3080, 145 mediated with the help of its partners and 154 complaints were mediated on the survivor's own initiative.<sup>25</sup> In 2002, it received 3108 complaints which are less than the year 2003. The reasons behind the receipt of more complaints by BNWLA are identified as (a) the number of violation has increased, (b) people have become more aware and (c) above all, public trust on BNWLA has been enhanced. During the period 2003, it filed and conducted 774 court cases in addition to 1036 previous pending cases. It also filed and conducted 19 public Interest Litigation suits during this period. BNWALA filed PILS on behalf of a group of citizens to uphold their interest. In 2003 it filed a PIL suit which was as follows:<sup>26</sup>

BNWLA along with BLAST and ASK filed a writ petition in the High Court Division against Health Directorate, Mohakhali, Dhaka for inviting applications from Bangladeshi nationals of concerned districts for temporary appointments to fill 3999 vacant posts of 'Health Assistant'. The invitation for application had a clause saying that all female candidates should be married if they wanted to apply for the posts and it was required that they should enclose a photocopy of the marriage certificate and 'Nikahnama' along with the application. BNWLA feels that this is a discriminatory requirement and against

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<sup>25</sup> Annual Report 2003 BNWLA, P.4 (2004).

<sup>26</sup> *op.cit* P.5.



the rights provided in the constitution. Such an arbitrary requirement has given rise to the situation whereby some unmarried female candidates who are otherwise qualified and competent to apply for the post, resorted to obtaining fake Nikahnama to fulfil the mandatory requirement of marriage. In response to this petition the High Court issued a Rule Nishi upon the respondent 'to show cause as to why the impugned appointment and why they should not be directed to delete the aforementioned condition'.

In response to that Rule Nishi the government (Health Directorate) appealed to the Supreme Court. Afterwards considering the public interest, both parties sat on a meeting and agreed on the conditions that the clause 11 of the circulation would be deleted and a fresh appointment notice would be circulated. The government agreed to take necessary steps to withdraw the case from the Supreme Court and afterwards the petitioners would withdraw the case from the High Court Division. In 2003 BNWLA rescued/released 118 victims from different confinements.<sup>27</sup>

This organization has also been working in the field of repatriation. BNWLA repatriated 36 trafficked persons from Kolkata, Delhi, Mumbai and Pakistan during the period 2003. BNWLA repatriated a 2 years old child named 'Arifa' from India.<sup>28</sup>

Besides legal support, BNWL also extends rehabilitation to support the survivors. It has established three shelter Homes named "proshanti-1" proshanti-2 in Dhaka and another at Rajshahi. During the period 2003, a total of 512

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<sup>27</sup> Annual Report 2003 BNWLA, P.6 (2004).

<sup>28</sup> *op.cit* P.7.

survivors were provided with basic survival support in those Shelter Homes.<sup>29</sup> BNWLA, therefore, has been making sincere efforts to protect and promote human rights by taking both protecting and preventive measures.

### 8.3.2 Bangladesh Legal Aid and Services Trust (BLAST).

The need for establishing an organization for Providing legal aid and its proposed structure was first tabled at the National Conference of Lawyers held in 1992 under the auspices of Bangladesh Bar Council. Later in pursuance of that deliberation, the Bangladesh Legal Aid and Services Trust (BLAST) was formed and registered as a non-profit earning organization on 29 May 1993 and it was registered on 11<sup>th</sup> December 1993 under the Foreign Donations Regulation Ordinance, 1978 and also registered with the NGO Affairs Bureau on 11<sup>th</sup> December 1993.<sup>30</sup> It is worthy of mention that upto 1999, 1404 NGOs were registered with the NGO Affairs Bureau, but only a limited number of them are directly involved with protection and promotion of human rights.<sup>31</sup> Since its inception in 1993, the goal of BLAST has been to open up the judicial system to the disadvantaged in Bangladesh society.

The main objectives of Bangladesh Legal Aid and Services Trust (BLAST) are as follows:<sup>32</sup>

- I. To ensure that the operation of the legal system promotes access to justice;

<sup>29</sup> Annual Report 2003 BNWLA, PP.9-10.

<sup>30</sup> Annual Report 1995, Bangladesh Legal Aids and Services Trust ( BLAST), P.7 (1996).

<sup>31</sup> Annual Report 1999, *op.cit*, P.vii (2000).

<sup>32</sup> Annual Report, 2002-2003, *opcit*, P.14 (2003).

2. To provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen or person by reasons of economic or other disabilities;
3. To administer a Trust Fund for establishing and maintaining legal aid and services units to be supported by the grants from the Trust;
4. To establish legal aid/ assistance and human rights protection units in the Bar Associations and in different localities of the country including rural areas;
5. To promote the use of alternative dispute resolution mechanisms i.e. mediation and compromise for amicable settlement of disputes that do not require adjudication by courts.
6. To conduct special training programmes and courses for lawyers, mediators, human rights activists and others;
7. To co-ordinate the works of the units with other institution, including NGOs working in related fields.

BLAST realized that effective and efficient activities cannot be carried on without the co-operation of other similar NGOs. With this end in view BLAST has been working with NGOs and other organizations as partner organization, some of which are;

Ain O Salish Kendra (ASK), Association of Development Agencies in Bangladesh (ADAB), Bangladesh Bar Council, Bangladesh National Women Lawyers Association (BNWLA), Bangladesh society for Enforcement for Human Rights, Coordinating Council for Human Rights in Bangladesh, Institute of Development of Human Rights in Bangladesh, Madaripur Legal Aid,

Association, Odhikar, Save the Children (UK), The Royal Danish Embassy, The Asia Foundation, The Royal Norwegian Embassy and UNICEF.

BLAST has been working through 18 divisional and district units. It has also three Legal Aid Clinics:- two at (1) Gopibag, (2) Mohammadpur, in Dhaka; and another at (3) Hathazari, Chittagong. These units are working for disposing of family disputes, second marriage, dowry, cruelty to women, trafficking, repatriation and Public Interest Litigation free of cost. Deprived and disadvantaged people are becoming more aware about their rights due to the role of BLAST and they are receiving free services from this NGO. The services rendered by BLAST are shown below year-wise:

**Table-1**

Year	Complaints received, disposed of through cases filed, mediation etc.	
1995 <sup>33</sup>	(i) Cases filed	83
	(ii) Cases carried from previous year	26
	(iii) Cases disposed of	34
	(iv) Cases pending	75
1996 <sup>34</sup>	(i) Complaints received	1596
	(ii) Cases filed	1037
	(iii) Cases carried over from previous years	197
	(iv) Cases disposed of	446
	(v) Cases in favour of clients	226
	(vi) Cases against clients	113
	(vii) Cases withdrawn	107
1997 <sup>35</sup>	(i) Cases filed	1452

<sup>33</sup> Annual Report 1995 (BLAST), P.15 (1996).

<sup>34</sup> Annual Report 1996 (BLAST), P.17 (1997).

<sup>35</sup> Annual Report 1997(BLAST) P.22(1998).

	(ii) Cases carried over from previous years	1483
	(iii) Total cases handled	2935
	(iv) Cases settled	760
	(v) Cases settled through Mediation	172
	(vi) Cases under process of settlement through mediation	247
1998 <sup>36</sup>	(i) Complaints received	3490
	(ii) Complaints carried over from previous years	484
	(iii) Cases filed	2250
	(iv) Cases mediated	226
1999 <sup>37</sup>	(i) Complaints received	4526
	(ii) Cases carried over from previous years	688
	(iii) Total Cases filed	2829
	(iv) Mediated	320
January 2000 to March 2001 <sup>38</sup>	(i) Complaints received	6003
	(ii) Complaints carried over	1050
	(iii) Cases settled through mediation.	543
	(iv) Cases filed	3464
April 2001- March 2002 <sup>39</sup>	(i) Complaints received	4447
	(ii) Complaints carried over from previous year	1599
	(iii) Cases settled through mediation	782
	(iv) Total cases field	2157
	(v) Taka recovered through mediation	2614364.00
	(vi) Cases decided	2225

<sup>36</sup> Annual Report 1998 (BLAST) P.23 (1999).

<sup>37</sup> Annual Report 1999(BLAST), P.43 (2000).

<sup>38</sup> Annual Report January 2000-March 2001(BLAST), P.3 (2002).

<sup>39</sup> Annual Report April 2001- March 2002 (BLAST), P. 26 (2002).

April 2002 to March 2003 <sup>40</sup>	(i) Complaints received (ii) Cases carried over from previous years (iii) Cases filed (iv) Cases settled through mediation	5756 1552 3221 997
April 2003 to March 2004 <sup>41</sup>	(i) Complaints received (ii) Pending complaints from previous years (iii) Total cases (iv) Cases settled through meditation (v) Cases filed (vi) Cases pending for mediation	8867 1585 10452 1518 4042 1676

BLAST primarily has been assisting the victims of violation of human rights by extending legal aids with the intention of restoration of their infringed rights. The contributions of BLAST can be evaluated from the following cases which it handled.

### **Case Studies:**

(a) 12 year old Shazedul Islam was arrested by the Tangail police on 14.03.96. He was a student of class seven of Khash Shahzani M.A. Karim High School, Tangail. An order for his detention for one month under the Special

<sup>40</sup> Annual Report April2002 March 2003 (BLAST), P. 28(2003).

<sup>41</sup> Annual Report April 2003-March op.ct.P. 4(2004).

Powers Act, 1974 was issued on 18.3.96 and the detention order was extended for another three months on 17.3.96. The detention order was again extended for another two months on 17.7.96. For BLAST, advocate Jaglul Haider Arif filed a writ of *habeas corpus* on behalf of Shazedul Islam and his detention was declared illegal by the High Court Division and he was released from detention.<sup>42</sup>

(b) Md. Zabed was a minor boy of 10 years. He came of a hawker family and helped his father hawker business. Sutrapur Police Dhaka district arrested him showing his age as 19. He was produced before the court of Metropolitan Magistrate on the next day. He was served with an order of detention for a period of 30 days under the Special Powers Act, 1974. The news of minor Zabed's detention was published in the daily Muktakantha on 28 December 1998 which drew the attention of BLAST. It filed Writ Petition No. 4191/98 before the High Court. In the writ petition BLAST challenged the detention order of a 10 years old minor Md. Zabed. The High Court had issued a rule. It also ruled why appropriate legal action shall not be taken against the respondent Md. Alauddin Miah, a sub-inspector of Sutrapur Thana. It was alleged that the sub inspector out of grudge and ulterior motive had wrongfully detained the minor boy by falsely showing to be 19.<sup>43</sup>

(c) The Daily Prothom Alo published a report on 4 January 2003 that about 400 Children were detained in Dhaka Central Jail for more than 2 years. The report

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<sup>42</sup> Annual Report 1996 op .cit P.2. (1997).

<sup>43</sup> Annual Report 1998 (BLAST), P.27 (1999).

also stated that two human rights organizations namely *Odhikar* and *Save the Children*, UK, had compiled a list of 1200 children who were kept with dangerous criminals in violation of the provision of Children Act, 1974. According to the report, police arrested these children before political events like hartal (strike) on the pretext of stopping picketing and violence. They were implicated under the Arms Act 1878, Narcotics Control Act, 1990, Explosive Substance Act, 1908 and other Penal law. Police did not mention the age of the minor accused in the First Information Report and also delayed submitting reports before the court regarding the age of minor accused. As a result, they remained detained in jail as general prisoners. The report also highlighted the living condition of those accused children, including their food, accommodation, and medical facilities etc. that were insufficient and miserable. It also focused on the miserable conditions of female prisoners and overcrowding and dilapidated conditions of Dhaka Central Jail. This news and reports influenced BLAST to step into this matter. BLAST took this matter seriously and jointly filed a suit before the High Court Division of the Supreme Court on 9 February, 2003 with Ain-O-Shalish Kendra and another Human Rights Organization.

Honorable Mr. Justice Amirul Kabir Chowdhury and Mr. Justice Md. Nazamul Huq disposed of the matter by giving the following directions:<sup>44</sup>

1. The law enforcing agencies, prosecuting agencies and Legal Aid Committees take immediate steps for trial of all juvenile accused by the juvenile courts.

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<sup>44</sup> Annual Report April 2002-March 2003 (BLAST) pp.58-59.



2. That the Government considers making prayers to the court concerned for discharging the juvenile accused under sections 82 and 83 of the Penal Code and also consider withdrawal of juvenile accused from prosecution under section 494 of the Code of Criminal Procedure in appropriate cases.
3. The local Legal Aid Committees formed by the Government are instructed to move the courts for bail of the juvenile accused.
4. Juvenile accused in jail must be kept in isolation from other prisoners and be transferred to correctional homes and other approved homes with utmost expedition.

Bangladesh Legal Aids and services Trust (BLAST) along with other organizations make a remarkable contribution to combat abuse of powers of law enforcement agents by their misuse of sections 54 and 167 of the Code of Criminal Procedure by filing a writ petition to High Court Division of the Supreme Court of Bangladesh On 29, 1998 in public Interest Litigation (writ No. 3806/1998). In this case, *BLAST V. Bangladesh*,<sup>45</sup> the learned Judges delivered a land mark judgment ordering the government to amend Sections 54,167 of Cr. P.C. and other related laws so that law enforcement agents cannot violate human rights by misusing those provisions of law. This credit, it is firmly observed, goes mainly to BLAST, which took initiative for amending those laws which are contrary to human rights.

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<sup>45</sup> 55 DLR 363(2003).

### 8.3.3 Bangladesh Rehabilitation Centre for Trauma Victims (BRCT):

Bangladesh Rehabilitation Centre for Trauma victims (BRCT) is also another human rights NGO which was founded in February, 1992 with the initiative of Mr. Akram Hassain Chowdhury, a leading and successful human rights activist, as a follow up to the national workshop on “Human Rights: Rehabilitation of Trauma victims” held in Dhaka on February 25-26, 1992 with a promise to assist the torture survivors of the country. BRCT was initially registered with the Department of Social Welfare, Government of Bangladesh as a non-profit making, non-governmental organization (NGO) in 1993. Later, it got registered with the NGO Affairs Bureau of Bangladesh in 1996.<sup>46</sup>

Since its inception, BRCT has been providing services to the hundred of torture victims through physical and mental treatment and also legal services for justice and economic integration so that they can come back to social life. It started working by offering medical treatment for a number of torture victims on 25 February, 1992 with the exclusive support from foreign medical experts. Now BRCT is the only organization of its kind working for the torture victims in Bangladesh. It has been serving mankind specially who are mal-treated by the law enforcement agents like police, BDR, Army from its very origin. BRCT extends co-operation to the tortured without discrimination as to race, sex, religion, age etc.

The main objectives of BRCT are as follows:<sup>47</sup>

- i) to provide supports for rehabilitation of torture victims;

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<sup>46</sup> Annual Report 2003 Bangladesh Rehabilitation Centre for Trauma Victims (BRCT), P.1.

<sup>47</sup> Annual Report 2003 Bangladesh Rehabilitation Centre for Trauma Victims (BRCT), P.1-2.

- ii) to provide legal aid to defend rights and compensation of the victims of torture;
- iii) to ensure physical and mental soundness of the torture survivors and their families through Integrated Rehabilitation Approach (IRA);
- iv) to initiate advocacy efforts to prevent torture;
- v) to prefer appeals to the government for urgent legal actions against perpetrators of crime;
- vi) to conduct fact-finding mission on the occurrences of torture for ensuring supports for Trauma victims and punishment for perpetrators;
- vii) to organize seminars, workshops and training for the professionals to disseminate knowledge and experience relating to rehabilitation and treatment of torture survivors;
- viii) to establish Documentation and Information centre to ensure exchange and dissemination of human rights violations;
- ix) to form Task Force against Torture (TFT)- a local body of professionals at district level for creating awareness against torture and to stop torture before its occurrence and
- x) to organize campaign and lobbying for reformation of laws related to torture and ratification of International human rights instruments.

BRCT has also chalked out some strategies to achieve the objectives for which it has been originated. The strategies are:<sup>48</sup>

- i) to prevent torture by educating, informing and rousing the conscience of people, especially the professionals;

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<sup>48</sup> Annual Report 2002 (BRCT), P.2. (2003).

- ii) to ensure community participation at the local level against torture;
- iii) to restore the mental and physical capacity of the victims through a multidisciplinary approach and
- iv) to re-integrate the torture victims to his/ her own world by rehabilitation works.

BRCT has divided its activities into two major parts- preventive and curative. "Prevention is better than cure" is its belief. On the basis of this principle, it has started a program known as Task Force against Torture (TFT) formed at district level. This is consisted of local physicians, lawyers, journalists, teachers and social workers. They work for the protection against torture as well as human rights violations. The members of the TFT facilitate treatment for the victims of torture locally. They arrange workshop, seminars, discussion meeting for general awareness about torture and human rights violations and take initiative to stop future incidents of any such violations.

BRCT takes curative measures through an Integrated Rehabilitation Approach (IRA). These measures include medicine, Physiotherapy, Psychotherapy, counseling, home visit, legal assistance and social rehabilitation program. The activities of<sup>49</sup>

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<sup>49</sup> Annual Report 2000 (BRCT) ,P.1 (2001); Annual Report 2001(BRCT) P.1 (2002); Annual Report 2002(BRCT),pp.1,4,29,34,36,38,47.(2003) ;Annual Report2003 (BRCT) PP.1,8-16 (2004; Annual Report 1998 (BRCT)PP.1-2,5 (1999).

BRCT for the period 2000-2003 are shown below:

Table-2

Year	Medical Treatment	Physiotherapy	Psychotherapy	Legal aid	Legal counseling	Case filed	Home visit	Rehabilitation by giving economic aid	Interest free loan	Task Force against Torture (TFT) formed	Fact-finding mission	Jail visit	Economic assistance	Mobile treatment	Referred to medical centre
2000	582	180	59	20	73	7	22	10	10 persons	-	89	11	-	-	53
2001	515	198	176	22	53	-	31	25	10 persons	Jessor, Bogra, Meherpur, Nao goan	24 (center); 26(outside centre)	11	23		
2002	493	369	84	22	44		43	32	10 persons taka tk124000/=	Rangpur, Rajshahi, Kurigram Gaibanda Cox'sbazar Satkhira	31 (centre) 40(outside)	10	-	-	47
2003	627	334	261	11	26		33	26	8		70	-	-	34	

Result of fact-finding can be seen from the following case.

### Case study <sup>50</sup>

Young businessman, Quamrul Hasan Maula (30), was released from jail having support from BRCT after a fact-finding mission. The police of Detective

<sup>50</sup> Annual Report 2001(BRCT) P.49 (2002).

Branch (DB) arrested him from West Rampura area of the City (Dhaka) following a traffic signal at about 8:00.P.M on June 8, 2001. Following a press report on June 10, the fact-finding team of BRCT conducted fact- finding on 11, 12, 13. and on 14 June, 2001.BRCT lawyers pleaded for his bail to the Metropolitan Magistrate Court, Dhaka. The BRCT lawyers succeeded to convince the Court to grant bail for him on the same day. The eyewitnesses informed the fact-finding team that druggist Maula was helping wedding party vehicles of his family to cross the road. Civil dressed Sub Inspector of DB police drove his motorbike over right foot of Maula at that time. Maula, inhabitant of the locality, asked him to stop there. The police punched on his face. Maula became excited for this attitude of the man. He asked the man about the reason of driving motorbike over his foot and punching on his face. The S.I. started punching and kicking on Maula. During a tussle with the S. I., Maula found a pistol on his pocket. He held off the man then and there. The policeman called another police team and asked them to beat Maula. About 6 civil dressed policemen started beating him barbarously. The business leaders and influential people tried to save the victim from the clutch of police but failed. A group of policemen took Maula in the police van beating and pulling. At night the S.I., Mahbubur Rahman beat Maula with stick, kicked on his abdomen and electrocuted. For the whole night police beat him sometimes in the office room and sometimes taking him in a microbus moving in the city. On the next morning, June 09, 2001, he was produced before the court implicating him in snatching case of Khilgaon police station. The fact- finding team rushed to the spot to provide support to the victim and his family.

BRCT believes that for prevention of torture or other human rights violations, beside government initiatives, mass awareness is essential. The members of the law enforcement agencies should respect constitution. And the constitutional provisions of torture mentioned in Article 35 (5) of the constitution of Bangladesh. Simultaneously, the professionals (journalists, doctors, lawyers and social workers) should come forward to organize massive human rights awareness program throughout the country. A day may come when human rights culture will grow up to pave the way for a torture free society.

#### **4.3.4 Ain o Salish Kendra (ASK)**

ASK was established in 1986 by a group of lawyers, social workers, journalists and development workers. The prime aim of ASK is to empower the disadvantaged group through community activism. Its functions are directed towards creating awareness of rights to negotiate for change within a democratic process. ASK was registered on 20 September, 1986 under the Societies Registration Act, 1860 and also registered on 28 June, 1993 under the NGO Affairs Bureau under Foreign Donation Regulation Ordinance, 1978. Further, it has special consultative status with UNECOSOC since 31 July, 1998.<sup>51</sup> Since its inception as a legal aid organization, ASK has been working to defend the rights of individuals. ASK, a politically neutral organization, has been endeavoring with all its sincerity to uphold human rights of the people.

ASK facilitates access to justice and gives priority to the poor and excluded, specially women, workers and working children, religious and ethnic

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<sup>51</sup> Annual Report 2003, Ain O Salish Kendra (ASK) P.9 (2004)

minorities.<sup>52</sup> It has been working to regain the lost rights of the victims through filing suit, mediation, giving shelter, legal counseling. Due to its activeness, awareness among the people about their rights has been increased and ASK has been receiving response from all quarters. The following statistics show the nature of response from the victims and steps taken by ASK.

Settlement of complaints 1998-2003.<sup>53</sup>

Table-3

Description of steps taken	1998	1999	2000	2001	2002	2003
Complaints accepted	536	887	2166	2777	4757	9076
Settled through mediation	169	472	899	1244	2276	4598
Cases conducted by lawyers	25	33	112	216	642	1128
Cases disposed of	0	13	33	81	121	284
Clinics	32	91	128	168	230	238

<sup>52</sup> Annual Report 2002 (ASK), p.9 (2003).

<sup>53</sup> Annual Report 2003 (ASK) p.24 (2004).



ASK has been working with its six partner organizations,<sup>54</sup> which are:

Mukti, (Kustia); Sirajgong Uttara Mohila Songstha; Pabna Protisruti; Welfare Efforts; Shabolomby Unnayan Shamiti and Women Development Organization, Purbodhola and sadar (Netrokona). It also runs a legal aid programme with Bangladesh Rural Advancement Centre (BRAC) in 185 rural areas in Dhaka and Rajshahi Division.

Besides, ASK has its national networks with Bangladesh Shishu Oddikar Forum (BSAF), Coalition for Urban Poor (CUP), Strategic Action Team (SAT); Samajik Protirodh Committee and Beijing Plus Five for women's Rights.<sup>55</sup> It has also international networks. ASK receives donations from:

- i) NOVIMC (Netherlands)
- ii) The Royal Norwegian Embassy
- iii) The Swedish Embassy
- iv) NETZ Germany
- v) Save the Children-Sweden
- vi) BRAC

Ask imposes more importance on legal aid programme like filing of suit and mediation. It has its Litigation unit (LIT) which files cases related to domestic disputes, human right violations, detention, Jail appeals, criminal revision and labour disputes etc, when mediation fails.

ASK has been rendering laudable service to the aggrieved persons by filing suit on their behalf under Public Interest litigation (PIL).

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<sup>54</sup> Annual Report 2003 (ASK) p.10 (2004).

<sup>55</sup> Ibid.

A brief account of PIL cases are mentioned year-wise:

In 2000, ASK took five PIL cases-<sup>56</sup>

- i) Challenging unlawful use of handcuffs on minors (writ petition No. 3176/2000);
- ii) Challenging legality of police search without warrant (writ petition No. 3539/2000);
- iii) Protection of the minority community from harassment and violence and for appropriate administrative action against perpetrators (writ petition No. 176/2000);
- iv) Challenging government's arbitrary decision for eviction of slums (writ petition No. 59/946) and
- v) Challenging the legality of fatwa (writ petition No. 5897/2000).

In 2001 ASK took the following measures to ensure the rights of the aggrieved:<sup>57</sup>

- (i) Appeared in the Appellate Division of the Supreme Court in appeal against the High Court judgment in fatwa case;
- (ii) released a Nigerian citizen named Goddi Ochondo who was in jail for five years after completion of his sentence( writ petition No. 489/2001).
- (iii) ASK sent a letter to the Chief Justice regarding the situation of 29 foreign citizens detained in jail long after completion of their sentence. High Court Division accepted the letter as petition and asked the

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<sup>56</sup> Annual Report 2000 (ASK), P.7(2001).

<sup>57</sup> Annual Report 2001 (ASK), PP. 32-33 (2002).

government for their release and send them home at government expense (Rule Nishi No. 2737/2001)

- (iv) A prisoner named Shahin was kept in jail with bar fetters. ASK challenged the jail authority for such violation of constitutional law and human rights. The High Court Division issued a show cause on the government;
- (v) ASK drew the attention of the High Court regarding over-crowdedness in the jails by a writ petition (3679/2001). High Court Division issued a show cause notice on the government;
- (vi) ASK filed a Writ Petition to the High Court Division for enforcement of safety regulations in the garment factories and demanded the accountability in case of fire from the industry, the Labour Directorate and Fire Service Department. The High Court Division directed the respondents to implement safety regulations under the Factory Rules 1979.

In 2002 ASK filed the Public Interest Litigation on behalf of the victims:<sup>58</sup>

- i) ASK filed two writ petitions. (No. 658/2002 and 1471/ 2002) to stop eviction of the people of Amtoli basti (15000 residents) and Kallanpur basti (10000 residents) respectively. High Court issued show causes to the respondents;

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<sup>58</sup> Annual Report 2002 (ASK) P.32 (2003).

- ii) ASK filed Writ Petition (No. 3621/ 2002) against arrest and torture by BDR of citizens. High Court declared such incidents of torture and arrest illegal;
- iii) ASK filed a case against trial of two minors in the same case with adults. (Case no. 241/2002). Trial Court ordered to produce the minors and transfer them to the Tongi Correction Centre and also ordered to frame separate charges against them.

Besides, ASK alone and with Bangladesh Legal Aid and Services Trust filed several Public Interest writs in 2003.<sup>59</sup> These were against forcibly eviction from Mohakhali bosti and Kallanpur Bosti; against jail custody of 400 children; against discriminatory policy of Health Directorate. In these cases the High Court gave verdict in favour of ASK.

It is, therefore, seen that like other human rights NGOs, ASK also has been rendering relentless and systematic efforts to protect human rights in Bangladesh in all possible ways.

## 8.4 CONCLUSION

Large number of NGOs are working around the globe to protect human rights. Of them, two international and four national NGOs have been selected for our discussion. It has been found in the study that these NGOs are devoted in providing different types of assistance to the victims of violation of human rights. These assistance includes legal, financial, medical shelter, mediation, rehabilitation and awareness so that the victim's infringed rights can be restored

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<sup>59</sup> Annual Report 2003 (ASK) P.33 (2004).

would get more indulgence and as such there would have been more violation of human rights. People have become more aware about their rights due to the active and sincere efforts of the NGOs. In a recent case, *Bangladesh Legal Aids and Services Trust (BLAST) and others Vs. the Government*,<sup>60</sup> the Supreme Court directed the government to bring necessary amendments of some provisions of Criminal Procedure Code, Evidence Act, Special Powers Act etc. in order to prevent misuse of powers by the executives. The Children Act 1974, Acid Control Act 2002, Dowry Prohibition Act 1980, Prevention of Acid Crime Act 2002, Prevention of Repression Against Women and Children Act 2000 etc. enacted by the government, are the outcome of several international instruments on human rights, because of government awareness and public opinion piloted by NGOs. Thus it can be said without any reservation that NGOs have played a great role to convert some International Conventions and Declarations relating to human rights into domestic laws. By creating awareness and forming of public opinion. In fact, the above domestic laws have been enacted by the government due to sincere and relentless efforts made by the NGOs.

It is, therefore, concluded from the above observation that if further NGOs emerge and play effective role, the protection and promotion of human rights in Bangladesh will be ensured. This is the expectation of all concerned.

In the following chapter the overall conclusion of this research work will be drawn wherein some recommendations will be suggested to ensure the protection and promotion of human rights in Bangladesh.

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<sup>60</sup> See, 55 DLR 363 (2003)

## CHAPTER NINE

### GENERAL CONCLUSION

#### 9.1 INTRODUCTION

Human rights are universal, indivisible, interdependent and interrelated and hence these are so inherent in human persons that they cannot survive without the presence of these rights<sup>1</sup>. On that account, protection and promotion of human rights and fundamental freedoms have become the concern of the United Nations that was established to maintain world order and security of human beings in every corner of the world<sup>2</sup>.

In dealing with human rights, international as well as national human rights provisions are analysed. Human rights received international recognition specially after the First and the Second world War. Gross violations of human rights were committed immediately before the Second World War. Violation of human rights in the form of loss of life and property during the Second World War exceeded the First World War.<sup>3</sup> These atrocities actually prompted the world opinion in the San Francisco Conference to promote respect for human rights and fundamental freedoms “for all without distinction as to race, sex, language or religion.”<sup>4</sup> The formation of the United Nations and the adoption of the Charter marked the beginning of effective protection and promotion of human rights internationally.

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<sup>1</sup> The Vienna Declaration and Programme of Action 1993, para,5

<sup>2</sup> (Dr.) Md.Rahmatullah, “Bangladesh’s adherence to international human rights instrument; A critical study. Human Rights and Empowerment(ed), P. 174(2000).

<sup>3</sup> For details, See – section I.1.

<sup>4</sup> See, Article I of the United Nations Charter.

Bangladesh is a Republic where elected government runs the administration according to its Constitution. Constitution is the highest law of the land and as such it is committed to safeguard the fundamental rights of the people.<sup>5</sup> Important international instruments on human rights specially which have been ratified by Bangladesh are evaluated and in so doing the process of implementation of those instruments of the United Nations is examined. The effectiveness and weakness of those instruments for protection and promotion of human rights are thoroughly discussed. The constitutional provisions on fundamental rights in Bangladesh and their enjoyment by her citizens are examined at length.

## **9.2 EFFECTIVENESS OF THE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS**

The important international instruments on human rights, which include UN Charter, International Bill of Human Rights,<sup>6</sup> Convention on the Elimination of All Forms of Racial Discrimination,<sup>7</sup> Convention on the Elimination of Discrimination Against Women,<sup>8</sup> Convention on Torture<sup>9</sup> and Child Convention are examined and evaluated in this work. The United Nations so far adopted more than fifty instruments concerning human rights. The Universal Declaration on Human Rights, one of the most important instruments on human rights, is not legally binding upon the member states. Nevertheless, it had a great influence upon newly born states which inserted many provisions of UDHR in their constitutions. Bangladesh inserted

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<sup>5</sup> For more details, See Sections 4.2 to 4.7.

<sup>6</sup> For more details, See chapter 2.

<sup>7</sup> Detailed discussion has been made in section 3.2.

<sup>8</sup> See section 3.3.

<sup>9</sup> For details, See section 3.3.

most of the provisions of UDHR in its constitution (part III) in the name of Fundamental Rights. Besides, after the UDHR, the United Nations adopted a number of Conventions, Declarations, Covenants some of them are binding on the States Parties.

It is found that most of the covenants do not have inter-state and individual complaint system. They have only reporting system which is not so effective to protect human rights. Only International Convention on the Elimination of All Forms of Racial Discrimination 1965, Convention against Torture 1984 and Covenant on Civil and Political Rights have their respective Committees to whom the States Parties may bring complaint<sup>10</sup>. But in other cases, there is no accountability. So in all other instruments on human rights inter-state and individual complaint system must be there so that the concerned States Parties are accountable to the respective committees of the covenants. With this aim in view, a Permanent International Human Rights Court should be established which will exercise its jurisdiction over all the States Parties concerned. Both individual and state should have access to this court which will work under the supervision of the International Court of justice.<sup>11</sup> Any aggrieved State Party or individual may have the right to appeal to the International Court of Justice. This system will enhance the accountability of the states as well as the individuals.

So a new mechanism may be introduced with a view to enforcing human rights and fundamental freedoms effectively and any violation of human rights in any State Party should be stopped irrespective of big or small, rich or poor nation.

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<sup>10</sup> For details , See section 2.3.2,3.2 and 3.4.

<sup>11</sup>Abul Bashir Md Abu Noman, "International Human Rights Law : A study of the problems of implementation," Chittagong University Studies, Vol.4,p.155.



The International Bill of Human Rights and other instruments should be implemented in letter and spirit by the State Parties. In this context the Vienna Declaration and Programme of Action adopted on 20 June 1993 at the World Conference on Human Rights may be mentioned which reaffirms the solemn commitment of all states to fulfill their obligations. Thus promotion and protection of human rights and fundamental freedoms is the first responsibility of all governments.<sup>12</sup> So protection and promotion of human rights, as enshrined in different international conventions, declarations or covenants, or other regional covenants, is only possible when each government acts sincerely.

### 9.3 PROTECTION OF HUMAN RIGHTS IN BANGLADESH

Bangladesh is a Republic where elected government receives the mandate to run the administration for five years. The prime duty of the government is to uphold the constitution which contain a number of fundamental rights for the enjoyment of the citizens. These rights are so much inherent that they cannot be illegally snatched away by any plea.<sup>13</sup>

It has been revealed from the study that every year a number of people, mostly political personalities, are detained in the jail by the use of the Special Powers Act 1974,<sup>14</sup> though freedom of movement is a fundamental rights guaranteed by the Constitution of Bangladesh. It has also been revealed from case studies that the same person had been repeatedly detained by the same Magistrate whenever he is released

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<sup>12</sup> The Vienna Declaration and Programme of Action 1993, part I.

<sup>13</sup> For details, see chapter 4.

<sup>14</sup> See Table No 1 under chapter 4

by the order of the High Court Division of the Supreme Court<sup>15</sup>. It is further revealed that this black law has been applied by successive governments since 1974 to harass the leaders and activists of opposition political parties. Sometimes the arrestee had not been produced in the court inspite of court's order but simply "vanished in the air"<sup>16</sup>This law is being used by the party in power. So it is suggested that this black law should be amended in order to prevent violation of fundamental human rights. It has been found that though there is provision for filing writ petition in the HCD of the Supreme Court for the restoration of infringed rights as have been guaranteed by our constitution, but the scope is limited for the people living out side the capital, since HCD is situated at Dhaka. Besides, poor people can not afford this. Misuse of powers by the executives and atrocities of the law enforcement agents are the prime causes of violation of fundamental rights in Bangladesh. It has also been found in the study that unless the doors of commission of violation are closed, violation of human rights will continue unhindered. It has been further revealed that the police are the main agents for the protection of the rights of the people, but they are also the prime agents to violate their rights .<sup>17</sup>

It is further observed that NGOs are playing effective role for the protection and promotion of human rights. They are extending various assistance to the victims and are creating moral pressure on the government so that it becomes conscious about its duties.<sup>18</sup> They are also creating awareness among the people. NGOs in Bangladesh are paying special attention on women and children. It is revealed that the rights of women, girls and children are violated by police, husband, traffickers,

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<sup>15</sup> See case study No (a) under section 4.4.5.

<sup>16</sup> See case study No.(c) under section 4.4.5.

<sup>17</sup> For details , see section 5.3 .

<sup>18</sup> For details , see chapter 8.

and perpetrators and sometimes by employers.<sup>19</sup> Women are also becoming the victims of acid attacks and dowry torture. To combat these two crimes, government has enacted laws prohibiting dowry and use of acid. But the desired result has not been achieved due to the absence of proper implementation of the laws. The state of human rights in Bangladesh can be understood from the report of the United States Information Service, which is as follows:<sup>20</sup>

“ The Government continued to restrict or deny many fundamental rights, and failed to prevent or punish abuses committed by others. Police committed a number of extra judicial killings, and some persons died in police custody under suspicious circumstances. Police routinely used torture, beatings, and other forms of abuse while interrogating suspects. Police frequently beat demonstrators, at times Members of Parliament (M.P.'s) . The Government rarely convicts and punishes those responsible for torture or unlawful deaths. Prison conditions are extremely poor for the majority of the prison population. Rape of female detainees in prison or other official custody is a problem. The Government continued to arrest and detain persons arbitrarily, and to use the Special Powers Act (SPA) and Section 54 of the Code of Criminal Procedure, which allow for arbitrary arrest and preventive detention, to harass political opponents and other citizens by detaining them without formal charges . A large case backlog slowed the judicial process, and lengthy pretrial detention was a problem. Attacks on journalists and efforts to intimidate them by government officials, political party activists, and others, occasionally occurred. Abuse of

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<sup>19</sup> See Table 1, 2, 3, under chapter 7 and section 7.3.1.

<sup>20</sup> Published by United States Information , Dhaka.

children and child prostitution are problems. Violence and discrimination against women remained serious problems. Some domestic servants, including many children, work in conditions that resemble servitude, and many suffer abuse. Child labor and abuse of child workers remained widespread and serious problems. Trafficking in women and children for the purpose of forced prostitution and at times for forced labor remained serious problems. Both ruling and opposition political parties and their activists routinely employed violence, causing many deaths and numerous injuries.”

Our politicians and police men are regularly hindering the protection and promotion of human rights; they being the promoters and protectors of human rights, they are working against the implementation of human rights. Peoples human rights could be saved if these law obstructers could be controlled by effective means. In the recommendations some suggestions are made to arrest the degeneration of human rights in Bangladesh.

#### **9.4 RECOMMENDATIONS**

The following recommendations are suggested to ensure the protection and promotion of human rights in Bangladesh.

(1) The directives of the High Court Division of the Supreme Court in the case *BLAST and others vs. Bangladesh* should be implemented. Concern sections 54 and 167 of Cr. P.C. sections 330,302 and 348 of Penal code should be

amended as directed by HCD. Government should form a high-powered committee to find out ways and means to implement those directives.<sup>21</sup>

(2) In order to stop misuse of power by the Magistrate, the controversial Special Powers Act 1974 should be amended. Arbitrary detention by exercising misuse of powers by the executive is against fundamental rights. So this law should be amended without delay.

(3) In most of the cases it is found that the police are directly or indirectly responsible for violation of human rights in Bangladesh. So police must be made accountable for the commission of any such violations. Following special measures are recommended for curbing the excessiveness of the police:

- (a) Necessary amendments of Police Act 1861 should be made to enhance accountability of police personnel;
- (b) A completely separate department should be established to investigate the offence committed by police, and monitoring cell should be created to supervise the activities of CID, SB and DB. Presently government has formed a committee under the chairmanship of Home Minister to that end. Its result is positive;
- (c) Provision for exemplary punishment should be made for the police personnel in case of their violation of any right of citizens;
- (d) Honest and persons of high moral standing should be recruited for appointment to the police department;
- (e) Human rights law and fundamental rights are to be included in the syllabus of police training and they should be taught by professor having

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<sup>21</sup> For details see section 6.5

vast experience and knowledge about human rights during their training in Police Academy;

- (f) It is found that sometimes police are used in Bangladesh by the ruling political party, and on that account, they cannot play a neutral role while discharging their duties. This is also one of the causes of violation of human rights by the activists of political parties. It has also been seen that each political party, specially ruling party, has its godfathers. Police become helpless to bring into book those godfathers. So both ruling party/ parties as well as opposition party should come to an agreement that they will not give indulgence to any offender or godfathers. The notorious criminal Ershad Sikdar, once a coolie and an inhabitant of Khulna City, was involved directly or indirectly with 60 murders. This was possible due to political shelter. He used to change political party with the change of government. The ruling political leaders used him as a weapon against their political opponents. So police could not take action against him. Again, some corrupt police officers also took advantage of this situation and used such privileged criminals for earning extra-legal money. It is believed that commission of offence will come down to 50% if the police are allowed to play their role neutrally and if there is no politicization of the police;
- (g) The salary structure of the police should be enhanced and made lucrative so that they cannot be involved in bribe taking. Besides, every police must submit a statement of his wealth at the time of joining to the post. After every five years and also at the time of retirement, the amount of

his wealth in his own name, in the name his relations or dependants shall be taken into account by a competent committee and excess wealth earned illegally shall be confiscated to the public treasury. If this is done, police can be debarred from taking bribe and

(h) A sense of relationship should be developed that police are friends and not foes of the people. To that effect the character of the police personnel should be changed through constant training.

(4) Separation of judiciary from the executive is the crying need of the time. So it is recommended that the 12 points directives of the High Court Division given in *Masdar vs Government of Bangladesh case*<sup>22</sup> should be implemented without delay. If these directives are implemented, misuse of powers by the Magistrates will come to a halt.

(5) Bangladesh constitution prohibits a person to be a witness against himself<sup>23</sup> but under section 167 of the Code of Criminal Procedure an accused sometimes forced to do so. Hence forced confession should be prohibited.

(6) Torture, cruel, inhuman or degrading treatment is a heinous crime which very often practiced by police, jail authority and other perpetrators. These are prohibited by both international convention and Bangladesh Constitution.<sup>24</sup> Bangladesh Government should take stern action against such violators, whether government officials or private persons and arrangement should be made to compensate the victims or their heirs by the violators.<sup>25</sup>

<sup>22</sup> 52 DLR .2000 (AD) 82.

<sup>23</sup> See, Article 35 (4) of Bangladesh Constitution.

<sup>24</sup> See, Convention against Torture, Cruel, inhuman or Degrading Treatment or punishment 1984; Article 35 (5) of Bangladesh Constitution; section 5.3.

<sup>25</sup> For details , see section 3.4.

(7) It is a long standing demand of the civil society as well as NGOs in Bangladesh that a National Human Rights Commission should be established. Establishment of human rights commission is indispensable for social, economic and political rights and for administration of justice and also for prevention of corruption. To this end a committee was formed to prepare a draft on 10 December 2001. The committee prepared and submitted the bill to the Cabinet Division for approval on 23 January 2003. Since then it has been lying there. However on a Writ Petition, the High Court Division directed the government on 14 May 2005 to form a National Human Rights Commission for the protection of human rights.<sup>26</sup> The government is, therefore, requested to form immediately National Human Rights Commission which can contribute to the protection of human rights.

(8) Women and children offenders should be sent to correction centres and not to jail, because there are allegations that women prisoners are sometimes violated in the jails. Human rights of women and children would thereby be protected.

(9) It is also recommended that in the course curriculum of school, college and university, human rights law should be included so that both students and teachers will become aware about human rights.

(10) Bangladesh has ratified important international instruments on human rights. Government should therefore be more serious as regards the implementation of those instruments.

(11) Summary trial is a remedy against huge backlog of cases in courts. In the year 2002, there were 96800 pending cases in Bangladesh.<sup>27</sup> In order to avoid

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<sup>26</sup> The Daily Star, 15 May 2005

<sup>27</sup> Sarkar Ali Akkas, *Independence and Accountability of Judiciary – A critical study*, Dhaka, P. 103(2004).



backlog, more courts should be established and more judicial officers should be appointed to dispose of cases within shortest possible time. Nikunji Bihari (a deputy secretary) murder case was completed within a record time. Under the Speedy Trial Tribunal Act 2002, government has established a limited number of Speedy Trial Tribunal to dispose of very sensitive criminal cases involving violation of human rights yielding very good result. It is, therefore, humbly suggested that government should establish such courts in each District headquarters with the same end in view. It is also suggested that these courts should be staffed by honest, suitable and qualified honours law graduates from different universities. The recruitment of judicial officers should be made through Judicial Service Commission which has already been established.

(12) Lastly, the most important recommendation for the protection and promotion of human rights is the creation of a sense of accountability in the executives working under government; they should culture this accountability not only in their works but also in their conscience.

It is believed if the government implement the above recommendations, it will be able to ensure the protection and promotion of human rights in criminal justice in Bangladesh.

### LIST OF ABBREVIATIONS

(1) AIR	All India Reports
(2) AIR(SC)	All India Reports (Supreme Court)
(3) DLR	Dhaka Law Reports-Bangladesh
(4) DLR (AD)	Dhaka Law Reports (Appellate Division) Bangladesh
(5) MLR	Mainstream Law Reports – Bangladesh
(6) BLD	Bangladesh Legal Decisions
(7) BLC	Bangladesh Law Chronicles

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