

## The Role of Law Enforcing Agencies in Protecting Human Rights: Bangladesh Perspectives

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### *Abstract*

*As the law enforcing agency, the police force are responsible to maintain law and order and ensure peace in a democratic country like Bangladesh but over the last few years, violations of human rights by the law enforcing agency, especially police, have increased not only rampantly but also alarmingly. This paper can be regarded as an attempt to focus light on the multifarious ways of human rights violations in Bangladesh by law enforcing agencies, the reasons behind the protector being perpetrator, long term impacts of that violation on law and order situation in Bangladesh and the critical but analytical appraisal of lacunas in existing laws that govern the law enforcing agencies. Finally, it seeks to offer some recommendations for reducing and eradicating those lacunas from the police service more effectively.*

### 1. Introduction

As a developing country, Bangladesh came into being on December 16, 1971. The birth of Bangladesh which accompanied a bloody national liberation struggle was premised on the dream of attaining a democratic society based on the rule of law and enjoyment of human rights by her citizens. However, the beauties and triumph of rule of law which are the very foundation of a sound democratic system depends on existence of an effective and modern law enforcing agency equipped with modern technicalities and facilities of a country so that it can be motivated and dedicated to show respect for the rule of law and human rights at large. In Bangladesh, more than half of the people who live below the poverty line are deprived of various fundamental rights as well as human rights at large. A number of agencies are responsible for human rights violation in our country. Among them the indiscriminate violation of human rights by law enforcing agency is the alarming one. Transparency International, a German-based anti-corruption watchdog, has found Bangladesh police force as the most corrupt organization in the country. [1]

With the changing socio-economic situation in our country, it is now high time to be more concerned with the protection and preservation of human rights and to uphold the recognition/ prestige of our law enforcing agencies through long-range change or reform in existing laws and practice.

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### **2. Methodology**

This study is normally a non-empirical analytical based one. The source of this study includes mainly secondary in nature like-textbooks, reports, relevant national and international legal texts, case studies, articles published in some nationally important and widely read daily newspapers, online documents and some publications. The study also uses significant decided cases of apex court of Bangladesh and the sub-continent.

### **3. Limitations**

Due to word limitations, this study will mainly highlight the human rights violation by the police and would also try to discuss human rights violation by other wings of law enforcing agencies in Bangladesh in this context.

### **4. Concept of Human Rights**

Generally “human right” means and includes those rights which are inherited by human being by their birth and which are inalienable and universal in nature. These are right to life, right to education, rights to freedom of thought, etc.

### **5. Concept of Law Enforcing Agencies**

According to Montesquieu, a state’s power is divided among three branches of the government, namely, the Executive, the Legislature and the Judiciary. Likewise, state power in Bangladesh is shared by the executive, the legislature and the judiciary. The law enforcing agencies are under the control of the executive branch in Bangladesh. The law enforcing agency such as the police are statutorily responsible for maintaining law and order situation within the country.

In 2004 three special units were formed to supplement the regular police. These are:

- a. Rapid Action Battalion (RAB)
- b. Cheetah and
- c. Cobra

### **6. Legal basis of our law enforcing agencies**

#### **a. Police force in Bangladesh:**

Queen Victoria ascended the throne of the then Indian sub-continent in 1858 through the India Act of 1858 and during her reign the Indian Police Act, 1861 was enacted. In other words, the present police force as an organized department was established during the British rule in 1861 through this Police Act (Act V of 1861). Although there have been a few changes while it was renamed the Police Regulation of Bengal (PRB), the Act has virtually remained the same in spirit and still remains in force after almost 150 years. [2] According to the police website, the number of police personnel rank wise is given below [3]:

Rank	Number of man power
IGP	1
Add. IGP	9
DIG	33
Add. DIG	41
SP	204
Add. SP	260
Sr. ASP	230
ASP	911
Ins.	3079
SI	12535
SI(Tr)	254
Sgt.	1569
TSI	113
ASI	7838
HC	6887
NK	6108
Constable	101053
Total	141125

**b. Rapid Action Battalion**

The Rapid Action Battalions (herein after RAB), the elite force, was created through the Armed Police Battalions (Amendment) Act, 2003 which was published in the Bangladesh Gazette of July 12, 2003. The RAB is a composite force of manpower wise because section-3(5) of the law states, "Notwithstanding anything contained in this Ordinance or in any other law for the time being in force, armed personnel and officer in Rapid Action Battalion may, as and when necessary, be appointed on secondment or on deputation as the case may be, from among the persons who are in the services of the republic, including any disciplined force." It is a hybrid and mixed force consisting of police and army. [4] The amended Armed Police Battalion Ordinance has given birth to the Armed Police Battalion to Rapid Action Battalion.

According to the Armed Police Battalion (Amendment) Act, 2003, the force was assigned the following duties under section-6-

- i) Internal Security Duties
- ii) Recovery of the unauthorized arms, ammunitions, explosive and such articles as the government may direct from time to time
- iii) Apprehension of armed gangs or criminals
- iv) Assisting the regular law enforcing agencies including the police for maintaining law and order and such other duties as the government may assign from time to time.

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### **C. Chettah and Cobra**

At the same time Cheeta and Cobra were formed as special units of Detective Branches (DB). They also enjoy a lot of impunity in arresting people [5]. We have also the Border Guard of Bangladesh (BGB), Industrial Police, Highway Police, Criminal Investigation Department (CID), Special Branches (SB), eleven training institutes, six Metropolitan Police, seven Railway Range, the Special Women Police Contingent (SWPC) established in 2008 and Police Hospital.[6]

### **How protector became perpetrator of human rights in Bangladesh**

1. **Torture:** In spite of having various safeguards under constitution, international convention and procedural laws, the instance of torture in police custody have alarmingly increased in recent years.

The concept of torture in the eye of the Convention against Torture and other Cruel, Inhuman or Degrading Punishment, 1984 (Art-1)

*Torture means any act by which severe pain or sufferings whether physical or mental, is intentionally inflicted on a person for such purpose as obtaining from him or a third person information on a confession, punishing him for an act or a third person has committed or is suspected of having committed or intimidating or coercing him, or a third person or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public officials or other person acting in an official capacity.*

Besides, the international standards of police behavior and code of conduct for law enforcement officials (General Academy Resolution 34/149) under article-5 observe that no law enforcement officials are allowed to inflict, instigate any act of torture or any other inhuman behavior even under any situation.

Moreover, the Penal Code 1860 of Bangladesh has provided statutory provisions which focus upon the concept against torture narrowly such as-

- ➔ Offence Affecting Life ( Under Sections-299-311)
- ➔ Hurt ( Under Sections-319-338A)
- ➔ To Wrongful Restraint and Wrongful Confinement (Under Sections-339-348)
- ➔ Offence Relating to Criminal Force and Assault (Under Sections-339-358)
- ➔ Offence Relating to Rape (Under Sections-375,376)

A report on Death by the Law Enforcement Agencies, 2003 said that 26 people were tortured to death in police custody. [7]

As regarding the protection from torture our Honorable High court also asserted against torture and degrading punishment Under Article-35(5) of Constitution of Peoples' Republic of Bangladesh. [8]

The Indian Supreme court observes custodial torture –

A naked violation of human dignity and rule that law does not permit the use of

third degree method or torture or an accused person since action of the state must be right, just and fair torture for extracting any kind of confession would neither be right nor just or fair.

### **Death in Custody**

Very often it is believed by the law enforcing officials that inflicting torture might be effective in case of collecting information from the accused regarding offences and that belief sometimes make them so cruel to the detainee so that they have prey to inhuman death by torture in the custody. Here the custody means and includes guardianship and protective case. In my view, it is the most crucial among all forms of human rights violations against someone's will and is thus illegal.

It is observed by the honorable High Court division that –[9]

Detention in safe custody against the will of a detained person was illegal.

It is also supported by basic standard 8 as follows-[10]

All detainees must be treated humanely.

Ascertaining to the detainee is the basis of police law which is also supported by the following international legal instruments-

- a. Article-5 of UDHR (Universal Declaration of Human Rights,1948 )
- b. Article-10 of ICCPR (International Covenant on Civil and Political Rights,1966 )
- c. Covenant Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- d. Standard Minimum rules for the Treatment of persons adopted on August 30,1955.
- e. Body of principles for the protection of all persons under any form of detention or Imprisonment, 4A. Resolution 43/174, UN Doc A/43/49 ( 1988)
- f. United Nations' Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), GA Resolution 40/33, Annex, 40 UN GAOR SUPR. (No-53) at 207, UN. Doc A/40/53

In Bangladesh between January-December, 2012 it was reported that 140 people were fated to meet custodian death. [11]

### **Violence against women by law enforcing agency**

Though violence against women by law enforcing agency is strongly prohibited by various national and international instruments but unfortunately for various reasons in our country women detainees are very often tortured (i.e- rape) physically and mentally by the detaining authority as well.

It is observed in the Code of Conduct for police personnel in police station, as well as in basic Human rights standards for law enforcing officials that.

Female visitors will have to be behaved with highest courtesy and manners and

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decency will have to be maintained in words and behavior with them and female detainees should be entitled to medical examination by a female doctor.

In basic Standard 8-

Female guards should be present during the interrogation of female detainee and should be solely responsible for carrying out body search of female detainees.

Even the Bangladesh Jail Code allowed the detainee to meet the family with reasonable intervals by physically or other means.

Besides that, it is also provided by Regulation-377 of Police Regulation of Bengal (PRB) as follows for the safeguard of women in police custody –

1. The accommodation of each lockup shall be based on the scale of 36 squares per prisoner.
2. A notice in English and Vernacular Language shall be hung up outside the lock-up at every police station and post showing the maximum number of male or female prisoners which the lock up is authorized by the govt. to accommodate.

Unfortunately these rules are absent in our country.

Due to our religious and social contexts the fact of rape is considered sin and the victims are compelled to conceal the rape as violence because of social stigma and shame which are also responsible for violence against women.

An incident of custodial rape was recorded by the police in Rajshahi on 9th October against an Assistant sub-inspector (ASI) of Boalia police station on charges of raping a field worker of an insurance company. According to the First Information Report (FIR), Assistant Sub Inspector (ASI) Faruk used to harass the victim over phone and one afternoon he took ASI Abdul Hamid to the victim's house. The victim lived with her mother. The rapist threatened the victim saying that he is a police man and raped her. Later the victim narrated the incident to her mother who, with the help of a person named Alam admitted her to One Stop Crisis Centre (OCC). Assistant Sub Inspector (ASI) Abdul Hamid and Faruk went into hiding after the case was filed against them. [12]

#### **Enforced Disappearance**

Now- a- days enforced disappearance has become the extreme violating weapon used by the political party in power to oppress their opponents in political view and which is catalyst to violate many other fundamental rights of the disappeared person and his/her family as well. The concept of enforced disappearance can be traced since the mid 20<sup>th</sup> century.

#### **According to Odhikar**

Year	Number of people disappeared
2009	2
2010	18
2011	30

It is also observed by Robert O Blake, Jr. the State Department Assistant Secretary while attending the hearing at the USA congress said that..[13]

*The Rapid Action Battalion is allegedly involved with extra judicial killings and disappearance in Bangladesh.*

In fact, this type of criminal act is yet to be penalized as a separate offence in Bangladesh according to the Convention for the protection of all persons from enforced disappearance.

#### **Extra Judicial Killings**

Despite the claims by the Bangladesh government that they have zero tolerance for extra judicial killing, the rampant violation of Human Rights (Right to Life) occurs in the name of crossfire, gunfight or encounters. The concept of extra judicial killing is very much involved with the birth of RAB on 14<sup>th</sup> April, 2004 and it was reported that 1000 persons have been directly or indirectly killed by RAB since 2004 to till. [14]

#### **Violence against Journalist**

The right to freedom of expression is also threatened by the law enforcing agencies as they are very often alleged to be involved with the violence and torture against the journalists in recent years.

#### **Violence against Journalist in 2007 [15]**

Nature of violence by alleged perpetrators	Number of persons
Murder	3
Threat to murder	56
Newspaper/TV channel banned	2
Intimidation/Threats/Harassment	
Law Enforcing Agency	97
Local terrorist	72
Militants including underground leftwing group	37
BNP cadres	8
Islami Chatro Shibir	3
BNP and AL jointly	10
Government employees	5
Awami League Cadres	7
Others	8

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### **Misuse of Laws by the Law Enforcing Agencies in Bangladesh:**

1. Scope Remand: Part V, Chap-XIV of The Code of Criminal Procedure (Cr. P. C) ,1898
2. Section-54 of The Code of Criminal Procedure (Cr. P.C), 1898.
3. Section- 100/86 of Dhaka Metropolitan Police Ordinance.
4. The Special Powers Act, 1974.

It can be found from the various reports by Odhikar that most of the people arrested under the above powers are from poor economic background and specially in case of woman destitute or abandoned by their husband or helpless youth suspected as terrorist, extortionist and members of opposition parties.

Reasons behind the lawful agencies being perpetrator:

- a. Fully involved in corruption
- b. Political interest
- c. Poor salary structure
- d. Low standard of life style
- e. Lack of human right value among the members of law agencies
- f. Accommodation problem
- g. Corruption in recruitment procedure
- h. Lack of scientific facilities
- i. Absence of strong accountability and monitoring mechanism.

### **Framework for the protection of Human Rights under Laws in Bangladesh:**

National      International

Articles - 15, 31, 32, 33, 35, 36, 37, 39, 43 and 102 of Constitution of Bangladesh of the People's Republic of Bangladesh.

1. Universal Declaration of Human Rights (UDHR), 1948.
2. International Covenant on Civil and Political Rights (ICCPR), 1966
3. Convention against Torture (CAT), 1984
4. Convention on the Rights of the Child (CRC), 1999
5. Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

### **Milestone directions given by Supreme Court (SC) regarding lawful behavior of officials of Law Enforcing Agencies in Bangladesh:**

In **BLAST and others Vs Bangladesh and Others** [16] (section 54 guidelines case or Rubel Killing case or Guidelines on arrest and remand case the High court recommended the following directives in exercising power under Sections- 54 and 167 of the Code of Criminal Procedure (Cr. P.C) ,1898 and section 33 of the Special Powers Act ,1974.



1. No police officer shall arrest anyone under section 54 for the purpose of detention under section 3 of the Special Powers Act, 1974.
2. A Police Officer shall disclose his/her identity and show his/her Identity card on demand to the person arrested or those present at the time of arrest.
3. A record of reason of arrest and other particulars shall be maintained in a separate register till a special diary is prescribed.
4. The concerned officer shall record reasons for marks of injury, if any on the person arrested and take him/her to nearest hospital or government doctor.
5. The person arrested shall be furnished with reasons of arrest within three hours of bringing him/her to the police station.
6. If the person is not arrested from his/her residence or place of business, the relatives should be informed over the phone or through messenger within one hour of bringing him/her to police station.
7. The person concerned must be allowed to consult a lawyer of choice or meet nearest relation.
8. While producing the detained person before the magistrate under section-61 of the Code of Criminal Procedure (Cr. P.C), the police officer must forward reason in a forwarding letter under section- 167 (1) of the Code of Criminal Procedure (Cr. P.C) as to why the investigation could not be completed within twenty four hours and why s/he considers the accusation and information to be well founded.
9. On perusal of the forwarding letter, if the magistrate satisfies him/herself that the accusation and information are well founded and materials in the case diary are sufficient for detaining the person in custody, the magistrate shall pass an order of detention and if not release him/her forthwith.
10. Where a person is released on the aforesaid ground the magistrate shall proceed under section 190(1)(c) of the Code of Criminal Procedure ( Cr. P.C) ,1898 against the officer concerned under section 220 of the Penal Code,1860.
11. Where the magistrate orders detention of a person, the officer shall interrogate the accused in a room in a jail until a room with glass wall or grill on one side within sight of lawyer or relations is constructed.
12. In any application for taking accused in custody for interrogation reasons should be mentioned as recommended.
13. The magistrate while authorizing detention in police custody shall follow the recommendation laid down in the judgment.
14. The police officer arresting under section 54 or the investigation officer taking a person into custody or the jailor must inform the nearest magistrate about the death of any person in custody in compliance with these recommendations.
15. The magistrate shall inquire into the death of any person in police custody or jail as per the recommendations.

Later on in **Saifuzzaman Vs The State** [17] addressing the Article 33 and Article 35(5) of the Constitution of the People's Republic of Bangladesh, more guidelines have been issued regarding the police behavior while arresting a person. These are as follows:

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1. The police officer making the arrest of any person shall prepare a memorandum of arrest immediately after the arrest and such police officer shall obtain the signature of the arrestee with the date and time of arrest in the memorandum
2. The police officer within 6 hours of arrest shall notify the time and place of arrest and the place of custody to the nearest relative or to a friend of the arrestee.
3. An entry as to the ground of arrest and name of the informer must be made
4. Copies of all documents including the memorandum of arrest, a copy of complaint relating to the commission of a cognizable offence of the entries in the diary should be sent to the magistrate at the time of the production of the arrestee.

It is expected that these guidelines have been followed in all cases of arrest so that harassment of the citizen and the use of third degree method can be eliminated.

**Introducing compensation in case of Human Rights Violation by Law Enforcing Agencies:**

Introducing compensation in case of human rights violation by law enforcing agencies may bring an effective ray of hope for general people in case of protecting and promoting human rights in Bangladesh.

**In Smt. Niabati Behera Vs State of Orissa and Others. [18]**

The Supreme Court asserted the jurisdiction of judiciary as 'protector of civil liberties' under the obligation to repair damage caused by officers of the state to fundamental rights of the citizens, holding the state responsible to pay compensation to the near and dear ones of a person who has been deprived of life by the wrongful actions of officers of the state.

Our Apex Court is also starting to pay attention in this regard which can be found from the judgment in Muhammad Ali Vs Bangladesh [19], where the court fined 5000 taka as token compensation against each police officer for searching the house of a journalist without warrant during midnight. It is hoped that the Apex Court shows strong judicial activism –by giving directives to the state *suo moto* or of its own motion that the state must compensate the victims in case of any violations of human rights.

**Prospective Recommendations:**

1. Replacing the police Act 1861 with a law similar to the Draft Police Ordinance (2007)
  - a. Placing the order before the national parliament for a detailed debate and review
  - b. Urging the parliamentary standing committee on home affair to examine provisions in greater detail and provide recommendations, and

- c. Seeking the feedback of serving and retired police officials for the public
2. Lessening police corruption and protect officers from political manipulations.
3. Preventing premature transfer of officers by requiring them to remain at their duty station for two years except in special cases.
4. Creating Police Internal Oversight (PIO) Department, a permanent aspect of the national safeguard against violation of human rights.
5. Illegalizing political interference in police affairs
6. Initiating broader reform in pay commission to boost salaries of police personnel.
7. Reforming the police morale and increasing their efficiency
8. Creating a fund administered jointly by the police and parliamentarians for public services awards for exceptional policing
9. Modernizing training methods and procedures and the recruitments system
10. Increasing police numbers
11. Establishing a police complaints commission similar to the one envisioned by the Draft Police Ordinance
12. Ensuring a greater presence of women police
13. Consider increasing the number of model thanas during phase II of the PRP
14. Establishing a coordination board to oversee and coordinate all new and existing police improvement projects to ensure that they are in line with the overall objectives of the Bangladesh police strategic plan.

### Conclusion

As it is observed that various reasons are responsible to drive the law enforcing agency to violate human rights of the common people for whom they are supposed to be the protector, though not in real sense. In my view the absence of proper accountability and transparency mechanism among the law enforcing officials are mostly liable for their professional immorality and degradation. In addition, loopholes and misuse of existing laws are creating scopes for the protector to be perpetrator. In order to get relief from this as well as to upright the dignity of the people, this researcher has been in a position due to her studies to suggest the formulation of suitable laws for the all the law enforcing agencies with proper check and balance of power.

### Endnotes

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