

**Political Corruption and a Culture of Impunity in Poling in Bangladesh: A Justification
for Gross Human Rights Violation ¹**

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Abstract:

Bangladesh is constitutionally obliged to protect the dignity of citizens and officially it ensures democracy and rule of law. Bangladesh also ratifies all key instruments of international human rights. The issue of human rights is highly significant in the country in the sense that the government law enforcement machinery. For example, police is strongly involved in enormous human rights violations with freedom. It engages in committing giant extra-judicial killings, custodial death, arbitrary arrests and detention, disappearance, and torture. Though the violation of human rights by law enforcing agencies in Bangladesh has long traditions since its independence, it intensified in recent times with high gravity. This paper will identify the underlying causes of human rights violations in policing in Bangladesh. This paper will also explore how the government is justifying human rights violations in the course of law enforcement.

Key Concepts: Political corruption, Culture of impunity, and Policing

1. INTRODUCTION

The influence of human rights on the development of rule of law and good governance is colossal. It plays a vital role to improve and reform countries' legal system, particularly in law enforcement systems. The vital code on which the idea of human rights is premised upon turns around the provision 'all human being are equal in rights'' (Article, 1: UDHR). As a core document of human rights, Universal Declarations of Human Rights (UDHR) sanctions state obligation to protect, promote and fulfill humanrights as means to defend human dignity from unlawful arrest, detention and any other kind of force applied to by third parties including government agencies. The subject of human rights was generally guided and dominated by the discipline of law as a field of study since long (Landman, Todd: 2006:1). At the present time, the human rights issue becomes immensely significant to understand the politics of human rights in a comprehensive way and apply human rights principle in ensuring the rule of law yet often the subject of human rights are political by nature. Modern states are obliged to promote and protect human rights as a part of state policy. Human rights paradigm adopts national mechanism with a view to maintaining international human rights standard. In particular, Bangladesh as part of its constitutional and international human rights obligations is bound to uphold human rights in the country, and it supports that this country is a signatory state of important international human rights documents. Nevertheless, the practices of human rights that prevail in Bangladesh have not been satisfactorily met since its independence. Specifically, the record of human rights protection is very low and conversely, its record of violation is extremely high. Law enforcing agencies, for the most part, are engaged in gross violation of human rights which is a striking problem of the country. More recently, the gross human rights violations by law enforcement agencies particularly have reached an upsetting stage that is a big challenge to uphold human rights in the country.

2. BACKGROUND

The international human rights mechanisms recognize the large notion of human rights, and it decorates human rights irrespective of nations, societies and cultures. The International Covenant on Civil and Political Rights (ICCPR) particularly pinpoints individual freedom and liberty. State party can restrict some of the rights specified in the ICCPR on the ground of national security, public safety, public order, protection of others rights, morals and the protection of health of the citizens even in a democratic society (Charvet, John and Nay, Elisa Kaczynska-: 2008:94). The state party cannot derogate the articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 of the covenant of civil and political rights in any circumstances.

As a consequence of nine months long heroic war, Bangladesh acquired its independence in 1971. It was a part of Pakistan since 1947 and continued its relationship with the country in the circumstances of suppression, sacrifice and resentment. As Pakistan was betrothed with corruption, persistent abuse of human rights as well as discrimination in every sphere of life, it entirely failed to ensure national integration that is an indispensable component of state machinery. The history of incessant oppression persuades Bengali nation to start afresh with a dream to build up 'Sonar Bangla' - a country of gold. The manifestation of this determination expressed eloquently in the Constitution of Bangladesh specifically in the fundamental rights of citizens chapter which sets out four basic principles of state policy, such as democracy, nationalism, secularism, and socialism in terms of ensuring economic and social justice (see Bangladesh Constitution: 1972, Part 2, Article 8). Therefore, the Government of Bangladesh is constitutionally pledged bound to uphold the dignity and worth of human being, and as a process it steps in to guarantee eighteen civil and political rights within the ambit of fundamental rights, such as right to life, right to liberty, equality before law, right to property, safe guard as to arrest and detention, freedom of occupation and protection in the ground of

trial and punishment (Zafarullah & Rahman: 2002:1012). The constitution, in addition, reflects its commitment to safeguard and promote human rights based on the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), The Committee on the Elimination of Racial Discrimination (CERD), The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), The Committee Against Torture (CAT), and Convention on the Rights of the Child (CRC). As all these Conventions have been systematically ratified by Bangladesh, this government assumes to have the responsibility to protect, respect and fulfill human rights with the help of its machineries.

In recent years, the human rights record in Bangladesh has immensely deteriorated and reached an alarming stage in terms of infringement of civil and political rights of the citizens such as extra-judicial killing, custodial torture and death, disappearance, and detention. (Malik: 2011:1 see also Human Rights Report, Human rights Watch, 2011, Odhikar, 2011 and US State Department, 2012). The gross abuse of human rights in Bangladesh with massive impunity is a common occurrence. One of the principal actors in the widespread abuse is law enforcement agency. As ill luck would have it, it is the security force that is entitled to respect human rights and at the same time, responsible to prevent human rights violations occurred by a third party. But they are involved in such massive infringements in the country.

Bangladesh is facing notable problems to protect and promote human rights in law enforcement because the police have been involved in numerous patterns of massive human rights violations with impunity since Bangladesh transfer to democracy in 1991. After the establishment of Rapid Action Battalion (RAB) as an elite anti-crime and anti-terrorism force on 14 April 2004, the real objectives of government were to reduce the corrupt practice and

enjoyment of impunity of the police force but wrongly this special force also contributed somewhat more human rights violations through extra-judicial killing, force disappearance and torture etc. The act of enacting of Joint Drive Indemnity Ordinance 2003 which is called a black law in the country that permits and assures the arrests, hunts and interrogations of combined action of police and military on the part of “Operation Clean Heart” leads grave violations of human rights deteriorating good governance and rule of law(Mehta:2007:29). The ‘Operation Clean Heart’ initially gains public support due to reduce crime and corruption even though it lacks due process of law. Corruption and a culture of impunity allows law enforcement agencies for human rights violation through a number of systematic brutality, torture leading to death and shot to death during the law enforcement. Since 2004, after the creation of the elite force, Law enforcement agencies of Bangladesh killed more than 1700 people extra-judicially; the enjoyment of the culture of impunity has been continued in an upsetting manner leading to colossal human rights infractions, declining the law and order and absence of accountability of law enforcement officials (Odhikar Report:2013). Although the internal accountability method has been established within the police department, the role of other state and non-state actors like judiciary, parliament and national human rights institution (NHRC), civil society, NGOs and media etc. are valuable to observe and evaluate the activities of the police in the course of law enforcement (Bangladesh: Getting Police Reform on Track, 11 December, 2009, report of International Crisis Group). In reality all law enforcement agencies in Bangladesh act as partisan instrument of government and involved with corruption. Therefore, the Police Act 1861 needs to reform as means to implement Police Ordinance 2007. The Police ordinance 2007 was considered to lessen corruption practice of policing and will ultimately safeguard the police officers from political guidance(Bangladesh: Getting Police Reform on Track, 11 December, 2009, report of International Crisis Group). The another most influential approach to control corruption is the

creation of Police Internal Oversight (PIO) that can give to the observation of all forces under the direction of Inspector General of Police (IGP), particularly In relation to investigate police misconduct but unfortunately PIO does not apply as an effective internal appliance.²

3. VIOLATION OF HUMAN RIGHTS IN POLICING IN BANGLADESH

The human rights violation by law enforcement agencies in Bangladesh is not a new issue but it has reached an alarming stage from 2004 after the inception of Rapid Action Battalion (RAB), a special security elite force. The RAB was created on the ground of controlling crime, corruption and terrorism in the country. Initially, this special elite force has gained popularity for diminishing crime rate and arresting high profile terrorist (Report of Human Rights Watch: 2013). But this elite force associates with others security forces initiate the culture of extra-judicial killing in the name of ‘cross fire’, ‘gunfight’ and ‘encounters’. The way of the arrest and later killing without a fair trial to have unpleasant consequences foresting convenience as the practice as usual overlooks international principles and domestic laws leading use of lethal force. As per article 6 of Armed Police Battalion (Amendment) Act 2003, the jurisdiction of the duties of RAB is to maintain internal security, arrest criminals and hand them over the police force who initiates judicial process after that (Section 6 of Armed Police Battalion (Amendment) Act 2003). As a state sponsored special security force controlled by military and police officers, one of the important duties of this security force is to assist police force. According to the law they are authorized to capture criminals on doubt which is subject to the personal and nonetheless hand them over to the police and also they have the investigation power to investigate any offence if government permits but the RAB does not have any power of extrajudicial killing.

² Way Forward: Bangladesh Police, Commonwealth Human Rights Initiative, see http://www.nipsa.in/resources/bangladesh_police_policy_note.pdf

Extra-judicial killing, the taking of a person's life whether he is criminal or blameless by government law enforcement machinery lacking minimum assurances of due course of law are humiliating and irretrievable among all human rights violations. The Government uses its machinery not only to killings for the reasons of transferring political power but also now days devastatingly so to killings due to keeping hold of such political power and implementing their political agenda. Here, we will be emphasizing to extrajudicial killing which are carried out of official involvement of the government elite force of Bangladesh because the important concern of human rights supporter these days is the nonappearance of government responsibility for its functions. Over the last ten years, extra-judicial killings in Bangladesh by Rapid Action Battalion have become the instrument of the government law enforcement machinery in the name of controlling crime and terrorism and by the dints of extrajudicial killing RAB have disposed about 1700 extra-judicially since its establishment (See Odhikar Report: 2013). These large-scale killings extrajudicially can only be allowed with countries of dictatorship. In the democratic government, extrajudicial killing is prohibited not only by the national law but also international human rights law.

Figures on the total number of victims differ for different organizations, media and government reports but only to a limited extent. Government does not release official data of human rights violation by law enforcement agencies. My data are from human rights, media and NGO sources: The table below shows clearly the total numbers of extra-judicial killing in policing in Bangladesh from 2004 to 2012.

Table 1 Total Extra-judicial killing from January 2004- November 2012 (Source: Odhikar, 2013)

Year	RAB	Police	-RAB Police	Joint Force	Army	BDR	DB Police	Jail Authorities	Coast Guard	-RAB Coast Guard	Grand Total
2012	39	16	2			2		1		4	62
2011	43	31	4					2		4	84
2010	68	43	9			1				3	124
2009	41	75	25		3	5		1	1		151
2008	68	59	15	1		2			4		149
2007	94	64	3	7	7	1		1	1		178
2006	192	144	1			6	4		7		354
2005	111	258					5				374
2004	77	133		15	1	6					232
Total	733	823	59	23	11	23	9	5	13	11	1743

The above figure manifests that 1743 people were killed in the course of law enforcement in the country from 2004 to 2012. Among them, 733 are killed by the RAB and 823 are to police. In fact, the statistics prove while systematic and gross misuse power by police with impunity which go beyond significantly good governance and rule of law, the trend of extra-judicial killing is decreasing in nature. It is also important to note that the trend of EJK in 2006 has risen due to the political movement against government. The ruling government uses the law enforcement agencies to control the movement against government because of transformation of power through the election process and electoral manipulation. So, it is, to some degree, prove that LEA is used by the ruling party to implement their political agenda and to control the political opposition and there is sign of political oppression, arbitrary arrest, torture and illegal detention which subsequently led to execution.

Recently the political oppositions have protested the verdict of war crime as a justification for not ensuring justice in the verdict when the antagonistic verdict pronounced by War Crimes Tribunal. The law enforcement agency especially police force shoot directly to the protestors for massive destruction of public and private properties and on the ground of self –defense (Odhikar Monthly Report, February and March: 2013). To control this demonstration police shout out the public without any hesitation and killed about 150 people during last three

months (From January 2013 to March 2013) according to Odhikar report. The table below manifests the total statistics of human rights violation particularly extra-judicial killing in policing from January- March, 2013.

Table 2 Total Statistics of Human Rights Violations from January 2013- March 2013
(Source: Adhikar, 2013)

judicial killing-Extra	January	February	March	Total
Crossfire	5	7	5	17
Torture to death	0	1	0	1
Shot to Death	2	72	47	121
Beaten to death	2	1	0	3
Total	9	81	52	142

The shoot-out, by chance, to the demonstrators in most situations killed 142 blameless people for the application of ‘proportionality’ and ‘necessity’ test during this protest. Furthermore, deployment of law enforcement agencies to restrict political opposition in an aggressive manner correlates the agreement of government with the security forces continuous and obscures the role of the ruling party to overlook the controversial role of the police force in policing. The demonstrators against the verdict of war crime were so also vibrant and arrogant to attack police men during the demonstration. Five police men were beaten to death during the protest in February and March, 2013(See Daily Star, 4 March, 2013). The government was absolutely disastrous to control the situation due to the unwillingness of discussion among political opponents to settle the issue peacefully. On the other hand, government uses the law enforcement agencies and orders them to control the protestors anyhow, and it results in more than 150 people including policemen killed in recent hostilities. The trend of this recent extra-judicial killing explains shocking facts of gross human rights violation as it considers the rights to life of the citizen and fair trial and yet it ignores the professional duty of law enforcement agencies in Bangladesh to protect the citizens. The democratic culture, rule of law and good governance may overcome the political interest of

the government but corruption and a culture of impunity for law enforcement machineries challenge good governance and human rights.

The law enforcement agencies mainly police and RAB in Bangladesh are also involved torturing the arrestees in the name of remand. Methods of torture, an oppressive way that police generally apply in the course of remand are whipping with batons on the soles of the feet and other parts of the body, drilling the feet and legs with electric drills and they also put electric shock on the body of detainees³.

The cruel torture lead to death is also the common phenomenon in policing. The following data from 2004 to 2012 on torture to death in policing will make understand actual statistics of torture by law enforcement agencies in Bangladesh.

Table 3 Total Torture to death from January 2004- November 2012 (Source: Odhikar, 2013)

Total Torture to death from January 2004- November 2012											
Year	RAB	Police	RAB-Police	Joint Force	Army	BGB	DB Police	Jail Authorities	Coast Guard	Navy	Grand total
2012	0	4	0	1						1	6
2011	1	14						2			17
2010	2	20									22
2009	3	11				5		1	1		21
2008	3	8				1					12
2007	2	14		3	5			1		3	28
2006	4	23									27
2005	4	18					2				24
2004	11	28		7							46
Total	30	140	0	11	5	6	2	4	1	4	203

This data show that the police are more active in torture than RAB; however, the statistics demonstrate a declining trend in torture which generally helps to interpret of reducing human

³ See Article 31,32,33,35 of the Constitution of Bangladesh. Article 31 says: No action detrimental to the life, liberty, body,, reputation and property of any person shall be taken except in accordance with law. Article 33 provides, “No person who is arrested shall be detained in custody without being informed 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. Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest and no such person shall be detained in custody beyond the period without the authority of the Magistrate.” Article 35 says, “Every person accused of a criminal offense shall have the right to a speedy and public trial by an independent and impartial court established by law.” “No person shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.”

rights violation by law enforcement agencies through torture to death. However, the violation of human rights still exists as a new technique of forced disappearance. To exemplify, more than 150 people are disappeared from 2009 to 2012, in most cases it happened after individuals are picked up by members of the law enforcement agencies according to claims by their families, human rights organizations and media (Odikhar Repot, 2012, published in 2013).

4. JUSTIFICATIONS FOR HUMAN RIGHTS VIOLATIONS IN POLJIANG IN BANGLADESH

The justification for gross human rights violations by law enforcement agencies is difficult particularly in the case of shout out the citizen and extra-judicial killing. All members of the police department in Bangladesh are bound to perform their duties based on Police Regulations Bengal, (PRB) and the behavior of the police is controlled by PRB. Police are allowed to use firearms during riots and disorder on the ground of self-defense or the defense of individual rights to use the property, in order to effect the arrest of several circumstances and unlawful assembly to disperse (PRB, the sixth paragraph of the fourth chapter, Section 153 - a). According to clause of the Penal Code 96-106, the police can use firearms to protect himself or others life and property, If there is no alternative without using of firearms, when the protestors attempt to destroy others life and property illegally, but power should be applied here as much as need to control the situation though it is an 'extreme measures' to fire in illegal gathering (Section -153 - b). So the officially permitted requirements of rationalization to use firearms ,off course, need to comply with proportionality arguments take in between the degree of threat and the degree of force applied(Kremnitzer, Menashe & Ghanayim: 2007-2009:71). Initially Police cannot shout out the people for justification of controlling illegal gathering without repeatedly requesting and asking them to disperse the mob and threatening them for shooting if they do not disband. If it is not effective, situation is

not under control, meanwhile the law and order situation is pathetic and the life of others citizen and their property are in endangered and police does not have other options in such circumstances only after the shootings and around the nature item of the fire will be issued only but other ammunition is prohibited (Section 150 - b). Once more, the instantaneous concrete, actual threat to life proportionate with use of force cannot be justified to apply in particular circumstances except the situation demand the use of force within the theory of necessity with regard to stop the voyage of a suspect.⁴ The police force under jail code 46, can apply the power however if the criminal try simply to prevent arrest by force the police can use firearms. A person convicted of criminal offenses related to the death penalty can be brought only in the case of death (Section 153 - d). All these regulations related to police fire impose a liability to the magistrate and police officer who gives the order of police firearms as reasons for controlling such a manner of police fire. He needs to satisfy that the damage will minimize if police use firearms. In reality, the entire aim, use of force, rationalization test reflect on the ground of protection of life of suspects if there is a genuine risk of death or grave physical injury of the law enforcement agencies or other civilians and less extreme measure is not sufficient to protect them(Alston:2010:6-7).

Let give the little attention to the Constitution of Bangladesh regarding police shout out the citizen. The constitution protects and ensures fundamental rights of citizen which is mentioned in the section31 of the Constitution as *“to enjoy the protection of the law, and to be treated in accordance with the law, and only in accordance with the 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”*. Life and

⁴ See Report of the Special Rapporteur on extra judicial, summary or arbitrary executions, General Assembly, sixty-sixth sessions, 30th August 2011.

freedom cannot be denied to any citizen without permission of law. Paragraph 35 (3) of the constitution says, every person charged with a criminal offense, are entitled to get justice by independent and impartial court or tribunal established by law. The position of the UDHR in this regard is more severe. Section 3 of the Declaration says, everyone has the right to liberty, living, and security of person. Therefore, it is the fact that, the analysis of the above-mentioned rules proves that power of police firearms is not the unchecked power that can be applied in a general situation. So the shout out people and extrajudicial killing by law enforcement agencies is a gross human rights violation and extremely difficult to justify. It is not just unlawful but it is the same with the unconstitutional and contrary to international human rights charters.

The recent incident of protest and the indiscriminate use of lethal force by law enforcement agency do not meet up any of the tests and standards in international law. The mere protection of public property is not the justification test for taking away innocent life and the protesters are not carrying arms to create a situation of grave danger to the officers. Although protesters were aggressive enough to implement less extreme measure by law enforcement agency to warn themselves in the way of open fire, application of non-lethal force like shoot to legs, police officers append damages to the death toll that came on street as an exercise of democratic rights enshrined in the Constitution. Ultimately the issue of impunity is the primary contributing factor to perpetuate extra-judicial killing under the endorsement of government which encourages human rights violation. As impunity itself is an act of violence, it creates a vicious circle to perpetuate the lawlessness in the coming days too (Reif, 2000). Absence of government initiative to full and comprehensive investigation is another reason of support extra-judicial killing and continues impunity.

The general people are still worried to become the victim of arrest; detention and execution based on some unfair provisions as police exercise the power of arrest to people withouta

warrant and also detains the alleged persons in custody up to 24 hours without producing them before the magistrate. This power is itself depend on the own sweet will of the police officer (See, Section 54, 61 of the Code of Criminal Procedure 1898). The rationale of arrest such as preventing the impediment of fare trial or perpetration of an offence cannot be the justification for torture the suspect rather its original code that requires to pass the suspect before court(Kremnitzer, Menashe & Ghanayim: 2007-2009:80). So police officers abuse this power, as the power depends on their will to satisfy the government in many cases. Again, the system of remade with permission of magistrates which is another controversial practice in policing in Bangladesh introduce the culture of torture in various repressive ways. Initially it is limited to 15 days as per Section 167 of the Code of Criminal Procedure 1898 but can be extended to further periods if the concerned police officer makes magistrate satisfied that the information is well founded, and they need more time to get more important information.

Ultimately the issue of the culture of impunity and the political corruption are the primary contributing reasons for the gross human rights violations in policing in Bangladesh. As impunity and corruption are the act of violence, it creates absence of checks and balances between the state and non-state actors of the country that undermines good governance and human right. Absence of government initiative to full and comprehensive investigation is another reason of support extra judicial killing and continues impunity and corruption.

Although the power of investigation of human rights violation in policing vests with police authority, their incapability or reluctance is very evident to carry out independent inquiry. Since other limitations such as lack of forensic capacity, unsecured crime place, failure to refer cases contribute to malfunction of police officers, still corruption at every level of police administration continue to be a big challenge for ensuring political accountability and rule of law. Although the rule of arrest, detention and sometimes filing false case are regulated by pervasive corruption, there are no checks and balances and legal system is weak to protect the

victims and witnesses. That is why the detection rate of the actual level of crime is low and hence most of the serious cases go unpunished with express or implied sanction of law enforcement agencies. As the whole chain of law enforcement agencies including RAB is engaged with high volume of human rights violation, no internal accountability mechanism works in practice and this warrants the role of external transparency safeguards more acute and demanding(Human rights Report Odhikar:2012:96).

The power of impunity indeed influences the force to utilize the circumstances with various techniques of torture, torture leading to death and shot to death. As since the inception of RAB, more than 1700 people are killed with the hands of law enforcement agencies, the trend of the culture of impunity has been perpetuated in an alarming way leading to massive human rights infringements, absence of rule of law and accountability of law enforcement officials. Although provision of internal accountability approach within the force itself such as responsibility of government to review their conduct demonstrate not to be an effective mechanism, the role of state actors like judiciary, parliament and national human rights institution (NHRC), and non-state actors like civil society, media and NGOs deserve considerable attention and regular assessment.

5. CONCLUSION

The present situation, gross human rights violation in policing in Bangladesh, creates anxiety for citizens and civil society and attracts condemnation from the international community. Therefore, Bangladesh faces a huge challenge to uphold human rights in the country particularly in the course of law enforcement. In general, democratization of political institution, rule of law, transparency, and good governance are the panacea to combat corruption and ensure human rights of all countries. Consequently, institutional reforms are

required to cure corruption in the country and to introduce accountability in the political, social and legal institutions of Bangladesh. As corruption attacks the heart of rule of law, it generally encourages a culture of institutionalized impunity for human rights violators specially law enforcement agencies. As corruption is considered as the problems of governance, curing it involves general checks and balances in the governance system, legal institutions and fair application of legal processes and high moral and ethical standards of politicians. Thus, a democratic regime combined with good governance can best ensure prevention of corruption and promotion of human rights. The role of police depends on the culture and reform which we gradually flourish with the rigorous efforts of all segments of society. Combating corruption and culture of impunity for human rights violation, institutionalization of democracy and good governance is possible through human rights movement in the country. The human rights movement through human rights training for law enforcement agencies and human rights education for others can change the institutional (government and non-government institutions) behavior to ensure human rights in the course of law enforcement by way of institutional reforms.

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