

Crossfire and Violation of Human Rights in Bangladesh: A Critical Review

Md. Awal Hossain Mollah*

Professor of Public Administration, University of Rajshahi, Rajshahi-6205, Bangladesh

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*Corresponding author: Md. Awal Hossain Mollah

Abstract

The aim of this paper is to examine the state of violation of human rights by crossfire through law enforcing agencies in Bangladesh. Why the protectors become perpetrators has also explored in this paper by highlighting the pattern of violations made by the law enforcing agency and their impact upon the law and order situation in Bangladesh. The law enforcing agencies are mainly responsible for maintaining the law and order, protection of life and property of the citizens and prevention and detection of crime to establish rule of law in a state. However, the violation of human rights by the law enforcing agencies in Bangladesh has been increasing severely for the last few years. The existing legal framework of law enforcing agencies has some limitations and not implemented properly. Some recommendations are put forwarded for the eradication of the pitfalls of security forces which would be helpful for making new policies and laws by the government. As a result, common people interest and rights will be protected and promoted. The paper is qualitative in nature and case study on Bangladesh based on mainly secondary sources of materials.

Keywords: Law enforcing agencies, crossfire, violation of HR, Bangladesh.

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INTRODUCTION

It is a crucial and sacred duty of the state to protect human rights, prevent human rights violations, and take active steps to uphold human rights. The law enforcement agencies of Bangladesh are universally appreciated for their patriotic and courageous efforts to combat terrorism inside the country. Contrary, suspicious incidences of a particular form of extrajudicial killing by crossfire through law enforcing agencies especially by Rapid Action Battalion (RAB) are fading their achievements. Though primarily, it was a media term, however, now widely used to express the murder of a criminal or accused in a gunfight event between members of law enforcement agencies and criminal groups. It alleged by the media, opposition political parties and civil society that law enforcing agencies are pressured to get quick results, often with unofficial guarantees that they may use any means possible to accomplish the task at hand. This occurrence is facing enormous criticisms in the home and abroad and considered as a violation of human rights. The main objective of the paper is to explain the nature and causes of violation of human rights by law enforcing agencies and finally prescribe some ways to overcome the shortcomings of law enforcing agencies in Bangladesh.

Conceptual Explanation

Human Rights

The definition of human rights is a debating issue but it has been discussing as a burning issue from time immemorial. Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. Every single citizen is equally entitled to human rights without discrimination [1]. Human rights, deprivation and unequal allocation of resources have been issues for then West Pakistan (now Bangladesh) between 1947 and 1971. The people of Bangladesh struggled for 23 years to ensure and establish their rights. In 1971, Bangladesh was independent but three million people lost their lives, ten million fled across the border to India and 200,000–400,000 women were raped, leading to approximately 25,000 pregnancies [2]. Could anyone imagine how brutally human rights are violated in Bangladesh? Though 47 years of independence have passed, however, violation of human rights is still continuing in Bangladesh. The country struggled to overcome significant barriers to the realization of human rights: a repressive police force, poverty, corruption, unequal distribution on of wealth and opportunities, and a slow

legal system. The state apparatus deliberately suppressed human rights, extraterritorial actors and the dynamics of regional and global hegemony allowed limited human rights for the people [3].

Rapid Action Battalion

In 2004, the government of Bangladesh introduced the elite anti-crime force called the Rapid Action Battalion (RAB) following rise in the rate of crime in the country. The RAB was created through the "The Armed Police Battalions (Amendment) Act, 2003," and published in the Bangladesh Gazette of July 12, 2003. The primary tasks of the RAB were to maintain internal security; recover unauthorised arms, ammunition, explosives and other such articles; apprehend armed gangs of criminals; assist other law enforcement agencies in the maintenance of law and order; gather intelligence; investigate any offence concerning the government; and, any other such duties as the government requires from time to time. Seconded members from six services such as the Bangladesh Army, Bangladesh Navy and Bangladesh Air Force, the Bangladesh Police, and members of Bangladesh's other law enforcement groups such as Border Guard Bangladesh and Bangladesh Ansars joined the RAB [4]. This force has been accorded with special power with special salary and benefits package. They are better equipped than the regular police force. For example, in order for them to arrive at the crime scene fast, they are given a helicopter.

Crossfire and Extra-Judicial Killing

The term 'crossfire' is synonymous of the term 'death in an encounter' which is used by law enforcement agencies in Bangladesh. The government justifies the killings by using the term "crossfire," which it refers to as gunfights between any alleged criminal group and terrorist and the RAB or police [5]. The term 'extrajudicial killing' means killing someone without following the legal justice system, laws, and constitution [6]. Killings committed outside the judicial process by or with the consent of public officials, other than as necessary measures of law enforcement to protect life or as acts of armed conflict carried out in conformity with the rules of international humanitarian law is called extrajudicial killing [7]. Such killings are prohibited by Bangladesh's Constitution and national laws, as well as by various international instruments that Bangladesh has ratified. However, the extrajudicial killing has been made an integral part of the law-enforcement system of Bangladesh for many years by "crossfire" or "encounter" with few other synonyms like "gunfight", "in the line of fire" etcetera [6]. The overall human rights situation in Bangladesh is still at an alarming level in the first six months of 2018 due to a rapid increase of extra-judicial killings, a high number rapes and sexual assault of women and custodial deaths across the country. The overall human rights situation in Bangladesh is still at an alarming level in the first six months of 2018 due to a rapid increase of extra-judicial

killings, a high number rapes and sexual assault of women and custodial deaths across the country. The human rights monitoring report of Odhikar published in December 2018 mentioned that 456 people have killed extra-judicially by law enforcement agencies and 83 others were forcibly disappeared across the country by 11 months. Out of the 449 people were killed by crossfire. Besides, violation of human rights happened in various forms such as- death in Jail(64), political killing (79) and injured (3826), rape (619), killing y BSF (10), acid violence 26 and so may which are presented by the table-1, (annex-1).

Legal Framework of Human Rights in Bangladesh

Bangladesh has ratified all the major international human rights instruments such as the International Covenant on Civil and Political Rights, 1966 (ICCPR) (Article 6, 7, 9, 10) [8]. International Covenant on Civil and Political Rights, 1966 ensures that no one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment. The Convention against Torture (CAT), Convention on the rights of the Child (CRC), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) [9]. Bangladesh is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which stipulates that State Party shall ensure that all acts of torture are offenses under its criminal law [8]. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture [10].

Torture by public officials date back to the period immediately following independence, and it appears that torture has become institutionalized, a practice that is perpetrated regardless of the government in power; there are only fluctuations in the nature of the torture practices and in the scale [11]. However, the constitution of Bangladesh also outlaws any form of torture [12]. The Universal Declaration on Human Rights (UDHR) (art. 3, 5, 7, 8, 9, 10, 11) is considered as the jus cogens throughout the world from which no derivation is possible. Still 'torture' has not been defined as a crime in Bangladesh [8]. However, there are a number of reservations has been made by Bangladesh which made it ineffective and denies the equal status of women. Bangladesh reserved article 14 of the Convention against Torture which states "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible [8]. In the event of the death of the victim as a result of an act of torture, his/her dependents shall be entitled to compensation. Therefore, the implications for this reserve are to deny such compensation or rehabilitation and also invalid the constitutional mandate under Article 35 (5) of the People's Republic of Bangladesh [13]. The International Covenant on Civil and Political

Rights (ICCPR) which was ratified by Bangladesh in 5th September 2000 ensures that every human being has the inherent right to life and that this right should be protected by law and no one shall be arbitrarily deprived of his life [8]. The Bangladesh Constitution also provides provisions to ensure human rights.

The Constitution of Bangladesh has been granted 18 fundamental rights by Articles 27 to 44. Articles 31 and 32 guarantee the right to life and personal liberty and it is applicable to both citizens of Bangladesh and foreign nationals [5]. Article 33, provides that the arrested person must be produced before a magistrate within 24 hours excluding the time of journey from the place of arrest to the court of the magistrate.

However, the recent allegations that police do not even acknowledge the arrests they make are rampant. In the event, there are some political pressures; the police are seen to produce the arrestees to the court after days to weeks [8]. The HCD of Bangladesh held that the detention of prisoners in Jail after they have served out the sentences is a violation of their fundamental rights guaranteed in the Constitution, especially the right to life [14, 8]. Hence, through this judicial activism, there is scope for a post-trial concession to enjoy by a prisoner who has spent in custody for a considerable time [8].

The constitutional guarantee of the right to life – the right not to be deprived of life is given in accordance with the law and cannot be suspended or derogated from under any circumstances [5]. However, in earlier years, state security forces reportedly continued to be responsible for extra-judicial killings in the form of cross-fire deaths, death in encounter/encounter killings and custodial killings Momtaz [8]. These incidents have become so frequent that a new term has been coined in the country: death by crossfire. Currently, the most significant human rights problems are enforced disappearances. Human rights groups allege the involvement of the country's security forces [13].

Law Enforcing Agencies in Bangladesh

In Bangladesh, as a law enforcing agency we have the 'police force'. The year 2004, three special units were formed to help the regular police. These are:

- Rapid Action Battalion
- Cheetah; and
- Cobra.

For the better understanding of our discussion, the legal basis of our law enforcing agencies is given below:

Bangladesh Police Force

Queen Victoria has ascended the throne of this Indian Subcontinent in 1858 and during her reign the

Indian Police Act, 1861 was enacted [8]. And the existing police force as an organized department was established during the British rule in 1861 through the promulgation of this Police Act (Act V of 1861). Although there have been a few amendments while it was renamed the Police Regulation of Bengal or PRB, the Act has virtually remained the same in spirit and still in force after almost 150 years [8].

Rapid Action Battalion

The Rapid Action Battalions (hereinafter 'RAB'), the elite force was created through 'the Armed Police Battalions (Amendment) Act, 2003 and published in the Bangladesh Gazette of July 12, 2003 [5]. The RAB is a composite force, 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 officers in Rapid Action Battalion may, as and when necessary, be appointed on secondment or deputation as the case may be, from among the persons who are in the service of the Republic, including any discipline force' [6]. It is a hybrid force consisting of the police and the army. Momtaz [8] mentioned that The Amended Armed Police Battalion ordinance has given birth to:

- Armed Police Battalions,
- Rapid Action Battalions.
- Internal security duties,
- a. Recovery of unauthorized arms, ammunition, explosives and such other articles as the government may, from time to time direct,
- b. The apprehension of armed gangs of criminals,
- c. Assisting the regular law enforcing agencies including the Police for maintaining law and order, and such other duties as the government may, from time to time, assign.

In addition, Cheetah and Cobra were formed as special units of the detective branch. They also enjoy a lot of impunity in arresting people [8]. We have, also Border Guard of Bangladesh (BGB), Industrial police, Highway police, CID, SB, 11 Training institutes, 6 Metropolitan Police, 7 Range, Railway Range, the Special Women Police Contingent (SWPC) established in 2008, and Police Hospital.

How Rights are violated by Law Enforcing Agency in Bangladesh?

This part is an attempt to focus on the human rights violations that are alleged to have been done by the law enforcing agency and why the protectors become the perpetrators. Though Bangladesh has ratified major legal instruments of International Humanitarian laws and the Constitution of Bangladesh enumerate the essential rules for protecting human rights, however, human rights always violated in various forms. Some are analyzed below. Table-2(Annex-2) shows the overall statistics of human rights violations from January-November 2018 in Bangladesh.

Death in Custody

Custodial death becomes a common happening for quite a long time. The word ‘custody’ implies guardianship and protective care. No civilized law permits custodial torture that springs out of a vicious desire to cause suffering when there is no option of any reprisal. Jails are overcrowded beyond capacity, as a result of arrest operations carried out to suppress opposition political parties and dissenting voices. The actual number of inmates is about three times more than the prisons’ capacity. The total capacity of prisons across the country is 36,614, but there were 92,404 inmates as of 30 November 2018. Many inmates allegedly die in jail due to the lack of proper treatment facilities and negligence by prison authorities. In November 2018, seven persons died in jail due to alleged ‘illnesses’. In *Jatiyo Mahila Ainjibi Samity vs. Bangladesh and Others (criminal)*, the High Court held that detention in safe custody against the will of a detained person was illegal.

Many police officers believe that information or confessions cannot be extracted without physical threat or torture. That is why, although torture is prohibited under the law, its practice is rampant particularly under the ‘remand’. The form of torture includes beating on the soles of the feet, hanging, and suspension by the arms while they are tied behind the back, suspension upside down, beating, electric shocks, and psychological forms of torture including humiliation, threat, and insult etc. The Bangladesh Penal Code, 1860 has provided definitions and penalties for some offenses which very narrowly cover the area of torture as follows: offence affecting life (Section 299-311); hurt (Section 319-338A); to wrongful restraint and wrongful confinement (Section 339-348); offences relating to criminal force and assault (Section 339-358); offences relating to rape (Section 375, 376).

When such offenses are caused by the members of the police force, complains of torture can be brought against them under these provisions.

Very often it seems that torture is committed on a person on the orders of ‘higher-ups’ which allows police to act with impunity. The lack of disciplinary action against law enforcement personnel remains one of the main attributing factors of torture. Similarly, they should be instructed that any other forms of sexual abuse may constitute torture or cruel, inhuman or degrading treatment and that offender will be brought to justice’.

While addressing the protection against torture and degrading punishment under Article: 35(5) the HCD in *Alhaj Yousuf Ali vs. The State* asserted against the police torture and spoke of duty on part of the police not to exercise their power of arrest capriciously and fancifully. Torture for extracting any kind of confession would neither be right nor just nor fair’.

Arbitrary Arrest and Detention

Another form of human rights violation is arbitrary arrest and detention. In *BLAST and others vs. Bangladesh and others* [‘Section 54 Guidelines Case’, or ‘Rubel Killing Case’ or ‘Guidelines on Arrest and Remand Case’], the High Court recommended the some directives in exercising power under section 54 and 167 of the Cr Pc, 1898 and section 33 of the Special Powers Act 1974. Few can be mentioned here.

- No Police officer shall arrest anyone under Section 54 for the purpose of detention under Section 3 of the Special Powers Act, 1974.
- A police officer shall disclose his/her identity and show his/her ID card on demand to the person arrested or those present at the time of arrest.
- The police officer arrested under Section 54, or the Investigating Officer taking a person to custody or the jailor must inform the nearest Magistrate about the death of any person in custody in compliance with these recommendations
- The Magistrate shall inquire into the death of any person in police custody or jail as per the recommendations. Later on in *Saifuzzaman vs. State* addressing Article 33 and Article 35(5), more guidelines have been issued regarding the police behavior while arresting a person as follows:
- 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.
- Time and place of arrest and the place of custody of the nearest relative or to a friend of the arrestee. An entry as to the ground of arrest and name of the informer must be made.

However, arbitrary arrest and detention are still continuing all over the country. On 8 November 2018, police arrested some people in the name of recovering drugs in Matikumra Village under Jhikargachha Upazila in Jessore District. Later the police inflicted torture on two persons named Faruk Hossain and Ashraful Islam and shot them in their legs. Faruk and Ashraful were admitted to the National Institute of Traumatology and Orthopaedic Rehabilitation in Dhaka. Dr. Ashim Ghosh said that the left legs of both Faruk and Ashraful had to be amputated. See pictures (annex-3).

Enforced disappearance

The enforced disappearance of persons has been practiced since the mid-20th century. Enforced disappearances constitute an extreme violation of human rights, infringing many fundamental rights. Furthermore, not only is the person affected who becomes the direct victim, but also his or her family, colleagues, and friends as well as society as a whole. Most of the disappeared are persons who are critical of their governments. According to Odhikar Report (December 2018)[15], in November 2018, 12 persons

were allegedly disappeared after being picked up by members of law enforcement agencies. Among them, three were shown arrested after a few days of disappearance and the whereabouts of nine persons remain unknown. A highly visible and worrying number of enforced disappearances have been committed during the current government reign. Opposition parties have expressed their concern and fear that there are possibilities that leaders and activists of the opposition will be disappeared in the lead up to the upcoming national elections. Many leaders and activists of the opposition parties, particularly the BNP, became victims of enforced disappearance before and after the controversial 10th Parliamentary elections in 2014. Of them, many have still not returned. The International Federation for Human Rights, Asian Federation against Involuntary Disappearance and its local member Odhikar has already urged the Bangladesh government to ratify the International Convention for the Protection of All Persons from Enforced Disappearances.

Extrajudicial killings

April 14, 2004, the day the RAB began its operation. Since then the so-called elite force has repeatedly killed directly or indirectly 1,600 persons. It is found that in no case of 'cross-fire' or 'encounter' whatever no member of RAB, Policies, cheetah or cobra has ever been injured or killed, which gives the impression that the "gun-fight" was unilateral and it was done by the armed personnel.⁴⁸ Extrajudicial killings in the name of 'crossfire', 'gunfight', or 'encounters' portrays the picture of blatant violation of fundamental rights that are enshrined in the Bangladesh Constitution. The key point which raises the question is the execution without due process. The 'accused' is never formally accused (let alone having his rights read to him) in a court of law, never tried (therefore denied the right to defend himself), never sentenced. The Arafat Ameen, Criminal Responsibility for Torture: An urgent Human Rights safeguard in Bangladesh; Criminal Responsibility for Torture, A South Asian Perspective, Research Report 2004, Odhikar, Page. 23, 24.

Facts of Yasmin's Case

Yasmin an 18-year-old girl was raped and killed by three policemen in August 1995. Yasmin was going home and while she was waiting at the bus stop, a police van arrived and offered her a lift. When the villagers found her body, the police claimed that Yasmin had jumped off the van, Yasmin's case revealed an institutional acceptance of violence against women, as it took a long time to initiate proceedings against the accused. The trail of Yasmin consisted of two parts. In the first part, the three principals accused were tried by a special court. The second part involved charges against administrative lapses during rape, including damaging evidence of rape and concealment of facts. From the post-mortem reports and the evidence

there is a clear sign of rape on the victim girl and that, according to the Medical Reports, her death was due to asphyxia as a result of throttling followed by head injury and she was raped.' The Appellate Division after hearing the Parties dismissed the appeal of the accused, who was sentenced to death by the lower court. The death sentences of two of the accused police officers were carried out in September 2004, nine years after the trial. From May 15 to 30 November 2018, 283 persons were reported to have been killed extra-judicially in the name of 'gunfight' or 'shootout' during the ongoing 'anti-drug drives' across the country. 34 persons were reported to have been killed extra-judicially in November [16]. On 17 November 2018, the police arrested a man named Farid Alam from Lengurbil Village in Teknaf under Cox's Bazar District. Police stated that they went to recover Yaba pills (illegal synthetic drugs) at midnight. At that time Farid's associates opened fire at police. As a result, a gunfight occurred between the two groups. Later the police arrested Farid, who had been shot and wounded, and took him to Teknaf Health Complex, where the doctors declared him dead. In the meanwhile, the family of Farid Alam alleged that Farid was arrested by the police during the day and was killed in the name of 'gunfight' during the recovery of drugs and arms at night (The Prothom Alo, 16 November 2018). See Annex-4 (Table-3: Total extra Judicial Killing (2001-2018)).

Police and Children

Children are also a victim of police's cruel behavior. In times of political unrest, children are used for throwing explosive substance and stones. That is why police always have a tendency to arrest children under S/54 and S/86 Dhaka Metropolitan Police Ordinance. In the Code of Conduct for Dhaka Metropolitan Police as to the responsibilities of the guard with the children, it is laid down that, 'Children will have to be behaved with soft words and in affectionate manners.'

As to the responsibilities of the officer-in-charge, the said Code cited that, 'in case of children or adolescents, officer-in-charge will behave with them with a vascular affection.' Many of the police stations in Dhaka city do not have separate custody room for children or female detainees. They are put in a police cell with adults and common criminals, who is, in total contravention with the Jail Code and the Children's Act' 1974. Very often after the arrest, what police doing is that they have not recorded the actual age of the children or mentioned extended age?

Under the ICCPR, children are generally considered to be individual' that enjoy the full range of rights under the covenant. Article 10(3) requires the separation of 'juvenile offenders'. But all these provisions are not ensured in Bangladesh.

Violence against journalists

At present, a number of journalists faced torture, threats or harassments from law enforcement agencies, (gangsters), government officials, or the student wings of various major political parties as noted in the table-4(Annex-5). Journalists are now very proactive to disclose everything before the public. That's why the government and political elites are suppressed them under recently crated laws in the name of yellow journalism by law enforcing agencies.

The Laws in Question and How They are Misused? *Scope of Torture in Remand*

Part V, chapter XIV of the Code of Criminal Procedure 1898 deals with the police and their powers to investigate. Whenever any person is arrested or taken into custody and it appears that the investigation cannot be completed within 24 hours and there are grounds to believe that the accusation or information is well founded, the officer in charge of the police station may forward the accused to the magistrate and the magistrate may authorize the detention of the accused in such custody for a period not exceeding 15 days. After an investigation, if it appears to the police that there is sufficient evidence or reasonable ground of doubt to justify the statement of the accused to a magistrate responsible officer has the right to release the person from custody on his executing a bond with or without sureties. And if upon an investigation it appears to the officer that there is sufficient evidence or ground, such officer shall forward the accused under the custody of the Magistrate empowered to take cognizance of the offense upon a police report and to try the accused and send him for trial.

The general rule is that special orders for the remand of accused persons under section 167 must not be granted to the police without good and sufficient cause shown, accused persons should be brought before the Magistrate having jurisdiction who, if further investigation is necessary, he can adjourn his inquiry from time to time under section 344 of the Code. When, however, a person is brought before the Magistrate prior to the granting of an order of detention the latter must be satisfied that –

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

The order of remand is upon the subjective satisfaction of the magistrate that there is a necessity of granting remand for the interest of the case. Nowadays it has become a practice of the police in almost every case to apply for the remand of the accused whether there is an actual need or not. This section is now being

misused as an instrument for interrogation and to obtain a confessional statement or any other information through torture. This is how the police manipulate the situation and there are many reported deaths in police custody (discussed earlier) for torturing the arrested person.

Section 54 of the Code of Criminal Procedure

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

- If the person arrested has been concerned in any cognizable offense or if there has been credible information against him, or the police have reasonable suspicion to think so;
- If the person has in his possession any implement of housebreaking and cannot give a lawful excuse for doing so;
- If a person has been proclaimed under this or any other Code or by government order, to be an offender;
- If there is reasonable suspicion to believe that the person possesses stolen property;
- If the person obstructs a police officer on duty, or if he has or attempts to escape from lawful custody;
- If the person is a deserter from the armed forces of Bangladesh;
- If the person has been concerned in or if there is credible information of his being so involved in or there is reasonable suspicion that he is concerned in committing any act abroad which would have been a punishable offense in Bangladesh (if committed in this country). He would be detained under custody in Bangladesh under the Fugitive Offenders Act 1881 or under extradition laws;
- If the person is a released convict, he can be arrested if he does not notify the sentencing judge of his change of address or absence from residence;
- If the arrest of a specific person for a specific crime has been made by another police officer by requisition. Some persons initially detained under section 54 are subsequently charged with a crime, while others are released without charge.

However, the term 'reasonable suspicion', 'credible information' or 'reasonable complaints' appears in several of the reasons under which a police officer can arrest a person under section 54 of the Code of Cr. Pc. Unfortunately, these terms are one of the causes of misused. Therefore, after the arrest under section 54, the police forward the person before the Magistrate with a prayer for remand under section 167

of the Code of Criminal Procedure which has been discussed earlier. To some officers, moreover, S/54 of the Code of Cr. Pc is the way to get money.

Section 100/86 of the Dhaka Metropolitan Police Ordinance

Section 100/86 of the Dhaka Metropolitan Police Ordinance (hereafter 'DMP Ordinance') echoes the provision of section 54 of the Code of Cr. Pc. The punishment of persons on suspicions motives between the times of dusk to dawn deals with Section 86 of DMP Ordinance. The law states that, if a person is seen between the hours of dusk to dawn, acting under several stated circumstances the police arrest him/her under reasonable suspicion. Section 86 of the Dhaka Metropolitan Police (DMP) Ordinance provides (unofficial translation):

If any person is found in the following situations during the period between sunset to sunrise:

- Equipped with dangerous machinery without satisfactory reasons, or
- Covered face or in disguise without satisfactory reason, or
- Present in any residence or any other building or any boat or water vessel or any other transport without satisfactory reason, or
- Sleeping or wandering on any street or in any place without satisfactory reasons, or
- Possessing the tools of entering any house forcefully without satisfactory reason, then the person will be liable for one-year imprisonment or fine of taka two thousand or both.

Section 100 of the DMP ordinance provides: in the presence of any police officer or in his attention if any person commits an offense under this Ordinance or any other law in force, that police officer can arrest him without a warrant.

However, S/54 of the Code of Criminal Procedure is applied all over Bangladesh but S/86 of DMP Ordinance is used for arrest in the Dhaka Metropolitan area only. It is also common for a person arrested under S/54 of the Code of Criminal Procedure, to find they later charged under the Special Powers Act 1974, a repressive law favored by all the governments, or the Controls of Narcotics and Drugs Act or even the Explosives Act. This conversion occurs where prayer or petition for detention under these Acts, is submitted to the district magistrate from the concerned police station, through the superintendent of police. The district magistrate then issues a common order and sends it for approval to the ministry of Home Affairs.

During this 12 months period, 64.46 percent of the total arrests were under different sections of the DMP Ordinance and 6.33 percent of the total arrests were under S/54 of the Cr. Pc, 1898.

The DMP police continued to use the power of arbitrary arrest by Switching from one legal provision (S/54 of Cr. Pc) to another (S/86 and law of the DMP Ordinance); although according to Regulation 317 of the PRB, "The police shall be careful to abstain from unnecessary arrest".

The Special Powers Act 1974

The Special Powers Act 1974 (hereinafter SPA) is deemed by human rights activists and other members of civil society as a repressive law. The use and abuse of this Act in the name of protecting the security of the state has resulted in a steady pattern of human rights violations. The Act provides 'Special Measures' for the prevention of prejudicial activities, for a speedy trial and punishment for grave offenses. Under prejudicial acts, the law includes acts that are prejudicial to:

- The sovereign and/or state; to the maintenance of friendly relations between other states and Bangladesh;
- To the security of Bangladesh;
- To the safety or maintenance of public order;
- To the peaceful co-existence among different classes and section of the community;
- To the maintenance of law and order;
- To the security of any section of the public;
- To the economic and financial interests of the state;

For aforesaid grounds police can arrest any person at any time.

Who is detained under section 54, Section 100/86 and the SPA?

Investigations carried out by Odhikar since January 2003 have shown that the larger majority of persons arrested under S/54 of the Cr. Pc, and section 100/86 of the DMP Ordinance, and under the SPA are from the very poor economic background. They are either homeless person, rickshaw pullers striving to make ends meet, small scale vegetable and fruit vendors, street children, destitute women who, being abandoned by their husbands, turn to the streets to try and support their children and youths suspected as terrorists, extortionists and for rival political activities.

Crossfire and Violation of Human Rights in Bangladesh

The term "death in an encounter" is used in other countries which mean "crossfire" by law enforcement agencies in Bangladesh. The evil connotation associated with the word demonstrates the utter powerlessness of the people facing extrajudicial killings that are taking place in Bangladesh [5]. The overall human rights situation in Bangladesh remained at an alarming level in the first six months of 2018 due to a sharp rise in cases of extra-judicial killings and custodial deaths, and a high number of cases of rapes and sexual assault of women across the country. A

report published by the Daily Star disclosed that a total of 275 people have been killed during incidents of 'gunfight' and 'crossfire' with law enforcers, in custody of law enforcement agencies, or being shot by law enforcers, while 427 women were raped across the country between January 1 and June 30, 2018 [17]. The human rights monitoring report of Odhikar published in December 2018 mentioned that 456 people have killed extra-judicially by law enforcement agencies and 83 others were forcibly disappeared across the country by 11 months. Out of the 449 people were killed by crossfire [15]. Besides, violation of human rights happened in various forms such as- death in Jail (64), political killing (79) and injured (3826), rape (619), killing y BSF (10), acid violence 26 and so may [15]. The following table represents the statistics of crossfire happened from 2001- to 2018 by various law enforcing agencies in Bangladesh. The table indicates that a total number of crossfire incidents happened 2286 by 18 years in which 1167 by police and 936 by RAB. It has been displayed by the table that in 2001 the violation of human rights by crossfire was zero but it reached 216 in 2017. The highest number of crossfire happened in 2005 which was 340. Though the number fluctuates but the crossfire incidents of the first 6 months of 2018 were 216 and at the end of December 2018 it reached number 449 [15] which indicates the trend of crossfire and extrajudicial killing is increasing. Bangladesh Prime Minister vows to continue anti-drug operations and over 120 people have been killed by crossfire and at least 10,000 arrested since May 14 to May 2018 by the Bangladeshi police [18]. This is a grave violation of human rights and a serious threat to human rights. Therefore, it has been proved that the arbitrary and abuse of power exercise by law enforcing agencies is increasing recklessly. This is the sign of lack of accountability, rule of law, good governance and deteriorating law and order and violation of civil rights in Bangladesh.

Causes for Violations

Why such violations are rampant in Bangladesh security forces? Numerous causes are responsible for such violations by the police discussed with more details here below:

Corruption

Our police department has been charged against involving in corruption. Taking bribes, harassing innocent people, links with notorious gangsters, extortions, misusing power for personal gains are some of the common forms of crimes police are accused of [8]. According to the report of the Transparency International Bangladesh (TIB), Corruption Perception Index (CPI), the law enforcement agency is found the most corrupt sector in 2017 [19].

Political Interferences

One of the main factors against the police for violating human rights is political interest used by the government or ruling political parties. In the last 16 years during which democratically elected governments have ruled the country, it is seen how blatantly the government use the police as its party cadre to oppress the opposition [8]. We find that by the enactment of some politically motivated laws, namely: the Special Powers Act, Section 54 of the Code of Cr, Pc, and the government has provided an opportunity for the police to misuse these laws for personal interest [8].

Salary Structure of Police

The salary structure of the police department was comparatively so poor that it was simply impossible to lead an honest life. As a result, law enforcing agencies involved with a bribe and contract money and does any kinds of criminal activities. For example- the commanding officer of Rab-11 in Narayanganj Lt. Col. Tareque Sayeed Mohammad and the then company commanders Maj Arif Hossain and Lt. Commander Masud Rana of the RAB contract with Tareque is the son-in-law of Disaster Management and Relief Minister Mofazzal Hossain Chowdhury Maya. They abducted seven people, including NCC panel mayor Nazrul Islam and senior lawyer Chandan Sarker, from the Dhaka-Narayanganj link road on April 27, 2014. Later, their bodies were found floating in the Shitalakkhya river [17]. Though recent pay scale and other facilities provided by the government [3] is very handsome (Basic 8250-78000) determined by National Pay Scale 2015 for the lowest to the highest level of Police officers. However, bribe or contract money still prevailing law enforcing agencies and act as a cause of crossfire and extrajudicial killing.

Lack of Human Rights Training for Police Personnel

One of the pitfalls lies with the existing training facility of the police. The amount of training of police officers in police stations, compared to training received at headquarters, is very low[8]. A survey on the training of 100 constables of Dhaka Metropolitan Police, selected at random, who had completed 20 years of service, revealed that 96 received only basic training for 6 or 3 months [8]. The basic cause is heavily biased towards physical training. Of 1,329 classes during a 6-month basic course, only 530 were devoted to academic training, and this was mostly on laws and procedures 1996. "In Bangladesh, there is no such institute for police where international standard education and training for improving overall human rights knowledge and capability of the police officers and training focusing on human security issues of the poor, woman and children can be imparted [8]. As a result, of absence and ignorance, protecting and promoting the universal norms of human rights, police it, become the perpetrators and human rights, violators.

Accommodation

Accommodation is another big problem according to PRB, only 20% of the constables and sepia are allowed to live with their families [8]. Others have to live in the thanas or barracks. A recent survey of accommodation by police headquarters revealed that 14,153 constables/ naiks/ head constables did not even have barrack accommodation [8]. There were 32,454 cases of shortages of family accommodation for assistant sub-inspectors / head constables /naiks / constables; 4,603 for sub-inspectors and equivalents; 1,285 for senior assistant police superintendents/ assistant police superintendents/ inspectors and 98 for superintendents of police/ additional/ superintendents of police [8]. Inside the dingy quarters, policemen sleep on the floor in very little space sharing pillow and blankets. Then it is really a question of how they are to be conscious of human rights when they themselves are receiving inhuman treatment.

Defects in Recruitment Procedure

‘There is also a huge flaw in the recruitment procedure, which has far-reaching effects on the entire department. In this system, the field level officers do not have the opportunity to be promoted to the highest office in the department [8]. Most of the higher level posts are exclusively set aside for officers who are appointed through the BCS Examination and start as an ASP [8]. This is a strange procedure practiced in our country. This discriminating practice gives rise to frustration among the field level officers. Another important thing is that, in selecting a candidate political affiliation, good connection or how far the bribe becomes the deciding factor. By recruiting a police officer through pay off, the first thing he learns is corruption [8].

Impunity for law enforcing Agency

There is no separate authority or department to investigate the human rights violations related to crimes committed by the police. As a result, it is the police which investigate allegations of human rights violations committed by their departmental fellow colleagues by which in most of the cases police get relief from the allegations or are awarded comparatively light punishment [8]. In some cases, upon the public pressure some possible perceived consequences are removal from service, damage to career, punitive transfer, disturbance of personal and family life, etc. And at these stages, the departmental proceedings are completed.

Consequently, the police are enjoying informal impunity despite being the perpetrator of human rights violations. When any complaint is filed before any court against the alleged violations of human rights perpetrated by police, it is the state which bears the expenses from its fund [8]. As a result, the corrupt and human rights violators’ police that enjoy not only impunity from the responsibility of crime related to

human rights violations but also economical relief. The Armed Police Battalions Ordinance, 1979 laid down that no suit, prosecution or other legal proceedings shall be against any member of the Force, for anything which is done or intended to be done in good faith under this Ordinance [5]. ‘That is why there are overall despair and dissatisfaction against the police so much that people are usually reluctant to report crimes in Thana as they deem sure that they will not get relief or fair treatment.

Suppression, Degrading Treatment and Lack of Accountability of Law Enforcement Agencies

Members of the law enforcement agencies are enjoying impunity as the government is using them to suppress its political opponents [8]. As a result of such impunity, allegations of harassment, torturing people, taking bribes, shooting in the legs, attacks and unlawful detention of the opposition and dissenters and extortion, were found against members of law enforcement agencies [8]. The Torture and Custodial Death (Prevention) Act, 2013 was passed after relentless demands from human rights defenders. However, a vast majority of the torture victims and family members are not able to file any cases under this Act due to fear of reprisals; and those cases that have been filed are yet to see light in the court [8].

CONCLUSION WITH PRESCRIPTION

There is no doubt that Bangladesh police has been contributing to the law and order situation in Bangladesh. However, some controversial activities are ruining the image of this force. There are hundreds of allegations against the elite force officials for being involved in extortion, abduction, extrajudicial killing by crossfire, rape and dealing in drugs and weapons. Some of the members of the RAB use organized blackmailing rackets to trap innocent people and finally extract money from the victims through various excuses. There are allegations that the law enforcing agencies have been politically used by successive governments. As discussed above those constitutional provisions says arrestees detained should be produced before the court within 24 hours after arrest. In practice, however, during the detention arrestees are not allowed to meet with anyone.

Governments and politicians have used the Bangladesh Police to destroy political enemies [12]. It is most important that democracy is reinstated in Bangladesh but the free, fair, credible and participatory election is absent. Besides, active and participatory parliament is essential first which is lacked in Bangladesh. Accountability of government is important to establish the rule of law and good governance but all the mechanisms of accountability are under the government. Press freedom should be ensured and sufficient space should be granted for growing civil society but which is still under government control. Laws have greater permanence than commands which

are also absent. The supremacy of laws ensures no person can claim to be above law but everything is strongly guided by the government. There cannot be a more undesirable situation where security forces, created for the purpose of providing safety to the people, would come to be considered by many as a source of their insecurity. Prescriptions to overcome these pitfalls are given below:

- First, we need to ensure free, fair, credible and participatory election.
- Human rights should be given the highest priority and this information has to be passed on to every single citizen.
- Parliament should be viable, vibrant, active and participatory.
- Mechanisms of accountability of law enforcing agencies and the executive branch should be more effective and free from government control.
- The culture of impunity must be seized from the existing system.
- It is to ensure that no one is above the law.
- Crossfire is not the solution to any kinds of criminal activities.
- The consciousness of people and moral education is essential for every sphere of our life.
- Lack of trust and conflicting attitude from and among political parties should be driven out.

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Annex-1

Table-1: Statistics of Crossfire 2001-2018

Crossfire/Gunfight from 2001-2018																		
Year (s)	RAB	Police	RAB-Police	Joint Force	Cheeta-Cobra	Army	BGB (Former BDR)	Police-BGB	RAB-Coast Guard	RAB-Police-Coast Guard	Coast Guard	DB Police	Forest Guard	Police-Coast Guard	Ansar	BGB-RAB	Grand Total	
2018 (Jan-May)	64	134					1				2	15					216	
2017	32	104				1						2					139	
2016	51	92		1				1	4			2					151	
2015	48	97		1			2										148	
2014	23	83		8							3					2	119	
2013	27	36	0	2	0	0	0										65	
2012	40	7	2						4								53	
2011	42	15	4						4								65	
2010	65	21	9						3	3							101	
2009	38	63	25			3											129	
2008	65	50	15	1			1				4						136	
2007	90	35	3	1							1						130	
2006	181	96	1								7	4	1				290	
2005	107	212			4						2			15			340	
2004	63	91		7		1	1	3									166	
2003	0	26		4		1						1			1		33	
2002	0	5															5	
2001	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Total	936	1167	59	25	4	6	5	4	15	3	17	26	1	15	1	2	2286	

Source: Odhikar Report June 2018. Source: http://odhikar.org/wp-content/uploads/2018/06/Statistics_Crossfire-Gunfight_2001-May-2018.pdf

Explanations: Table-1 is showing the trend of violation of human rights by crossfire/gunfight by law enforcing agencies from 2001 to 2017. It has been displayed by the table that in 2001 the violation of human rights by crossfire was zero but it reached 216 in 2017. Therefore, it has been proved that the

arbitrary and abuse of power exercise by law enforcing agencies is increasing recklessly. This is the sign of lack of accountability, rule of law, good governance and deteriorating law and order and violation of civil rights in Bangladesh.

Annex-2:

Table-2: Statistics of Human Rights Violations: January-November 2018

Type of Human Rights Violation	Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.		
Extrajudicial Killings	Crossfire	18	06	17	28	149	50	69	24	35	19	34	
	Shot to death	1	1	0	0	0	0	0	0	0	0	0	
	Torture to death	0	0	1	1	2	0	0	0	1	0	0	
	Total	19	7	18	29	151	50	69	24	36	19	34	
Enforced Disappearances	6	1	5	2	1	3	5	5	30	13	12		
Death in Jail	6	5	9	7	8	5	7	4	2	4	7		
Human Rights Violation by Indian BSF	Bangladeshis Killed	2	1	0	0	0	0	1	0	1	3	2	
	Bangladeshis injured	3	5	1	2	0	1	0	1	7	0	0	
	Bangladeshis Abducted	2	0	0	3	4	0	0	0	1	2	1	
	Total	7	6	1	5	4	1	1	1	9	5	3	
Attack on Journalists	Injured	12	6	1	2	3	1	3	12	1	3	1	
	Assaulted	1	3	3	0	0	0	0	10	1	0	0	
	Threatened	2	1	3	0	1	1	0	1	0	0	0	
	Total	15	10	7	2	4	2	3	23	2	3	1	
Political Violence	Killed	9	5	9	11	13	2	3	2	4	10	11	
	Injured	619	424	335	428	297	153	216	252	261	380	461	
Dowry related violence against Women	12	16	15	21	12	06	10	14	16	07	06		
Rape	46	78	67	69	78	48	59	56	54	53	31		
Sexual harassment of Females	15	14	25	24	19	06	11	08	16	09	05		
Acid violence	2	1	3	4	2	0	5	6	1	1	1		
Public lynching	5	6	8	2	5	2	4	3	6	4	3		
Situation of Workers	RMG workers	Killed	0	0	1	0	1	0	0	0	0	0	
		Injured	20	0	40	0	35	27	10	0	1	67	20
	Workers in other sectors	Killed	9	11	7	8	18	7	4	6	5	3	9
		Injured	8	4	0	3	4	3	9	0	6	20	8

Source: Odhikar's Human Rights Monitoring Report on Bangladesh January to November 2018. Retrieved from: http://odhikar.org/wp-content/uploads/2018/12/human-rights-monitoring-report-November-2018_Eng.pdf

Table-2: The above-mentioned data disclosed the overall picture violation of human rights caused by various ways including by law enforcing agencies by 11 months in Bangladesh. Though Bangladesh now improving the economic conditions progressively day by day the situation of rule of law, human rights, and democratic practice are deteriorating by an alarming rate.

Annex-3: Injured by arbitrary shot by Police



Source: Daily Prothom Alo(Bengali Daily News Paper), November 24, 2018. <https://en.prothomalo.com/bangladesh/news/186979/UP-member-nephew%E2%80%99s-legs-amputated-after-torture>

Explanation: Pictures of these two persons named Faruk Hossain and Ashraful Islam are arrested and later shot their legs in police custody that are near to death and fighting to survive. This is one of the

cruellest forms of human rights violation. Thus, the protector became perpetrator in Bangladesh since its independence.

Annex-4:

Table-3: Total Extra Judicial Killing (2001-2018).

Total Extra-judicial killings from 2001 - 2018																											
Year (s)	RAB	Police	RAB-Police	Joint Force	Linesth-Cobra	Ansar	Army	BNP (Former BDR)	Police (former BDR)	RAB-Coast Guard	RAB-Police-Coast Guard	Coast Guard	UPA Police	Police-Forest Guard	Forest Guard	Coast Guard-Forest Guard	Police-Coast Guard	Jail authorities/Police	Navy	Police and Armed Police Battalion, RAB, BGB	Joint Force	Urugs and Narcotics	Armed Battalion	BGB-RAB	Highway Police	Grand Total	
2018 (Jan-May)	64	139						1				2	16														222
2017	33	117					2	1					2														155
2016	51	118	0	1	0	0	0	2	1	4															1	178	
2015	83	126		1				5																1		186	
2014	29	119		11			1	2	5			3													2	172	
2013	28	175	1	8	0	0	0	11	32											64						329	
2012	40	16	2				3		2	4								1								70	
2011	43	31	4							4										2						84	
2010	68	43	9					1		3	3															127	
2009	41	75	25				2	3	5			1			1			1								154	
2008	68	59	15	1					2			4														148	
2007	94	64	3	7			7	1				1			1			1	3				2			184	
2006	192	144	1						6			7	4		1											355	
2005	111	258			4	1							5			2	15									396	
2004	77	133		15	3	1	1	6	3					1												240	
2003	0	57		6			2	2	4				3					6	1							81	
2002	0	33					4	39	4				1							2						83	
2001	0	33		1					9				1													44	
Total	1002	1742	80	51	7	14	56	56	45	15	3	18	32	1	3	2	15	13	4	64	0	2	3	1	2	1	3209

Source: Odhikar Report 2018. http://odhikar.org/wp-content/uploads/2018/06/Statistics_EJK_2001-May-2018.pdf

Explanations: Table-3 represents the trend of violation of human rights by extrajudicial killing by law enforcing agencies from 2001 to May 2018. It has been explored that in 2001 the violation of human rights extrajudicial killing was 44 but it reached 222 in May 2018 that means within 5 months of 2018 the figure goes 222 and it may reach 400 by December 2018. In

2013 the figure was 329. The total killing has been happened 30209 by 18 years. Therefore, it has been proved that extrajudicial killing by law enforcing agencies is increasing recklessly. This is the sign of lack of accountability, rule of law, good governance and deteriorating law and order and violation of civil rights in Bangladesh.

Annex-5

Table-4: Violence against journalists in 2018

(January-December) 2018 Journalist Harassment	
Documentation Unit Ain o Shalish Kendra (ASK)	
Types of Violence	No. of Harass
Torture/Harassment/Threat by Law Enforcement Agency	18
Death Threat (Govt. affiliated party, Govt. Official, Terrorist and unanimous by phone)	13
Case filed against published news	15
Torture by Terrorist/attack/threat/harassment/bomb thrown	53
Attack/Torture/Harassment by Awami League and its sister concern	70
Attack/Torture/Harassment by BNP and its sister concern	1
Torture/Threat/Harassment by Govt. Officials and Employees	9
Injured in Conflict between BNP-AL supporters during 11 th National Parliamentary Election	2
Injured after being attacked by grand alliance candidate supporters during 11 th National Parliamentary Election	16
Abduction	1
Deadbody Recover	1
Killed by Miscreant	1
Others	6
Total	207

Source: Ain o Shalish Kendro report, 2018. Online: <http://www.askbd.org/ask/2019/01/14/journalist-harassment-january-december-2018/>

Explanation: Table 4- shows the picture of violence against journalists by January to December 2018. These violence incidents have been occurred not only by the law enforcing agencies but also by the political parties and terrorist groups and by many others. It is an

indication of the worst form of violation of human rights in Bangladesh because journalists are considered as a mirror of state and not safe in Bangladesh. The number of victims is also very high.